

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2008-091361

12/19/2011

HONORABLE DAVID B. GASS

CLERK OF THE COURT
L. Nevenhoven
Deputy

IN RE THE MATTER OF
KIRK DANA SMITH

KIRK DANA SMITH
542 W POSADA AVE
MESA AZ 85210

AND

MARYVONNE FRANCINE JACQUELINE
HARBULOT

MARYVONNE FRANCINE
JACQUELINE HARBULOT
936 N SWEETWATER BAY DR
GILBERT AZ 85234

ANNETTE HEYWOOD RUSKIN
300 W CLARENDON AVE
SUITE 140
PHOENIX AZ 85013

**ORDER APPOINTING AN INTERVENTIONIST FOR FAMILY
COUNSELING**

Upon order of the court, **Annette Heywood Ruskin, 300 W. Clarendon Ave., Suite 140, Phoenix, AZ 85013 Phone: 602-242-7383** is appointed as an Interventionist.

Scope:

Court Interventionists are intended to 1) gather data and inform the Court regarding family dynamics and functioning and 2) create desired change in individuals and families. The different sub-roles with the Therapeutic Intervention category, generally define who is to be involved in the process.

In this role, the Interventionist's process and goals **may** include the following:

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1. Provide rehabilitation of a relationship between identified family members;
2. Identify, establish, and communicate clear boundaries, behavioral expectations, and rules, rules for exchanges of the children, in order to enhance safety and health in the family;
3. Make referrals for therapy as appropriate for containment of psychological or behavioral issues regarding the parents or children as needed;
4. Report child maltreatment pursuant to applicable child abuse reporting statutes;
5. Facilitate the development of, or implement a court-ordered, child-focused, schedule for access;
6. Facilitate conflict resolution;
7. Provide education and support to obviate re-litigation.

This Court Intervention Appointment is specifically intended for the purpose of:

Family counseling intervention: The Interventionist assists individuals within the family dynamic (e.g. Mother, Father, children, Stepparents, Grandparents, nanny, care providers, etc) with goals related to improving healthy family dynamics. The parties shall be involved in the counseling when the counselor deems it appropriate to begin addressing the parties' parenting skills with each child, taking into consideration each child's special needs.

The Interventionist's Report to the Court:

In order to inform and assist the Court, the Therapeutic Interventionist shall provide brief 90-day intervention summaries to the court. Copies are to be provided to the parties or counsel. Reports of the Interventionist may be received in evidence without the necessity of any foundation and without the objection to hearsay statements contained therein or any other objection. It is agreed that reports shall be delivered to the Court and counsel, unless the Interventionist asserts extraordinary extenuating circumstances, including but not limited to imminent life threat or the potential for serious harm to a person related to the case. In that instance, the Court shall make a ruling regarding dissemination.

The Interventionist has the authority to make requests regarding implementation, clarification, amendment and enforcement of orders of the court. Such requests are made in writing and copied to counsel or the parties.

Term:

The Interventionist is appointed for a term of 12 months subject to (1) reappointment at the expiration thereof upon the Court's own motion, the request of the Therapeutic Interventionist or motion of either party; or (2) earlier removal by court order based upon motion

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showing good cause, stipulation of the parties, or resignation by the Therapeutic Interventionist. Sixty (60) days prior to the expiration of this appointment, the Therapeutic Interventionist shall submit to the Court and parties or their counsel, if represented, a summary of the history of the services rendered, compliance by the parties, recommendations made, and any recommendations for future involvement of the Therapeutic Interventionist.

1. THE AUTHORITY OF THE APPOINTEES:

The Appointees shall have the following rights and authority with regard to the minor children and family members:

- The Appointees shall serve as experts for the court in order to provide data and opinions relevant to the care of, custody of and access to the minor children in this case pursuant to applicable Arizona Statutes and case law.
- The Appointees shall have the authority to collect data and form opinions relevant to statutory issues.
- The Appointees shall conduct any and all assessment needed in order to provide an ultimate opinion as to the specific questions identified above.
- Collection and integration of information as well as referral for adjunct services shall be at the sole discretion of the Appointees.
- The Appointees may request that an individual or multiple family members participate in adjunct services, to be provided by third parties, including but not limited to physical or psychological examinations, assessment, psychotherapy, co-parenting work, or alcohol and drug monitoring/testing.

The Appointees may communicate ex-parte with the Court regarding procedural issues. The Court may order additional rules applicable to the Appointees from time to time. The Appointees may seek guidance from the Court in order to achieve clarity with regard to the procedural aspects of the intervention should disputes arise.

The Appointees are permitted to consult with or exchange information with professionals and other collateral informants he or she deems appropriate in this role.

2. RESPONSIBILITIES OF THE PARTIES AND LEGAL REPRESENTATIVES:

The Parties shall keep the Appointees informed of concerns; meet the behavioral expectations outlined in the court order; meet the behavioral expectations outlined by the Appointees during the course of the Appointees' term; Seek to promote a healthy relationship between the child's parent or parents, the child's siblings and any other person who may significantly affect the child's best interest.

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The parties will not engage additional behavioral health professionals (including but not limited to therapists, psychologists, psychiatrists, and social workers) to provide services during the course of the process without the consent or authorization of the Appointees, unless otherwise authorized by court order.

Except as directed by the Appointees or authorized by the Court, the parties shall not disseminate or publish any reports, opinions, testimony or other written, transcribed or recorded communications from the Appointees to any third parties except behavioral health providers appointed by the Court to provide services (e.g. custody evaluators, parenting coordinators, therapeutic interventionists). Under no circumstances shall such information be shared with the parties' child(ren).

The parties shall keep the Appointees advised of their and the child(ren)'s addresses, telephone numbers for home, work and school, mailing address if different than the living address, as well as any other pertinent information. This information shall be immediately communicated in writing to the Appointees.

The parties are to comply fully with this court order and present as requested on time for the evaluation process. The parties shall comply with all requests made by the interviewer.

Should the Appointees determine that one of the parties is using his/her services unnecessarily and is thereby causing greater expense for the other party as a result thereof, the Appointees may recommend to the Court a different allocation for payment of fees.

Should the Appointees find any party is acting in bad faith, and/or not complying with the Court's orders, the Appointees may recommend that the party acting in bad faith pay or reimburse the other party's costs of services provided by the Appointees necessitated by the party acting in bad faith, and the Appointees may recommend additional sanctions which may include modifications of access and/or contempt proceedings.

Parties and legal representatives will not videotape or audiotape any part of the Appointees's process, including recording of the Appointees, the child or the parties without the written consent of the Appointees. If recordings are made in violation of this order, 1) the Court will consider sanctions and 2) all transcripts, tape recordings or videotapes of the proceedings shall be immediately submitted to the Court and the Appointees.

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3. INFORMATION AND RECORDS:

All data provided by the parties directly to the Appointees shall be copied to the other party, or to the legal representative of that party.

The Appointees shall receive the cooperation of all parties and counsel involved to help ensure that the report is submitted by the due date identified by the Court.

The Appointees may seek information and records that are the result of a privileged or confidential relationship. This order shall act as a release by the parties of all information requested by the Appointees and shall further obligate the parties for any costs associated with the production of those records to the Appointees. The Appointees shall request only the records and information that are necessary and pertinent to further the purpose of the role envisioned by this order. The possessor of the records and information will release relevant information in an effort to retain the integrity of the privileged or confidential relationship, yet cooperate with the needs of the Appointees for the role envisioned by this order. Also at the request of the Appointees, each party shall execute any and all authorizations, releases or consents necessary so as to authorize the Appointees's access to the information contemplated herein above. Any costs shall be paid promptly and by the party/parties as outlined in this order inline with ARS §12-2295 and ARS §12-351. Parties, counsel and other professionals shall provide all documents requested by the Appointees within ten days of receipt of this order.

If the recipient does not comply with this order, the Appointees can request sanctions against the recipient to the extent permitted by *Arizona law including civil contempt. Consistent with civil contempt, the Court may impose sanctions to obtain compliance with the order, including incarceration, seizure of property, attorney's fees, costs, compensatory or coercive fines.* Additionally, action may be taken with a professional's licensing board regarding non-compliance with a Court order.

IT IS FURTHER ORDERED that the Appointees shall have authority to involve the child(ren), parents, siblings, stepparents and any other person who may significantly affect the child(ren)'s best interest. The Appointees is permitted and may seek to:

1. Meet and interview any of the above participants.
2. Visit the home(s) of the parents to determine if the environments are appropriate for the child;
3. Investigate and review both parents', their spouses' and significant others' backgrounds with regard to criminal arrests and convictions;
4. Determine if drug testing by either or both parents is needed. The parties shall immediately comply with any requests by the Appointees for documentation or further

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- evaluation such as random drug testing through TASC, substance use assessment by a licensed medical doctor, or any other form of assessment;
5. Review the child's school/daycare records, Parenting Skills records, psychological evaluations, and counseling records;
 6. Review law enforcement, court, or Child Protective Services reports concerning the child.

The Appointees shall also have access to:

1. All therapists of the children and parties;
2. All school and medical records of the children and parties;
3. Any and all psychological testing or evaluations performed on the children or the parties;
4. Arizona Department of Transportation records;
5. Any and all teachers/child care providers for the children.
6. Any and all additional records the Appointees deems necessary and relevant to the evaluation.
7. Any and all CPS records which shall not be redacted unless otherwise ordered by the Court.

The Court has balanced interests consistent with Title IX obligations and determined release of un-redacted CPS records to the Appointees is appropriate. As the Appointees is serving with authority from this Court, this Order should serve as an order to CPS to provide any and all un-redacted records related to this family from prior to the date of this appointment through the term of this appointment upon the request of the Appointees. If there is an active CPS investigation at any time during the course of this evaluation, CPS is ordered to produce all records to the Appointees until the Appointees submits a final report. *This Order is made pursuant to Ariz. Rev. Stat. Ann. § 8-807(D) and (F)(4) as the information is necessary to promote the safety and well-being of the child or children and is reasonably necessary to promote the safety, permanency and well-being of a child*

As the Appointees is serving with authority from this Court, this Order should serve as an order to the Arizona Department of Transportation to provide any and all un-redacted records related to the above named parties from all dates prior to the date of this appointment through the term of this appointment upon the request of the Appointees.

4. IMMUNITY:

The Appointees shall act in the capacity of a special master in his/her capacity pursuant to this Order, and as such, the Appointees is cloaked with applicable judicial immunity consistent

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with Arizona case law applicable to quasi-judicial officers of the Court as to all actions undertaken pursuant to the Court appointment and this Order.

5. APPEARANCES:

Each party reserves the right to call the Appointees as a witness. If only one party believes that in addition to his/her written report the Appointees' testimony is necessary, that party shall be responsible for 100% of the costs incurred in connection with the Appointees testifying during the hearing.

The Appointees may appear and may be available to testify at any court hearing upon reasonable notice to the Appointees, the Court, and the opposing party, regarding any issue addressed by the Appointees.

The parties are responsible for notifying the Appointees of any changes in the originally scheduled hearing date. If, due to extenuating circumstances, the Appointees are unable to provide a written report prior to the scheduled hearing, the Appointees will notify the parties and the court, specifying when the report shall be completed.

If transcripts, tape recordings or videotapes have been made of any portions of the Appointees' proceedings, they shall be submitted to the Court. There will be no videotaping or audio taping of the Appointees, the child or the parties without the written consent of the Appointees.

6. FEES:

The Appointee's fee and costs shall be paid **100%** by Father, subject to other and further orders of the Court. Costs shall be paid as directed by evaluator and may be required to be paid prior to the first appointment. In the event any person (including a child) fails to appear at the time of an appointment, the person responsible for the missed appointment shall be obligated to pay any cost associated with the missed appointment. The fees ordered to be paid to the Appointees hereunder are considered to be in the nature of and enforceable as child support.

If either party requests that the Appointee testify, the party will be responsible for fees associated with that testimony as identified within the Appointee's consent form.

7. CONFIDENTIALITY:

There is **no confidentiality** relating to the parties' communications with/to the Appointees or concerning the Appointees' activities, treatment, referrals, data collection or

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recommendations. This court order constitutes a complete waiver of doctor-patient privilege, as the Appointees are appointed as the court's expert. Additional rules applicable to the Appointees may be ordered by the Court from time to time.

8. THE APPOINTEES REPORT:

Should the Appointees submit a report, the report of the Appointees may be received in evidence without the necessity of any foundation and without the objection to hearsay statements contained therein or any other objection. It is agreed that the report shall be provided to the Court, the parties and counsel, unless otherwise ordered by the Court. Upon delivery of the report, the Appointees shall be discharged of his evaluative duties. Any further data collection shall be executed only via court order.

9. PROFESSIONAL RESPONSIBILITIES:

The Appointees shall serve pursuant to applicable case law, rules of court, local rules, domestic relations rules, rules of civil procedure, uniform rules, and with behavior consistent with the Appointees' applicable ethical standards.

Any alleged impropriety or unethical conduct by the Appointees shall be brought to the attention of the Court in writing, prior to the submission of such complaints to any administrative bodies. Professional conduct within the scope of this court order shall not be deemed unprofessional conduct by the court or any administrative body.

If any party or attorney on behalf of a party files a licensing complaint against the appointed professional during the pendency of this case, that party shall notify the Court within 3 business days that the licensing complaint has been filed. If the appointed professional is notified by his/her licensing board that a complaint has been filed against the appointed professional in this case, the appointed professional may notify the Court that a complaint has been filed against the appointed professional if he or she does not believe the party or litigant informed the Court as described above.

As the Court is concerned about the Appointees' ability to effectively carry out appointment duties, the Court may review any licensing complaint to determine whether the complaint inappropriately hindered the Appointees' role and the Court's process. If the Court determines the complainant has acted in a way to hinder the legal process, the Court may choose to sanction the complainant. Failure to advise the Court as required above may result in contempt proceedings being initiated against the complaining party and that party's attorney.

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Nothing in this court order shall be construed to relieve the Appointees of their professional responsibilities. The Appointees and parties will engage each in a professional manner at all times. The Appointees do not have to report to the parties. The Appointees shall report to the Court, any physical threats and may report any threats or intimidation by the parties towards the Appointees.

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

/ s / HONORABLE DAVID B. GASS

JUDICIAL OFFICER OF THE SUPERIOR COURT

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>.