

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2012-070796

09/17/2013

HONORABLE MICHAEL W. KEMP

CLERK OF THE COURT

J. Bailey

Deputy

IN RE THE MATTER OF
JENNIFER DONAHUE

CHRISTOPHER S SHORT

AND

RYAN DONAHUE

S ALAN COOK

HEARING

Prior to hearing Petitioner's exhibits 1 through 10, 25, 26 and 27 and Respondent's exhibits 11 through 24 were marked for identification.

Northwest Facility, Courtroom 121

2:03 p.m. This is the time set for an Evidentiary Hearing re: Respondent's Petition to Modify Legal Decision Making (Custody), Parenting Time and Child Support filed July 8, 2013. Petitioner/Mother Jennifer Donahue is present and represented by counsel, Christopher S. Short. Respondent/Father Ryan Donahue is present and represented by counsel, S. Alan Cook.

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

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Jennifer Donahue, Ryan Donahue and Katie Pallante are sworn.

The Rule of Exclusion of Witnesses is invoked and the witness leaves the courtroom.

Discussion is held regarding status of the case and pending issues.

Ryan Donahue testifies.

Respondent's exhibits 11 through 19 are received in evidence.

Petitioner's exhibits 25 and 27 are received in evidence.

3:14 p.m. Court stands are recess.

3:28 p.m. Court reconvenes with the parties and respective counsel present.

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

Katie Pallante testifies.

The witness is excused.

Jennifer Donahue testifies.

Petitioner's exhibits 1, 2, 4, 6, 7 and 8 are received in evidence.

Petitioner's exhibit 3 is offered but not received in evidence.

LET THE RECORD REFLECT the parties agree upon the issue regarding the Qualified Domestic Relations Order ("QDRO"), as stated on the record.

IT IS ORDERED that counsel for Petitioner will provide to counsel for Respondent a proposed form of order for the QDRO by 5:00 p.m. on September 20, 2013.

IT IS FURTHER ORDERED that the QDRO shall be submitted to the Court by 5:00 p.m. on September 27, 2013.

The Court has considered the evidence and testimony presented and the best interests of the minor children herein.

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In determining legal decision making and parenting time, the Court is guided by the factors set forth in A.R.S. § 25-403(A). The Court shall determine legal decision-making and parenting time, either originally or on petition for modification, in accordance with the best interests of the child. The Court shall consider all factors that are relevant to the child's physical and emotional well-being, including:

1. *The past, present and potential future relationship between the parent and the child.*

Not much evidence was presented with regard to this factor.

2. *The interaction and interrelationship of the child with the child's parent or parents, the child's siblings and any other person who may significantly affect the child's best interest.*

Not much evidence was presented with regard to this factor.

3. *The child's adjustment to home, school and community.*

The only testimony presented with regard to this factor was that Layla goes to a charter school and Father does not like that.

4. *If the child is of suitable age and maturity, the wishes of the child as to legal decision-making and parenting time.*

The children are not of suitable age and maturity to provide their opinion with regard to legal decision making and parenting time.

5. *The mental and physical health of all individuals involved.*

The Court questions the mental health of both parents due to the high level of controversy including threats and domestic violence.

6. *Which parent is more likely to allow the child frequent, meaningful and continuing contact with the other parent. This paragraph does not apply if the Court determines that a parent is acting in good faith to protect the child from witnessing an act of domestic violence or being a victim of domestic violence or child abuse.*

The Court finds that neither parent is likely to allow the children frequent, meaningful and continuing contact with the other parent.

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7. Whether one parent intentionally misled the Court to cause an unnecessary delay, to increase the cost of litigation or to persuade the Court to give a legal decision-making or a parenting time preference to that parent.

This factor does not apply.

8. Whether there has been domestic violence or child abuse pursuant to section 25-403.03.

Mother has been charged with domestic violence against Father's new girlfriend. It appears that there have been threats from both sides.

9. The nature and extent of coercion or duress used by a parent in obtaining an agreement regarding legal decision-making or parenting time.

This factor does not apply.

10. Whether a parent has complied with chapter 3, article 5 of this title.

This factor does not apply.

11. Whether either parent was convicted of an act of false reporting of child abuse or neglect under section 13-2907.02.

This factor does not apply.

For the reasons stated on the record,

THE COURT FINDS that a substantial and continuing change of circumstances has not occurred.

IT IS ORDERED that Father shall have parenting time with the children beginning the day after his regular work shift ends, from after school or 3:30 p.m. if school is not in session, for one overnight visit, and shall return the children to school the next morning or to Mother's care by 9:00 a.m. if school is not in session. Father shall continue to have parenting time with the children during the weekend, Saturday and Sunday, during the weekend that he is not working, and shall return the children to school on Monday morning or to Mother's care at 9:00 a.m. if school is not in session. Father shall also have one additional overnight visit per month during a weekend night with seven (7) days advance written notice provided to Mother.

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IT IS FURTHER ORDERED that the custodial parent shall have the children call non-custodial parent at 7:30 p.m. every evening.

IT IS FURTHER ORDERED that both parents shall use appropriate car seats for the children and have a valid driver's license when transporting the children.

IT IS FURTHER ORDERED affirming the current child support order.

IT IS FURTHER ORDERED that each party shall pay for his/her own attorney fees.

IT IS FURTHER ORDERED that the parties shall negotiate in good faith with regard to all major decisions for children, including the children's education, medical care, and religious training. If the parties are unable to agree upon a major decision involving the children, they shall participate in mediation through a private mediator to resolve the disagreement, as stated on the record. Each party shall pay for one-half of the cost for the private mediator.

IT IS FURTHER ORDERED that the parties shall be precluded from filing a petition to modify legal decision making and/or parenting time for a period of one year from the date of this order, absent immediate physical danger to the children.

4:37 p.m. Matter concludes.

LATER:

IT IS FURTHER ORDERED releasing Petitioner's exhibits 5, 9 and 10 and Respondent's exhibits 20 through 24 and 26.

IT IS FURTHER ORDERED signing this minute entry as a formal order of the Court pursuant to Rule 81, Arizona Rules of Family Law Procedure.

September 17, 2013

/s/ Michael W. Kemp

DATE

HONORABLE MICHAEL W. KEMP
SUPERIOR COURT JUDGE

FILED: Exhibit Worksheet; Exhibit Release Forms (2)