Order for Pretrial Conference to consider the amendment of the pleadings

Pursuant to Rule 12.200(b) by separate order the court will set a Pretrial Conference for the purpose of considering and determining the necessity or desirability of amendments to the pleadings regarding a parenting plan, parental responsibility order and a time-sharing schedule. The parties are ordered to bring proposed amended pleadings consistent with this order to that Pretrial Conference.

Amendments to the pleadings may be necessary or desirable because the parties' pleadings do not ask for all three alternatives to parental responsibility allowed by the law, that is, (1) sole parental responsibility over some or all parenting decisions to one parent or the other; (2) unlimited shared parental responsibility over all parenting decisions; or (3) shared parental responsibility with ultimate responsibility over some or all parenting decisions to one parent or the other. §61.13(2)(c)2., a.; *Watt v Watt*, 966 So.2d 455 (Fla. 4th DCA 2007); *Hancock v Hancock*, 915 So.2d 1277 (Fla. 4th DCA 2005); *Schneider v. Schneider*, 864 So.2d 1193 (Fla. 4th DCA 2004).

Further, if a sole parental responsibility order is requested in a pleading, the pleading must also allege ultimate facts demonstrating a detriment to the children if shared parental responsibility is ordered. Pursuant to §61.13(2)(c)2. the court must order shared parental responsibility "unless the court finds that shared parental responsibility would be detrimental to the child", so if a party pleads for sole parental responsibility, the party must also plead ultimate facts and then prove facts that demonstrate a detriment to the child if shared parental responsibility is ordered. In this case, the evidence at the hearing demonstrates that the facts of detriment appear to be the inability of the parents to communicate and cooperate concerning parenting decisions.

An amendment to the pleadings may be necessary or desirable because the evidence at the hearing indicates that these parents might prove to be unable share all parenting decisions. The court cannot order the parties to do something that they are incapable of doing, or, at least, something that they have not demonstrated they have a capacity to do. In other words, the court cannot enter orders that are impossible to perform, such as a child support or alimony order that is beyond the financial ability of a party or an order to share parenting decisions when the parents have not demonstrated a capacity to share parenting decisions.

Further, the court cannot order something that is detrimental to the children. If the evidence at the trial proves the parties are unable to share all parenting decisions, this would prove a detriment to the children if shared parenting were ordered. A shared parenting order is detrimental to the children if the parents are in fact unable to share parenting decisions because such an order only promotes bickering and arguments between the parents, which is detrimental to the children, because a shared parental responsibility order requires the parties to "confer with each other so that major decisions affecting the welfare of the child will be determined jointly." F.S. §61.046(17) and *see, e.g., Roski v. Roski*, 730 So.2d 413 (Fla. 2d DCA 1999). However, the court cannot order sole parental responsibility if neither party has pled for this relief. *See, e.g., Furman v. Furman*, 707 So.2d 1183 (Fla. 2d DCA 1998)*; McDonald v. McDonald*, 732 So.2d 505 (Fla. 4th DCA 1999). Pleading for relief in the alternative is permitted by the rules of procedure. Fla.R.Civ.P. 1.110(b).

Of course, the time-sharing order is a separate question from the parental responsibility order, and both of these, the time-sharing order and the parental responsibility order, are part of the parenting plan that the court must establish under §61.13(2). Further, a pleading that asks for "primary residence" or "custody" is

meaningless because effective 10/1/2008 the terms "primary residential parent," "custody," and "visitation" were deleted from all Florida statutes concerning separated parents. *See Session Law* 2008-61 effective 10/1/2008.

Therefore, the pleadings may also need to be amended to ask for the relief that is allowed by Florida law, that is, a parenting plan that includes a parental responsibility order and a time-sharing schedule. If either party wants a final time sharing schedule in which the children reside most of the days of the year with that party then they must plead for that relief and then at trial must prove a parenting plan and time-sharing schedule that are in the children's best interest, taking into consideration all of the factors in §61.13(3).

A "pleading" is "a complaint or, when so designated by statute or rule, a petition and an answer to it ..." Fla.R.Civ.P. 1.100(a). The requirements of a pleading are specific. Fla.R.Civ.P. 1.110(b): "A pleading which sets forth a claim for relief ... must state a cause of action and shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends ..., (2) a short and plain statement of the ultimate facts showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which the pleader deems himself or herself entitled. Relief in the alternative or of several different types may be demanded."

So, a pleading is the document in which a party asks for the relief in the case that the party believes it is entitled to and the request for judgment in the pleading must be supported by allegations of ultimate facts that demonstrate a right to the relief. A "motion" is not a pleading, Fla.R.Civ.P. 1.100(b). Motions address only temporary matters or the process of the case and only certain motions are permitted by the rules. A motion cannot request the ultimate relief in the case and the court cannot grant ultimate relief based only on a motion and a hearing on a motion. The issues raised by petitions and answers, that is, the pleadings, can be decided only after a trial on the pleadings and a trial can be held only after the court issues a trial order. Fla.R.Civ.P. 1.440(c): "If the court finds the action ready to be set for trial, it shall enter an order fixing a date for trial."

Originals or copies of documents that a party believes amount to evidence or documents produced in discovery or pursuant to mandatory disclosure under Rule 12.285 must *never* be filed in the court file. These must be brought to a hearing or trial if they are relevant to a parties' evidence at the hearing or trial, and any document can be seen and considered by the judge only if it is admitted into evidence at the hearing or the trial pursuant to rules of procedure and the rules of evidence. Any document that is filed in the court file that is not a proper pleading or a proper motion or that is not admitted into evidence at a hearing or a trial according to law will not be looked at or considered by the judge.