

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2003-004001

04/14/2011

HONORABLE THOMAS L. LECLAIRE
FOR JUDGE DAVID J. PALMER

CLERK OF THE COURT
L. Berger
Deputy

IN RE THE MATTER OF
TRACI ANNETTE THOMAS

TRACI ANNETTE THOMAS
7351 N 39TH DR
PHOENIX AZ 85051

AND

MARCUS D WIMBERLY

MARCUS D WIMBERLY
UP

AG-CHILD SUPPORT-NORTH
CENTRAL OFFICE

MINUTE ENTRY

Courtroom CCB 501

Prior to the commencement of this proceeding Respondent's Exhibits 1 and 2 are marked for identification.

Prior to the commencement of this proceeding Traci Annette Thomas and Marcus D. Wimberly are sworn.

4:02 p.m. This is the time set for Evidentiary Hearing with regard to Respondent's August 16, 2010 Petition for Modification of Child Custody, Parenting Time and Child Support. Petitioner/Mother Traci Annette Thomas, is present on her own behalf. Respondent/Father, Marcus D. Wimberly, is present on his own behalf.

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

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Marcus D. Wimberly, having previously been sworn, now testifies.

Respondent's Exhibits 1 and 2 are received in evidence.

Traci Annette Thomas, having previously been sworn, now testifies.

Based upon the testimony and evidence presented,

IT IS ORDERED taking this matter under advisement.

5:06 p.m. Matter concludes.

LATER:

This matter comes before the Court on Respondent's Petition for Modification of Custody, Parenting Time, and Child support. A trial was held on May 14, 2011 and each party had the opportunity to present testimony and evidence to the Court. The Court admitted, without opposition, two documents: (1) a series of police reports from the Glendale Police Department; and, (2) a series of police reports from the Phoenix Police Department. Summarized, these reports memorialize Respondent's attempts to enforce court ordered parenting time with the minor child, eight year old Jamahl.

Respondent lives alone in a comfortable home as he has described. He works as a security guard generally five days a week, but also on weekends when he is offered overtime. Respondent describes himself as shy, quiet, and reserved. He and Jamahl enjoy playing X Box, watching movies, and going to the park. Respondent alleges that he has repeatedly been denied parenting time with Jamahl in violation of the pertinent Court Order regarding parenting time. He claims that Petitioner has moved on at least three occasions in the last year, failed to inform him of the move, failed to keep him apprised of her address and contact information so that he could locate and parent Jamahl, and that Petitioner disappeared for almost two years, denying him significant opportunity to parent and bond with Jamahl. Respondent also stated that Petitioner does not respond to his telephone calls and text messages.

Petitioner appears to be an out-going person. She has three children and Jamahl is the oldest. She describes herself as a homemaker and appears to delight in that role. Petitioner claims that she has only moved twice in the last year and that Respondent knew where she was. She stated that her father, maternal grandfather, always knows where she is and that Respondent can always contact the grandfather to reach Petitioner. She stated that she has a cell phone that she has had for years and that Respondent may reach her on the cell phone. She stated that he cell phone does not always work. She stated that she is about to relocate to a new home with her

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current boyfriend and will be moving on March 31, 2011. She also indicated that she is currently living with a family member of her current boyfriend. Petitioner also noted that Respondent often works during his parenting time and that Jamahl must stay with a care-giver during that time. When at her house, Jamahl is with his brothers if she must be away – she is a homemaker – and, on those rare occasions, stays with maternal grandfather.

Both parties acknowledge that Jamahl is a shy, introverted child who is sensitive and smart. Jamahl's shy and quiet style is virtually identical to Respondent's personality. He has maintained mostly A's in school except for an occasional B. Jamahl is currently in the second grade. Jamahl has two younger brothers age three and one and half, not of this relationship. Petitioner claims that Jamahl is bonded to the younger siblings. Both parents acknowledged to the Court that the other parent is a good parent to Jamahl. Petitioner claims that Jamahl does not wish to always go with Respondent because he misses his younger brothers. Respondent states Jamahl's reluctance to go with Respondent has been on very few occasions and usually relates to a specific event that Jamahl wants to attend. On one occasion he wanted to stay at Petitioner's house so he could ride his new bike, which Respondent had provided. Respondent agreed that Jamahl could stay at Petitioner's home instead of having parenting time with Respondent.

The Court finds, among other issues, that the main issue between the parties is communication or a lack of communication. Respondent has foregone parenting time on occasion because he has been unable to "confirm" with Petitioner that she will be at the pick-up point with Jamal for Respondent's parenting time. As a result, Respondent has not gone to the exchange location and he did not enjoy parenting time. Petitioner claims that she and Jamahl waited for Respondent on several occasions, but that he failed to show up for parenting time. She indicated that this is disappointing to Jamahl. Respondent alleges that Petitioner has failed to show up at the exchange location at the exchange time so often that he believes he must call to verify that Petitioner will be present. The Court directed Respondent to proceed to the exchange location at the times he is supposed to have parenting time. A further complication is that the exchange location has been at maternal grandfather's house. As a result of an earlier altercation, Respondent has an Order of Protection against the maternal grandfather, which complicates the exchange.

The **COURT FINDS** as follows:

- Petitioner has failed to communicate with Respondent about her location. She has also used the fact of her relocation to deny Respondent parenting time. It appears to the Court that the motivation for doing so is Petitioner's wrongful belief that parenting time may be withheld if the other parent is not current in child support. The Court has admonished Petitioner that this is not the case. Child support is a distinct issue. If

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Petitioner believes that Respondent is not current with child support, Petitioner must bring an action to enforce child support, not withhold parenting time.

- The relationship between father and son is appropriate, nurturing, and supportive. Respondent is very engaged in Jamahl's life and their time together is critical to Jamahl's development from childhood to becoming a man. Mother's withholding of parenting time is destructive of the father/son relationship and very short-sighted.
- The police reports are numerous, over the course of a long time, and are virtually identical. The documents catalogue a history of Petitioner withholding Respondent's parenting time. That time is forever lost. That lost time hurts Jamahl because it denies him opportunities to be with his father.
- Notwithstanding the Court's assessment and determination that Petitioner has improperly denied Respondent parenting time, Petitioner has worked hard to provide a loving and nurturing home for her children. The focal point of her description about her home centered on the existence of a park adjacent to the current and the future home. She describes the children's play activity in the park with delight. As a result, the Court is hesitant to alter the parenting schedules dramatically because for the most part the parenting time, when it works, works well.

The **COURT CONCLUDES** as follows:

- Petitioner has improperly denied Respondent parenting time under the Court's Order;
- The Petition to modify parenting time is **GRANTED**. Respondent shall be entitled to additional parenting time from Thursday after school until Monday morning when Respondent shall return Jamahl to school. In the event school is not in session, Respondent shall have parenting time from Thursday at 9:00 a.m. until Monday at 9:00 a.m.;
- The exchange shall take place curbside at the residence of Petitioner, unless the parties together agree to a new location that is convenient to both parties. Respondent shall provide transportation for the exchanges;
- The Petition to modify custody is **DENIED**. Changing custody has a significant impact on the minor child. The Court is not likely to grant a change in custody without compelling evidence that it is in the best interests of the minor child to do so. *See* A.R.S. §§ 25-403(a) and 403.01. There is currently insufficient evidence in all of the present circumstances to support a change in custody. A change of custody ought to be considered, however, if Petitioner continues to engage in behavior that denies or even impedes Respondent's lawfully ordered parenting time; and,
- The Petition to modify child support is also **DENIED**. There has been no substantially and continuing change in income to justify a modification of child support under A.R.S. § 25-320.

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This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>. Attorneys are encouraged to review Supreme Court Administrative Orders 2010-117 and 2011-10 to determine their mandatory participation in eFiling through AZTurboCourt.

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>.