

HEARING REQUESTED Y or N
() OBJECTIONS TO MAG DECISION
(X) MOTION TO SET ASIDE
() REQUEST FOR FINDINGS OF TRIAL

Wijdan Jreisat (0063955)
Trial Attorney for Plaintiff

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

ELLEN L. TURNER,
Plaintiff,

: Case No. DR0500131
: File No. E233969
: CSEA: 7053135062

v.

: PLAINTIFF'S MOTION TO SET ASIDE
: MAGISTRATE'S ORDER

JON H. ENTINE,
Defendant.

: Magistrate Theile
: Judge Sieve

FILED

2013 APR 15 P 2:58

TRACY WINKLER
CLERK OF COURTS
HAMILTON COUNTY, OH

Plaintiff/ Mother Ellen L. Turner hereby moves the Court to set aside the Magistrate's Order entered April 4, 2013 denying Plaintiff's Motion for Psychological Examination and Evaluation. This motion is made pursuant to the accompanying memorandum in support.

Respectfully submitted,



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D101685466

MEMORANDUM IN SUPPORT

As this Court is aware, Rule 35 (A) of the Ohio Rules of Civil Procedure provides:

When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit himself to a physical or mental examination or to produce for such examination the person in the party's custody or legal control. The order may be made only on motion for good cause shown . . .

Wife sought such an examination of Husband. Despite the decree being entered in 2006, the parties have been in litigation virtually every year since related to the divorce and the child. The latest round was again initiated by Husband. In seeking to modify the shared parenting plan, he has placed the child's best interest into question.

Ohio Revised Code Section 3109.04(F)(1)(e) provides:

In determining the best interest of a child pursuant to this section, whether on an original decree allocating parental rights and responsibilities for the care of children or a modification of a decree allocating those rights and responsibilities, the court shall consider all relevant factors, including, but not limited to . . . The mental and physical health of all persons involved in the situation . . .

As such, Wife sought such an examination as Husband's continuing pattern of conduct has raised questions whether his mental condition is creating and/or influencing the on-going disputes and issues (including alleged contempt of court) and how the child's best interests may be served. Wife intended to present her concerns and the evidence supporting her motion in order to demonstrate why the examination was appropriate as part of the determination of the motions pending. Several motions were scheduled for hearing on April 3.

The Magistrate dispenses with Wife's motion by stating: "As the current substantive issue before the court is that of the adjustment of parenting time, Wife has not shown good cause to require Husband to obtain a psychological examination. Her

motion for psychological examination of Husband is denied." However, no evidence was taken as to the motion for an examination. In fact, at various points, Wife's counsel sought to call witnesses in this regard and the Magistrate would not take testimony on the matter.

Pursuant to Rule 35(A), three requirements must be met before a Court may order psychological evaluations. The first requirement is that the physical or mental condition be "in controversy". *Shoff v. Shoff*, 10th Dist. No. 95APF01-8, 1995 Ohio App. LEXIS 3145, *7 (July 27, 1995), *overruled in part on other grounds*, citing *Brossia v. Brossia*, 65 Ohio App. 3d 211, 215, 583 N.E.2d 978 (6th Dist. 1989). In determining whether to adjust parenting time, the Court must determine what is in the best interests of the child. Mental health is inextricably entwined with such a determination because the mental health of the parties is a relevant factor in determining what is in the child's best interests pursuant to RC 3109.04(F)(1)(e). *See also, Prakash v. Prakash*, 181 Ohio App. 3d 584, 2009 Ohio 1324, 910 N.E.2d 30, ¶18 (10th Dist.). The second requirement, upon a motion, has also been met since Wife filed a motion requesting the psychological examination. *Brossia* at 215.


The third requirement is that Wife demonstrate "good cause" for the examination. *Brossia* at 215. Wife could not meet that requirement because the Magistrate denied her the opportunity to do so. Good cause is not met by conclusory allegations of the pleadings and cannot be established merely by arguments of counsel. *See, In re Guardianship of Johnson, overruled in part on other grounds*, 35 Ohio App. 3d 41, 519 N.E.2d 655 (10th Dist. 1987) (finding error in a court finding good cause based on the in camera arguments of counsel); *see also, Brossia* at 215 (finding error in an order for an

examination where "no evidence was offered to establish good cause, and no hearing has yet been held in which such evidence could have been offered.").

Therefore, the Magistrate's order must be set aside as unfounded by virtue of the fact that he did not allow Wife the opportunity to present her evidence to establish good cause and, as such, denied the motion without an appropriate hearing and review of the issue. This clear error should be reversed by the Judge. Wife therefore requests that she be granted an evidentiary hearing on her motion such that the need for the examination can be established with good cause.

In the alternative, if the Court determines that no additional hearing is appropriate or necessary, the Magistrate incorrectly overruled the motion as the mental health of Father is clearly a necessary issue to the determination of the child's best interests, as set forth by statute. Such information is best presented with expert testimony. As such, Mother's motion should be granted and remanded to the Magistrate to set forth the specifics of such an examination and evaluation.

Respectfully submitted,



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NOTICE OF HEARING

You are hereby advised that a hearing has been set on the above Motion beginning on JUNE 11th at 10 ^Ap.m. for 30 minutes before Judge Sieve in Room 2-10 of the Domestic Relations Court, 800 Broadway, Cincinnati, Ohio 45202.



Wijdan Jreisat

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Plaintiff's Motion to Set Aside Magistrate's Order Plan has been served via US mail this the 15th day of April 2013 upon:

Robert J. Meyers, Esq.
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and

Anne Barry Flottman, Esq.
Wood & Lamping, LLP
600 Vine Street, Suite 2500
Cincinnati, OH 45202



Wijdan Jreisat

KTBH:4847-9873-6915.1

SECURITY FOR COSTS IN THE SUM OF \$ 125⁰⁰
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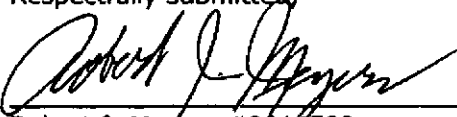
() PRE-DECREE () POST DECREE
COURT OF COMMON PLEAS) Chg. of Cust.
DIVISION OF DOMESTIC RELATIONS) Dis. Enforce/Mod.
HAMILTON COUNTY, OHIO) Sup. Enforce/Mod.
() Others

Ellen L. Turner : CASE NO. DR0500131
Plaintiff, : FILE NO: E233969
vs. : JUDGE SIEVE
Jon H. Entine : MOTION TO MODIFY MODIFIED
Defendant. : SHARED PARENTING PLAN AND
: REPLY TO MOTHER'S MOTION TO
: MODIFY PLAN

Now comes the Defendant, Jon H. Entine ("Father"), by and through counsel, and moves the Court to modify the Modified Shared Parenting Plan ("MSPP") as to the reconciliation of shared expenses; and Article IV (A) to ensure that rowing is included as a "school-related" activity.

Father also herein responds to Mother's filing to modify the MSPP to "impose certain restraints on the costs and expenses to be incurred for extracurricular activities of the child."

This Motion is supported by the following Memorandum.

Respectfully submitted,


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FILED
2013 APR 12 P 2:05
TRACY WINKLER
CLERK OF COURTS
HAMILTON COUNTY, OH



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MEMORANDUM

A. Modifying Medical Expense Reconciliation Schedule.

Article XX of the MSPP currently requires that the parents reconcile their expenses once a year, covering the fiscal year July 1 through June 30, during the month of July. This agreement works for general expenses, which tend to be shared by both parents but does not work for medical expenses, which are usually covered almost exclusively by the one parent holding insurance coverage for Maddie.

This was not an issue in the first four years after the parent's separation. Mother, who had lost her job at Sarah Lee, initially had COBRA coverage. Father paid his share of COBRA every month though not specifically required under the Shared Parenting Plan. Subsequently Mother obtained new employment and received insurance coverage benefits. Father continued to reimburse Mother for the premium bills monthly.

Mother subsequently lost this job and her insurance coverage, whereby, beginning in 2009, Father assumed insurance coverage for Maddie. Mother has steadfastly refused to cover her share of the monthly premium, which is now \$121 per month. That means Father advances approximately \$1,452 annually to Mother's zero cost. Beyond the premium outlays, Maddie also has a \$3,000 deductible before medical costs are covered. All of that is covered by Father. Maddie has had numerous operations far exceeding the \$3,000 deductible and regularly incurs a sizable amount of medical expenses. Nearly all of this falls on Father's shoulders.

On numerous occasions, Father asked Mother to follow his practice when the separation and divorce first occurred to voluntarily share medical costs. Mother refused. Father attempted to mediate the issue, requesting that the parties reconcile medical expenses quarterly or semi-annually. Mother rejected those entreaties. Subsequently, on March 19, 2012, the parties reached a mediated agreement, memorialized by the mediator,

TRACY WINBLER
CLERK OF COURTS
SHARON COUNTY, OH
2013 APR 12

to reconcile medical expenses on a semi-annual basis, in January and June. Mother subsequently refused to abide by the mediated agreement.

This Court generally requires parties to reconcile uninsured medical expenses on at least a quarterly if not monthly basis. Unlike general expenses, which have often been contested, there have been no disagreements as to medical expenses. In fact, in January 2013, after Mother initially agreed to abide by the March 2012 mediated agreement, and received the documented expenses from Father, Mother acknowledged there were no discrepancies. However, she then refused to reimburse Father. Establishing a semi-annual reconciliation of medical expenses would relieve Father of the burden of shouldering all or most of the medical expenses for an entire year and would be consistent with this Court's practice.

Father requests that the Court order semi-annual reconciliation of medical expenses in January and July beginning with the July 2013 reconciliation.

B. Modifying the Modified Shared Parenting Plan as further modified on September 14, 2013 as to activities.

Paragraph number 5 of the Agreed Entry modified Article IV (A) of the MSPP as follows:

During the school year, Maddie shall be allowed to choose her own extra-curricular activities (defined to mean school-related activities such as clubs and sports only) as she develops an interest in them. The parents should ensure that Maddie follows through on all commitments. Both parents shall support her choices by transporting her (or arranging for transportation), encouraging her and attending during their respective parenting time. Substitute care arrangements shall be made by a parent who is unavailable to support an activity on a given parenting day so that Maddie may participate. The cost of such activity including equipment, lessons, fees, events, rental (except horse), and clothing/shoes, shall be shared equally by the parties without set off against other claims by a parent for monies owed by the other.

That paragraph was substantially written in the early summer of 2012 by the GAL before Maddie decided that she wanted to try her hand at rowing, which has since become,

along with tennis, her major sport related extra-curricular activity. A question has arisen as to whether rowing falls under the revised Article IV (A).

Mother has contended in numerous emails that rowing is not considered an activity under Article IV (A). She initially attempted to block Maddie's self-chosen activity, claiming on September 14, 2012, "I never agreed to rowing" as if it were Mother's choice rather than Maddie's choice. She also contends she is not obligated to share in expenses claiming that rowing should fall under clause Article IV (B) stating: "As you know, in the Shared Parenting Plan, it is fine if you would like to enroll Maddie in other non-school and non-religious activities during your time/afternoons and evenings: 'Maddie may also choose to participate in non-school activities with the support of one but not the other parent.' Absent a mutual agreement, either parent **AT THEIR SOLE EXPENSE** may enroll the child in a non-school or non-religious activity that does not impact the other parent's time. So that is how I am planning to proceed, based on our Shared Parenting Plan agreement."

Mother's stated position creates two significant problems. First, it will deny Maddie the ability to participate fully in the rowing program since the program occurs during the parenting time of each parent. Second it will force all expenses of the program to be paid by Father.

Father believes the new clause, Article IV (A) is ambiguous and would like the Court to resolve that ambiguity. Although rowing is not a "typical" school sport, nevertheless it is clearly a school sport. Moreover, as to the MSPP, although rowing is not officially offered as a sport at Indian Hill, it is "school related" – the operative words in the MSPP. The Cincinnati Junior Rowing Club currently consists of 132 members and is open only to middle school and high school students. Approximately a dozen kids attending Indian Hill schools are members of the Cincinnati Junior Rowing Club. Some area schools formally offer rowing, such as Walnut Hills, although because of the huge expense in buying equipment, etc., many

schools, like Indian Hill, encourage students interested in rowing to join the Cincinnati Junior Rowing Club. At the Cincinnati Junior Rowing Club, Maddie interacts daily – as much as 6 days a week – with dozens of high school children of both sexes. Rowing fulfills every objective that both parents and the GAL say they embrace for Maddie – a healthy interactive experience with school kids and peers.

Rowing is also not inexpensive, which is what is prompting this request that the Court resolve the ambiguity that now exists in Article IV (B). It costs approximately \$600 a season to cover Maddie's basic expenses, and more if regatta and related expenses are added in. These costs are comparable to money spent for other sports over the years for Maddie, including horseback riding and tennis, which require expensive weekly lessons. Mother's stance, quoted in the September email, that Father and only Father would be obligated to pay for this activity contradicts the intention of the amended Article IV (B) and contradicts the original language of that article. Father also believes that the GAL strongly supports Maddie's participation in this sport and believes it to be in her best interests to continue in it.

Father respectfully requests that rowing be deemed a school-related activity under the Agreed Entry modifying the MSPP.

C. Response to Mother's Request to Modify the MSPP as to Reimbursement of Summer Activities Chosen by Maddie.

Article III (B) currently states:

"Before scheduling vacations, on or before April 1 of each year, Maddie, after consulting with her parents and other trusted persons, shall have the sole discretion to select up to two summer activities lasting a minimum of five consecutive weekdays or overnights but..."

"...The parents shall equally divide the costs pertaining to the activity or activities without set off against other monies claimed to be owed by one to the other."

Mother argues that this clause gives Maddie "carte blanche to commit the parents to expenses without consultation or limitation." Mother then argues to cap Maddie's self-

determined summer expense at \$1,000.

This clause was inserted to protect Maddie from either parent's undue influence, and in fact it has proved its worth. For the summer 2013 Maddie has decided she would like to go to overnight tennis camp. Father supports Maddie's decision. It shows a maturity not previously exhibited by Maddie who had been reluctant to take risks such as overnight camps. Moreover, Maddie decided that she wanted to go "out of town" for her tennis camp – another maturing step. Maddie decided to attend two weeks of overnight camp – again, a sign of her growing independence.

Maddie reviewed dozens of tennis camp options with both Mother and Father. She consulted with her godmother, Carol Magnes, who is a US Tennis Association official, and whose three sons all went to tennis camps and became nationally ranked junior players. Maddie demonstrated considerable maturity, even asking to interview the director of one of the camps that she expressed an interest in attending, the Julian Krinsky Camp, based at Villanova University in Philadelphia, one of the oldest continuous youth summer tennis camps in the United States.

Mother appropriately urged Maddie to consider other options including a local Nike camp and a Florida based camp. Maddie considered each but elected not to attend them. Maddie weighed her options and chose the Krinsky camp recommended by her godmother.

In other words, the process as outlined in the current MSPP worked. Mother said she would have supported two weeks at the Nike Camp or the Florida camp, where costs were exactly comparable, so financial concerns were not an issue.

Father believes that tinkering with the MSPP is a solution in search of a problem. The \$1,000 summer limit is unrealistic – it does not even cover one week of camp (overnight camps run about \$1,500 per week). Also the cap chosen by the Mother is totally arbitrary. Father believes that if that cap number was in place for this summer, Mother would have

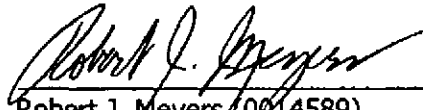
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used it to try to bully Maddie into attending a local tennis camp of her choosing rather than one that Maddie chose after careful discussion with numerous people, including her parents. In fact, this Article of the MSPP was drawn up specifically to protect Maddie from undo lobbying by either parent – which likely would have happened this year if the clause was not in place.

Therefore, Father respectfully requests that Mother's request to modify the Modified Shared Parenting Plan to cap summer expenses be denied.

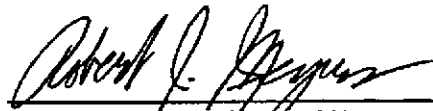
Respectfully submitted,



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Attorney for Defendant

NOTICE OF HEARING

Please take notice that a hearing on the foregoing Motion to Modify Modified Shared Parenting Plan and Reply to Mother's Motion to Modify has been scheduled for the 24th day of April, 2013 at 1:30 a.m./p.m. for ____ (mins./hrs.) before Magistrate Theile, Room 2-102, at the Hamilton County Domestic Relations Court, 800 Broadway, Cincinnati, Ohio 45202.




Robert J. Meyers (0014589)
Attorney for Defendant

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Motion to Modify Modified Shared Parenting Plan and Reply to Mother's Motion to Modify has been served upon Wijdan Jreisat, Esq., Attorney for Plaintiff, Katz, Teller, Brant & Hild, 255 E. Fifth Street, Suite 2400, Cincinnati, Ohio 45202, and Anne B. Flottman, Esq., Guardian Ad Litem, Wood & Lamping LLP, 600 Vine Street, Suite 2500, Cincinnati, Ohio 45202 by regular U.S. mail, postage prepaid, this 12th day of April, 2013.


Robert J. Meyers (0014589)
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HEARING REQUESTED Y or N
 OBJECTIONS TO MAG DECISION
 MOTION TO SET ASIDE
COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
REQUEST FOR FINDINGS OF FACT
HAMILTON COUNTY, OHIO

Ellen L. Turner

Plaintiff,

vs.

Jon H. Entine

Defendants.

: CASE NO. DR0500131
FILE NO: E233969
: CSEA: 7053135062

: JUDGE SIEVE
MAGISTRATE THEILE

: MOTION TO SET ASIDE
: MAGISTRATE'S ORDER DATED
APRIL 4, 2013

Now comes the Defendant, Jon H. Entine, by and through counsel, and hereby files a Motion to Set Aside that part of the Magistrate's Order dated April 4, 2013 which denies the request of the Defendant to have the Court interview the parties' minor child in accordance with Revised Code §3109.04(B)(1). The reasons supporting this motion are more specifically set forth in the Memorandum attached hereto.

Respectfully submitted,



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FILED

TRACY WINKLER
CLERK OF COURTS
HAMILTON COUNTY, OH
2013 APR 11 P 2:06

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MEMORANDUM

The Court denied Defendant's Request to Interview the Minor Child based on its finding that Revised Code §3109.051 is controlling. The Court is in error in this conclusion.

Revised Code §3109.04 provides in subsection (B)(1) as follows:

"When making the allocation of the parental rights and responsibilities for the care of the children under this section in an original proceeding or any proceeding for modification of a prior order of the court making the allocation, the court shall take into account that which would be in the best interest of the children. In determining the child's best interest for purposes of making its allocation of the parental rights and responsibilities for the care of the child and for purposes of resolving any issues related to the making of that allocation, the court, in its discretion, may and, upon the request of either party, shall interview in chambers any or all of the involved children regarding their wishes and concerns with respect to the allocation."

Section 3109.051, cited by the Magistrate, specifically provides in subparagraph (A) as follows:

"If a divorce, dissolution, legal separation, or annulment proceeding involves a child **AND IF THE COURT HAS NOT ISSUED A SHARED PARENTING DECREE** (emphasis added), the court shall consider any mediation report filed pursuant to §3109.052 of the Revised Code and, in accordance with Division (C) of this section, shall make a just and reasonable order or decree permitting each parent who is not the residential parent to have parenting time with the child..."

It is clear from §3109.051 that the provision does not apply where the Court has issued a Shared Parenting Decree. Opposing counsel may correctly indicate that the Ohio Supreme Court has held that §3109.051 applies to modification of visitation. *Braatz v. Braatz*, 85 Ohio St.3d 40, 706 N.E. 1218 (1999). However, unlike the case at bar, the *Braatz* Court reviewed a pure custody and visitation case involving one residential parent and one parent with limited visitation rights. Here, the parties have a shared parenting agreement in place. The modification of a shared parenting agreement is governed by §3109.04 rather than §3109.051. *Bauer v. Bauer*, 12th Dist. No. CA2002-10-083, 2003-Ohio-2552.

Under shared parenting, which was once called joint custody, both parties share some or all of the aspects of physical and legal care of their children. §3109.04(J); *Snouffer v. Snouffer*, 87 Ohio App.3d 89, 91, 621 N.E.2d 879. Additionally, under a shared parenting agreement, both parents have custody of the child [§3109.04(K)(5)] and are considered residential parents or legal custodians of the child [§3109.(K)(6)]. *Custody* is limited to the party or parties who have the right to ultimate legal and physical control of the child. *In Re Gibson*, 61 Ohio St.3d 168, 171, 573 N.E.2d 1074 (1991). However, *visitation* refers to the rights of the noncustodial party and is limited to the party's right to visit the child. *Id.* The Ohio Supreme Court specifically limited its holding in *Braatz* to the visitation (as defined by the Court in *Gibson*) and noted that §3109.04 governs agreements allocating rights related to custody. *Braatz*, 85 Ohio St. 3d at 44. Additionally, as the *Bauer* court noted, visitation is granted to someone who does not have custody; therefore, a shared parenting agreement, which vests the right to custody in both parties, is not the equivalent of visitation. *Bauer* at ¶21.

In this case a Shared Parenting Decree was entered, and a modified Shared Parenting Plan was adopted by this Court and is currently the controlling Order of the Court. Father's Motion to Modify the Allocation of Parenting Time under the Shared Parenting Decree was appropriately brought pursuant to §3109.04 for two reasons. First, the parents are under a Shared Parenting Decree. Second, both parents constitute residential parents under the terms of the Shared Parenting Decree. Therefore, §3109.04 controls the Motion to Modify.

As specifically cited above, §3109.04(B)(1) requires this Court to interview the minor child upon the request of a parent.

It was error for the Court to deny this request. Furthermore, the Court has erroneously applied §3109.051 to this case. The Court's clear error should be reversed by the Judge, and the Judge should order that the request for the Court to interview the minor child must be granted.

Respectfully submitted,

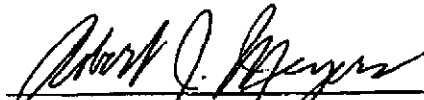


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NOTICE OF HEARING

Please take notice that a hearing on the foregoing Motion to Set Aside Magistrate's Order entered April 4, 2013 has been scheduled for the 11 day of JUNE, 2013 at 10:00 (a.m./p.m.) for 30 (mins./hrs.) before Judge Sieve, Room 2-10, at the Hamilton County Domestic Relations Court, 800 Broadway, Cincinnati, Ohio 45202.



Robert J. Meyers (0014589)
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Motion to Set Aside Magistrate's Order entered April 4, 2013 has been served upon Wijdan Jreisat, Esq., Attorney for Plaintiff, Katz, Teller, Brant & Hild, 255 E. Fifth Street, Suite 2400, Cincinnati, Ohio 45202, and Anne B. Flottman, Esq., Guardian Ad Litem, Wood & Lamping LLP, 600 Vine Street, Suite 2500, Cincinnati, Ohio 45202 by regular U.S. mail, postage prepaid, this 11th day of April, 2013.



Robert J. Meyers (0014589)
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190780

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DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO



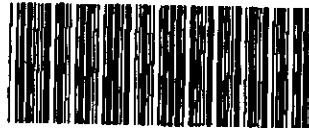
Elten L. Turner

Plaintiff

- vs -

Jon H. Entine

Defendant



D77275692

Case No: DR0500131 POST
File No: E233969
CSEA: 7053135062

**MAGISTRATE'S DECISION
WITH FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

Judge Panioto
Magistrate Theile

An Entry, captioned "General Order of Reference" which is a matter of record in this Court, provides "... that all matters be and are hereby referred to a Magistrate in accordance with Rule 53 of Ohio Rules of Civil Procedure".

This cause came on for hearing on November 30, 2007 and January 31, 2008 on Plaintiff/Wife's Motion for Contempt filed September 13, 2007, and Defendant/Husband's Motions filed September 19, 2007, October 18, 2007, November 19, 2007, and January 11, 2008. Husband withdrew all of his motions except for the portions of his October 18, 2007 motion dealing with payment of unreimbursed medical expenses and COBRA payments, and his request in his November 19, 2007, and January 11, 2008 motions for a modification of the existing shared parenting plan and re-appointment of a parenting coordinator.

The hearing proceeded on Wife's Motion for Contempt and those parts of Husband's Motion that he had not withdrawn. Each party was present; *pro se*.

A Magistrate's decision entered February 14, 2008 ruled on the pending motions. On February 20, 2008, Wife requested Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

Despite this Magistrate's repeated admonition, the parties *pro se* elicitation of testimony was more in the nature of dialog than of question and answer. Evid. R. 611. Much of this dialog had little evidentiary value. Despite reference to a number of documents during this proceeding, most were not identified in accordance with the rules of evidence. Evid. R. 901. Notwithstanding this Magistrate's instruction that documents could be moved into evidence (tp.76. 11/30/07), each party rested on his/her motion(s) without the admission of any exhibits.



On the financial/contempt issues, testimony established Husband owes Wife \$1,739.89 for the parties' minor child's unreimbursed medical expenses, and Wife owes Husband \$1,980.52 for cobra reimbursement. Wife therefore owes Husband \$240.63 which shall be paid forthwith. There is no finding of contempt as the sum due after offsetting each party's claim is minimal.

Wife requests a finding of contempt against Husband for "(f)ailing to notify Mother (Ellen Turner) of car accident involving her daughter." Article IV (E) of the parties shared parenting plan provides, "If Maddy becomes ill or injured during the time that she is with either party, that party shall immediately notify the other and give the other party the details of such illness or injury." Testimony did not establish by clear and convincing evidence that the minor child had been injured in an accident.

Wife requests a finding of contempt against Husband for "(f)ailing to observe daughter's Birthday (Tues, 5/22) in odd years and letting her spend it with Mother." and for "(f)ailing to notify Mother of out-of-town travel." The testimony did not establish by clear and convincing evidence that Husband is in contempt on these prongs of Wife's motion

The parties attended mediation. This mediation was discontinued. Each party accuses the other one of not being cooperative in rescheduling this mediation. The evidence demonstrates that the parties could not cooperate on rescheduling this mediation. Neither party can be held in contempt under these facts.

CONCLUSIONS OF LAW

The law applicable to the issue of contempt is found in O.R.C. 2705.02, which reads, in part, as follows:

A person guilty of any of the following acts may be punished as for a contempt: (A) Disobedience of, or resistance to, a lawful writ, process, order, rule, judgment, or command of a court or an officer...

The moving party must show only a failure of compliance with a valid court order. Proof of willful noncompliance or intent to violate a court order is not a prerequisite to finding of contempt. The burden of proving the defense of inability to comply is on the person asserting it. See Pugh v. Pugh, 15 OS (3d) 136, 15 OBR 285, 472 N.E. (2d) 1085 (1984).

The burden of proof in a civil contempt action is clear and convincing, i.e., evidence which will produce in the mind of the trier of fact a firm belief or conviction as to the fact sought to be established. In re Ayer, (1997) 119 Ohio App. 3d 571 (First District)

This Court has continuing jurisdiction over the parties' minor child's parenting issues. Civ. R. 75 (J).

R.C. §3109.04 (E)(2)(b) provides:

The court may modify the terms of the plan for shared parenting approved by the court and incorporated by it into the shared parenting decree upon its own motion at any time if the court determines that the modifications are in the best interest of the children or upon the request of one or both of the parents under the decree. Modifications under this division may be made at any time. The court shall not make any modification to the plan under this division, unless the modification is in the best interest of the children.

DECISION

Neither party's motion for contempt is well taken.

Although the existing shared parenting plan has been problematic for the parties, this Magistrate cannot find that any specific change would be in the best interest of the minor child at this time¹, except as set forth below. However, based in large part on David Peck, Esq. Guardian ad Litem's, testimony, Husband's motion for reappointment of a parenting coordinator is well taken and the following is ordered:

Matters in dispute except matters of spousal or child support shall first be submitted to mediation. At least two mediation sessions shall take place and then costs shall be divided equally. If the parties cannot agree on a mediator, the decision shall be made by Dr. Vivian Fliman and David Wade Peck, Esq. Should the mediator determine that either or both parties have not mediated in good faith, the mediation fees may assessed against the offending party or divided disproportionately by the mediator.

If an issue is not mediated successfully it shall be submitted to a panel of two Parenting Coordinators (PC's), one being a domestic relations attorney and one a mental health professional. The PC's shall be responsible for interpreting and, where necessary, enforcing the provisions of this Plan.

Copies of this Decision have been mailed to the parties or their counsel. Objections to this Magistrate's Decision must be filed within fourteen (14) days of the filing date of the Magistrate's Decision with a copy served on the opposing side.


Magistrate Gregory R. Theile 02/25/2008

¹ Wife received the guardian ad litem's proposed shared parenting plan a few days before the January 31st hearing and did not have an opportunity to review it prior to the hearing.

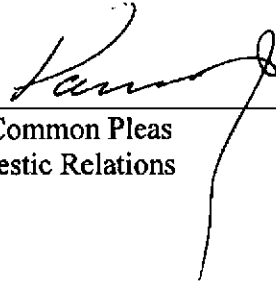
Copies sent by Clerk of Courts to:

Ellen L. Turner, Plaintiff
6720 Camaridge Lane
Cincinnati, Ohio 45243

Jon H. Entine, Defendant
6255 S. Clippinger Drive
Cincinnati, Ohio 45243

Entry Adopting Magistrate's Decision

Pursuant of Ohio Civil Rule 53, the Court hereby adopts the Magistrate's Decision. However, pursuant to that rule, the timely filing and serving of objections to the Magistrate's Decision, or the timely filing and serving of any civil post-judgment motions pursuant to Appellate Rule 4, shall operate as an automatic stay of execution of the judgment until the Court disposes of such objections or motions by vacating, modifying, or affirming same. **A PARTY SHALL NOT ASSIGN AS ERROR ON APPEAL THE COURT'S ADOPTION OF ANY FINDING OF FACT OR CONCLUSION OF LAW UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FINDING OR CONCLUSION AS REQUIRED BY OHIO CIVIL RULE 53(D)(3)(b).**



Judge, Court of Common Pleas
Division of Domestic Relations

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO



D101580799

Ellen L Turner
Plaintiff

Date: 04/03/2013

Case No. DR0500131

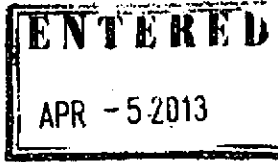
File No. E233969

CSEA No. 7053135062

Judge Sieve

Magistrate Theile

-vs/and-



Jon H Entine
Defendant

MAGISTRATE'S C.I.P. SCHEDULING ORDER

Whereas, additional time for completion of the testimony in this case is required,

IT IS HEREBY ORDERED THAT this case is continued in progress to 4-24-13 at 9 ~~AM~~ PM for all day hour(s), in the Court of Common Pleas, Division of Domestic Relations, Courtroom 2-102, 800 Broadway, Cincinnati, OH 45202, before Magistrate Theile for type of hearing.

Further Orders are as follows:

all pending motions, except H-1-24-13 motion to be heard on above date

This Order is effective immediately. Either party may appeal this Order by filing a Motion to Set the Order Aside within ten (10) days of the date this Order is filed. The pendency of a Motion to Set the Order Aside does not stay the effectiveness of this Order unless the Magistrate or Judge grants a stay.

[Signature]
Magistrate

By signature below, both parties/counsel acknowledge receipt of this Order.

[Signature]
Plaintiff

[Signature]
Defendant

[Signature]
Attorney for Plaintiff

[Signature]
Attorney for Defendant

Other (CSEA / GAL)

[Signature]
Other (CSEA / GAL)



COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO



Ellen L Turner

Plaintiff

-vs-

Jon H Entine

Defendant

Case No: DR0500131
File No: E233969
CSEA: 7053135062

MAGISTRATE'S ORDER

Judge: Sieve
Magistrate Theile

An Entry, captioned "General Order of Reference" which is a matter of record in this Court, provides ". . . that all matters be and are hereby referred to a Magistrate in accordance with Rule 53 of Ohio Rules of Civil Procedure".

Both parties have filed motions to modify the parenting time contained within their existing shared parenting plan, as amended. Both parties also have pending contempt motions. These motions have been continued in progress. This order addresses Plaintiff/Wife's motion for psychological examination filed February 4, 2013 and Defendant/Husband's motion for in camera interview of the parties' minor child filed on March 12, 2013. The hearing on these motions was conducted on April 4, 2013.


Based upon the evidence presented at the hearing and upon due consideration of the applicable law, the decision of the magistrate is as follows:

Civil Rule 35 allows the Court to require a party to submit to a physical or mental examination. This "order may be made only on motion for good cause shown..." As the current substantive issue before the court is that of the adjustment of parenting time, Wife has not shown good cause to require Husband to obtain a psychological examination. Her motion for psychological examination of Husband is denied.

Husband seeks to have the court interview the parties' minor child in accordance with R.C. §3109.04 (B)(1) which requires the court to conduct this interview. However R.C. §3109.04 applies in the allocation of parental rights and responsibilities. Neither party is seeking to terminate the shared parenting plan and be designated the residential parent. Therefore the controlling statute is R.C. §3109.051 which allows but does not require the court to conduct the

interview. This court's long history with this case, the parties, the issues and the involvement of professionals and a Guardian ad litem, leads this magistrate to conclude that an interview with the minor child would serve no purpose. Husband's motion for in camera interview of the minor child is denied.

Copies of this order have been mailed to the parties or their counsel. This Order is effective immediately. Either party may appeal this order by filing a Motion to Set the Order Aside within ten days of the date this order is entered. The pendency of a Motion to Set the Order Aside does not stay the effectiveness of this order unless the Magistrate or Judge grants a stay.


Magistrate Gregory R Theile 04/03/2013

Copies sent by Clerk of Courts to:

Wijdan Jreisat Esq, Attorney For Plaintiff
2400 Chemed Center
255 E 5th St
Cincinnati, OH. 45202

Robert J Meyers Esq, Attorney For Defendant
105 E 4th St Suite 300
Cincinnati, OH. 45202

50

**COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO**

ELLEN L. TURNER

Plaintiff,

vs.

JON H. ENTINE

Defendant.

: **Case No. DR0500131**
: **File No. E233969**

: **JUDGE SIEVE**
: **MAGISTRATE THEILE**

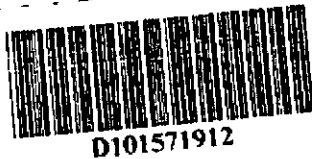
: **NOTICE OF APPEARANCE**

Now comes Robert J. Meyers of Buechner Haffer Meyers & Koenig Co., LPA and hereby enters his appearance on behalf of Defendant Jon H. Entine on the contempt actions that have been filed by both parties and the Motion to Reallocate Guardian Ad Litem Fees and on any other pending motions with the Court in the above mentioned matter.



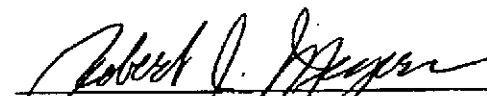
Robert J. Meyers (0014589)
Attorney for Defendant
BUECHNER HAFFER MEYERS
& KOENIG, CO., L.P.A.
105 East Fourth Street, Suite 300
Cincinnati, Ohio 45202
Telephone: 513-579-1500
Facsimile: 513-977-4361
E-mail: rmeyers@bhmklaw.com

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TRACY WINKLER
CLERK OF COURTS
HAMILTON COUNTY, OH



CERTIFICATE OF SERVICE

I hereby certify that copy of the foregoing Notice of Appearance was served upon Wijdan Jreisat, Attorney for Plaintiff, Katz, Teller, Brant & Hild, 255 East Fifth Street, Suite 2400, Cincinnati, Ohio 45202 and Anne B. Flottman, Guardian Ad Litem, Wood & Lamping, LLP, 600 Vine Street, Suite 2500, Cincinnati, Ohio 45202 by regular U.S. mail, postage prepaid, this 4th day of April, 2013.


Robert J. Meyers (0014589)
Attorney for Defendant

BUECHNER HAFFER
MEYERS & KOENIG
CO., L.P.A.
Suite 300
105 East Fourth Street
Cincinnati, Ohio 45202
(513) 579-1500

NC

4/3/2013

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

ELLEN L. TURNER	:	CASE NO. DR0500131
	:	FILE NO. E2233969
Plaintiff,	:	
	:	Judge Sieve
v.	:	Magistrate Thelle
JON H. ENTINE	:	<u>REPLY MEMORANDUM IN SUPPORT</u>
	:	<u>OF MOTION FOR CONTEMPT FOR</u>
Defendant	:	<u>NON- PAYMENT OF MEDICAL EXPENSES</u>

Defendant Jon H. Entine ("Father") hereby submits his Reply Memorandum in Support of his Motion for Contempt for Non-Payment of Medical Expenses.

Ohio Revised Code §2705.02 provides that a person guilty of the following may be punished for contempt: "Disobedience of, or resistance to, a lawful writ, process, order, rule, judgment, or command of a court or officer." (Emphasis added). In Article XVI of the Modified Shared Parenting Plan entered on December 9, 2008 ("MSPP"), this Court ordered, "all matters in dispute except matters of spousal or child support shall first be submitted to mediation." (Emphasis added). The MSPP also clearly and unambiguously directs the parties to mediate certain disputed matters. It orders the parties to agree upon dates for the reconciliation of medical expense documentation. Article XX provides, "Within the last week of June of each year or upon any other date that is mutually agreed upon, the parties shall exchange, by mail, regular and/or electronic, or otherwise, an itemized summary of all expenses paid by that party, supported by copies of commercially acceptable proof of payment as defined above." (Emphasis added).

TRACY WINKLER
 CLERK OF COURTS
 HAMILTON COUNTY, OH
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The parties followed this Order and mediated the issue of the timing of the exchange of expense information. Plaintiff Ellen Turner ("Mother") then violated the order and the MSPP by failing to exchange the medical expense documentation on the dates mutually agreed upon in mediation (See below and exhibits).



Mother takes numerous disingenuous positions to justify her refusal to abide by the MSPP and the written mediated agreement that changed the date to reconcile medical expenses. In her Memorandum in Opposition.

- Mother contends that she cannot be held in contempt of court because the contempt "is not based on a valid court order." (Ellen's Memorandum in Opposition, pp. 1-2.) But as explained above, there is a valid court order, which clearly and unambiguously directs Father and Mother to mediate certain disputes before attempting to address them in court. The valid court order expressly permits the parties to mutually agree upon revised dates for exchanging medical expenses, which the parties did through mediation.
- Mother appears to argue that the parties never really reached an agreement with the mediator as to the expense issue, that this was just "an aside." This argument contradicts the mediator's own words. The mediator issued a letter (attached to original Motion as Exhibit A) stating, "This email will memorialize the agreements we reached in mediation on Friday." Further, the mediator's letter stated, "In addition to the agreements reached above, we also agreed that, beginning in June, 2012, the two of you will exchange medical expense and other child related expense information twice a year instead of once a year. The exchange will take place at the end of June and the end of December each year."
- Mother also appears to argue that the dispute was not mediated "successfully" so she cannot be held in violation of a mediated agreement. Yet there is a written, memorialized proof of a successful mediation. There is no provision in the MSPP that asserts that a mediated agreement must be subsequently submitted to the court to be incorporated in a court order, but only that an agreement must be reached—which clearly occurred, and is confirmed in writing.

Mother's arguments place form over substance. Her failure to follow through with a mediated agreement is no different as a legal and practical matter than failing to mediate altogether. This Court's order was to mediate. There is no vagueness in the language of the mediator. There was an expressed agreement as to how the medical expenses and other related child expenses were to be exchanged. Mother simply did not perform her obligations under the mediated agreement, and she should be held in contempt.

It is ludicrous to suggest that the intent of the mediation provision of the MSPP is limited to simply having the parties successfully mediate an agreement only to then abandon it. Is a mediated agreement good for only a day? A week? Six months? Can either side refused to abide by a mediated agreement simply when the mood hits him/her? Part of mediating a dispute and maintaining the legitimacy of the MSPP is following through with what is agreed upon. Otherwise, the exercise is pointless and the provisions of the MSPP are worthless and unenforcable.

Mother's failure constitutes "resisting" of the carefully written provisions in Court's Modified Shared Parenting Plan in violation of R.C. §2705.02. The MSPP must be interpreted so as to provide certain recourse in the form of contempt for a party's failure to perform obligations mandated by a mediated agreement. Mother must be held in contempt for failing to comply with and for resisting the MSPP. Mother's brazen failure to perform the mediated agreement violates the spirit and intent of the valid court order, and an action for contempt must lie.

If this Court does not hold that Mother is in contempt of the Court's Order contained in the Modified Shared Parenting Plan and concludes that the Agreement reached in mediation must be placed of record by an Order of this Court before it can be enforced by contempt, then Father respectfully requests that the Court act under Article XVIB and enter such an Order for compliance by the parties and modification of the MSPP.

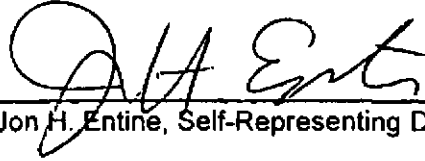


Jon/H. Entine, Self-Representing Defendant

6255 S. Clippinger Dr.
Cincinnati, OH 45243
(513) 319-8388 / jon@jonentine.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Memorandum was served upon Wijdan Jreisat, Attorney for Plaintiff, Katz, Teller, Brant & Hild, 255 East Fifth Street, Suite 2400, Cincinnati, Ohio 45202, this 3rd day of April 2013.

A handwritten signature in black ink, appearing to read "Jon H. Entine". The signature is written in a cursive style with a large initial "J".

Jon H. Entine, Self-Representing Defendant

MEMORANDUM

I. SUMMARY

The Final Decree of Shared Parenting was entered by the Court on November 13, 2006 and a Modified Share Parenting Plan ("Plan") was entered on December 8, 2008.

The Plan details how to resolve medical expenses. According to Article VI.B., The Parties shall equally share all uncovered medical, dental and mental health costs without set off against other claims by parent for monies owed by the other... All conflicts shall be resolved by the provisions of Article XVI of this Plan.

Article XX details the reimbursement procedure:

The parties have agreed to share equally certain expenses related to Maddie which are set forth in this Plan. In order to accomplish reimbursement, each party shall maintain such receipts, paid invoices, credit/debit card records, cancelled checks, electronic records, or other commercially accepted indicia of payment. During the last week of June of each year or upon any other date that is mutually agreed upon, the parties shall exchange, by mail, regular and/or electronic, or otherwise, an itemized summary of all expenses paid by that party, supported by copies of commercially acceptable proof of payment as defined above. Notice of mailing or other means of exchange shall be posted immediately on OFW. The parties shall have until July 10th (unless another date is mutually agreed upon) to contest expenses claimed by the other, and an effort shall be made to work through the issue(s). Any reimbursement issue that remains unresolved by July 17th of that month may be submitted for resolution pursuant to Article XVI, above.

As noted in the above Articles, all disputes over medical expenses are to be resolved under Plan Article XVI. It states: "Except as set forth otherwise in this Plan, all matters in dispute except matters of spousal or child support shall first be submitted in mediation." Father challenged Mother last spring over her history of non- and delayed payments of expenses and requested that henceforth expenses be resolved bi-annually. Mother refused and Father invoked Article XVI as directed by the Plan.

Both parties agreed to mediation and two mediation sessions were held in March 2012. Mediation was successful. On March 19, 2012 the Mediator issued a letter of resolution (Exhibit A) on a range of issues, including Father's request that expenses be settled biannually instead of annually. Father and Mother agreed that beginning in June 2012 all shared expenses, including medical bills, would be resolved under the terms detailed in the Plan with one modification, according to the Mediator: "[W]e also agreed that, beginning in June, 2012, the two of you [Father, Mother] will exchange medical expense and other child related expense information twice a year instead of once a year. The exchange will take place at the end of June and at the end of December of each year."

At the end of December 2012, Father informed Mother that he would be sending his medical expenses to Mother for reconciliation. Mother did not respond.

On January 6, 2012, Father sent an email to Mother (Exhibit B) reiterating their joint obligation to submit all expenses complete with full documentation by the hard deadline of the 10th of the month as per the Plan and the March 19, 2012 mediated agreement. Mother did not respond.

On January 8, 2012, Father sent an email to Mother that included a pdf (Exhibit C) summarizing all medical expenses from July 1, 2012 through December 2012. The total of shared medical expenses and medical premiums totaled \$1959.66. Shared equally Mother's share is \$979.83. Mother did not respond.

On January 9, Father put in Mother's mailbox all documentation for medical expenses (Exhibit D) as required to meet the Plan's deadline for submission of all documentation by January 10. January is also the final date for either parent to

"contest" the other parent's claimed expenses. Mother neither responded nor sent documentation of any medical expenses.

On January 11, acting as Counsel for himself, Father sent an email to Mothers' attorney, Wijdan Jreisat, copied to Mother, (Exhibit E) informing her that Father was representing himself in this particular case and that Mother's Counsel should henceforth communicate with Father acting as Counsel and only Father acting as Counsel going forward. The email included a summary of Father's medical expenses and a copy of the March 19, 2012 mediated agreement—both previously sent to Mother.

Father's January 11th email also informed Mother's Counsel and Mother, copied on the email, that Mother had missed the deadline to claim any shared expenses or contest expenses submitted by the other parent., medical or otherwise. Neither Mother nor Mother's counsel responded.

On January 12, two days past the hard deadline to submit documentation of expenses or contest the other parent's expenses, Mother sent Father an email with a pdf included (Exhibit F) summarizing her expenses, including her medical expenses. Mother's summary acknowledges that she had incurred \$0 in medical expenses for the second half of 2012, which concurs with Father's documentation

II. CONCLUSION

As per Article VI.B, medical costs are independent of all other claims and cannot be "set off" against any other claims. Mother has not paid the medical expenses she has acknowledged that she owes. The deadline for payment for uncontested medical expenses, per the Plan Article XX and past practices, was the 17th of the month, January 17th.

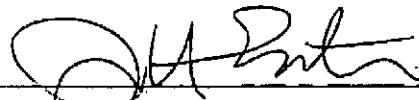
Additionally, per Article XX, "Any reimbursement issue that remains unresolved by July 17th of that month [the date amended to January and July per the March 19 mediated agreement] may be submitted for resolution pursuant to Article XVI. There is nothing to submit to mediation as there is no disagreement as to the Mother's obligation to pay the Father the \$979.83 that Father has documented and Mother has not contested.

Father has sent numerous emails to both Mother and Mother's Counsel, always copying mother, requesting immediate payment of the uncontested medical expenses. Neither Mother nor Mother's Counsel has responded.

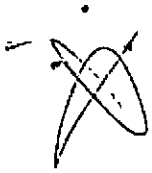
With Article XX inapplicable—there is no dispute as to Father's medical expense claims and money owed and the issue of biannual reconciliation has previously been mediated and resolved—Father has been left with no alternative but to seek resolution through the Courts.

Father requests that the Court find Mother in contempt, order immediate payment of agreed upon outstanding medical expenses and pay filing fees and legal costs incurred by Father to cover emails and other communications by Mother's lawyer to Robert Meyers, Counsel representing Father on separate and unrelated matters in defiance of Father as self-Counsel's declaration in writing that he represented himself. As Mother's Counsel continues to send emails to Fathers' outside Counsel—emails that are read but go unreturned as Father's Counsel does not represent him on this case—these costs continue to rise. That total cost generated by Mothers Counsel will be presented in court.

As Mother has a history of non-compliance with the medical expense Articles in the Plan, and as biannual out-of-pocket medical related expenses have occasionally exceeded \$4,000, Father further requests the Court order that henceforth any shared medical related cost or premium be settled within 10 days of either parent providing documentation that said bill or premium was paid. Any disputes should be resolved as per existing clauses in the Plan as modified by the March 2012 mediated agreement.



Jon H. Entine, Self-Representing Defendant
6255 S. Clippinger Dr.
Cincinnati, OH 45243
(513) 319-8388
jon@jonentine.com



Wijdan Jreisat (0063955)
Trial Attorney for Plaintiff

**COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO**

ELLEN L. TURNER,	:	Case No. DR0500131
	:	File No. E233969
Plaintiff,	:	
v.	:	<u>PLAINTIFF'S NOTICE OF SERVICE OF</u>
	:	<u>SUBPOENA</u>
JON H. ENTINE,	:	
	:	Magistrate Theile
Defendant.	:	Judge Sieve
	:	

PLEASE TAKE NOTICE that a subpoena *duces tecum* has been issued and served by agreement, via facsimile on Brett H. Clarke, M.S.W., Cincinnati Center for Psychotherapy & Psychoanalysis, Inc., 3001 Highland Avenue, Cincinnati, OH 45219-2315, facsimile number 513-487-3765. A copy of the subpoena is attached hereto as Exhibit A.

Respectfully submitted,

Wijdan Jreisat (0063955)
Katz, Teller, Brant & Hild
255 East Fifth Street, Suite 2400
Cincinnati, Ohio 45202-4787
Telephone: (513) 721-4532
Facsimile: (513) 762-0021
wjreisat@katzteller.com

TRACY WINKLER
CLERK OF COURTS
HAMILTON COUNTY, OH

2013 MAR 25 P 2:20

FILED



D101437502

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Plaintiff's Notice of Service of Subpoena has been served via US mail this the 25th day of March, 2013 upon:

Robert J. Meyers, Esq.
Buechner Haffer Meyers & Koenig Co., LPA
105 E. Fourth Street, Suite 300
Cincinnati, OH 45202

and

Anne Barry Flottman, Esq.
Wood & Lamping, LLP
600 Vine Street, Suite 2500
Cincinnati, OH 45202



Wijdan Jreisat

**COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO**

ELLEN L. TURNER, Plaintiff

**Case No. DR0500131
File No. E233969**

v.

JON H. ENTINE, Defendant

**SUBPOENA DUCES TECUM AND FOR
ATTENDANCE AT HEARING**

**TO: Brett H. Clarke, M.S.W.
Cincinnati Center for Psychotherapy & Psychoanalysis, Inc.
3001 Highland Avenue
Cincinnati, OH 45219-2315**

YOU ARE COMMANDED to appear in the Hamilton County Court of Common Pleas at the place, date, and time specified below to attend hearing in the above case.

PLACE OF TESTIMONY Hamilton County Domestic Relations Court 800 Broadway Cincinnati, OH 45202	COURTROOM 2-102 – Magistrate Gregory Theile
	DATE AND TIME Wednesday, April 3, 2013 at 9:00 a.m.

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE	DATE AND TIME

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below:


Any and all correspondence in your possession from and to Jon Entine and billing records regarding Madeline Entine.

PLACE: 255 E. Fifth Street, Suite 2400 Cincinnati, OH 45202	DATE AND TIME Monday, April 1, 2013 at 9:00 a.m.
--	--

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Ohio Rules of Civil Procedure, 30(B)(6).

ISSUING OFFICER SIGNATURE AND TITLE  Attorney for Defendant	DATE 3/22/2013
ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER Wijdan Jreisat, Attorney for Defendant Katz, Teller, Brant & Hild, 255 East Fifth Street, Suite 2400, Cincinnati, Ohio 45202, (513) 721-4532	

PROOF OF SERVICE		
SERVED	DATE 3/22/2012	PLACE 3001 Highland Avenue Cincinnati, OH 45219-2315
SERVED ON (PRINT NAME) Brett H. Clarke		MANNER OF SERVICE By agreement, via facsimile
SERVED BY (PRINT NAME) Wijdan Jreisat		TITLE Attorney
DECLARATION OF SERVER		

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on 3/22/2013
DATE


SIGNATURE OF SERVER

255 E. Fifth Street, Suite 2400, Cincinnati, OH 45202
ADDRESS OF SERVER

Rule 45, Ohio Rules of Civil Procedure, Parts C & D:

(C) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.

(2)(a) A person commanded to produce under divisions (A)(1)(b)(ii), (iii), (iv), or (v) of this rule need not appear in person at the place of production or inspection unless commanded to attend and give testimony at a deposition hearing, or trial.

(b) Subject to division (D)(2) of this rule, a person commanded to produce under divisions (A)(1)(b)(ii), (iii), (iv), or (v) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce, may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.

(3) On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following:

(a) fails to allow reasonable time to comply;

(b) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies;

(c) requires disclosure of a fact known or opinion held by an expert not retained or specially employed by any party in anticipation of litigation or preparation for trial as described by Civ.R. 26(B)(4), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by that expert that was not made at the request of any party;

(d) subjects a person to undue burden.

(4) Before filing a motion pursuant to division (C)(3)(d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney. A motion filed pursuant to division (C)(3)(d) of this rule shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.

(5) If a motion is made under division (C)(3)(c) or (C)(3)(d) of this rule, the court shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.

(D) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall, at the person's option, produce them as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena. A person producing documents pursuant to a subpoena for them shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials under Civ.R. 26(B)(3) or (4), the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

SECURITY FOR COSTS IN THE SUM OF \$ 675.00
POSTED BY 0345

PRE-DECREE POST DECREE
 Chg. of Cust.
 Vis. Enforce/Mod.
 Sup. Enforce/Mod.
 Others
COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

ELLEN L. TURNER,
Plaintiff,
v.
JOHN H. ENTINE,
Defendant.

Case No. DR0500131
File No. E233969

MOTION TO DISMISS FATHER'S
MOTION FOR CONTEMPT FOR
NON-PAYMENT OF MEDICAL
EXPENSES

Judge Sieve
Magistrate Theile

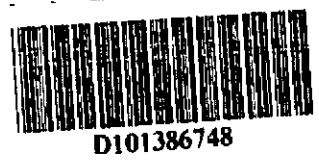
TRACY WINKLER
CLERK OF COURTS
HAMILTON COUNTY, OH
20 P 2:35
FILED

Defendant John H. Entine ("Father") has moved to hold Plaintiff Ellen L. Turner ("Mother") in contempt for non-payment of shared medical expenses for the period July 1, 2012 through December 31, 2012. Father's motion must be dismissed as there is no court order upon which contempt may be based and Mother is entitled to her expenses in defending against this frivolous motion.

This motion is made pursuant to the accompanying memorandum in support.

Respectfully submitted,


Wijean Jreisat (0063955)
Trial Attorney for Plaintiff
Katz, Teller, Brant & Hild
255 East Fifth Street, Suite 2400
Cincinnati, Ohio 45202-4787
Telephone: (513) 721-4532
Facsimile: (513) 762-0021
wjreisat@katzteller.com



MEMORANDUM IN SUPPORT

The court may resolve the motion on legal grounds without further consideration.

The Ohio contempt statute, R.C. 2705.02, provides in part:

A person guilty of any of the following acts may be punished as for a contempt: "(A) Disobedience of, or resistance to, a lawful writ, process, order, rule, judgment, or command of a court or an officer[.]" In order to show contempt it is necessary to establish the following: (1) a valid court order existed; (2) there was knowledge of the order; (3) a violation of the order occurred.

Arthur Young & Co. v. Kelly, 68 Ohio App. 3d 287, 295 (10th Dist. 1990). The elements must be established by the complainant using the clear and convincing evidence standard. *Morford v. Morford*, 85 Ohio App. 3d 50, 54 (4th Dist. 1993).

In the case of Father's Motion here, it is not even necessary to address the second and third elements because Father's contempt allegation is not based on a valid court order. "In order for a contempt action to exist, the contempt action must be based upon a valid underlying order or judgment of a court."

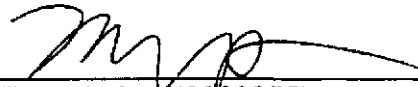
Foley v. Foley, 2006 Ohio 946, P34 (10th Dist. 2006); see also, *Temple v. Temple*, 2002 Ohio 5835, P13 (8th Dist. 2002) citing *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 5 Ohio B. 481, 450 N.E.2d 1140 (1983), ("A finding of contempt absent a valid underlying order is 'unreasonable, arbitrary or unconscionable,' and thus an abuse of discretion.").

Father does not point to any court order or judgment in support of his contempt allegation regarding the sharing of medical expenses. Rather, Father claims that he has an agreement with Mother regarding the sharing of medical expenses; however, even if that were true, such an agreement still could not be enforced by contempt. The law in Ohio is absolutely clear that unless documented in a court order or specifically

incorporated into a court order, a party cannot enforce an agreement by contempt. See e.g., *Hairline Clinic, Inc. v. Riggs-Fejes*, 2011 Ohio 5894, P15 (A settlement agreement not incorporated into an order may only be enforced by a contract action, not contempt.); see also, *Rose v. Rose*, 2nd Dist. No. 6898, 1981 Ohio App. LEXIS 13132 (March 17, 1981) (The Court explained the distinction between a separation agreement incorporated into a divorce decree, which could be enforced by contempt, versus a separation agreement not incorporated into a divorce decree, which could only be enforced by a separate breach of contract action, not contempt).

As such, Mother moves that Father's motion be denied and, instead, that she be granted her fees in defending the matter.

Respectfully submitted,



Wijdan Jreisat (0063955)
Trial Attorney for Plaintiff
Katz, Teller, Brant & Hild
255 East Fifth Street, Suite 2400
Cincinnati, Ohio 45202-4787
(513) 721-4532
(513) 762-0021 (facsimile)
wjreisat@katzteller.com

NOTICE OF HEARING

You are hereby advised that a hearing has been set on the above Motion beginning on the 3rd day of April, 2013 at 9:00 a.m. before Magistrate Theile in the Domestic Relations Court, 800 Broadway, Cincinnati, Ohio 45202.



Wijdan Jreisat

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Dismiss was served via regular United States mail this 19th day of March, 2013 upon:

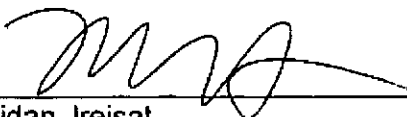
Robert J. Meyers, Esq.
Buechner Haffer Meyers & Koenig Co., LPA
105 E. Fourth Street, Suite 300
Cincinnati, OH 45202

and

Anne Barry Flottman, Esq.
Wood & Lamping, LLP
600 Vine Street, Suite 2500
Cincinnati, OH 45202

and

Jon H. Entine
6255 S Clippinger Dr
Cincinnati, OH 45243-3253



Wijdan Jreisat

KTBH: 4842-9375-9251, v. 1

SECURITY FOR COSTS IN THE SUM OF \$ 127.00
POSITIVE

() PRE-DECREE (X) POST DECREE
() Chg. of Cust. (Wijdan Jreisat (0063955)
(X) Vis. Enforce/Mod. (Wijdan Jreisat (0063955) Plaintiff
() Sup. Enforce/Mod.
() Others

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

ELLEN L. TURNER,
Plaintiff,

: Case No. DR0500131
File No. E233969

v.

JON H. ENTINE,
Defendant.

: PLAINTIFF'S MOTION TO FURTHER
: MODIFY THE PROVISIONS OF THE
: MODIFIED SHARED PARENTING PLAN
: Magistrate Theile
: Judge Sieve

Plaintiff/ Mother Ellen L. Turner hereby moves the Court to modify the Modified Shared Parenting Plan entered by this Court on December 9, 2008 to impose certain restraints on the costs and expenses to be incurred for extracurricular activities of the minor child. This motion is made pursuant to the accompanying memorandum in support.

Respectfully submitted,

Wijdan Jreisat (0063955)
Trial Attorney for Plaintiff
Katz, Teller, Brant & Hild
255 East Fifth Street, Suite 2400
Cincinnati, Ohio 45202-4787
Telephone: (513) 721-4532
Facsimile: (513) 762-0021
wjreisat@katzteller.com

FILED
2013 MAR 20 P 2:35
TRACY WINKLER
CLERK OF COURTS
HAMILTON COUNTY, OH



D101386736

MEMORANDUM IN SUPPORT

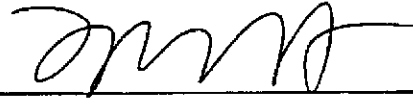
On December 9, 2008, this Court entered a Modified Shared Parenting Plan which modified the original plan issued as part of the Decree of Shared Parenting entered November 13, 2006 for the minor child, Madeleine Entine ("Maddie") and subsequently modified by the Agreed Entry Modifying Modified Shared Parenting Plan entered September 7, 2012 which was effective as of June 28, 2012 (the "Plan").

Article II B. provides that Maddie shall select up to two summer activities "after consulting with her parents and other trusted persons" and provides for the parents to pay the cost of that activity. It is in Maddie's best interest to place some parameters and limitations on this provision to avoid the conflict which each GAL has noted comes with open language subject to interpretation in the Agreement. Moreover, it is not in the best interest of the child to effectively give her carte blanche to commit the parents to expenses without any consultation or limitation. As such, Mother moves that the Plan be amended to limit such activities, without the parents' prior consent, to \$1,000.

The Plan requires that "all matters in dispute except matters of spousal or child support shall first be submitted to mediation". When Father was last ordered to mediation, he insisted on his own demands to participate in such a mediation and, once those demands were met, then refused to proceed with the mediation. As such, Mother believes mediation would not proceed in good faith and, as such, is futile as to such issues. Moreover, as Father has yet to pay for the fees of the mediator in the last such effort, such efforts will only lead to additional expenses for Mother.

Therefore, Mother asks the Court to proceed to address the motion at hand.

Respectfully submitted,



Wijdan Jreisat (0063955)
Trial Attorney for Plaintiff
Katz, Teller, Brant & Hild
255 East Fifth Street, Suite 2400
Cincinnati, Ohio 45202-4787
(513) 721-4532
(513) 762-0021 (facsimile)
wjreisat@katzteller.com

NOTICE OF HEARING

You are hereby advised that a hearing has been set on the above Motion beginning on the 3rd day of April, 2013 at 9:00 a.m. before Magistrate Theile in the Domestic Relations Court, 800 Broadway, Cincinnati, Ohio 45202.




Wijdan Jreisat

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Plaintiff's Motion to Further Modify the Provisions of the Modified Shared Parenting Plan has been served via hand delivery on this the 19th day of March, 2013 upon:

Robert J. Meyers, Esq.
Buechner Haffer Meyers & Koenig Co., LPA
105 E. Fourth Street, Suite 300
Cincinnati, OH 45202

Anne B. Flottman, Esq.
Wood & Lamping, LLP
600 Vine Street, Suite 2500
Cincinnati, Ohio 45202



Wijdan Jreisat

() Final Decree (X) Post Decree

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

() Chg. of Cust.
() Vis. Enforce/Mod.
() Sup. Enforce/Mod.
(X) Others

ELLEN L. TURNER

Plaintiff,

v.

JON H. ENTINE

Defendant.

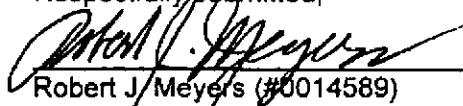
:
: CASE NO. DR0500131
: FILE NO. E233969
:
: JUDGE SIEVE
: MAGISTRATE THEILE
:

: REQUEST FOR INTERVIEW OF A
: MINOR CHILD

Comes now, Defendant, Jon H. Entine, by and through counsel and represents to the Court that issues are pending regarding the modification of the parties' Final Decree of Shared Parenting concerning the parenting time allocation concerning the parties' minor child, Madeline Entine.

Pursuant to O.R.C. §3109.04 (B)(1), request is hereby made that the Court interview the parties' minor child, Madeline Entine, in chambers regarding her wishes and concerns with respect to the parenting time allocation.

Respectfully submitted,



Robert J. Meyers (#0014589)
Trial Attorney for Defendant
BUECHNER HAFFER MEYERS
& KOENIG CO., L.P.A.
105 E. Fourth Street, Suite 300
Cincinnati, Ohio 45202
Telephone: (513) 579-1500
Facsimile: (513) 977-4361
rmeyers@bhmklaw.com

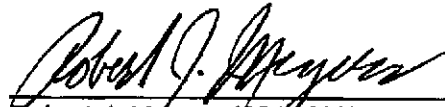
BUECHNER HAFFER
MEYERS & KOENIG
CO., L.P.A.
Suite 300
105 East Fourth Street
Cincinnati, Ohio 45202
(513) 579-1500

2013 MAR 2 10:01
 CLERK OF COURTS
 HAMILTON COUNTY, OH



NOTICE OF HEARING

Please take notice that the foregoing matter is scheduled for hearing on the Motion to Modify the Shared Parenting Plan on the 3rd day of April, 2013, at 9:00 a.m. before Magistrate Theile, Hamilton County Domestic Relations Court, 800 Broadway, Room 2-102, Cincinnati, Ohio 45202.



Robert J. Meyers (0014589)
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Request for Interview of a Minor Child was served upon Wijdan Jreisat, Attorney for Plaintiff, Katz, Teller, Brant & Hild, 255 East Fifth Street, Suite 2400, Cincinnati, Ohio 45202 and Anne B. Flottman, Guardian Ad Litem, Wood & Lamping, LLP, 600 Vine Street, Suite 2500, Cincinnati, Ohio 45202 by regular mail, postage prepaid, this 12th day of March, 2013.



Robert J. Meyers (0014589)
Attorney for Defendant

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO



Ellen L Turner
Plaintiff

Date: 02/27/2013

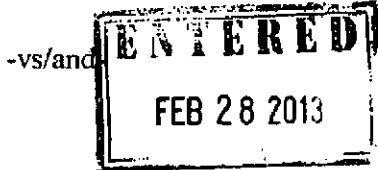
Case No. DR0500131

File No. E233969

CSEA No. 7053135062

Judge Sieve

Magistrate Theile



Jon H Entine
Defendant

MAGISTRATE'S C.I.P. SCHEDULING ORDER

Whereas, additional time for completion of the testimony in this case is required,

IT IS HEREBY ORDERED THAT this case is continued in progress to 4-24-13 at 1:30 AM/PM for 1 hr hour(s), in the Court of Common Pleas, Division of Domestic Relations, Courtroom 2-102, 800 Broadway, Cincinnati, OH 45202, before Magistrate Theile for contempt.

Further Orders are as follows:

This Order is effective immediately. Either party may appeal this Order by filing a Motion to Set the Order Aside within ten (10) days of the date this Order is filed. The pendency of a Motion to Set the Order Aside does not stay the effectiveness of this Order unless the Magistrate or Judge grants a stay.

Magistrate

By signature below, both parties/counsel acknowledge receipt of this Order.

Plaintiff

Defendant

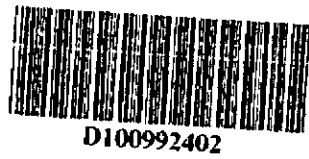
Other (CSEA / GAL)

Attorney for Plaintiff

Attorney for Defendant

Other (CSEA / GAL)

SS



COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

ELLEN L. TURNER,
Plaintiff,

v.

JOHN H. ENTINE,
Defendant.

Case No. DR0500131
File No. E233969

MEMORANDUM IN OPPOSITION
TO MOTION FOR CONTEMPT
FOR NON-PAYMENT OF
MEDICAL EXPENSES

Judge Sieve
Magistrate Theile

FILED
2013 FEB 1 P 2:51
TRACY WHEELER
CLERK OF COURTS
HAMILTON COUNTY, OH

Defendant John H. Entine ("Father") has moved to hold Plaintiff Ellen L. Turner ("Mother") in contempt for non-payment of shared medical expenses for the period July 1, 2012 through December 31, 2012. Father's motion is full of inaccurate and misleading factual statements. Rather than engage in needless dispute of these issues, however, the court may resolve the motion on legal grounds without further consideration.

The Ohio contempt statute, R.C. 2705.02, provides in part:

A person guilty of any of the following acts may be punished as for a contempt: "(A) Disobedience of, or resistance to, a lawful writ, process, order, rule, judgment, or command of a court or an officer[.]" In order to show contempt it is necessary to establish the following: (1) a valid court order existed; (2) there was knowledge of the order; (3) a violation of the order occurred.

Arthur Young & Co. v. Kelly, 68 Ohio App. 3d 287, 295 (10th Dist. 1990). The elements must be established by the complainant using the clear and convincing evidence standard. *Morford v. Morford*, 85 Ohio App. 3d 50, 54 (4th Dist. 1993).

In the case of Father's Motion here, it is not even necessary to address the second and third elements because Father's contempt allegation is not based

on a valid court order. "In order for a contempt action to exist, the contempt action must be based upon a valid underlying order or judgment of a court." *Foley v. Foley*, 2006 Ohio 946, P34 (10th Dist. 2006); see also, *Temple v. Temple*, 2002 Ohio 5835, P13 (8th Dist. 2002) citing *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 5 Ohio B. 481, 450 N.E.2d 1140 (1983), ("A finding of contempt absent a valid underlying order is 'unreasonable, arbitrary or unconscionable,' and thus an abuse of discretion.").

Father does not point to any court order or judgment in support of his contempt allegation regarding the sharing of medical expenses. Rather, Father claims that he has an agreement with Mother regarding the sharing of medical expenses; however, even if that were true, such an agreement still could not be enforced by contempt. The law in Ohio is absolutely clear that unless documented in a court order or specifically incorporated into a court order, a party cannot enforce an agreement by contempt. See e.g., *Hairline Clinic, Inc. v. Riggs-Fejes*, 2011 Ohio 5894, P15 (A settlement agreement not incorporated into an order may only be enforced by a contract action, not contempt.); see also, *Rose v. Rose*, 2nd Dist. No. 6898, 1981 Ohio App. LEXIS 13132 (March 17, 1981) (The Court explained the distinction between a separation agreement incorporated into a divorce decree, which could be enforced by contempt, versus a separation agreement not incorporated into a divorce decree, which could only be enforced by a separate breach of contract action, not contempt).

As recited in the memorandum in support of his motion, the Shared Parenting Plan provides that the parties exchange this information in the last week of June of each year or upon any other date that is mutually agreed upon and then have until July 10th to

contest expenses claimed by the other. No other orders have been issued to amend this requirement. Rather, the parties participated in mediation in early 2012. Contrary to Father's assertion, the mediation was not to address expenses. It was ordered by this Court when Father filed a motion to modify the parenting plan without satisfying that condition precedent of mediation. It should be noted that this was the first session of the mediation and the correspondence provided was the mediator's status update as to what the parties had discussed in anticipation of concluding the issues. The "agreement" was as to the hiring of a GAL and included provisions to continue mediation, stay litigation, etc. As an aside, the mediator also discussed the reference to expenses.

Subsequent to that March mediation, Father refused to proceed further with the mediation despite the "agreement". Moreover, he subsequently refused to reach other agreements and only documented the agreement to appoint a GAL by submitting an agreed entry regarding it. After the mediation was unilaterally cancelled by Father, the parties entered an Agreed Entry Modifying Modified Shared Parenting Plan on September 7, 2012 which was effective June 28, 2012 revising many terms of the SPP. It is important to note that nothing in this Agreed Entry revised the prior SPP provisions as to when the parties would reconcile payments.

As such, the current state of affairs is that the parties are to reconcile these expenses once a year unless mutually agreed upon. As is clear by the fact that Father seeks to compel Mother to do so, the parties have not mutually agreed upon a different date other than the initial reconciliation which took place in June. Father makes a variety of unfounded statements in terms of Mother's alleged history in this regard. The

facts will prove otherwise. Moreover, Mother's counsel had previously warned him about the fact that this filing is frivolous. As such, Mother requests that the motion be denied and, instead, that she be granted her fees in defending the matter.

Respectfully submitted,


Wijdan Jreisat (0063955)
Trial Attorney for Plaintiff
Katz, Teller, Brant & Hild
255 East Fifth Street, Suite 2400
Cincinnati, Ohio 45202-4787
(513) 721-4532
(513) 762-0021 (facsimile)
wjreisat@katzteller.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum in Opposition to Motion for Contempt for Non-Payment of Medical Expenses was served via regular United States mail this 15th day of February, 2013 upon:


Robert J. Meyers, Esq.
Buechner Haffer Meyers & Koenig Co., LPA
105 E. Fourth Street, Suite 300
Cincinnati, OH 45202

and

Anne Barry Flottman, Esq.
Wood & Lamping, LLP
600 Vine Street, Suite 2500
Cincinnati, OH 45202

and

Jon H. Entine
6255 S Clippinger Dr
Cincinnati, OH 45243-3253


Wijdan Jreisat

TRACY WINKLER
1000 MAIN STREET ROOM 319
CINCINNATI OH 45202
DOMESTIC RELATIONS

CERTIFIED MAIL



049JB2053402
\$05.010
01/29/2013
Mailed From 45202
US POSTAGE

7194 5168 6310 0657 0089

*SPENT
LN 1-30-13*

01/29/2013 MOTION
DR0500131 P 1 WAV
ELLEN L TURNER
6720 CAMARIDGE LN
CINCINNATI OH 45243

REGULAR MAIL SENT

FEB 14 2013



D100958182

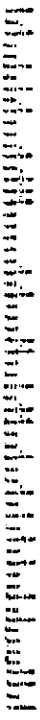
- A INSUFFICIENT ADDRESS
- C ATTEMPTED NOT KNOWN
- S NO SUCH NUMBER/STREET
- NOT DELIVERABLE AS ADDRESSED
- UNABLE TO FORWARD
- OTHER

RTS

RETURN TO SENDER

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UNABLE TO FORWARD

BC: 45202128599 *0215-05168-29-37



COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO



Ellen L Turner
Plaintiff / Petitioner

ENTERED
FEB -8 2013

Case No: DR0500131

File No: E233969

CSEA No: 7053135062

-vs/and-

Jon H Entine
Defendant / Petitioner

Judge Sieve
Magistrate Theile

MAGISTRATE'S ORDER FOR CONTINUANCE

Whereas, Plaintiff/Defendant/Other has requested a continuance of the hearing set for 2/7/13, for the following reason(s):

- conflict of trial assignment
- failure of service
- for the presence of a necessary witness
- for the presence of a party
- to obtain additional information/discovery
- other

Whereas, the complaint/petition/motion was filed on 1-9-13, and this is the 1st continuance of this matter;
Whereas, no other party/counsel objects to this continuance OR objects to the continuance.

THEREFORE, IT IS HEREBY ORDERED:

This case is hereby continued to 4-3-13 at 9:00 am/pm for 2 hours, Court of Common Pleas, Division of Domestic Relations, 800 Broadway in Courtroom 2-102 before Magistrate Gregory R Theile.

For parenting time + other motion

- The motion for a continuance is denied.
- Further Orders are as follows:

This Order is effective immediately. If a Magistrate has issued this Order, either party may appeal the Order by filing a Motion to Set Aside the Order within ten (10) days of the date this Order is filed. The pendency of a Motion to Set Aside the Order does not stay the effectiveness of this Order unless the Magistrate or Judge grants a stay.

Magistrate Gregory R Theile 02/07/2013

By signature below, both parties/counsel acknowledge receipt of this Order.

Plaintiff

Attorney for Plaintiff

Defendant

Attorney for Defendant

Other (CSEA / GAL)

Other (CSEA / GAL)

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

ELLEN L. TURNER,

Plaintiff,

vs.

JON H. ENTINE,

Defendant.

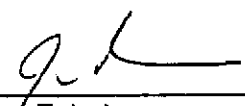
Case No. DR0500131

Judge: Theile

PROOF OF SERVICE OF A MOTION
FOR SANCTIONS AND TO SHOW
CAUSE, A MOTION TO REALLOCATE
FEES AND A MOTION FOR
PSYCHOLOGICAL EXAMINATION ON
JON H. ENTINE

This notice is given that the service of a Motion for Sanctions and for Defendant to Show Cause Why He Should not be Held in Contempt for Violating the Provisions of the Modified Shared Parenting Plan, a Motion to Reallocate Fees of Guardian Ad Litem and a Motion for Psychological Examination and Evaluation on JON H. ENTINE was perfected by James Eckels, who is a person not less than eighteen years of age and is not a party in the above litigation, on February 7, 2013 by personally giving a true copy of each from hand to hand to JON H. ENTINE at his place of residence 6255 S. Clippinger Drive, Cincinnati, Ohio 45243.

2013 Feb - 7 PM 2:29
FILED
TRACY WINKLER
CLERK OF COURTS
HAMILTON COUNTY, OHIO


James Eckels
Special Process Server
Legal Tenders of Ohio
5 McCormick Trail
Cincinnati, Ohio 45150
(513) 624-0110



PRE-DECREE POST-DECREE

- Chg. of Cust.
- Vis. Enforce/Mod.
- Sup. Enforce/Mod.
- Other:

Wijdan Jreisat (0063955)
Trial Attorney for Plaintiff

SECURITY FOR COSTS IN THE SUM OF \$ 125.00
6355
POSTED BY

**COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO**

ELLEN L. TURNER,

Plaintiff,

v.

JON H. ENTINE,

Defendant.

: Case No. DR0500131

: File No. E233969

:

: PLAINTIFF'S MOTION FOR
: PSYCHOLOGICAL EXAMINATION
: AND EVALUATION

:

: Magistrate Theile
: Judge Sieve

Now comes the Plaintiff, Ellen L. Turner, by and through counsel, and pursuant to Civil Rule 35(A) respectfully moves the Court for an Order requiring the Defendant, Jon Entine, submit to a complete mental examination by a qualified psychiatrist or psychologist. This motion is made on the basis of Rule 35(A) of the Ohio Rules of Civil Procedure and Section 3109.04(F)(1)(e) of the Ohio Revised Code.

The requested examination must be made so that a full examination report of Defendant's mental condition can be submitted to the Court for purposes of the hearings pending before the Court. In this regard, the Court's order should specify the scope of the requested examination, the person making the examination and the other terms and conditions of the examination.

Respectfully submitted,



Wijdan Jreisat (0063955)
Trial Attorney for Plaintiff
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Telephone: (513) 721-4532

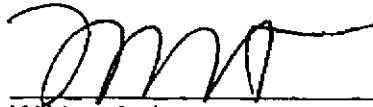


TRACY STRICKER
CLERK OF COURTS
HAMILTON COUNTY, OH
2013 FEB 14 10:37
FILED

Facsimile: (513) 762-0021
wjreisat@katzteller.com

NOTICE OF HEARING

You are hereby advised that a hearing has been set on the above Motion beginning at 1:30 p.m on February 27, 2013 before Magistrate Theile in the Domestic Relations Court, 800 Broadway, Cincinnati, Ohio 45202.



Wijdan Jreisat

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Plaintiff's Motion for Psychological Examination and Evaluation has been served via US

Mail on this the 4th day of February 2013 upon:

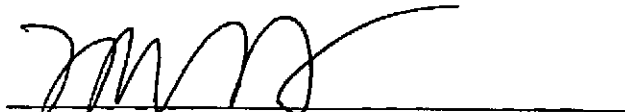
Robert J. Meyers, Esq.
Buechner Haffer Meyers & Koenig Co., LPA
105 E. Fourth Street, Suite 300
Cincinnati, OH 45202

and

Anne Barry Flottman, Esq.
Wood & Lamping, LLP
600 Vine Street, Suite 2500
Cincinnati, OH 45202

and by process server upon:

Jon H. Entine
6255 S Clippinger Dr
Cincinnati, OH 45243-3253


Wijdan Jreisat

KTBH: 4841-4867-0738, v. 1

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO



ELLEN L. TURNER, : Case No. DR0500131
Plaintiff, : File No. E233969
v. : MEMORANDUM IN OPPOSITION
: TO MOTION TO MODIFY
: SHARED PARENTING PLAN
JOHN H. ENTINE, :
Defendant. : Judge Sieve
Magistrate Theile

Father has filed a motion purporting to seek modification of the Shared Parenting Plan. The motion again seeks to vest the decision making authority as to the allocation of parenting time to the couple's 14 year old daughter. Moreover, the motion seeks to wrest decision making authority from the parents despite the fact that there is no history of issues with such decision making authority.

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HAMILTON COUNTY, OH
TRACY WICKLER
CLERK OF COURTS

O.R.C. 3109.04(E)(2)(b) provides that "The court may modify the terms of the plan for shared parenting . . . upon the request of one or both of the parents under the decree. . . . The court shall not make any modification to the plan under this division, unless the modification is in the best interest of the children." This request is neither an appropriate request of the Court nor a request that is in the best interest of the child. Rather, it is a part of the continuing effort of Father to interfere with Mother's parenting time.

As a preliminary matter, it must be noted that the motion is procedurally inappropriate. Once again, Father has run to court with no attempt to follow the appropriate procedure under the SPP which requires mediation prior to the filing of a motion. The Plan specifically requires that "all matters in dispute except matters of

spousal or child support shall first be submitted to mediation". The parties have not addressed this issue in mediation. This is the same pattern in which Father engaged a year ago seeking this same modification.

In his last attempt, Father was ordered to mediation. He insisted on his own demands to participate in such a mediation and, once those demands were met, then refused to proceed with the mediation. As the Court may recall, due to Father's actions, the parties were required to expend tens of thousands of dollars on various professionals, including the mediator and guardian ad litem, only to have Father then try to avoid a hearing on the matter by seeking to be referred to mediation again. As such, Mother believes mediation would not proceed in good faith and, as such, is futile. Moreover, as Father has yet to pay for the fees of the mediator in the last such effort, such efforts will only lead to additional expenses for Mother. Therefore, Mother asks the Court to proceed and to deny the motion at hand.

The simple fact of the matter is that the parties specifically did not include the terms of the side agreement in the agreed entry to avoid any claim that this temporary change be incorporated into the terms of the shared parenting plan. There is no basis to wrest control from the parents for parenting time and, as the GAL's report made clear, flexibility or open issues in the schedule are directly contrary to the child's best interest. As such, this revision is not in the best interest of the child and should be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via regular United States
mail this 4th day of February, 2013 upon:

Robert J. Meyers, Esq.
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105 E. Fourth Street, Suite 300
Cincinnati, OH 45202

and

Anne Barry Flottman, Esq.
Wood & Lamping, LLP
600 Vine Street, Suite 2500
Cincinnati, OH 45202



Wijdan Jreisat

KTBH: 4841-7751-7586, v. 2

PRE-DECREE POST-DECREE

- Chg. of Cust.
- Vis. Enforce/Mod.
- Sup. Enforce/Mod.
- Others

Wijdan Jreisat (0063955)
Trial Attorney for Plaintiff

SECURITY FOR COSTS IN THE SUM OF \$ 170⁰⁰
DEPOSITED BY 63955

**COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO**

ELLEN L. TURNER,

Plaintiff,

v.

JON H. ENTINE,

Defendant.

: **Case No. DR0500131**
: **File No. E233969**
:
: **PLAINTIFF'S MOTION TO RE-**
: **ALLOCATE FEES OF GUARDIAN**
: **AD LITEM**
:
: **Magistrate Theile**
: **Judge Sieve**

FILED
 2013 FEB -14 AM 10:33
 TRACY W. TELLER
 CLERK OF COURTS
 HAMILTON COUNTY, OH

Plaintiff/ Mother Ellen L. Turner hereby moves the Court to re-allocate the fees of the Guardian Ad Litem appointed by this Court. This motion is made pursuant to the accompanying memorandum in support.

Respectfully submitted,



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MEMORANDUM IN SUPPORT

Pursuant to the Agreed Entry Appointing Guardian Ad Litem entered April 16, 2012, "[T]he GAL's fees shall be divided equally between the parties unless otherwise ordered by this Court." Mother has complied with this Order and has submitted her share of all GAL fees as they have been billed. Nonetheless, it became clear, as the matter progressed, that much of the GAL's time in this matter was necessitated by the actions of Defendant/Father Jon Entine.

As will be set forth in greater detail, the parties incurred excessive fees, which under the April 16th order were simply divided equally, due to Father's behavior. By way of example:

1. Father inundated the GAL with communications which, rather than providing information, were intended to draw the GAL into irrelevant issues and/or to lobby for his own position;
2. He was recalcitrant and insisted on reviewing matters outside the scope of the GAL's charge;
3. Father insisted that the GAL deal with him rather than his counsel on certain issues but counsel then became necessary as to others. This led to additional expenses when his lawyer's communications with the GAL were inconsistent with Father's later decisions (i.e. counsel would represent agreement only to have Father refuse to proceed on such terms);
4. Father took actions in violation of the agreed upon terms requiring additional time to bring him back into the fold; and
5. Father took actions in violation of the agreed upon terms thus necessitating additional efforts and time by the GAL.

The Court has discretion to determine the appropriate allocation of these fees. Mother asserts that a disproportionate allocation is equitable to account for the additional time and concomitant expenses which were caused by Father. It is otherwise inequitable to hold Mother responsible for these additional costs. Therefore, Mother moves to reallocate the expenses incurred for the GAL to date associated to Father. Though Mother had hoped to avoid additional involvement of the Court, Father's actions have necessitated it.

Respectfully submitted,



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NOTICE OF HEARING

You are hereby advised that a hearing has been set on the above Motion beginning at 1:30 p.m. on February 27, 2013 before Magistrate Theile in the Domestic Relations Court, 800 Broadway, Cincinnati, Ohio 45202.



Wijdan Jreisat

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing
Plaintiff's Motion to Re-Allocate Fees of Guardian Ad Litem has been served via US

Mail on this the 4th day of February 2013 upon:

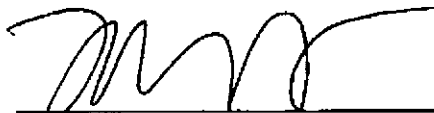
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105 E. Fourth Street, Suite 300
Cincinnati, OH 45202

and

Anne Barry Flottman, Esq.
Wood & Lamping, LLP
600 Vine Street, Suite 2500
Cincinnati, OH 45202

and by process server upon:

Jon H. Entine
6255 S Clippinger Dr
Cincinnati, OH 45243-3253



Wijdan Jreisat

SECURITY FOR COSTS IN THE SUM OF \$ 125⁰⁰
63955

PRE-DECREE POST-DECREE

- Chg. of Cust.
- Vis. Enforce/Mod.
- Sup. Enforce/Mod.
- Others

Wijdan Jreisat (0063955)
Trial Attorney for Plaintiff

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

ELLEN L. TURNER,

Plaintiff,

v.

JON H. ENTINE,

Defendant.

: Case No. DR0500131
: File No. E233969

: PLAINTIFF'S MOTION FOR SANCTIONS
: AND FOR DEFENDANT TO SHOW
: CAUSE WHY HE SHOULD NOT BE
: HELD IN CONTEMPT FOR VIOLATING
: THE PROVISIONS OF THE MODIFIED
: SHARED PARENTING PLAN

: Magistrate Theile
: Judge Sieve

FILED
2013 FEB -11 AM 10:30
TRACY PRINSTER
CLERK OF COURTS
HAMILTON COUNTY, OH

Plaintiff/ Mother Ellen L. Turner hereby moves the Court for sanctions and Order requiring Defendant /Father Jon H. Entine to show cause why he should not be held in contempt for violating the provisions of the Modified Shared Parenting Plan originally entered by this Court on December 9, 2008 and subsequently modified by the Agreed Entry Modifying Modified Shared Parenting Plan entered September 7, 2012 which was effective as of June 28, 2012. This motion is made pursuant to the accompanying memorandum in support.

Respectfully submitted,



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D100833106

MEMORANDUM IN SUPPORT

Introduction

On December 9, 2008 this Court entered a Modified Shared Parenting Plan ("Plan") which modified the original plan issued as part of the Decree of Shared Parenting entered November 13, 2006 for the minor child, Madeleine Entine ("Maddie"). On November 2, 2011, Father filed a motion asking that Maddie, "ha[ve] the discretion to choose to modify her routine time with each parent as needed based upon activities, events, or generally so as to provide her flexibility with her schedule." As a result of the motion, the Court first ordered the parties to mediation and then appointed a Guardian Ad Litem. After months of time and effort, the GAL submitted a report. Mother then filed a motion to modify the plan to adopt the recommendations.

The parties settled the pending motions by agreeing to adopt the GAL's recommendations with a few revisions. The parties reached the agreement in court on June 28, 2012, read the terms into the record, and advised the Court they would submit an agreed entry to reflect the agreement as stated in Court. The parties made clear that the terms of that agreement would be effective immediately. Virtually from the day the parties left the courtroom after entering the agreement on the record, Father has violated the terms of the agreement. Though the final Agreed Entry modifying Modified Shared Parenting Plan was not entered until September 7, 2012, consistent with the terms read into the record on the day of the hearing, it was effective as of June 28, 2012. Father continues to engage in conduct which violates the agreement reached – picking and choosing the terms he wishes to enforce. He continues to do so despite the parties' great expenditure of time, effort and money to determine the rules of engagement which are in Maddie's best interest.

Interference with Therapy

Paragraph 13 of The Agreed Entry provides that **Article XVI (D)** shall be amended to state:

Maddie should remain in therapy with Brett Clarke, in a frequency the GAL determines in consultation with the therapist is optimal, until such time as the GAL determines it is no longer to her benefit or until such time as the parents so agree in writing. Any recommendations the GAL makes to the parents in consultation with any treating therapist for the child should be followed. Costs for therapy services for the child shall be shared equally by the parties unless otherwise determined by the Court. Both parents must respect Maddie's right to a confidential, privileged relationship with her therapist. Neither should ever inquire about the content of conversations she has with him, nor review any emails or texts that are exchanged.

When the parties first came to Court regarding the Motion to Modify the Parenting Plan, Mother suggested that it was important for Maddie to be seen by a therapist. At that time, Father resisted and insisted on having a Guardian Ad Litem appointed. Subsequent developments made clear the need for Maddie to see a therapist. Mother agreed to the therapist suggested by Father, Brett Clarke, as a means of avoiding disputes with Father on the issue. Maddie began seeing Mr. Clarke during the pendency of the motion and the GAL's investigation. Recognizing the need for Maddie to continue in therapy without interference from either parent, the GAL directed as much in her recommendations.

Unbeknownst to Mother, however, Father had already cancelled Maddie's appointments for therapy when it was his parenting time. In fact, the morning of the hearing (with full knowledge of the recommendations), Father was resisting proceeding with this therapist and making unsupported and untrue claims that the parties had only agreed to a certain number of appointments. Upon information, in response to that email, the GAL asked Father's counsel to intercede and to direct Father not to interfere

with the therapy. Yet despite this, Father proceeded to interfere again by seeking to interject himself into the process as of July 1, 2012. In fact, Father then refused to proceed with the entry as read into the record unless the provision on the therapist was revised.

Yet, his blatant disregard for the agreement reached continued on even after extended discussions resulted in amendments to the Agreed Entry as he insisted. Immediately upon entry of that Agreed Entry, Father again interfered with the therapist threatening him with legal action if he were to see Maddie. The undersigned immediately contacted Father's counsel to object to this blatant violation and Father's counsel advised he had directed Father to retract his threats. He subsequently sent a retraction of this threat but the damage was done. Upon information, his actions led the therapist to determine that it was not fruitful to continue seeing Maddie as Father clearly had "poisoned the well." Despite multiple requests by Mother that Maddie continue therapy as agreed, Maddie has not had an appointment since July 10, 2012. Moreover, Father has refused to cooperate with other attempts to retain another therapist for Maddie. To date, no additional therapy sessions have taken place. Mother delayed filing for court intervention in the hopes that Father's cooperation could be obtained but that has proven to be fruitless.

Inappropriate Communications

In her report, the GAL found that:

Father has a problematic level of texting and calling interaction with Maddie when she is in Mother's care, and occasionally when she is in school. This could be viewed as undermining Mother's ability to parent her child in her own home without interference. Father, on the other hand, has reasonable concern about her wellbeing and is reassured by the contacts. However, barring a message or call from Maddie that alarms Father about her safety, he should

allow her to develop greater independence from him as she enters high school.

As a result of this finding, the GAL recommended restrictions on the Father's communications with Maddie in order to minimize Father's undermining of Mother's ability to parent. Paragraph 10 of The Agreed Entry provides that **Article I (N) of the Plan** is amended to add the following sections:

6. The parent not in residence with Maddie will limit initiating a call, text or email to the child to once a day. Either parent can respond to texts, calls or emails from Maddie. The responses should be brief and with an eye toward redirecting potential concerns to the parent in residence. If any communication causes the non-residential parent to be concerned about her safety, that parent shall immediately contact the parent in residence and/or the school authorities and/or the GAL, and seek assistance in ensuring her safety.

7. No parent shall text Maddie during school hours.

Despite this specific finding and the restrictions imposed to address it, Father has continued to engage in an inordinate amount of texting with Maddie when she is with Mother and at odd times. In doing so, he not only interferes with Mother's time but fosters a relationship whereby Maddie runs to him to complain of any disagreement with Mother.

Mediation Costs

As this Court recalls, the parties were originally ordered to mediation to address the issues raised in Defendant's Motion to Modify Parenting Plan. Pursuant to the Modified Shared Parenting Plan which was incorporated as part of the Court's order, the mediation costs were to be divided equally. The parties proceeded to mediation, upon the Court's order, with David Kamp. Though Plaintiff has paid her share of the mediation costs as required, she has subsequently been advised that Defendant had

yet to pay as required. By failing to make the payments required, Defendant is in violation of the terms of the Plan.

Conclusion

In taking these actions, Father has violated the specific terms of the parenting plan as revised by the Agreed Entry. These violations are particularly egregious given the changes were made as a result of his motion and to address the issues that were creating stress and division between the parents. After thousands of dollars were expended by both parties in fees and expenses to the various professionals to reach such agreement, Father has proceeded without regard to his obligations under the Agreed Entry.

WHEREFORE, Mother respectfully requests that this Court issue an order:

1. Finding Father in Contempt for failing to comply with the terms of the Shared Parenting Plan as most recently amended by the Agreed Entry.
2. Ordering Father to stop denying and/or interfering with Maddie's therapy
3. Granting Mother the right to determine the therapist, without regard to whether the therapist is on the parents' medical plan, and the frequency of therapy needed.
4. Ordering Father to pay the full cost of therapy for Maddie.
5. Ordering Father to respect Maddie's right to a confidential, privileged relationship with her therapist by having no communication with that therapist except for the administrative task of setting appointments or responding to requests initiated by the therapist.
6. Ordering Father not to inquire about the content of conversations Maddie has with her therapist nor to have any discussions with her regarding therapy.

Rather, if Maddie initiates such conversations, Father should redirect her to Mother or the therapist for further discussion.

7. Ordering Father to stop initiating text exchanges with Maddie while she is with Mother or during school hours and be limited to one reply text if Maddie initiates such texts.
8. Ordering Father to pay attorney's fees and costs in addition to Guardian Ad Litem fees incurred by Mother in addressing his violations in an amount to be more fully documented at the hearing in this matter.
9. Ordering Father to pay attorney's fees and costs incurred by Mother in filing this motion in an amount to be more fully documented at the hearing in this matter.
10. Ordering such further relief as this Court deems appropriate.

Respectfully submitted,



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NOTICE OF HEARING

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Wijdan Jreisat

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Plaintiff's Motion for Sanctions and for Defendant to Show Cause Why He Should Not be Held in Contempt for Violating the Provisions of the Modified Shared Parenting Plan has been served via US mail this the 4th day of February 2013 upon:


Robert J. Meyers, Esq.
Buechner Haffer Meyers & Koenig Co., LPA
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Cincinnati, OH 45202

and

Anne Barry Flottman, Esq.
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and by process server upon:

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Wijdan Jreisat