
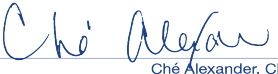


**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA
FAMILY DIVISION**

 **EFILED IN OFFICE**
CLERK OF SUPERIOR COURT
FULTON COUNTY, GEORGIA
2023CV385636

APR 16, 2024 06:53 AM



Ché Alexander, Clerk
Fulton County Superior Court

JAY WAYNE JENKINS,

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Petitioner,

CIVIL ACTION

v.

FILE NO. : 2023CV385636

JEANNIE CAMTU MAI JENKINS,

Respondent.

PETITIONER’S RENEWED MOTION FOR TEMPORARY HEARING

COMES NOW, JAY WAYNE JENKINS, Petitioner in the above-styled action, and through his Counsel of Record, and files this, his RENEWED MOTION FOR TEMPORARY HEARING, showing this Honorable Court as follows:

STATEMENT OF FACTS

1.

The parties were married on or about March 27, 2021, and have one (1) child, who was born in Georgia in 2021, to-wit: M. JENKINS, a female child. Said minor child lived with both parties until the Respondent moved out of the marital home with the parties’ minor child in October 2023. The Respondent did not ask the Petitioner if he agreed that the minor child could be removed from the jurisdiction of this Court. The Petitioner has been an active and present Father throughout the minor child’s life. Respondent’s rash decision to vacate the marital residence and essentially take the minor child away from her father was clearly not in the minor child’s best interest. It could conceivably be concluded that such a sudden disruption of the continuity in the minor child’s life will detrimentally affect said minor child’s emotional state.

2.

The Petitioner did not initially object to the Respondent taking the minor child with her because he was under the impression that the Respondent and the minor child would be temporarily residing in the parties' home in California. The Petitioner never imagined that he would have no idea where the minor child is, or that his parenting time and contact with the parties' minor child would be restricted by the Respondent.

3.

In Paragraph 6 of the Petitioner's COMPLAINT FOR DIVORCE, the Petitioner stated that he desired that the parties share *joint legal custody* and *joint physical custody* of the minor child and that the specific parenting time schedule be determined by the Court consistent with the best interest of the minor child. The Petitioner's position has never changed.

4.

Initially, the Petitioner filed his first MOTION FOR A TEMPORARY HEARING on November 30, 2023 for the Court to establish a parenting schedule such that the Court would set Petitioner's parenting time with the parties' minor child. From the date of the filing of Petitioner's COMPLAINT FOR DIVORCE on September 13, 2023, and November 30, 2023 when the Petitioner filed his first MOTION FOR A TEMPORARY HEARING, the parties tried to make informal custodial arrangements, and they actually agreed upon a visitation schedule through the end of 2023. Petitioner had the minor child with him from November 27, 2023 through December 2, 2023, and then from December 21, 2023 through December 29, 2023. However, from the beginning of the New Year, until the parties' mediation session scheduled on February 26, 2024, the Respondent continued her gatekeeping and completely denied the Petitioner any parenting time with the parties' minor child, except for one-half (½) day on February 3, 2024 in Los Angeles.

5.

Despite Petitioner being the minor child's father and consistently present in said minor child's life, the Petitioner really has not had any significant parenting with the minor child all year. The Petitioner and the parties' minor child enjoyed a strong bond before the Respondent abruptly vacated the marital residence, and it is important for the minor child to maintain her bond with **both** parents, not just the Respondent. It is also important for the parties' minor child to maintain a bond with her sister, the Petitioner's older daughter.

6.

At the mediation session held on or about February 26, 2024, the Petitioner reluctantly entered into a private MEDIATED AGREEMENT ON TEMPORARY ISSUES. The Respondent did not allow the Petitioner to see his daughter again until he was able to take the parties' minor child on a Spring Break vacation with the Petitioner's oldest daughter from March 3, 2024 to March 9, 2024.

7.

Specifically, on or about April 2, 2024, Petitioner sent a caretaker to California to retrieve the minor child for his agreed upon parenting time, which was supposed to be from April 2-8, 2024. Petitioner's caretaker waited outside of the parties' California home for several hours. Thereafter, the caretaker discovered that the Respondent had moved out of the California home with no notice to the Petitioner. In 2024, the Respondent has only allowed the Petitioner to spend time with their daughter from March 3, 2024 to March 9, 2024, for Spring Break with the Petitioner's oldest daughter from a previous relationship, and overnight on April 8, 2024, for a total of seven (7) nights this year.

8.

Even worse, the Respondent made the unilateral decision not to allow the Petitioner to exercise his parenting time with the parties' minor child because the Petitioner owns firearms. The Petitioner has a Second Amendment right to own firearms, and he owned firearms before the parties met, after they began dating, after the parties were married, and after their minor child was born. The Petitioner's gun ownership was never an issue before this divorce case was filed. Moreover, the Petitioner is a parent who knows very well how to keep all firearms away from and out of reach of the parties' 2-year-old daughter. The Petitioner loves the parties' minor child just as much as the Respondent does, and he would never ever do anything to put the parties' daughter in harm's way.

9.

For the month of April, the Petitioner has only been able to have one (1) overnight with the parties' minor child, which was on April 8, 2024 in Dallas, Texas. In fact, as of date of this filing, the Petitioner has no idea where the parties' minor child is. The Petitioner has not seen the minor child consistently since the Respondent removed the child from the State of Georgia. After he returned the minor child to the mother on December 30, 2023, the Petitioner did not see the minor child again until February 3, 2024, for one-half (1/2) day.

10.

The Petitioner has no idea who is the caretaker for the minor child when the Respondent is working. In case of an emergency, the Petitioner does not even have an emergency contact for the Respondent. The Respondent is still gatekeeping. In their MEDIATED AGREEMENT, both parties agreed that during his or her parenting time, each parent would keep the other parent informed pertaining to the whereabouts of their minor child "(i.e. where the child will be sleeping each and

every night), who will be caring for the child, the phone number of the caregiver for the child, and any travel itineraries for the minor child if she will be traveling away from Mother's Los Angeles home or Father's Atlanta home.”

11.

As of the filing of this RENEWED MOTION, the Petitioner does not know the exact whereabouts of the parties' minor child. The Petitioner has no idea where the minor child is sleeping every night. The Petitioner can only assume that the Respondent's mother and/or brother is caring for the minor child, but the Respondent has not communicated with the Petitioner to provide any information about caregivers at all. To date, the Petitioner has not been provided with a single travel itinerary for the parties' minor child.

12.

The Respondent and the parties' 2-year-old daughter have been in three (3) different states so far during the month of April 2024 alone, to-wit: Massachusetts, New York, and Texas. However, the minor child has not been in in the State of Georgia, which is the home state of the parties' minor child, all month. Not only does the Petitioner not have any personal knowledge of where the Respondent is currently staying with the parties' minor child, but the Petitioner does not have any knowledge about whether the Respondent has a current permanent residence since the Respondent moved out of the marital residence in Georgia and out of the California residence. More importantly, the Petitioner has no idea when he will be able to have any parenting time with his daughter. Clearly, the Respondent has no regard for the bond and affection between the parties' minor child and her father.

13.

According to the MEDIATED AGREEMENT, the Respondent is supposed to initiate a FaceTime call with the minor child and the Petitioner at 6:00 p.m. EST on Mondays and Wednesdays. The Respondent has failed to initiate FaceTime calls as agreed, and the Petitioner is unable to reach the Respondent because she has blocked the Petitioner's number. The inability to spend time with his daughter coupled with the inability to have regular, consistent contact with his daughter is agonizing to the Petitioner, and he would never restrict Respondent's access to their daughter.

14.

The Petitioner has only seen his daughter *eight (8) days in 2024*: (a) one-half day on February 3, 2024 in Los Angeles; (b) six days from March 3-9, 2024 for Spring Break with both daughters; and (c) overnight on April 8, 2024 in Dallas, Texas. The Petitioner is desirous of seeing the parties' minor child right away. The Petitioner should not be limited to seeing his daughter only once per month. Moreover, the Petitioner should not be limited to speaking to his daughter via FaceTime only two (2) days each week for a few minutes on either day. The Respondent should not have unilateral control over the Petitioner's parenting time. The same lack of consistency, continuity, and stability exists now that existed prior to the parties' MEDIATED AGREEMENT. The lack of time that the minor child has spent with her father this year has to be stressful to the minor child, who clung to a stranger who looked remotely like the Petitioner for a 4-hour flight to California. The minor child is of tender years, and it is imperative that she maintains a strong bond with her mother *and* with her father.

ARGUMENT AND CITATION OF AUTHORITY

Pursuant to O.C.G.A. § 19-9-3(a)(1), “In all cases in which the custody of any child is at issue between the parents, there shall be *no prima-facie right to the custody of the child in the father or mother*. There shall be no presumption in favor of any particular form of custody, legal or physical, nor in favor of either parent.” (Emphasis supplied). Pursuant to O.C.G.A. § 19-9-3(a)(2), “...in determining to whom custody of the child should be awarded the duty of the judge in all such cases shall be to exercise discretion to look to and determine solely what is for *the best interest of the child* and what will best promote the child's welfare and happiness and to make his or her award accordingly.” (Emphasis added).

Further, O.C.G.A. § 19-9-3(e) states provides that, “[u]pon the filing of an action for a change of child custody, a parenting time schedule consistent with the best interests of the child, a judge may in his or her discretion change the terms of custody on a temporary basis pending final judgment on such issue.” Similarly, this Honorable Court has the authority to modify temporary custody at any time until the entry of the final decree of divorce. *Foster v. Foster*, 230 Ga. 658, 198 S.E.2d 881 (1973). Additionally, pursuant to O.C.G.A. § 9-11-65(e), this Court has the authority to “make prohibitive or mandatory orders, with or without notice or bond, and upon such terms and conditions as the court may deem just.” *Id.*

In the case at bar, this Honorable Court should vacate the parties’ MEDIATED AGREEMENT, and establish a temporary parenting schedule such that the minor child spends equal time with both parents. Such an establishment of a temporary parenting schedule would be in the best interests of the minor child, provides continuity and stability for the minor child, and facilitates the minor child’s relationship with *both* parents.

Petitioner shows the Court that strong love, affection, bonding, and emotional ties exist between Petitioner and the parties' minor child. Further, Petitioner has the capacity and disposition to give the minor child love, affection, and guidance. Petitioner is knowledgeable and familiar with the minor child's needs. The Petitioner has the capacity and disposition to provide the parties' minor child with stability, food, clothing, medical care, day-to-day needs, and other necessary basic care. Petitioner's stable home environment promotes nurturance, respect, proper adult guidance and safety of the parties' minor child rather than superficial or material factors.

The Petitioner should be awarded parenting time with the parties' minor child where the parties have equal parenting time. The parties should also share joint legal custody of the parties' minor child. The Petitioner is not trying to take the minor child away from the Respondent. The Petitioner has not asked this Court for primary physical custody of the parties' minor child; however, clearly, the Respondent is trying to keep the minor child away from her father, the Petitioner. *Both parents* should have equal parenting time with the parties' daughter. Furthermore, the Petitioner is entitled to joint physical custody and joint legal custody of the parties' minor child.

It seems readily apparent that Respondent believes that she is the superior parent as she continues to unilaterally make decisions that affect the well-being of the parties' minor child. It should be duly noted that Petitioner is not a second-class parent, nor should he be treated as such. The Petitioner has just as many rights to the custody of the parties' minor child as the Respondent does. However, the Respondent impedes upon the Petitioner's parental rights and disregards any viable efforts to actively co-parent with the Petitioner.

Specifically, the parties' minor child should spend equal time with her father and the Petitioner's side of the family. The parties' minor child has her father, sister, brother, grandfather, grandmother, an aunt, and cousins in the metropolitan Atlanta area that love the parties' minor

child just as much as the Respondent's family loves her. There is absolutely no reason why the parties' minor child cannot spend equal time with both parties.

Additionally, the parties' minor child is biracial. It is important for the minor child to spend time with her mother's side of her family and to learn the Vietnamese culture. Likewise, it is equally as important for the minor child to spend time with her father's side of her family to learn about her African American culture. Unfortunately, the Respondent has continued to function as a gatekeeper when it comes to Petitioner exercising parenting time with the minor child as if the Respondent's parenting rights are superior to the Petitioner's parenting rights.

The Respondent's gatekeeping has severely disrupted the Petitioner's relationship with the parties' minor child. Petitioner requests that a Rule Nisi hearing be set to establish the parties' parenting schedule and custodial rights consistent with the best interests of the parties' minor child.

CONCLUSION

For the forgoing reasons, the Petitioner respectfully requests that a Rule Nisi hearing be set to establish the parties' parenting time with the minor child. Because the Respondent has absconded with the minor child outside of the jurisdiction of Georgia, this Honorable Court should order that each party may have daily FaceTime calls while the child is with the other parent, and that the parties communicate with each other pertaining to the minor child via Our Family Wizard. Additionally, the parties should be ordered to participate in co-parent counseling sessions such that the parties can learn how to effectively communicate with each other pertaining to the parties' minor child. Each parent should be able to exercise his or her parental rights without interference from the other parent. Petitioner respectfully requests that the Court enter a temporary order establishing the parties' temporary joint legal and joint physical custody during the pendency of this case.

WHEREFORE, Petitioner prays as follows:

- (a) That the Court GRANT his Motion for a Temporary Hearing;
- (b) That a Rule Nisi issue requiring Respondent to appear and show cause as to why Petitioner's prayers for relief should not be granted; and
- (c) That this Honorable Court award Petitioner such other and further relief as this Honorable Court may deem just and equitable.

RESPECTFULLY SUBMITTED, this 16th day of April 2024.

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CIVIL ACTION

FILE NO. : 2023CV385636

CERTIFICATE OF SERVICE

This is to certify that I have this date served:

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in the foregoing matter with a copy of this PETITIONER'S RENEWED MOTION FOR TEMPORARY HEARING, via electronic service pursuant to O.C.G.A. § 9-11-5(b).

This 16th day of April 2024.

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