IN THE FAMILY COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI

M. W.,	)	
	)	
Petitioner,	)	
	)	**Cause No. 08SL-DR08042**
vs.	)	
	)	**Division 6**
	)	
M. W.,	)	
	)	
Respondent,	)	

FAMILY COURT MODIFICATION JUDGEMENT, MOTIONS TO ENFORCE AND MOTIONS FOR CONTEMPT

Cause called on the Respondent's Motion to Enforce, Determine Amounts Due, Contempt and Amended Motion for Contempt as to relief only, Family Access, Motion for Counseling, Amended Motrion to Enforce regarding Edward Jones IRA, (partially dismissed), Respondent's Motions to Dismiss, Motions to Set Aside, and Cross Motion to Modify custody and on Petitioner's Motion for a Child Order of Protection, Motion to Enforce, Motion to Distribute Undistributed Marital Property, Amended Motion for Contempt and her Motion to Modify and Second Motion to Modify the Decree of Dissolution as to support and custody and for her name to be changed. Petitioner, M.W., (hereinafter referred to as Petitioner/Mother) appearing in person and by attorney Deborah Benoit. Respondent, D. W., (hereinafter referred to as Respondent/Father) appearing in person and by attorney Simone Haverstock-McCartney. The Court has considered the record, the testimony, taken Judicial Notice of its entire file, and the evidence, and now being fully advised in the premises, enters its Findings and Orders as follows:

FINDINGS OF FACT AND CONCLUSIONS

(1) This Court entered an Amended Judgment and Decree of Dissolution of Marriage on June 25, 2010, dissolving the marriage of the parties. The parties had entered into a consent agreement regarding the custody of their then two minor children, then age _____20 and now emancipated by having turned age 21 and the remaining child _____ who is age 12. The Parenting Plan and Custody Agreement granted the parties joint legal and joint physical custody of the children, with physical custody subject to Respondent's periods of custody and visitation as set forth in the Parenting Plan Part A attached to the Judgment as "Exhibit 1 ". Respondent was ordered to pay to Petitioner the sum of $1,135 per month as and for child support for the two (2) minor children and child support of $766 per month if there is just one child entitled to support. In addition there is a provision for the parties to share equally the college expenses, if any, after using any of the college funds set aside for each child and any of the bonds that were set aside for the college expenses.

NON CUSTODY ISSUES

(2) The first issue the Court will take up is the question of the allegations related to ____ and his college expenses at Morehouse College. During the dissolution trial there was an initial statement from the Respondent that he had paid all of _____ spring 2010 college expenses. However, there was also proof that he received a refund to his credit card for some $3,000 which thus meant that in fact ____ had a debt still due. At this current trial the Petitioner seeks an accounting for what she says was an expense she incurred because when she signed up ____ for summer school, the school alleged that there were charges still owing from the previous semester. The credible evidence appears to be that the Petitioner assumed these alleged charges somehow had something to do with the $3,000 issue carried over from the dissolution proceedings. It did not deal with that. It is unclear exactly what any debt may have been for, since the credible evidence is that the Respondent ultimately paid more than the $3,000 that was initially at issue and in fact paid $3,500 and later another $1,550 which somehow at the end of the summer

ended in a $991 credit on the school books in favor of ____and which was the balance from funds paid by the Respondent. Morehouse has an unreadable billing system and both parties presented evidence of bills and payments which were completely different in format as well as amounts. As it relates to the costs ultimately incurred according to the Petitioner, she paid some $99 in late charges. Unfortunately, we spent three times as much as that on attorneys' fees over this issue. There is no credible evidence that any fees were due from any act of the Respondent and thus any attorneys fees incurred on this topic are not the responsibility of the Respondent and Petitioner will thus not recover any costs from Respondent on this issue.

(3) The second issue regarding ___and Morehouse deals with the payment by each party for their one half of the fall semester 2010 expense. First it appears that Father was not included in making the decision that __ would go to summer school. He did however contact the school and make arrangements for the payment of the 2010 fall session. For some unknown reason the school appears to have required payment up front, of the entire balance, even though __ had a grant and a loan already approved. The credible evidence is that Father paid the entire amount due. He used all of the remaining funds in the three accounts still remaining that were set aside for __ education expense. Mother/Petitioner admitted at trial in January 2011 that she had not paid any sums due for the fall of 2010. Her apparent reason was she felt that she did not have a satisfactory accounting for the educational account and thus was not obligated to pay. The credible evidence is that she was told about the use of these funds, but the Court is not able to determine if her failure to pay was purposeful, because the accounting from Morehouse is so mixed up. We need not dwell on this issue about these accounts since the money is now gone and from the evidence was used for __ education. However, Mother's conduct is suspect in the eyes of this Court on this matter. After all of the evidence is considered from both parties it is clear that Mother/Petitioner owes $1,256.50 to Father/Respondent for the fall 2010 semester for ___. The Court will not dwell on the refund of some $8,100 which represents Father's overpayment for the fall of 2010, which was calculated after __ received the grant and loans previously awarded. This money was paid to __ and not repaid to Father and __ put this $8,100 it in his personal account and it has been

partially used by him for his expenses in the first semester. The remaining amount was left to be resolved between __ and his Father.

(4) During the testimony in July, it was determined that the issues regarding the balance of the educational expenses for __ for the spring of 2011, if any, are resolved and neither party owes the other any amount for his schooling in the spring of 2011. Since he is now reached the age of 21 neither parent is required by any court order to provided additional educational assistance. The Court finds there are no additional proceeds to be liquidated for __ educational costs. Petitioner is entitled to the credit available on the account in the amount to $991 which may be applied to his spring 2011 college obligation.

(5) The next issue was Petitioner's failure to have paid the Court ordered attorney's fees to Respondent's attorney. There are three separate awards. One for $1,000 issued in January of 2010 because of Petitioner's having created an additional burden on Respondent preparation costs based on her actions. The second amount was for $1,500, again as a consequence of Petitioner's actions and finally the last $7,500 at trial for the extra costs created because of Petitioner's actions during the initial dissolution. The Court acknowledges that it can not find a person in Contempt for the mere failure to pay attorney's fees that are ordered. However, Petitioner sat on the witness stand and admitted to having liquidated virtually all of her assets some $456,000 worth and placing them in the name of another person, namely Mr. Green to whom she has since married. She told the Court that she did not pay because she had other creditors and that the fees due are in her "queue" and will be paid in due coarse. Apparently that means whenever she determined to get around to it. By the time that this trial came to a conclusion she had paid all the attorneys fees which had been ordered. The Court includes the issue in this Judgment because it is necessary as an example of how the Petitioner has demonstrated on more than one occasion during the course of these proceedings her disregard for Court rules and Court orders as will be apparent in the custody issues more fully described below. The fact that the fees have now been paid, does not eliminate Petitioners flagrant disregard to payment of this debt.

(6) The Dissolution Judgment of June 2010, allowed Petitioner to remain in the marital home until September 4th 2010. As long as Petitioner was in the home she

was responsible for the payment of the utilities and any repair costs not to exceed $250 per item or event. Petitioner notified Respondent that there was a problem with the air conditioning unit for the upstairs, in late June. Respondent arranged for Joe Hawkins to attempt to repair as set out in the email of July 12, 2010. Petitioner complained that it was not repaired. During trial Respondent testified about the nonfunctioning air conditioner and he at least to this Court's impression, early in his testimony made it sound as if the air conditioning was working, but simply not cooling as much as Petitioner wanted. He said in his testimony the temperature upstairs was "tolerable". However, later it was brought out that he was aware the a/c was not working. In fact Petitioner's Exhibit 8, the email traffic, clearly states that on July 24th he was aware the a/c for the upstairs had failed and a new unit would be needed. He suggests in his email and more pointedly in his live testimony that because Petitioner was not cooperative regarding his refinancing efforts causing a delay, that he simply had other bills to pay. He took the attitude that he did not have to pay to repair the air conditioner. In fact he said "I don't have any allocated cash or extra credit available". He was under a court order to make this repair. The credible evidence from his demeanor on the stand and his arrogant attitude portrayed at trial, was that he was punishing Petitioner for not acting in a manner he wanted, regarding the refinancing thus he would retaliate. He willfully and purposefully did not make the repair and made the mistake in putting his failure to act in writing. Interestingly, a byproduct of this failure to fix the a/c meant that his daughter, whom he describes as the "center of his world and his princess", was forced to live in the heat as well.

(7) This discussion of Petitioner's exclusive possession of the marital home from February 2010, when she had Respondent removed by filing for an Order of Protection, is important to another issue. Petitioner contends that Respondent has not turned over to her some of her personal items and business items that were left, according to her, in the marital home when she was locked out. The Court notes that initially she complained that Respondent was also holding records from her business, namely the ___ Group. In her initial pleadings she included boxes of records she alleged he retained. However, because there is also a civil suit filed by ___ against Respondent, on the day of trial she amended her pleadings to remove any reference to the business records. This is

of course is her choice, but the existence of the business records is relevant to the determination as to what was or was not necessarily remaining in the house when she was precluded form reentry.

(8) As noted above, Petitioner was given exclusive possession of the former marital home on ___ Drive after the Dissolution Judgment, until September 3, 2010. She and the party's daughter resided there during the summer. Respondent was responsible for paying the mortgage payment while they were living there and thus not obligated to pay child support while they were there to offset the mortgage expense to some extent. Aside from the a/c issue noted above, the parties communicated little as to the residence or anything else for that matter. However, in an email (Exhibit 8) dated August 16th, 2010, Petitioner indicated that she would vacate the ___ Drive address on August 31, 2010. Respondent responded a few minutes later that he would be relocating on September 14, 2010. The credible evidence is that thereafter, in accord with the Judgment, arrangements were made by the Respondent to have his previous appraiser Mr. Wisniewski make arrangements to return to the __ Drive home to take photographs to document the condition of the home and the contents prior to his reentry. This was arranged to be accomplished on September 2, 2010 with Petitioner present at the home. In fact, a representative of the appraisal company took the pictures as depicted in Exhibit 4. Also introduced at trial was the original of the appraisal done in April 2010 and attached thereto were photo's taken on that date as well, and marked as Exhibit 4a.

At this point from all the evidence adduced, the Respondent arrived at the house on September 3, along with a locksmith and a police officer. Although no one appeared to be home, and no one entered the home, phone calls were made to the Petitioner which eventually resulted in some time later, the Petitioner's return to the home. It was subsequently learned upon the Petitioner/Mother's return that Daughter was in fact inside the home the entire time. The Petitioner at some point during this time, called her godfather to come to the house as well to talk with the Respondent. She said she did not want to talk to him because of the previous restraining order she had obtained in July of 2010. From the testimony elicited from the Petitioner she was told by the police that she had to leave. She would be allowed to take some personal items but she was only given approximately 45 minutes to vacate. She proceeded to fill up her car and the truck

belonging to her godfather, with bags of items. She also testified that the Respondent told her godfather that he would let her remain, if she would come out and apologize to him for kicking him out last February with her filing of the first adult abuse petition. This apparently she would not do so she was told to leave. When questioned about why she had not moved on the 31st of August as she said she was going to do, or why she thought he would not come to take possession of the house on the date set by the Judgment, her reply was that she did not believe that he would in fact put his daughter out and he had said he was not moving in until the 14th. She admitted to not having communicated with him about her not yet being out of the house, nor about asking to remain past the 4th. With this Courts experience with these two individuals over the last year and a half, how she could think he would not be there that very day is beyond this Court's comprehension and is in fact not credible. Neither party gives the other in this matter any quarter and particularly in this instance there is no doubt that he would come to the house the day set out by the Judgment to retake possession. The Petitioners' other justification was another in a series of alleged misinterpretations on her part. In this instance she claims a portion of the wording in the Judgment, paragraph 30, she felt said that if she stayed he would not pay child support until she vacated. She relied on the wording "Until September 3, 2010 or until the date she relinquishes control of said residence to Respondent. Petitioner shall pay all expenses for utilities, regular maintenance…" However this interpretation is not only inconsistent with actions of the parties, but in the next paragraph of the same section the Respondent was ordered to start paying child support as of September 1, 2010 or the first day of the month following relinquishment or September 1, whichever came first. The Court does not believe that this response by the Petitioner is anything but an after the fact effort to come up with some kind of justification to account for her failure to abide by the Court's Judgment. The Petitioner has a history of self justification and willful defiance of this Court's orders.

(9) It is clear from the photographic evidence set forth in Exhibit 4, that the Petitioner on September 2, 2010 had done virtually nothing to prepare to move other than obtain some boxes. There are no pictures of the insides of closets relative to whether she left certain alleged missing items. Further, and unfortunately there are no pictures taken

on September 2, of the unfinished portion of the basement. Petitioner stated at trial that she asked for pictures to be taken but they were not and she does not know why not. This is significant because she alleges some of her personal items and personal records where stored there in boxes (as well as many bankers boxes allegedly owned by ___) and these are some of the items set forth in her petition, that she wants returned and the Respondent states that he does not have in the house or in his possession.

(10) At this juncture, dealing with the alleged missing personal items and the __ records, (when she has been removed from the home) the Petitioner is unrepresented. All parties appear before the Court and an agreement is made and reduced to writing, that the Petitioner could go to the house and recover "personal items". At the discussion, which was with the Court and the Petitioner directly, but off the record, she had indicated that she did not have anything but clothing or other personal items. Accordingly, on September 13, 2010, she went to the house. The Respondent had arranged for two (2) individuals, which were process servers or private investigators, to be there. They would not allow her to take anything but her personal items and religious items and toiletries. The credible evidence is that they were instructed that the daughter could have anything she wanted. One individual, Mr. Fredrick testified that the Petitioner first wanted a painting from the wall and she was not allowed to take this. Another investigator, Ms. Bettel followed the Petitioner the entire time she was in the home. The credible evidence is that she was not allowed a small computer or personal papers, nor did they go into the unfinished portion of the basement. The Petitioner was not allowed to go into the garage based upon the copy of the Court Order that Mr. Fredrick had from the Court file. The Petitioner again alleges a misunderstanding, and testified that she did not understand the definition of "personal" and thought she would be able to get additional items from the house such as the painting and the computer. She brought with her, her godfather and his truck as well as her car and the police were again present and would not allow her to take anything other than personal items mentioned above.

(11) Next, because of the animosity between the parties and the restraining order issues, the Court appointed an independent observer, Mark Kiesewetter (an attorney) as a commissioner to go to the house and oversee the removal of items by the Petitioner and to document the same. Accordingly, on October 22, 2010 Mr. Kiesewetter

went to the house and while accompanied by the Respondent inspected and photographed the contents. (Exhibit 6) The following day Mr. Kiesewetter oversaw the removal of household goods and furnishings by the Petitioner. The Petitioner brought with her two (2) __ representatives. [___ is a corporation that was part of the dissolution proceeding and for whom the Petitioner is employed and she is also a principal. Independent of these proceedings is an action filed by ___ against the Respondent claiming that he retained within the home records pertaining to ___ and left behind by the Petitioner. That is a separate lawsuit however when the civil case was briefly transferee to this Court, this Court had Mr. Kiesewetter literally within hours of their filling a TRO, accompany the attorneys for ISW to the ___ address, before the Respondent would have any time to remove any items located there. They found only a few papers not many boxes as alleged. None the less they took a change of judge after the visit was accomplished and the civil matter is with another court at this time. This Court was obligated however to continue to consider this issues of the alleged missing items that were items left in the home and not part of the ___ issue.] The ___ representatives that appeared with the Petitioner provided Mr. Kiesewetter with affidavits regarding ___ property. (Exhibits C-1& C-2) These are relevant to these proceedings only in that they memorialize what was accomplished by Mr. Kiesewetter at the direction of this Court. What they prove or disprove is not for this Court to directly determine at this time.

(12) The problem with the issue of all the missing items as alleged by the Petitioner, is that although there is a frame of reference based upon the photo's in Exhibit 4 taken September 2, 2010 the day before expulsion and Exhibit 6 taken with Mr. Kiesewetter on October 24th, the areas specifically in question, where the alleged items were said to be located, are either not shown or not entirely pictured. Further as documented in Exhibit 5, a number of boxes and two computer towers were returned by the Respondent through the party's attorneys on or about October 7th, 2010. The only pre Judgment photos are those included in Exhibit 4a taken in April 2010 and they do not depict any pictures of the basement and storage areas.

The hard evidence available is the picture of the basements furnished room Exhibit 4a, page 7, showing a desk, one computer tower under the desk, a printer scanner and a copier. The same room is photographed in Exhibit 4 on page 13 (marked 2) which

is the same room, with an additional computer tower shown on the right side of the desk. This same Exhibit 4, of the Sept 2, 2010 photos shows on page 14 (marked 1) the unfinished sum pump area without any boxes or items except a blue bag on a folding chair, a folding chair and box. Other pictures of the basement area show bare walls with electrical and hot water and furnace area (Pages 15 & 16) but not depicting any boxes or personal records or items allegedly missing.

(13) The Petitioner complains that she did not recover a fur coat receipt, some shoes, winter coat, cocktail dresses, men's Movado watch, personal records such as bank ledgers and other personal papers which had included 21 banker boxes of her personal information, including she said, thousands of pages of divorce documents and ISW materials. Even after the Respondent returned the items on October 7th she still claims the same items are missing. As to the clothing items, the evidence is clear that the Petitioner had access to the house several times after the Respondent reentered and removed bags that were not inspected. The Court is not suggesting that she necessarily is lying, but there is no evidence to establish that between February 2010 and September 3, 2010 the items in fact were in the home. Exactly what personal papers are being asked for, except for some divorce papers, is uncertain and again no documentation that they were in the home on September 4th. Certainly one must assume that if papers and records are important and one knows that they must soon vacate the premises that they would be preparing to remove them to a different location to avoid just this same problem. The pictures in Exhibit 6 show the scanner/fax machine, personal papers assorted other items on page 4. A box of personal papers on page 5, the computer monitor from the basement furnished room, on the shelving near the repaired crack in the wall on page 6. On page 6, (lower right corner) is the same picture as page 4 (upper right), but now there are many additional boxes and personal items in front of the two chairs covered in towels. Are these the personal papers? From the credible evidence this Court finds that it can not say with a certainty that any of the items listed by the Petitioner have been retained by the Respondent.

(14) Respondent seeks Contempt against the Petitioner for her failure to execute the necessary documents for the Respondent to receive that portion of the Edward Jones IRA account # in the sum of $66,064. The Petitioner has offered no

adequate or acceptable reason for why she has not executed the same and suggests this is because she felt it was not fair that he got more out of the annuity awarded to him than he was entitled. In fact she did not sign the required paperwork after this Court's January hearing and only executed the paperwork just prior to the July hearing. The Court finds that she has purposefully, willfully, deliberately and intentionally failed to take the steps necessary to effectuate the transfer. She is Contemptuous of this Courts Judgment and is found in Contempt.

(15) Petitioner seeks an order for the distribution of what she calls undistributed assets. This asset according to her logic is the difference in value of the Northwestern Annuity IRA # valued in the Judgment at $114,673. By the time the annuity was actually distributed it was valued at $142,409, the difference she alleges is undistributed marital asset. The Court disagrees. The Court awarded the entire annuity to the Respondent. The value was the value presented to the Court by the parties. The Petitioner adopted the values at trial and since this annuity was in her name along it was her responsibility to present the exact amount. Even at this current hearing she is unable to provide the exact value on the date of trial. Additionally, the Court in its Judgment set forth that it was not attempting to divide the assets equally between the parties and thus this was intended to be entirely his property and her motion is DENIED.

CUSTODY ISSUES

(16) The Court has jurisdiction over the subject matter and the parties in this action pursuant to §452.300 et seq. and §487.010 et seq., and R.S. Mo., 452.700 et seq.

(17) The Court has jurisdiction over the minor child pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act, Section 452.700 et seq., R.S.Mo., 2009. Further, the Court has considered the applicable factors enumerated in Section 452.400 et seq. R.S.Mo., 2005. In arriving at is determination regarding custody, the Court is guided by Sec. 452.410 and 452.375 R.S.Mo. and has taken into consideration all relevant factors delineated therein.

(18) The Court has considered the wishes of both parties and the Parenting Plans submitted by both as well as that submitted by the GAL.

(19) There were issues regarding custody prior to the Court entering its original custody plan. Accordingly and after consideration of the issues, the Court in its original Judgment awarded joint legal custody with joint physical custody to the parties with specific visitation to Respondent/Father all as set forth in the Parenting Plan part A which was attached and incorporated into the Judgment.

(20) The credible evidence is that Father has always been pretty tightly strung. At least throughout the entire proceedings in this divorce. He has appeared on a number of occasions before the Court on various issues. He is intense, articulate, gregarious, self centered and accomplished. He is also angry and hurt. His anger and hurt were manifest in his handling of situations involving his children. We have discussed the college financial issues above. In fact the parties' son testified before this Court in the current proceedings and it was apparent that he felt caught between his parents in their on going arguments. __ was also interviewed in the psychological evaluations done by Dr. Levin. [It is noted here that Dr. Levin was a court appointed psychologist] The retention of the college overpayment my Hamilton, without that being clearly resolved before the Court appearances, is an example of stress between all the parties. __ has now turned 21 and thus this is now not really about him but is definitely about Father's relationship with Daughter age 12.

(21) The credible evidence is that just prior to and more markedly immediately after the entry of the decree, the relationship between Father and Daughter began to deteriorate. There is evidence that she was becoming rude to her Father and giving less respect to her Father. There is no doubt that Father has high expectations regarding the children's behavior. He has been described as narcissistic by Dr. Levin. The credible evidence is that during the divorce Father and daughter did have a relationship. They would text and talk almost on a daily basis. Father has always traveled frequently as part of his business and thus they more or less had a routine of communication. This began to change as the dissolution came to an end. Daughter was less responsive and immediately after the Judgment was not coming to spend the time with her Father called for in the Parenting Plan. She would be late in arriving without explanation. Then there was a trip to Mississippi to visit with Father's family and there is little if any clear correspondence of what happened and why she did not go on this trip.

We have had in place with this family as the form and manner of communication about Daughter and __, the use of the 'Family Wizard" which is a program that enables the email communications to be captured and monitored. It allows for individual communications between parents and between parent and child. Many of the emails sent through the Family Wizard were introduced in evidence. Because Father is pretty intense he is continually communicating with Mother. Unfortunately however Mother is not communicating with him. Although there was some evidence that Mother was less than cooperative with Father before the dissolution, the hope had been that after the entry of the decree the animosity would be reduced and the parties would move forward if for no other reason, than for the best interests of their children. That did not happen. The fault lies on both parents however, Mother in the opinion of this Court has set out to intentionally and purposefully alienate Daughter from her Father.

(22) The credible evidence is that there is a clear lack of concern by Mother that the trip with Father and Daughter to Mississippi would happen. She testified that she did not do much if anything to see that the child went on the trip. She testified that she did not always review the Family Wizard. Father clearly was organizing the trip and even getting clothing organized well in advance of the departure date. Yes this is intense. But not uncalled for. Daughter did not go on the trip which when reviewed in the context of the proceeding month or so before the trip Father has started to have the late arrivals and missed weekends noted above. There was no courtesy extended by Mother to inform him of why or when they will be coming for his visits or why or when they would be late. Mother is to deliver the child to Father and thus it was her responsibility to inform him of issues with arrival. She is the adult and while she clearly has poise and expectations in her own world she has distain for the Respondent/Father which was evident in her actions toward him. It is clear that Daughter observed her Mother's actions and responded in kind. This is Mother's responsibility not to create a relationship between Father and daughter but not to sabotage one either. Mother's complete lack of concern about the issues of Father and daughter as demonstrated by her demeanor at trial, is the first unstated sign that she is showing to Daughter that Daughter does not have to comply or respect the Court orders or her Father. A parent need not openly state their views about the other parent and particularly the negative views, in order for the message to get

through. In fact this is just the beginning of Mother's complete distain for the Court's Joint Custody order. She proceeded not to require communication between Daughter and Father and shortly thereafter is the filing of the Child Order of Protection.

(23) Sometime around the failed Mississippi trip, Father and Daughter went to California Kitchen to eat. During that dinner Father indicated that Daughter was rude and making a scene. He took her outside into the hallway and admittedly got into her face and said in a low angry tone, that if she ever did that again that he would hit her upside the head and knock her head into the wall. He admits saying this. Mother's reaction is to file a Child Order of Protection. Because there was already a custody order in place, the Court granted a summons and not an Ex Parte Order. This was sometime in July 2010. Father and Daughter have only had contact with one another since that time while in counseling sessions between the two of them and no direct communications nor face to face meeting outside of therapy. At the time of trial it was almost a year.

(24) With this background we have an angry and frustrated Father. We have a lack of communications between Father and Mother on custody issues and we have the issues as set out above over the air conditioning units in the home, the communicating about Father's moving back into the Family residence and the disaster that occurred there. We have Father showing up at the house with Daughter inside the house, with the police and a locksmith. We have a big scene in front of Daughter as Mother leaves. Of course Father shows his true colors by saying that Mother can stay if she will just apologize for having had him removed from the residence with her Adult Abuse Order back in February 2010. He says to the police that Daughter can take anything she wants, but not Mother. This is followed by his later hiring security personnel to follow Mother around the house when Mother comes to retrieve her belongings. This confrontation at the house, seen by Daughter, in the eyes of this Court had a significant and detrimental effect on Daughter. It was a scene completely controlled by Father. He could have toned it down at any point but chose not to. Coupled with the Mississippi trip and the California Kitchen confrontation this put Father and child on a very poor footing. Interestingly, Father does not even mention in all of his testimony that he saw the fact that Daughter was inside the house when he arrived with the police as even an issue. An indication

perhaps of his narcissism and his self centeredness that this is not even expressed as a concern.

(25) During this same time, Mother has sent Daughter off to camps and made decisions about Daughter without any consideration of Father or the joint custody plan or even giving him the courtesy of recognizing the obligation to at least confer about major decisions. In fact she changed schools and sent Daughter to Whitfield School a private school at a significant expense, while claiming she did not have enough money to afford to move out of the __ house at the very time she is enrolling the child in Whitfield. Father found out about the change in schools when he was called by her old school, Crestwood, to be asked why Daughter had not started school. Mother is at this same time in Court for Contempt for not paying attorney's fees and shifting her assets into cash and transferring the funds into the name of Mr. Green, as noted above. Mother has made no significant effort to keep Father in the loop about Daughter and or about her school. In fact she has intentionally not included him in these decisions. She suggests he can get information himself. He of course has not done very much in the way of keeping up with Whitfield School. He did agree the child could go there as long as he did not have to pay and dropped his demand that she go back to public school. These two parents are both dysfunctional, which is probably why they are now divorced. The only person suffering at this point is Daughter. When confronted with her unilateral approach to decisions for Daughter, Mother once again feigns misunderstanding her obligations and the meaning of the summons and the COP. She has little credibility with this Court in this regard. She has contributed in this Court's opinion directly to the poor relationship with Daughter and Father.

(26) During the fall of 2010 there are ongoing issues as noted above about the Hamilton and his school expenses. At this same time the ___ files suit against Father calming that he has documents owned by ___ as noted above. The Court has set out above some of the process that went on in December of 2010 on that issue. We then have a hearing in January as noted about the college expenses and other non custody issues.

(27) Through the GAL Father begins counseling with Dr. Vorhees. It is the intent that at some point Father and Daughter will have joint sessions working toward a better more normal relationship. Daughter's attendance is spotty and in fact it seems that it is

hard to get the counseling going. There are several joint conferences but they do not go well. At some point in December it appears that Father sees that he is not getting anywhere with Daughter through the counseling and it is decided that he will give Daughter some space. He writes her a letter that he will back off and give her some time. This is from the Court's experience in these matters often the best thing that can be accomplished in these matters. He did in fact do just that from December until either June or July when he made efforts to contact her by phone and asked for a chance to go out to eat.

(27) At or about this time, January or so, Father comes to Court and presents an issue about "Journals" he has found at the Champion address that were written by Mother. He found these journals in the martial home after his reentry. He claims the reading of the journals brings an issue of Mother's mental stability. The GAL was given an opportunity to review the journals and believes they had some of what could be called disturbing comments. There are references in the journals to religious meaning and can some of the writings could be taken several different ways. Particularly concerning were references to driving a wedge between Daughter and her Father, which is fact seemed to be occurring. Because the meaning of the journals was an issue, the parties and the Court determined that a psychological evaluation of both parties would be appropriate. Such an Order was issued and the parties were to be evaluated by Dr. Daniel Levin.

(28) As noted the hearing in January dealt with the non custody issues. After that hearing there are several pretrial conferences waiting on the results of the psychological examination. Meanwhile to the best information of this Court, Father has not been pushing to see Daughter. Finally the results of the psychological are made available. The Court is given a copy and it is determined that we must conclude the outstanding custody motions even though Father has indicated he did not intend to push Daughter. In the initial report it is determined by Dr. Levin that Father is the one with the psychological issues and not Mother. Accordingly, the matter is set for a hearing. Outstanding issues include the Contempt, the spring semester costs for Hamilton and Mother determines that she still wants to go forward with her motion to limit father's contact with Daughter and to have a determination as to the Child Order of Protection, her motion for sole legal and physical custody of Daughter and issues of attorney's fees.

(29) The Court then heard testimony on June 3, 2011, June 10, 2011 and July 12, 2011 on these remaining issues. At these hearings Mother is testifying regarding the issues with Daughter and other issues. Dr. Levin is called to testify regarding his findings and his conclusions reached in his report. Dr. Levin had a great deal of experience in psychological evaluations and has worked for the Juvenile Court in abuse and neglect cases. He is recently engaging in forensic psychology in the dissolution arena. He testified to having spent some time with Dr. David Clark in his efforts to more thoughly acquaint him with issues in this area. He is clearly well versed and makes a good witness. He finds that Mother has issues but that after about eight (8) hours of interviews with her and comprehensive testing he finds her to not have any specific psychopathology. He does not find the same about Father, and very specifically finds that he has narcissistic tendency's that make him a danger to his daughter. He had done an extensive amount of interviews and study with Father as well. On cross examination he remained very intent on his findings being accurate.

(30) At the next hearing date the Respondent/Father brought in to testify Dr. Vorhees. Dr. Vorhees was the therapist who attempted to work with Father and Daughter and has continued to work with Father even after Father determined to stop pushing for a relationship with Daughter at this time. Dr.Vorhees did not find Father to be narcissistic and in fact indicated that he has come a long way in his understanding and dealing with his personal issues and the issue surrounding his interaction with Daughter. He indicated Father is beginning to understand and learn how to approach Daughter in an effort to reestablish a relationship with her. He to was a good witness and seemed equally sure of his findings and his opinion.

(31) At the next hearing was the cross examination of Dr. Levin. Then Father presented Dr. David Clark, the very person that Dr. Levin indicated he mentored with for a time, to testify that Dr. Levin had made errors in his calculations and that the MMPI results were contrary to Dr. Levin's findings. Dr. Clark too found that the Respondent /Father was not narcissistic. Dr. Clark was not however privy to the extensive interviews that Dr Levin experienced and in fact had never met either party. Reading notes taken over ten (10) hours and experiencing the interviews first hand, are not in the eyes of the Court the same. The Court would think that the impressions gained in the interviews by

Dr. Levin, were very relevant in the interpretation of the test results particularly in the area where subjectivity is involved. Dr. Clark suggested that in custody cases, the MMPI readings found by Dr. Levin as concerning, meant less in highly conflicted dissolution and custody fights and were in his opinion more in the normal range under the circumstances.

(32) After hearing all of the testimony from the experts, Father then had his opportunity to testify. Essentially he confirmed for this Court what the Court had begun to ascertain over all of the previous proceedings over the last several years. Father is a bright, opinionated, intelligent, passionate man and Father. He has specific desires and needs. He is very up tight and has made several mistakes with Daughter. Because of the Court's own involvement with the parties and its observation of Father the Court was interested in Dr. Levin's assessment and several of the issues he presented that had him believe that Mother did not have problem. The Court questioned Dr. Levin on several items one of which was the Court's findings that Mother was doing exactly as she choose and that she had in this Court's opinion lied several times to the Court and knowingly and intentionally disregarded court orders. Those facts he did not know, but did not change his opinion. Dr. Leven found that the Journals meant absolutely nothing. The Court has a problem with that, and feels some of the things said should in this Court's opinion, bring at least some concern if they even come into this Mother's head. Dr. Clark on the other hand was more concerned about these journals. Dr. Levin also indicated that Father is more interested in his own needs than Daughter's and as an example indicated that we were in Court because Father was pushing his seeing the child. That is not true, and in fact the trial on the custody issues are because Mother would not let it go and wished to force the issue of sole legal and physical custody, while before we stated the trial on the custody issues Father was willing to back off. Up until the week before the last hearing in July, Father had not pushed to see Daughter. He has recently asked to have dinner with her. Mother continues to rely on the COP summons as reason to deny him even a dinner, even after it was explained that the mattered had been continued to run with the trial and that is was only a summons and did not prohibit contact. Mother continues not to push Daughter at all it would appear, to even have a conversation with her Father. In fact Dr. Levin said just let it wait and Daughter will one day come around. The Court

believes Mother will not foster a relationship unless she has some consequence that will affect Mother directly. She manipulates the breakup with Father and daughter for her own advantage.

(33) Of course Father is not by any means blameless. In fact, when on the stand testifying about recently asking to have dinner with his daughter, he became agitated, narrowed his eyes, became very intense and stated that he was doing this because "he had a right". This is the exact kind of behavior that has been at the crux of this whole issue with Daughter. In the end this Court must determine whether the findings of Dr. Levin, that Father posses a danger to his daughter, are accurate and that Daughter needs to be protected from her Father and that accordingly that there would be no contact by court order or supervised contact only. Mother also seeks to have total control and sole legal custody. Frankly, from her past history before this Court if she had sole legal custody cut Father out of the picture entirely. She has done that so far despite a court order of custody and even after being told the COP is a summons only. However, based upon the credible evidence, this is not a case were the Court can change custody to Father. The Court does believe that Father has issues that must be addressed regarding custody, but in the end does not believe that Father is a danger to his daughter. The Court finds that the confrontation at California Kitchen was not a prelude to physical violence.

(34) Section 452.400.2(1) R.S.Mo states, "The court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child, but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger the child's physical health or impair his or her emotional development." From the credible evidence adduced, the Court finds that visitation between the minor child and Father without supervision would not endanger the child's physical health and impair her emotional development; as a result the Court finds that no supervision of Father's time with Daughter shall be required. The Court will however impose a number of conditions on the future custody relationship as set forth in the Parenting Plan A attached hereto.

(34) The Court has considered the best interests of the child for a frequent, continuing and meaningful relationship with both parents. Credible evidence as noted above notes that she should continue to have contact with both parents.

(35) The Court has considered the interaction and interrelationships of the child with parents and other person who have a significant affect on the child's best interests. Credible evidence is that clearly the child interacts at her mother's home and in school. However the interaction with her Father is strained for the reasons stated above.

(36) The Court finds that Mother not only is not likely to foster a relationship between Father and child there are reasons as fostered in part by Father's actions. As noted above even with the lack of a commitment to fostering a relationship with Father, it is still in the child interests to remain with her Mother with her Father having court ordered contact.

(37) The Court has heard evidence about the child's adjustments to home and community. The credible evidence is that she has adjusted given some very difficult and traumatic circumstances regarding the removal from the marital home.

(38) The Court has considered the mental and physical health of all individuals involved as noted above.

(39) No evidence was presented of either party's intent to relocate from their current residences although it is the Court's understanding that the current arrangements for Mother are not ideal and are not permanent Father is also only in town several times a month and his job requires travel on an extended basis. He has indicated his willingness to maintain the home here so that he can have a relationship wit his daughter.

(40) No credible evidence was adduced that the minor child wishes to live with Father.

(41) The Court finds that there has not been a change in circumstances as to the child and/or the child's custodian, which would justify a modification of the prior custody order regarding joint legal decisions although some changes in the Parenting Plan A would serve the best interest of the minor child. For the Court to award Mother sole legal custody would be to reward her for her actions since the entry of the dissolution, and Parent Plan. She has done more than just arguing with her former spouse about custody issues. She has already ignored the courts judgment. She did not even confer with Father let alone do what she wanted after conferring. Under other circumstances the Court might have changed custody to Father based on Mother's behavior, but it can not

honestly be said that to move Daughter into Father's home, would be in her best interest either.

(42) The Court finds it is in the best interest of the minor child that the parties continue to exercise joint legal custody with joint physical custody awarded subject to Father's periods of temporary custody and visitation as set forth in the Parenting Plan as attached hereto as "Exhibit 1 ", with such added conditions as are contained in the Addendum of August 2011, and which is approved, ordered and found to be in the best interest of the minor child.

Child Support Issues

(43) Father maintains health insurance for the benefit of the child at the cost of $141 per month. Neither party incurs work related childcare.

(44) The Court has taken Judicial Notice of its file including the prior judgments and the child support and Form 14 calculations and assumptions. It is noted that at the time of trial the Court imputed income to Petitioner/Mother at $133,000 per year. She had been working for ___ which had great potential but had lost some traction because of the fighting between the parties during the divorce. She continues to work for ISW and claims now that her income is some $41,640 per year. However the testimony which she presented was that she still is President of ___ and has moved her business in pursuit of the potential that was there before. Apparently she liquidated all of her funds and it appears that she has positioned herself to finance ___ and this Court believes she has chosen not to increase her income in order to enhance her business opportunities. She testified she did not seek other employment although her skills would certainly justify more than a $42,000 income. It has been only a year since the Courts original judgment and that is not sufficient time to find the imputation was grossly inappropriate. In fact she filed the support modification quickly before it could even be argued that the imputed amount was incorrect.

(45) Respondent was earning $168,300 at the time of the dissolution and has changed jobs and now earns $181,668 per year or $15,139 per month.

(46) There has not been any contact between Father and child for over a year but that is at the behest of Mother and child. Father makes himself and his home

available and will do so in the future. There clearly are issues as noted that may mean the child does not spend significant time with Father but that will be by the child's choice. Accordingly the Court will allow a 10% custody adjustment for custody awarded him herein.

(47) The Court presents its own accurate Form 14 attached as "Exhibit 2 " and rejects those presented by the parties as being not in conformance with its findings.

(48) The presumed child support pursuant to the Missouri Supreme Court guidelines is $891 per month for one child. Based upon this number there is not a change in circumstances so substantial and continuing as to make the terms concerning the prior orders of child support unreasonable and does not meet the 20% prima facie threshold.

(49) Respondent asks this Court to exercise its discretion under 452.340.7, and to abate his child support obligation for the period of July 2010 until such time as visitation recommences. Based upon the Court's findings above it is evident that the Court finds little belief that Mother will encourage Daughter to have a relationship with Father. Accordingly, the Court will abate child support starting in October 2011 until such time as the child meets with Father at least one time per month for three (3) consecutive months, for at least a dinner or other outing of a few hours. If and when that starts, then child support will resume and Father will owe the three months child support that would have been due, starting with the first of the three consecutive visitation periods and continue thereafter until further order of this Court. It is not a self executing judgment that will automatically stop child support payments again if the child stops seeing Father after the three month period of visits. The Court will not abate the support from July 2010 to October 2011.

Contempt Issues

(50) This Court above has found Father in contempt for his actions regarding the failure to fix the air conditioner. He knowingly and willfully refused to have it repaired or replaced out of his anger towards Mother. He has suffered in other ways other than financial over this decision since Daughter was also suffering from the heat because of his inactions. The Court does not find Respondent/Father guilty of contempt for failing to transfer Petitioner's personal belongings in a timely manner or for allegedly

not giving her all of the items she claimed were left since she did not prove that they were left in the house.

(51) This Court above has found Mother in contempt for her failure and refusal to execute the paperwork on the Edward Jones account, until literally the eve of trial. The Court also finds Petitioner/Mother has willfully and contemptuously failed and refused to follow this Court' orders with respect to producing Daughter for visitations periods, changing the child's school without notice, sending Daughter to activities and camps without notice, let alone conferring with Father about the same or even attempting to make a joint decision, her failure to notify Father of relocations and making phone numbers unavailable, for her not communicating on general issues regarding the child. She conjures up excuses of misunderstanding, which fall on deaf ears in this Court. She ignores and refuses to use the Family Wizard as ordered. She admits to not even looking at it, which defeats the entire purpose of communicating about you child. There is virtually no communication from Mother on the Wizard on the majority of the issues noted here. Further, pursuant to Father's Family Access Motion and frankly under the authority of the Modification request, the Petitioner is ordered to submit to therapy and counseling for the purpose of helping her to understand the importance of Daughter's having a relationship with her mother and her father. The actions of the Petitioner to date will already affect the child in a negative way in the future.

Attorneys' Fees, Costs of Court**, and Other Orders**

THE COURT FINDS AS FOLLOWS:

(52) In determining the amount of attorneys' fees to be paid by either party, the Court has considered all relevant factors as set forth in RSMo. Section 452.355, including each party's marital and separate property, and each party's income. The Court has further considered the request by both parties for attorneys' fees and the evidence which has been adduced regarding the fees incurred and finds that the attorney's fees as charged by the each sides attorney to be fair and reasonable.

(53) At first blush the Court looked at having each side pay their respective fees. However it is noted that up through the January 4, 2011 hearing a great deal of time was spent on household items and college expenses that in the end of the day proved to

be not much of anything but causing the Respondent to defend just the same. The Court finds that $2,500 of the fees incurred by Respondent is attributable to the Petitioner's actions. While not forgetting that Respondent das have a full set of emotional issues from which part, of all this turmoil resulted, the combination of Mother's willful actions as noted above and the insistence that the custody trial be heard must also be considered. Respondent must also account in fees for his contemptuous acts as noted above. After offsetting against Respondent sums attributable to his conduct and considering the actions of the Petitioner in the contempt and in causing trial the Court finds a net sum due from the Petitioner to the Respondent as and for attorneys fees in the sum of $15,000.

(54) The Court finds credible evidence from the review of the GAL fee billing (GAL Exhibit 2) that the Guardian ad Litem has incurred reasonable fees in the total amount of $9,700 leaving a balance after credit for payments from each party of $2,051. The Court has considered all relevant factors herein, and determined that each party shall pay to Diane Monahan, the GAL, the sum of $1,025 in addition to the sums previously ordered making each party responsible for 50% of the GAL fees for which is a judgment shall lie jointly and severally in favor of and against the parties.

JUDGMENT/ORDER

1. Father's Motion to Enforce Judgment/Order and Decree of Dissolution (Removal of Mother's Personal Possessions) is DENIED.

2. Father's Motion for Family Access Order is GRANTED. No additional time is ordered based upon the findings above. However, the Court will abate child support starting in October 2011 until such time as the child meets with Father at least one time per month for three (3) consecutive months, for at least a dinner or other outing of a few hours. If and when these visits start and after they have continued for three (3) consecutive months, then child support will resume and Father will owe the three months child support that would have been due, had support started with the first of the three consecutive monthly visitation periods and continue thereafter until further order of this Court. It is not a self executing judgment that will automatically stop child support

payments again if the child stops seeing Father after the three consecutive month period of visits. The Court will not abate the support from July 2010 through September 2011.

3. Father's Motion for Contempt and Amended Motion for Contempt is GRANTED as to Mother's failure to sign the Edward Jones documents and for failing to comply with the custody judgment as outlined above.

4. Father's Motion for Counseling for Daughter is GRANTED, Daughter shall begin counseling with Tish Fontana within 60 days of this order for the purpose of working toward an established relationship with Father. If the sessions are not covered by insurance the parties shall each pay 50% of the costs. Mother shall pay the initial amount of each payment and send the bill to Father who shall pay his half within 14 days of receipt. If Father can work out arrangements with Tish Fontana for direct billing that will be allowed.

5. Mother's Motion to Determine amounts due and owing with regard to ___ college expenses is DENIED. However, on Father's motion Mother is ordered to pay to Father within 30 days $1,100.28 for the fall 2010 semester.

6. Mother's Amended Motion for Contempt is DENIED.

7. Father's Second Amended Motion to Enforce is moot as to Count I and he dismissed Count II.

8. Mother's original Motion to Modify is GRANTED as to the change of name to SPANN which has previously been entered and is reaffirmed here. Her request for a continuing Adult Abuse Order against Father/Respondent is DENIED. The request for a change is child support is **GRANTED/DENIED.**

9. Mother's Motion to Compel Father to return personal records is GRANTED IN PART only as to the return of the original of Mother's prayer journals.

10. Mother's Motion for Distribution of Undistributed Asset is DENIED and Father's Motion to Dismiss said motion is SUSTAINED.

11. Father's Motion to Set Aside/Void Fraudulent Conveyance and to enter judgment against Third Party and attachment is DENIED.

12. __ is emancipated having turned age 21 during the course of these proceedings.

13. Mother's Second Motion to Modify and Father's Cross Motion to Modify are GRANTED and DENIED in part. The original Parenting Plan A as set forth in the June 1, 2011 remains in effect subject to the terms and conditions set forth in "**Addendum of August 2011"** which is attached hereto as Exhibit 1, and incorporated herein.

14. The Court finds no justification for the Child Order of Protection to be entered and will separately DISMISS the same finding the allegations have not been sustained.

15. Petitioner shall pay to Diane Monahan the sum of $1,025 and the Respondent shall pay to Diane Monahan the sum of $1,025 as GAL fees for which a judgment shall lie jointly and severally in favor of Diane Monahan and against the parties.

16. RELOCATION NOTICE: 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 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. 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.

17. Court finds a net sum due from the Petitioner to the Respondent as and for attorneys fees in the sum of $15,000. All other attorney fees shall be responsible for the payment of their respective attorney fees and costs.

18. Mother's Motion for an increase in child support is DENIED.

19. The court costs shall be paid from the cost deposit previously posted by the Respondent. The costs of any depositions and/or trial subpoena shall not be included in costs.

20. To the extent that this Judgment does not address any of the numerous requests in the plethora of Motions filed, and there has not been an independent judgment entered previously in this cause the issue not addressed is deemed DENIED. In all other respects not specifically modified herein, the provisions of the Judgment and Decree of Dissolution of Marriage entered into on June 1, 2010 shall be and remain in full force and effect.

SO ORDERED:

_____

Judge Division 6

Dated: August___, 2011

cc: Attorneys of record