

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2009-001603

03/13/2014

HON. ROGER E. BRODMAN

CLERK OF THE COURT
K. Philpot
Deputy

IN RE THE MATTER OF
TORIANA BREANN RIALS

TORIANA BREANN RIALS
11938 W CORRINE DR
EL MIRAGE AZ 85335

AND

JACOB ANDREW DUBUC

JACOB ANDREW DUBUC
14040 W COUNTRY GABLES
SURPRISE AZ 85379

AG-CHILD SUPPORT-SOUTH
CENTRAL OFFICE
LAB EXPRESS INC - PHOENIX
TASC - PHOENIX

MINUTE ENTRY

Courtroom CCB 601

1:32 p.m. This is the time set for Resolution Management Conference on Father's Petition to Modify Parenting Time and Child Support filed on December 7, 2013. Petitioner/Mother Toriana Rials appears on her own behalf. Respondent/Father Jacob Dubuc appears on his own behalf.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Toriana Rials and Jacob Dubuc are sworn

Discussion is held with the Court regarding the status of the case.

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Based on the matters presented,

IT IS ORDERED that within 24 hours of today's date, Father shall provide Mother a copy of the Petition to Modify Parenting Time and Child Support filed on December 7, 2013.

HAIR FOLLICLE TESTING ORDERED

IT IS ORDERED that within 24 hours of today's date, Mother and Father must appear for a hair follicle test. The results of that test shall be provided directly to the Court by the testing agency.

IT IS FURTHER ORDERED that Mother shall undergo a hair follicle drug test at a location of TASC, Inc. as indicated on the TASC Referral Form, and Father shall arrange for the test to be performed by Lab Express Inc., at 505 W. McDowell Rd. Bldg. A, Phoenix, Arizona 85003, 602-273-9000.

IT IS FURTHER ORDERED that prior to the hair follicle test, neither party may cut, dye or chemically treat his or her hair in any way that might alter the test results.

TASC TESTING ORDERED

IT IS ORDERED that Mother and Father shall submit to a urinalysis drug testing on the following basis:

A. **Agency.** Mother's and Father's urinalysis drug testing shall be conducted at the following testing agency or at a location of TASC, Inc. as indicated on the Referral Form:

TASC, Inc.
2234 N. 7th Street
Phoenix, Arizona 85006
Phone: (602) 254-7328

B. **First Test.** Mother and Father shall report to TASC by the close of business today for their first test.

C. **Scope.** Mother and Father shall undergo a full spectrum substance and drug test **Screen A** for each test ordered herein.

D. **Cooperation.** Mother and Father shall cooperate fully as reasonably required by the testing agency to comply with this Order, including:

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1. Mother and Father shall provide such samples as are reasonably required by the testing agency to comply with this order.

2. Mother and Father shall timely report for testing and provide samples as directed by the testing agency.

3. Mother and Father shall present photo identification to the testing agency at the time of each test, along with any prescription medications currently being taken.

4. Mother and Father shall sign and deliver such forms of consent, authorization and release of test results as shall be reasonably required by the testing agency to comply with this Order.

E. **Cost.** Mother and Father shall pay the cost of their testing (\$25.00 per test) by money order or cashier's check at the time of testing. If Mother's testing yields a negative result, Father shall reimburse Mother's costs for testing.

F. **Frequency & Duration.** Mother shall submit to testing one time. Father shall be randomly tested not less than once per week until he has obtained four consecutive weekly negative tests. Testing shall then be complete.

G. **Positive/Diluted/Missed Test.** In the event that Father tests positive on any test, misses a random test, or provides a diluted test sample on any test, the cycle and frequency of testing set forth in paragraph F above, shall be started again with weekly tests. All parties are advised that the failure, neglect or refusal to participate in testing, or providing a diluted test sample at the time of testing, may be considered an admission by the party that the testing, if properly conducted, would have revealed the use of the substance(s) tested for, which finding is contrary to the best interest of a child. Certain prescription medications may cause a positive drug test result. Parties who are required to drug test are expected to provide proof to the court of prescriptions and documentation from health care providers regarding the lawful possession and use of those medications.

H. **Reporting.** The parties are hereby advised that test results ARE NOT confidential and will be filed in the Court file upon receipt by the Court. The results of each test shall be reported directly to counsel for both parties, or directly to the parties at the addresses provided by the parties to the testing agency, if unrepresented by counsel. The testing agency shall also provide this Court with a copy of each test result.

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Once Father completes two consecutive tests yielding a negative result, he may file any motions to modify the current no parenting time order entered by Judge Kiley on November 29, 2010.

EVIDENTIARY HEARING SETTING

IT IS ORDERED:

1. An evidentiary hearing on **Father's Petition to Modify Parenting Time** will take place as follows:

- a. **Date – June 5, 2014**
- b. **Time – 1:30 p.m.**
- c. **Location** – Maricopa County Superior Court
Central Court Building
201 W. Jefferson
Courtroom 601
Phoenix, Arizona 85003

IT IS ORDERED that within 30 days from today's date, the parties are required to file a current Affidavit of Financial Information (AFI), and provide a copy to the opposing party.

The Court notes that, because this is a IV-D case, the issue of child support shall not be addressed at trial, but shall be addressed in separate proceedings.

2. **Time Set Aside for You** – The Court has set aside **1 hour** for this hearing. Pursuant to Rule 77(C)(5), Arizona Rules of Family Law Procedure, each party will be allowed 1/2 of the available time to present all direct, cross, redirect examination and any argument. The parties are expected to complete the hearing in the allotted time, and the time will not be extended absent a motion granted by the Court and filed at least thirty (30) days prior to hearing setting forth good cause to extend the time and specifically including a list of each and every witness who will testify and an estimate of time and subject matter of the expected testimony for each witness.

3. **Findings of Fact and Conclusions of Law** – You may request findings of fact and conclusions of law regarding the following issues, if they are contested: child custody, relocation requests, spousal maintenance, community property, community debt, and child support. To request findings of fact and conclusions of law, you must file a written request with

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the Court before the evidentiary hearing. If you do so, the Court will include findings of fact and conclusions of law in its final, written decision.

If either party asks the Court to make findings of fact and conclusions of law regarding any issue, then each party must file written proposed findings of fact and conclusions of law regarding all such issues twenty days before the hearing. The proposed findings also must be submitted in an electronic form (preferably Microsoft Word) that can be edited. **The proposed findings and conclusions must be submitted as an attachment to the Prehearing Memorandum** (the Prehearing Memorandum is discussed below). **If you fail to do this, you will be deemed to have waived a request for such findings and conclusions.**

4. **Additional Time** – If you think additional time needs to be set aside, you must request it by filing a motion not later than 30 days before the hearing date stated above. That request must include a reasonable explanation for the request **ALONG WITH** a list of each witness that you intend to have testify, a statement that describes what you expect each such witness to say, and an estimate of the amount of time you think will be necessary for that witness to testify. Because of the large number of cases assigned to this Division, it is very difficult to reschedule hearings. Therefore, requests for additional time will be granted only in extraordinary circumstances.

5. **Continuances** – Requests to continue (or postpone) the hearing are usually denied. If you think that a postponement is necessary, the request must be made by motion as far in advance of the hearing as possible, and that motion must present very compelling reasons for the request. Simply stating “I need more time to prepare” is not sufficient.

Generally, merely stating in the motion that the other party and you are trying to reach a settlement, without any specifics about the subjects of disagreement and what has so far prevented agreements from being reached, will not be sufficient. Before filing such a motion, you should make a reasonable attempt to ask the other party (or that party’s attorney, if there is one) whether that party agrees or disagrees about a postponement, and then state that party’s position in the motion. Even if the other party agrees to the continuance, the motion must still provide sufficient reasons for the request.

VERY IMPORTANT
What You Need to Do Before the Hearing

1. **Disclosure** -- You must tell the other party, in writing, everything that you will ask the Court to consider when deciding your case. Disclosure includes the following:

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a. **Witnesses** – You must prepare a list of the witnesses whom you intend to present to testify on your behalf. The list must include the name, address (if known), and telephone number (if known) of each witness and a reasonable description about what you expect that witness to say. The list must be mailed or hand-delivered to the other party and to the Court at least 30 days before the hearing date listed above. At the end of the list, you must certify the manner in which you provided the list to the other party.

b. **Exhibits** – If you want the Court to consider anything in writing or that can be copied onto paper (such as e-mails, text messages, and photographs), you must do the following: (i) prepare a list of each such item, (ii) copy each such item, and (iii) provide a copy of the list and a copy of each item on the list to the other party at least 15 days before the hearing date listed above. At the end of the list, you must certify the manner in which you provided the list and copies of everything listed to the other party. **DO NOT FILE EXHIBITS WITH THE CLERK OF COURT.**

In addition, a complete set of those exhibits (separated by a colored sheet) must be delivered to the Clerk of this Division at least 7 days before the hearing date so that the Clerk can “mark” the exhibits, i.e., assign the “official” numbers to those exhibits. If you do not do so, then each of your exhibits will have to be marked during the hearing. That will take time, and the time spent doing that will come out of the time allocated to you. **NOTE: DO NOT PROVIDE A BENCH COPY OF YOUR EXHIBITS.**

NOTE: We do not hold spots for supplemental exhibits.

c. **Affidavit of Financial Information** – At least 15 days before the hearing date listed above, you must file with the Court an Affidavit of Financial Information. In addition, at the same time, you must provide a copy of that Affidavit and all attachments specified in the Affidavit to the other party. The form to be used can be found on the Internet at this Court’s website.

d. **Expert Witnesses** – Expert witnesses are generally people with specialized training, education, or expertise, such as psychologists or accountants. If you intend to have an expert witness testify on your behalf, you must provide the name of the expert witness and the subject matter of his/her testimony to the other party not less than 45 days before the scheduled hearing date.

These requirements regarding expert witnesses do not apply to court-appointed parenting coordinators, Court Appointed Advisers, and other court appointees who submit written reports to the Court and the parties in advance of the hearing. You will be permitted to have that person testify as you would any other witness, so long as you have included that person on your list of

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witnesses. Whether or not you ask that person to testify on your behalf, if you want the Court to consider any report that person wrote, you must include it on your list of exhibits.

2. **Discovery** – All discovery (for example, interrogatories, requests for documents, and depositions) must be completed at least 20 days before the hearing date listed above.

a. For interrogatories and document requests, “completed” means that you must send them to the other party **so that the responses will be due at least 20 days before the hearing date**.

b. Any deposition transcripts, interrogatory answers, or written responses to document requests that you want the Court to consider should be listed on your list of exhibits.

c. You must comply with any reasonable request from the other party for written consents or releases that will allow the other party to obtain records and other documents that the Court may need to consider, including records from a bank or other financial institution where you have an account, a company including present and past employers, or health care providers including medical professionals who have treated you.

i. A party making such a request must have a reasonable basis for doing so and may not use this requirement as an opportunity to conduct a fishing expedition in the hope that something useful may turn up.

ii. If a party acts unreasonably, either when making such a request or when responding to it, in a way that forces the other party to incur any expense that could have been avoided, the party who acts unreasonably may be required to reimburse that expense.

3. **Prehearing Memorandum (Mandatory)** – At least 7 days before the hearing date listed above, you must provide the Court with a Prehearing Memorandum. You must also provide a copy to the opposing party unless that party has an attorney, and in that event, the copy must be provided to that attorney. The Memorandum should specify in detail what you want the Court to do and explain why that is reasonable. The Memorandum should also include a list of the witnesses and exhibits you intend to present at the hearing.

a. A **summary** of the issues for which you want rulings from the Court (such as custody, child support, parenting time or visitation, division of property, division of debts, spousal maintenance, and so forth).

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b. If there is a disagreement about **parenting time**, your Memorandum should include the specific, detailed parenting plan that you want the Court to adopt, including regular, holiday, and vacation parenting time. Forms for parenting time can be found on the Internet, and the completion and attachment of such a form to your Memorandum will be sufficient.

c. Your Memorandum should include your final list of witnesses.

d. Your Memorandum should include your final list of exhibits.

CRITICAL NOTE TO PARTIES: If there is any issue about which you want the Court to make a ruling, and you fail to identify it in your Prehearing Memorandum, or if you fail to submit a Prehearing Memorandum altogether, unless you have a very compelling excuse for that failure, you may be deemed to have waived that issue. Submitting a Prehearing Memorandum on the date of the hearing is the equivalent of not submitting one at all.

The parties are not required to file a Joint Prehearing Statement. Instead, each party is required to file the separate Prehearing Memorandum described above. If the parties believe that it would be beneficial to submit a Joint Prehearing Statement, that will be acceptable so long as that Joint Prehearing Statement is timely submitted and it complies substantively with the requirements listed above.

4. **Attorney's Fees** – If a party requests an award of attorneys' fees and costs, the request should be noted in a single sentence in the Prehearing Memorandum along with citations to the legal authority on which the request is based.

5. **Parental Education Program** – If you and the other party have a natural or adopted minor child in common who is under the age of 18, then, if you have not done so already, at least 7 days before the hearing date listed above, you must file with the Court proof that you have complied with the Parental Education Program requirements of A.R.S. § 25-351 and following.

**What Happens When
A Party Does Not Comply with These Requirements**

If you do not appear for the hearing on the date and at the time stated above, or if you do not comply with one or more of the requirements listed above, and you cannot provide a reasonable excuse for doing so, the Court may penalize you in one or more ways. Penalties may include a refusal to allow you to present certain evidence, a financial penalty, or a hearing that proceeds as if you have consented to what the other party has requested (i.e., proceeding by default). See Ariz. Rs. Fam. L. P. 71(A); Maricopa Cty. Sup. Ct. R. 6.2(e).

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**Finally,
A Few Suggestions**

In addition to complying with the requirements listed above, the presentation of your case probably will be much more effective if you do the following (but, these are only suggestions):

1. If any of your exhibits contain more than five pages, and those pages do not have page numbers on them, then without blocking out any relevant information, write in page numbers before you make the copies that you deliver to the Clerk and send to the other party. If possible, place those page numbers at or near the bottom right corner or the top right corner of each page. That way, during the hearing, it will become much easier for witnesses, and the other party to find a specific page within a multi-page exhibit.

Summary of Important Deadlines

Last day to identify **witnesses** – 30 days before the hearing date.

Last day to identify and provide copies of **exhibits** – 15 days before the hearing date.

Last day to deliver exhibits to the Court's Clerk – 7 days before the hearing date.

Last day to file **Affidavit of Financial Information** (and provide copy to the other party) – 15 days before the hearing date.

Last day to provide copy of **expert witness** reports or declarations to the Court and the other party – 45 days before the hearing date.

Last day to **complete discovery** – 20 days before the hearing date.

Last day to file **Prehearing Memorandum** (and provide copy to the other party) – 7 days before the hearing date.

Last day to file proof of completion of **Parental Education Program** – 7 days before the hearing date.

2:04 p.m. Matter concludes.

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All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.