

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

JERRY W. SCHULL,)	
SSN: XXX-XX-XXXX)	
Petitioner,)	Cause No. 07FC-002524-01
vs.)	Division No. 9
)	
KIMBERLY HELF, f/k/a SCHULL,)	
SSN: XXX-XX-XXXX)	Date: August 11, 2010
Respondent.)	

Court Order and Judgment of Modification

This matter is before the Court on respondent’s motion and affidavit requesting leave to relocate the minor child (motion to relocate), as filed on June 4, 2010; petitioner’s objections to respondent’s proposed relocation (petitioner’s objections); petitioner’s motion for an order preventing said proposed relocation (motion for prevention); and petitioner’s motion to modify; as filed on May 25, 2010. These motions were set for a court hearing on July 29, 2010 with respondent, Kimberly Helf (Mother), appearing in person and with her counsel, Attorney Sharon E. Cody, and petitioner, Jerry W. Schull (Father), appearing in person and with his counsel, Attorneys Susan L. Amato and Matthew E. Voorhees. Leave was granted pursuant to Missouri Supreme Court Rule 73.01 for the parties to file their requests for findings of fact and conclusions of law. Evidence was adduced and the matter submitted to the Court on July 29, 2010.

The Court, being advised in the premises, now enters its Findings of Fact, Conclusion of Law, and Judgment and Order, as follows:

Findings of Fact

Mother's and Father's marriage was dissolved by family court judgment (Decree) on May 15, 2007, with the parents awarded joint physical and joint legal custody of the unemancipated minor child, XXXX XXXX (minor child). Mother was designated as the residential parent for purposes of mailing and education for the minor child. The minor child, who had been subject to previous family instability, was adopted by Mother and Father in 2003. Minor child was also diagnosed with attention deficit hyperactivity disorder (ADHD). Additionally, Father was ordered to pay \$450 per month to Mother as child support, with both parents receiving monetary support from an adoption subsidy agreement with the Missouri Department of Social Services Children's Division.

At the time of their divorce and subsequent thereto, Mother and Father were residents of St. Louis County, Missouri, with Mother residing at XXX Great Hill Drive, Ballwin, Missouri 63021 and Father residing at XXX Amber Jack Drive, Ballwin, Missouri 63021. In accordance with the custody plan approved by and attached to the Decree, Mother and Father have consistently exercised their custody and visitation time with the minor child.

During the period of custody and visitation prior to Mother's request for relocation, the minor child has adjusted well to the living arrangements between the parents and developed into a very mature person. The minor child has an individualized education plan through the Special School District, was listed on his school's honor roll, and receives medication for his ADHD condition from health care physicians in St. Louis. He has many friends in school in the Rockwood School District and in his neighborhood, participates in baseball and football sports programs, and regularly attends and has been confirmed in the Manchester United Methodist Church, which is Father's family's religion. The minor child's 16 year old sister lives in South

St. Louis County and he visits with her 2 to 3 times per year with weekly phone contact.

During the latter part of 2009, Mother traveled to Florida to renew her relationship with her former high school boyfriend, Matthew Helf. Mr. Helf is a resident of Florida and resides at XXX S. Sundance Drive, Lake Mary, Florida 32746. His house is about 1600 square feet. Previously, Mother and Mr. Helf have maintained some contact with each other since their high school days in 1990. Mother's and Mr. Helf's relation became romantic in 2009 and, as a result, Mother is now pregnant and expecting the birth of a baby daughter. On May 14, 2010, Mother and Mr. Helf were "suddenly" married, with Mother still residing in Missouri and Mr. Helf still residing in Florida. Over the last six months prior to the court hearing of this matter, Mother was able to visit Mr. Helf in Florida about once per month, with a few days for each visit.

Mother made plans to move to Florida to be with Mr. Helf. She told the minor child and Father of her desires to move to Florida. Mother had also investigated Florida's area school district, which was comparable with the Rockwood School District. The minor child was excited but Father was greatly concerned about the minor child's well being, the relationship between Mother and Mr. Helf, and how the minor child and Mr. Helf will get along, not to mention the Mother's ability to take care of a new born while trying to hold down a "home job" and supervising the minor child.

Mother received a high school education and attended some college courses. She is employed at the CitiMortgage, Inc. as a mediator and, after she moves to Florida, she plans to work from home. Mother does not have an employment contract with CitiMortgage, Inc. and there are no guarantees for continued employment while residing in Florida. Her current gross income per month is \$3,081.00. Mr. Helf is currently employed as the director of graphic production for Orlando Hearst-Argyle Television, Inc. with a 3 year employment contract that

expires at the end of this year. He has worked in this line of business in Florida for at least 7 years.

The minor child visited Florida on about three occasions, but never really lived with Mr. Helf. Also, Mr. Helf, who was previously married, had never lived with children. Mr. Helf testified during the hearing of this matter that he recalled an incident in New Mexico where the minor child and another teenager got into an argument over chocolate on a back seat of a car. At that time Mother told the minor child that she will immediately send him back to Missouri. The minor child had to be calmed down by Mr. Helf's sister-in-law. Mr. Helf testified at the hearing that he hoped to assist minor child with transitioning in Florida, but admits that he has no household rules and no experience or training on how to raise children. He added that he plans on hiring a nanny.

Father is currently employed with Sherwin Williams for years as a technician, with a gross monthly income of \$6,748.00. He is considered the disciplinarian of the family and received extensive training on how to raise children in the foster care system. Last year the minor child was involved in an incident where he struck another teenager with a cue ball. Mother tried to confront the minor child about the incident but had to obtain the assistance of Father for appropriate discipline. Father believes that moving the minor child to Florida is not in minor child's best interest because the minor child needs "stability" in life in light of his past family problems. Father testified that he has the means and resources to contest Mother's motion for relocation, and will do so "by any means necessary."

On April 27, 2010, Father received notice that Mother intends to relocate the residence of the minor child to XXX S. Sundance Drive, Lake Mary, Florida 32746, which Father objected to on various grounds. Father additionally requested his attorneys' fees, which are in excess of \$17,000.00. The minor child indicated that he prefers to relocate to Florida, but understands if he cannot relocate. The minor child also testified that he loves Mother and Father.

Conclusions of Law

In her request for relocation, Mother has the burden to prove that the proposed relocation is made in good faith and is in the best interest of the child. §452.377.9 RSMo. Furthermore, in determining whether the relocation is in the best interest of the child, the Court considers the all relevant factors, including: (1) The wishes of the child's parents as to custody and the proposed parenting plan submitted by both parties; (2) The needs of the child for a frequent, continuing and meaningful relationship with both parents and the ability and willingness of parents to actively perform their functions as mother and father for the needs of the child; (3) The interaction and interrelationship of the child with parents, siblings, and any other person who may significantly affect the child's best interests; (4) Which parent is more likely to allow the child frequent, continuing and meaningful contact with the other parent; (5) The child's adjustment to the child's home, school, and community; (6) The mental and physical health of all individuals involved, including any history of abuse of any individuals involved; (7) The intention of either parent to relocate the principal residence of the child; and (8) The wishes of a child as to the child's custodian. §452.375 RSMo. See also *In re Steggall*, 296 S.W.3d 25, 27 (Mo.App.W.D. 2009). After considering the evidence adduced in the matter and all relevant factors, the Court finds and concludes that Mother's proposed relocation was made in good faith

but the minor child's relocation is not in the minor child's best interest.

Mother's request to relocate was made in good faith. Mother and Father adopted and raised the minor child who had prior difficult family problems. Over the years, before and after their divorce, Mother and Father have developed or maintained a mutual understanding and respect toward each other in their respective parental roles. Together, they have done an excellent job in raising the minor child. Mother's request for relocation may have been encouraged by her love and affection for the minor child and the minor child's preference to relocate to Florida with her, which is certainly understandable and expected. The Court does not find any evil motive, animosity or bad faith in Mother's relocation request.

However, the Court does find that it is not in the best interest of the minor child to move to Florida. Under the facts of this case, there are simply just too many unanswered questions if the minor child relocates to Florida, such as: Mother's role as disciplinarian without Father's direct assistance, the relationship between Mr. Helf and the minor child, Mr. Helf's apparent lack of experience and training in raising children, and the minor child's need for stability, among other things. Also, denying relocation should provide the added benefit of giving Mother and Mr. Helf the necessary time to adjust to a new relationship and to the birth of their daughter. For these reasons the Court finds that relocation is not in the best interest of the minor child.

The Court finds that it is in the best interest of the child to transfer physical custody to Father. Mother has changed her residence to Florida and, along with the above stated reasons, is deemed a change of circumstances that allow modification of a custody decree. §452.411 RSMo.

The Court also finds that Father has sufficient funds or resources with which to pay his own attorney's fees, which is consistent with his testimony during the hearing of this matter.

The Court has jurisdiction over the custody arrangements of the minor child pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act, §452.700 RSMo. et seq. The Court has reviewed and approves the provisions of Father's proposed parenting plan (Father's Plan), incorporated into this Court Order and Judgment of Modification and designated as Parenting Plan A – Custody in Petitioner's Exhibit 12, as attached hereto, pertaining to the custodial arrangements of the minor child and finds that the custodial arrangements contained in said parenting plan and residential schedules are in the best interests of the minor child. As indicated in the parenting plan, Mother and Father are awarded joint legal custody and Father awarded sole physical custody with visitation to Mother.

Therefore, the Court orders the provisions of above referenced custody plan, including residential schedules, pertaining to the custodial arrangements of the minor child.

The sheriff or other law enforcement officer shall enforce the rights of any person to custody or visitation pursuant to §452.425 RSMo.

The Court has reviewed and approves the provisions of Father's Plan, incorporated into this Court Order and Judgment of Modification and designated as Parenting Plan B – Support in Petitioner's Exhibit 12, as attached hereto, pertaining to the support of the minor child and finds that the support provisions contained in said parenting plan are in the best interests of the minor child. As indicated in Father's Plan, Mother is ordered to pay to Father \$346.00 per month as and for child support. Father's form 14, attached thereto, is not unjust or inappropriate.

Therefore, the Court orders the provisions of Father's Plan pertaining to the support of the minor child and incorporates by reference all of the terms and conditions pertaining to the support of the minor child set forth in Father's Plan as if fully set forth herein.

Order and Judgment

ACCORDINGLY, Mother's motion to relocate is overruled and denied; petitioner's (father's) objections are granted and sustained; petitioner's motion for prevention is denied as moot; and petitioner's motion to modify is granted and sustained in part. The May 15, 2007 Family Court Judgment in this matter is hereby modified by the terms of this Court Order and Judgment of Modification. Unless otherwise noted or not inconsistent with the Court Order and Judgment of Modification, the terms of the unmodified provisions of the May 15, 2007 Family Court Judgment shall remain in full force and effect. Father's request for attorneys' fees is denied.

So Ordered:

Dated: August 11, 2010

**Hon. David Lee Vincent, III
Circuit Judge
Division No. 9**

cc: Attorneys of Record