

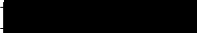

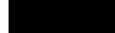


IN THE CIRCUIT COURT OF ST. LOUIS CITY, MISSOURI
22ND JUDICIAL CIRCUIT

IN RE: THE MATTER OF:


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)		
Petitioner,)		
)	Cause No.:	22043-05999-04
)		
and)	Division No.:	30
)		
)		
)		
Respondent)		
)		

FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER AND JUDGMENT

Cause called. Petitioner  ("Mother") appeared pro se. Respondent 
 ("Father") appeared in person and through attorney, Martha M. Moran. The minor child
appeared by Alexander Ledbetter, Guardian ad Litem ("GAL"). Evidence heard and arguments
presented. The court granted leave for the parties to file proposed findings of fact and conclusions of
law, after which the matter was submitted.

After careful review and due consideration the court hereby enters its finding of fact and
conclusions of law and order and judgment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Father's paternity was established in the judgment of paternity entered in this matter on September 9, 2005. The judgment ordered sole physical and sole legal custody of the parties' minor child,  to Mother. Father was ordered to pay Mother the sum of \$400.00 per month in child support for the minor child. No specific custody or visitation plan was included in the Judgment.

2. Father now seeks to modify legal and physical custody, request that the Court award him sole legal and sole physical custody. Mother did not file a counter-petition.

3. “The standard for modification found in Section 452.410 RSMo, applies when a party seeks to modify the custodial arrangement, as well as when a party seeks to modify a term related to the custodial arrangement, such as the parenting time schedule.” Russell v. Russell, 210 S.W.3d 191, 193-94 (Mo. Banc 2007). A modification will be granted if the court finds, “upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of the prior decree that a change has occurred in the circumstances of the child or his custodian and the modification is necessary to serve the best interests of the child”. Section 452.410.1. In all cases, the burden of proof is on the party seeking modification to show the required change in circumstances.” Clayton v. Sarran, 387 S.W.3d 439, 446 (Mo. App. W.D. 2013).

4. The section 452.410 RSMo., statutory standard requires a change in circumstances for those proposed modifications that do not deprive one custodial parent of custody altogether. The section 452.410 RSMo case law standard requires that a substantial change in circumstances be shown when the modification sought seeks to deprive one custodial parent of custody altogether. Morgan v. Morgan, ED103426 (Mo. App. E.D. 2016). To modify a previous order of visitation rights, a court must merely find that the modification would serve the best interest of the child. Section 452.400.2 RSMo.: Turley v Turley, 5 S.W.3d 162, 164 (Mo. Banc 1999).

5. Father’s Motion to Modify legal custody is a “...`drastic’ modification that would require a substantial change in the circumstance to justify.” Ndiaya v. Seye, 489 S.W.3d 887,894 (Mo. App. W.D. 2016).

6. The Court is to consider the custody of the child using the following eight factors, set forth in section 452.375 RSMo.:

The court shall determine custody in accordance with the best interests of the child.

The court shall consider 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 person;
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 individual involved. If the Court finds that a pattern of domestic violence has occurred, and, if the Court also finds that awarding custody to the abusive parent is in the best interest of the child, then the court shall enter written findings of fact and conclusions of law. Custody and visitation rights shall be ordered member who is the victim of domestic violence from any further harm.
7. The intention of either parent to relocate the principal residence of the child; and
8. The wishes of the child as to the child's custodian.

7. The Guardian ad Litem has submitted a recommendation for the Court's consideration.

8. With regard to the eight factors set forth in Section 452.375 RSMo. The Court finds as follows:

(1) The wishes of the child's parents as to custody and the proposed parenting plan submitted both parents.

Father has requested sole legal and sole physical custody of minor child. He has submitted a parenting plan wherein the minor child shall reside with him in Chicago and spend time with Mother over holidays, vacations, and during the summer. Mother submitted her parenting plan consisting of 21 pages wherein the parents share joint legal custody and Mother has physical custody. Mother further has requested leave to relocate with the minor child to the Chicago, Illinois city or its suburbs.

(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 need of the child.

The minor child wants and needs a relationship with both of his parents. The evidence presented at trial shows that Father has the ability and willingness to actively perform his function as Father for the minor child. The evidence reveals Mother interferes in the needs of the child for a frequent, continuing and meaningful relationship with Father.

(3) The interaction and interrelationship of the child with parents, siblings and any other person who may significantly affect the child's best interests.

The minor child has one sister in the St. Louis area, [REDACTED] whom he rarely sees because Mother has one hour supervised visits with [REDACTED] twice per month. The evidence shows that throughout his life, the minor child has spent time with Father's extended family and his three other children. While under Mother's custody the minor child was frequently cut off from contact with his Father's family, including his grandmother, aunts, uncles, sisters and brothers. The minor child would benefit from the opportunity to continue to spend time with his Father's extended family.

(4) Which parent is more likely to allow the child frequent, continuing and meaningful contact with the other parent.

Father testified that he filed the Motion to Modify because he was unable to contact Mother or the minor child. At trial, Mother testified she "blocked" Father's phone number for a period of two (2) years. Father testified he was unable to contact his son between 2014-2016. He testified that at the time he filed the Motion to Modify, he did not know the address of Mother and the minor child and was unable to contact Mother by phone or in person.

Evidence was adduced showing Mother's unilateral decision to move from the City of St. Louis to Edwardsville, Illinois in December 2018. Neither the minor child nor Mother told Father about their move until it had already occurred. On December 18, 2018, the Court entered a consent order including a winter break visit for the minor child with Father, to begin on that date. Later that day, Mother contacted the GAL to cancel the visit. Mother's cancellation of the visit resulted in a nine month time period in which the minor child did not see his Father.

Given the history of the parties, the Court finds Father is the parent who would be more likely to allow the child meaningful contact with the other parent. Further, the Mother's request to move to the Chicago area will insure both parents frequent, continuing and meaningful contact. The Court acknowledges Mother's characterization of a serious communication problem between the parties. However, the Court finds Mother's actions has resulted in infrequent, limited and un-meaningful contact by Father with the child.

(5) The child's adjustment to the child's home, school and community.

Until December 2018 the minor child had lived in St. Louis his entire life and attended [REDACTED] since the beginning of 6th grade. He was adjusted to his community and school and participated in activities such as basketball. In December 2018, Mother uprooted the

minor child from his community, moving him to Edwardsville, Illinois in the middle of the school year. He had no ties to Edwardsville before the move, and after the move was no longer able to participate in his activities in St. Louis, such as basketball. He has not had time to build significant connections to the Edwardsville area.

The evidence shows that the minor child has spent significant time over the years visiting Father in Chicago. The minor child has family there and has been able to establish some connection to Father's community there while visiting Father over the years.

Mother's move to the Chicago area would greatly facilitate the minor child's adjustment to home, school and community as well as foster meaningful relationship for Mother and Father equally.

(6) The mental and physical health of all individuals involved, including any history of abuse of any individuals involved. If the Court finds that a pattern of domestic violence has occurred, and if the Court also finds that awarding custody to the abusive parent is in the best interest of the child, the Court shall enter written findings of fact and conclusions of law. Custody and visitation rights shall be ordered in a manner that best protects the child and the parent or other family or household member who is the victim of domestic violence from any further harm.

There was no evidence adduced to show Father suffers from mental or physical health problems or that he has a history of involvement in domestic violence or abuse.

There evidence shows numerous concerns about Mother's mental health. Mother has been adjudicated permanently and totally disabled by the U.S. Social Security Administration due to mental illness. She has received Social Security Disability benefits since December 2015. At trial and in her pleadings, Mother has listed her diagnoses of: Major Depression with Paranoid Features, Attention Deficit Hyperactivity Disorder ("ADHD" – inattentive type), Narcolepsy, REM Sleep Disorder, Anxiety Disorder, Schizophrenia, Schizoaffective Disorder, Post-Traumatic Stress Disorder ("PTSD"), and Obsessive-Compulsive Disorder. In her pleadings Mother admitted to recently experiencing a "relapse of her underlying disabling condition that now makes her unable to work to sustain herself." Mother reaffirmed this statement at trial.

The evidence provides several specific examples of concern regarding Mother's mental health:

- (a) Mother testified that in June of 2012 she suffered a nervous breakdown at work. She was taken by ambulance to the hospital where she was admitted for three days.

- (b) Mother testified that in 2013 she felt like she had been followed for months and she believed she was a participant in the FBI witness protection program.
- (c) Due to her delusions, while driving with her two children, Mother stopped at Walmart and threw her phone in the trash, then got lost driving with no means of communications. She then stopped at the home of a stranger and asked for help. The Madison County Police responded, and she and her children were taken to the Troy, Illinois police station where the minor child was placed in the custody of Child Protective Services and placed in foster care overnight. This incident occurred in October 2013 when the minor child was eight years old. Father was not told about the incident until over a year later.
- (d) Although Mother receives mental health treatment, Mother testified that she has paranoia and feeling of being followed.
- (e) Mother testified that she leaves her cell phone in her car while at home to protect against spying activities.
- (f) Mother testified that she fell asleep while driving with the minor child in her car.
- (g) The minor child has experienced and witnessed all aspects of Mother's mental health diagnoses and treatment.
- (h) The neuropsychological evaluations submitted to the Court by the GAL raise concerns about Mother's mental health and her level of functioning.
- (i) Mother testified in detail regarding her history as a victim of domestic violence and abuse by her first husband and her father.

The evidence also shows concerns about Mother's physical health, specifically a concussion in November 2018 which cause a traumatic brain injury, a pituitary tumor, sleep problems and a thyroid disorder. Mother testified that she takes a number of medications to treat her mental and physical health problems.

(7) The intention of either parent to relocate the principal residence of the child;

Father has lived in Chicago for over thirteen years. He has worked for the same employer during that time and owns and has lived in the same house since 2014. He has stability in his place of residence and employment. There is no evidence that Father intends to relocate.

Mother has relocated the principal residence of the child multiple times, including moving to Illinois without notice to or consent of Father. The evidence (Father's Exhibit W) showed Mother asked Father to waive the 60 day notice of relocation pursuant to section 452.377 RSMo. but Father would not consent to the move and suggested it should go through the court during litigation.

Mother said nothing further about the move and Father did not learn that Mother had moved to Illinois until Mother was deposed by his attorney on November 27, 2018.

Under section 452.377.5(1) RSMo., “the court shall consider a failure to provide notice of a proposed relocation of a child as ...a factor in determining whether custody and visitation should be modified.”

Mother’s has requested this court for leave to move to the Chicago area.

(8) The wishes of a child as to the child’s custodian.

The evidence shows that the minor child expressed to the GAL his desire to remain in the custody of his Mother. The minor child also expressed his worry about his Mother and her stress related to this case.

GAL believes the best interest of the minor child will be served by a Judgment of Modification including a custody plan that grants Father sole legal custody and sole physical custody of the minor child with periods of visitation to be awarded to the Mother. The GAL strongly believes that the minor child deeply needs residential and familial stability. Further, that it is in the best interest of the minor child to begin his high school years in a stable environment where he can build friendships with his peers and prepare himself academically for college.

Father has agreed to enroll and pay for minor child to enter and complete Leo High School in Chicago, Illinois.

7. The Court, having considered all relevant factors, including those set forth in Section 452.375.2 RSMo., concludes that there has been a change in circumstances that warrant a change in custody. Based upon the evidence on the basis of facts that have arisen since the prior decree and which were unknown to the court at the time of the prior decree, the Court finds there has been a substantial change in circumstances. Mother’s mental health and ability to parent the minor child along with her unilateral relocation resulted in a drastic change in circumstances to the detriment of the child, since the entry of the Paternity Judgment entered on October 7, 2005. The Court finds the best interest of the child requires the court to award sole legal and sole physical custody to Father.

8. Accordingly, change in custody is warranted. Based in part on the recommendation of the GAL and the totality of the circumstances, the Court will modify custody generally in accordance with the Guardian’s recommendations.

9. Having considered the report of the GAL, the testimony of the parties, the parenting plans presented by Father, Mother and the GAL’s Recommendation, the Courts finds that custody and

visitation shall be in accordance with the Father's Proposed Parenting Plan A- Custody attached hereto and made a part hereof (Exhibit 1), with modification as follows:

Mother shall have visitation with the minor child each and every summer from the last day of the school year until the first day of the next school year. Mother shall also have visitation each full break during the school year; namely Fall Break, Christmas Break and Spring Break to commence on the first day of any break and ending the last day of any of the indicated breaks.

Mother shall also have two weekends visitation each month she does not have visitation during school breaks during the school year. Thus if Mother has visitation for a fall break during October of the school year she does not have the additional two weekends that month. Further, Father shall have one weekend visitation in June and July during the summer break.

All weekend visits commence at 7:00pm Friday and conclude at 7:00pm Sunday.

Each party is responsible to pick up and return the child during their visitation time.

10. The Court finds that the custody and visitation arrangements ordered herein are in the best interest of the minor child and the Court has considered all relevant factors contained in Section 452.375 and Section 452.400 RSMo, and other applicable law. Pursuant to Section 452.310.9 RSMo., the Father's Proposed Parenting Plan A – Custody (Exhibit 1) with modification is attached hereto as and is incorporated herein by reference. The Court finds Father's Proposed Parenting Plan Part B – Support (Exhibit 2), attached hereto and made a part hereof to be in the best interest of the minor child with the following modifications incorporated therein: Father shall be responsible for all medical, dental and vision expenses for the minor child in any way; and child support shall be in accordance with paragraph 11 below.

11. The Court hereby deviates from the child support presumed for the minor child contained in the Form 14 worksheet (Exhibit 3), attached hereto and made a part herein by reference. Mother is unable to pay child support due to her mental health issues and disability and Father shall provide full support as he is fully capable of doing so, including the payment for the Leo High School tuitions and fees in Chicago, Illinois. Mother shall bear any and all expenses for the minor child's everyday needs during her extended visitation time of summer vacation and any and all breaks during the school year. and any other visitation time.

12. The Court finds the total fees for the Guardian ad Litem to be \$3,370.00. These fees are fair and reasonable and justifiable. Of these fees Mother and Father were previously ordered to pay \$750.00 each for a total of \$1500.00. Father has paid \$500.00 of \$750.00 while Mother has paid \$50.00 of the original \$750.00 owed. These amounts are still due and owing. The Court further orders that the remaining \$2,820.00 fee of the Guardian ad Litem be paid as follows; Mother \$120.00 plus the 700.00 previously assessed for a total amount due of \$820.00. Father shall pay \$1,750.00 plus the \$250.00 previously assessed for a total amount due of \$2,000.00.

ORDER AND JUDGMENT

WHEREFORE IT IS ORDERED AND ADJUDGED AND DECREED that Father's Motion is hereby granted and Father is granted the sole legal and physical custody of the minor child, [REDACTED]

IT IS FURTHER ORDERED that Father's Proposed Parenting Plan Parts A and B with modification shall be performed in accordance with the terms and conditions set forth therein by both parents;

IT IS FURTHER ORDERED that the Guardian ad Litem be awarded the total sum of \$2, 820.00 additional fees and Father shall pay \$2,000.00 of that sum and Mother shall pay \$820.00;

IT IS FURTHER ORDERED that the parties are to fully abide by the terms of this judgment and failure to do so will subject either party to further sanctions before this Court including but not limited to contempt;

IT IS FURTHER ORDERED that this Court shall retain jurisdiction in this matter until the child reaches either his majority or graduates from college.

FINALLY IT IS ORDERED that the costs in this matter are taxed to Father.

Date:

June 25, 2019

SO ORDERED:



THE HONORABLE STEVEN R. OHMER
22nd CIRCUIT OF MISSOURI

p.c. Lawyers