

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2011-070984

08/27/2013

HONORABLE JOSE S. PADILLA

CLERK OF THE COURT
D. Berkland
Deputy

IN RE THE MATTER OF
JORGE L GOMEZ

JAMES P PALESTINI

AND

NICOLE M TIGNER

NICOLE M TIGNER
8201 W BEARDSLEY RD
PEORA AZ 85382

CONCILIATION SERVICES-CCC
CONCILIATION SERVICES-NW
TASC - GLENDALE
TASC - PHOENIX

MINUTE ENTRY

Courtroom 122 – NWR

4:15 p.m. This is the time set for Temporary Orders Hearing re: Petitioner's Motion for Temporary Orders re: Petitioner's Petition to Modify Legal Decision Making, Parenting Time and Child Support, filed on June 11, 2013 and Petitioner's Motion for Temporary Orders: Order Mother into Family Drug Court & Order Grandfather to Have No Contact With Minor Child, eFiled on June 24, 2013. Petitioner is present and is represented by counsel, James Palestini. Respondent is present appearing on her own behalf.

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

The Court reviews and summarizes the allegations raised in Petitioner's Petition to Modify and in Respondent/Mother's Response thereto.

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Jorge Gomez and Nicole Tigner are sworn.

Counsel for Petitioner/Father advises the Court as to the current status of the above-captioned case.

Counsel for Petitioner/Father withdraws his Motion for Temporary Orders re: Petitioner's Petition to Modify Legal Decision Making, Parenting Time, and Child Support, filed on June 11, 2013.

There being no objection and good cause appearing,

IT IS ORDERED granting counsel's oral motion to withdraw Motion for Temporary Orders re: Petitioner's Petition to Modify Legal Decision Making, Parenting Time and Child Support.

Based upon the allegations of drug/alcohol and past/present domestic violence and other issues raised in the Petition and Response,

THE COURT FINDS it to be in the best interest of the above-captioned case to refer the matter to Conciliation Services for a Parenting Conference.

REFERRAL TO CONCILIATIONS SERVICES RE:
PARENTING CONFERENCE

IT IS ORDERED the parties shall participate in a **Parenting Conference**. The parties will be advised by separate minute entry of the name and telephone number of the Parenting Conference Provider and other relevant information regarding the Parenting Conference. The parties shall comply with all instructions and directives issued by the Provider.

IT IS FURTHER ORDERED that immediately following this hearing both parties are directed to pay the \$300 per party fee through the Clerk of the Court. The fee may be paid at the Clerk of the Court filing counter, by mail to the Clerk of the Court with a check or money order, or by telephone with the Clerk of Court (602 506-2800) with a debit or credit card.

Respondent/Mother states that she needs additional time to pay the fee.

IT IS FURTHER ORDERED that if Respondent/Mother is deemed eligible for a payment plan, she may make monthly payments at the rate of \$100 per month commencing on September 1, 2013.

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BOTH PARTIES REFERRED TO TASC RE: DRUG / ALCOHOL TESTING

Based upon the allegation raised by Respondent/Mother that Petitioner/Father is abusing alcohol; and Petitioner/Father's allegation the Respondent/Mother may be using methamphetamine,

IT IS ORDERED that Father shall participate in alcohol testing; Mother shall participate in drug testing Screen "B".

IT IS FURTHER ORDERED:

1. Father and Mother shall appear in person at TASC, Inc. at 2234 North 7th Street, Phoenix, at 423 N. Country Club Drive, Suite 19, in Mesa, or at 5955 W. Myrtle Avenue, Suites 2-4, Glendale before 5:00 p.m. on August 27, 2013.
2. Father and Mother shall present to TASC the Court Ordered Substance Abuse Testing form issued by this Court, and shall provide all information necessary for its completion;
3. Father and Mother shall provide such samples as are reasonably required by TASC to comply with this Order. Father shall submit to an EtG (alcohol) test; Mother shall submit to a Screen "B" drug test.
4. Father and Mother shall sign, execute and deliver such forms of consent and authorization as shall be reasonably required by TASC to comply with this Order;
5. The results of said testing shall be reported directly to this Court in writing by TASC, with copies provided to counsel for both parties, or directly to the parties, if unrepresented;
6. Father and Mother shall report for subsequent testing as directed by TASC, and shall present a photo I.D. at time of testing, along with any prescription medications currently being taken;
7. Father and Mother shall pay the costs of his or her own testing **IN MONEY ORDER OR CASHIER'S CHECK** at the time of testing.

PLEASE NOTE: In the event that the Court directs one party to pay for the other party's testing, TASC recommends that the details of this arrangement be either directed by the Court or worked out between the parties or their counsel as soon as possible. TASC will not accept pre-

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payment, and it is often logistically impossible (not to mention, inadvisable) to get the two parties together at one of our offices.

8. All parties are advised that the failure, neglect or refusal to participate in testing may be considered an admission by the party that the testing, if conducted, would have revealed the use of the substances tested for, which finding is contrary to the best interest of the child; failure to submit to a test, absent good cause shown, may result in a finding of Contempt of Court, incarceration in the Maricopa County Jail, issuance of a Civil Arrest Warrant or other sanctions by the Court;

9. The parties are also advised that a diluted test specimen shall be considered an attempt to conceal the presence of illicit drugs, and therefore interpreted as positive, which finding is contrary to the best interest of the child;

10. In the event the initial urine analysis results are positive for drug use, Mother shall be randomly tested NOT LESS THAN ONCE A WEEK continuing until such time as she has produced eight (8) "clean", random, non-diluted Screen "B" urine analysis tests. In the event the initial urine analysis result is positive for alcohol, Father shall test again the following week. Should the second EtG test result in a positive test, Father shall be randomly tested NOT LESS THAN ONCE A WEEK continuing until such time as he has provided eight (8) "clean", random, non-diluted EtG urine analysis tests.

11. The parties are hereby advised that test results ARE NOT confidential.

ISSUED: Court Ordered Substance Abuse Testing

IT IS FURTHER ORDERED that in the event Father's second EtG test is necessary and if it is positive, all parenting time by Father shall be supervised by any person, eighteen years of age or older, who is not under the influence of drugs or alcohol. Supervised parenting time shall continue until such time as he has produced eight (8) "clean" non-diluted, random, weekly, consecutive EtG tests. If Mother's initial Screen "B" test is positive, all parenting time by Mother shall be supervised by any person, eighteen years of age or older, who is not under the influence of drugs or alcohol until such time as she has produced eight (8) "clean" non-diluted, random, weekly, consecutive tests. Supervised parenting time shall continue until such time as she has produced eight (8) "clean" Screen "B" urine analysis tests.

IT IS FURTHER ORDERED that in the event Petitioner/Father's initial or second EtG test is negative for alcohol, Respondent/Mother shall reimburse him the cost of the test. Should Respondent/Mother's initial Screen "B" result in a negative test Petitioner/Father shall reimburse her the cost of the test.

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**BOTH PARTIES TO PARTICIPATE IN
LIFESTYLE ASSESSMENT THROUGH TASC**

IT IS FURTHER ORDERED that Petitioner/Father and Respondent/Mother shall submit to and complete a Lifestyle Assessment by **TASC** including recommended treatment and/or counseling; the results which shall be provided to the Court.

Based on the assessment, the Court will determine if additional follow-up programs are necessary to insure that the child's best interests are served when they are with either parent. **The parties shall contact the TASC Clinical Annex at (602) 712-0234 to schedule an appointment for such assessment.**

IT IS FURTHER ORDERED that should either party's Lifestyle Assessment result in a low propensity to abuse alcohol and/or drugs, the other parent shall reimburse them the cost of the Lifestyle Assessment.

Discussion continues with regard to a temporary parenting schedule.

ORDER RE: TEMPORARY PARENTING SCHEDULE

Pursuant to the discussion held,

IT IS ORDERED entering the following TEMPORARY parenting time / holiday schedule:

- Father shall have parenting time with the child every Thursday, Friday and Saturday from 6:00 p.m. until 1:00 a.m. This shall commence on Thursday, August 29, 2013;
- Father shall have parenting time with the child every other Monday at 6:00 p.m. through Wednesday at 6:00 p.m. This shall commence on Monday, September 2, 2013;
- Father shall have parenting time on Labor Day 2013. This shall be defined as Sunday at 6:00 p.m. through Monday at 6:00 p.m.

Discussion is held with regard to income, insurance and daycare costs.

The Court advises counsel and the parties that the child support order which will be entered following the time of trial will be effective on July 1, 2013.

IT IS ORDERED affirming the child support order currently in full force and effect.

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EVIDENTIARY HEARING SET

IT IS FURTHER ORDERED setting the above-captioned matter for **Evidentiary Hearing re: Petitioner's Petition to Modify Legal Decision Making, Parenting Time and Child Support on December 10, 2013 at 9:00 a.m.** (2½ hours allotted) before the Honorable Jose S. Padilla, located at 14264 West Tierra Buena Lane, Courtroom 122, Surprise, Arizona 85374.

Each party will be allowed 1/2 of the available time to present all direct, cross, redirect examination and any argument. The parties are advised the Court will utilize a portion of the time for its ruling. The parties are expected to complete the trial 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 trial 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.

Each party is directed to provide the Court with their recent paycheck stubs, W-2's, and tax returns completed at the time of the hearing.

IT IS FURTHER ORDERED that the parties shall file and provide this Division with a copy of a Joint Pre-hearing Statement pursuant to Rule 76, Arizona Rules of Family Law Procedure, no later than 5 days prior to the hearing.

IT IS FURTHER ORDERED that the Joint Pre-hearing Statement shall include the following attachments:

1. A current Affidavit of Financial Circumstances.
2. A current Parent's Worksheet for Child Support Amount completed by each party pursuant to the Statewide Child Support Guidelines.
3. If there are disputed custody, access or visitation issues, a specific proposal for custody and visitation by each party.

IT IS FURTHER ORDERED with regard to discovery and disclosure requirements:

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1. Both parties shall exchange updated disclosure statements required by Rules 49 and 50, Arizona Rules of Family Law Procedure, including an exchange of all relevant information, documents and exhibits on or before **November 22, 2013**.

2. All depositions and discovery contemplated by Rules 49 through 65, Arizona Rules of Family Law Procedure, shall be completed and any motions regarding discovery shall be filed no later than **November 15, 2013**.

3. Counsel and both parties shall personally meet, face to face to conduct settlement discussions, exchange all exhibits, and discuss the resolution and narrowing of all procedural and substantive issues in this case.

The parties shall promptly comply with all requests for relevant information in this case. In this regard, the parties shall sign all necessary consents and releases reasonably required to obtain any relevant documents or records from any financial institution/company or business/medical or health care provider/employer possessing any relevant information.

IT IS FURTHER ORDERED that the failure of counsel or any party to appear at the time of hearing, or to timely present the Joint Pre-hearing Statement in proper form, including each and every attachment required, shall, in the absence of good cause shown, result in the imposition of any and all available sanctions pursuant to Rule 70(D), Arizona Rules of Family Law Procedure and Local Rules 6.2(e) and 6.9(b), including proceeding to hear this matter by default based upon the evidence presented by the appearing party.

EXHIBITS

IT IS FURTHER ORDERED that, if either party has exhibits to be marked, counsel or the parties shall deliver said exhibits to the Clerk **at least five (5) business days** prior to trial. Duplicate exhibits shall not be presented. The parties shall also provide the Court and the adverse party with a separate copy of all exhibits.

1. Counsel and/or the parties shall submit all exhibits to this Division by 5:00 p.m. on **December 3, 2013**. Exhibits shall not be filed at the Clerk of Court filing counter.

2. The exhibit packet shall contain a title page which states the case number, whether the exhibits are Petitioner's or Respondent's and the date for the hearing. Failure to clearly indicate which party is presenting the exhibits may result in the exhibits being marked incorrectly or not marked at all.

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3. Each exhibit shall be stapled if it contains more than one page. Each exhibit shall be clearly separated from the other exhibits, preferably by placing a colored page in between each exhibit. Do not staple the colored pages to the exhibits. Do not write or type on the colored pages. The clerk will reuse the colored pages if they are left blank. Failure to clearly separate each exhibit may result in the exhibits being marked differently than counsel and/or the parties intended, such as multiple exhibits being marked as one exhibit.

4. The exhibits shall be marked in the order received. For example, if Respondent's exhibits are received first, Respondent's exhibits will be marked first, i.e., Respondent's exhibits 1 through 5, and Petitioner's exhibits will follow Respondent's exhibits in number, i.e., Petitioner's exhibits 6 through 10.

5. Duplicate exhibits shall not be presented.

6. The parties shall provide the adverse party with a separate copy of all exhibits.

Information regarding exhibits for parties not represented by counsel:

The Court does not automatically review exhibits. Each party will need to offer his/her exhibits into evidence during the hearing by stating to the Court that he/she is offering exhibit(s) 1, 2, 3, etc. The party will need to explain the relevance of each exhibit to the Court. Exhibits that are not received into evidence during the hearing will be returned to the party at the conclusion of the hearing without the Court reviewing the exhibit(s).

IT IS FURTHER ORDERED that the parties shall indicate in the Joint Pre-hearing Statement which exhibits they have agreed will be admissible at hearing as well as any specific objections that will be made to any exhibit if offered at hearing which is not agreed to be admitted. Reserving all objections to the time of hearing will not be permitted. At the time of hearing all exhibits that the parties have agreed will be admitted and all exhibits for which no specific objection is stated in the Joint Pre-hearing Statement shall be summarily admitted.

NOTICE

You may request conclusions of fact and law on the following issues, if they are contested: the issues of child custody, relocation requests, spousal maintenance, community property, community debt, and child support. To request conclusions of fact and law, you must file a written request with the court before the trial or the evidentiary hearing. If you make a written request before the trial or evidentiary hearing, the court will make conclusions of fact and law as part of the final decision.

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If any party asks the court to make findings of fact and law on any issue, each party must file written proposed findings of fact and law on those issues. The proposed findings also must be submitted in an electronic form that is editable, preferably Microsoft Word. The proposed findings must be submitted with the Pretrial Statement.

SETTLEMENT

IT IS FURTHER ORDERED in the event a full settlement is reached prior to the time of hearing, the parties or counsel, if represented, **shall** present the formal written Judgment or the agreement signed and notarized by all parties, prior to 5:00 p.m. the **day prior to** the scheduled hearing [if set on the Court's morning calendar the following day, e.g., 9:00 to 11:55 a.m.] or **not later than** 9:00 a.m. on the day of hearing [if the hearing is set on the Court's afternoon calendar, e.g., 1:30 to 4:55 p.m.].

In the event the agreement has not been reduced to writing, all parties and their counsels, if represented, shall appear at the time designated for hearing to recite the agreement on the record and have it entered as the order of the court pursuant to *Rule 69, (Arizona Rules of Family Law Procedure hereinafter AzRFLP)*.

If the signed Judgment or agreement is not received by the Court pursuant to these guidelines, and the parties and/or their respective counsels, if any, fail to appear as ordered, the Court **shall dismiss the case in its entirety, without prejudice** and the matter **will not** be reinstated but for the most compelling of reasons. See *Rule 70(B)*.

IF ONLY ONE PARTY APPEARS, THE COURT MAY ENTER A DEFAULT AGAINST THE ABSENT PARTY, AND ALLOW THE PARTY THAT APPEARS TO PROCEED BY DEFAULT AND/OR ISSUE A CIVIL ARREST FOR THE PARTY WHO FAILS TO APPEAR. IF BOTH PARTIES FAIL TO APPEAR, THE ENTIRE CASE MAY BE DISMISSED, WITHOUT FURTHER NOTICE TO EITHER PARTY.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court this 27th day of August 2013.

/s/ Hon. Jose S. Padilla

Honorable Jose S. Padilla
Superior Court Judge

4:55 p.m. Matter concludes.

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FILED: Acknowledgment and Notice of Parenting Conference (2)

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