

**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR  
LEE COUNTY, FLORIDA** **CIVIL ACTION**

**A. G. C.,  
Petitioner,**

**vs.  
C. L. S.,  
Respondent,**

**Case No. 00 DR 0000 N**

**ORDER ON MOTHER'S THREE MOTIONS**

This matter having come before the court on 10/24/2011 on (1) mother's motion for contempt, filed 10/4/2011; (2) "Emergency/ Expedited Motion, Etc." filed 10/4/2011; and (3) "Emergency Motion for Drug Testing" filed 10/4/2011; it is ordered:

**1. Findings**

The parties have a minor child, D. A. C., born (*Date omitted*), so now age 5. The mother is 25. The father is 25. The mother filed a supplemental petition 4/19/2011 and the parties settled that petition and all prior pleadings and litigation in a mediated agreement filed 6/21/2011.

That agreement, and the court order approving and adopting it, provide that the child support due is \$300 per month.

That agreement also sets out a time-sharing schedule, alternative weekends from 5 pm Friday to 6 pm Sunday and "every Wednesday from 4:30 pm to 7:30 pm.

The father is in arrears in the child support. The father is a "vet tech." As of 10/24/2011 the arrearage is \$15,616. The amount due currently is \$300 per month or \$69.23 per week. This is the amount due beginning 5/4/2011, per an "Advancement Sheet" agreed between the parties and filed on 5/5/2011. The parties' mediated agreement of 6/21/2011 ratified this temporary agreement and set the child support at \$300 per month. Before 5/4/2011 the amount due was \$452 per month or \$104.38 per week, from 7/1/2009 to 5/3/2011.

In August 2010 the father moved to Miami in order to take a job as a "vet tech." He worked in Miami for "8 months" at "West Kendall Animal Hospital," and then he came back to Lee County, in 3/2011, and he took another job as a "vet tech" at "Animal E.R." in Lee County. He worked at "Animal E.R." for 4 months before being laid off.

After he was laid off he qualified for unemployment compensation. He is still receiving unemployment compensation.

So, from 8/2010 until 7/1/2010, the father was employed. However, in those months he did not pay anything on his child support obligation. And, he has been receiving unemployment compensation of an unknown amount each month since he was laid off.

However, he swore that he only received one month of unemployment compensation, "\$300," and that he does not know why he only got one month. He has a laptop computer with "WiFi" capability, that he can get on the Internet by using his neighbor's WiFi connection. He suggested that "maybe" he stopped getting unemployment compensation because he "didn't go online and claim my weeks." This testimony is not credible.

The father claimed that on "November 4, 2011" he is starting a "new job" at "Pet Coral" on Del Prado, in Cape Coral, which is a dog day care facility.

The father's living situation is unknown. The mother says the father "does not have food in the house" to feed their child, but the details of the father's residence are not known. The father says he lives alone but he was accompanied to the courtroom by his "girlfriend." The furnishings in his residence and whether they are adequate for a 5 year old child is unknown. The father is evasive and defensive when questioned about where he lives. His address is below. This is an apartment where he has lived before and where his mother lived before she moved to Miami in the summer of 2010. The rent is \$550 per month and the rent is current. She moved to Miami because the father's brother has "lupus" and she needed to be closer to sources of medical care for that child.

The father was arrested for possession of marijuana less than 20 grams on 4/28/2011. He was riding as a passenger in a car. The driver of the car was also arrested for possession of marijuana less than 20 grams. Both were given a citation to appear in court.

In the case, 11 MM 0603, the father and SAO entered into a diversion contract on 5/18/2011, in which the father agreed to enter and complete a 6 week drug treatment program. He is now completing a program at TLS Counseling on Pondella Road in N. Fort Myers. He is taking regularly scheduled drug tests, so he knows when the test is coming up, which means that any short-lived drugs will not appear on the test results.

The father gave the court a "Monthly Progress Report" dated 10/20/2011. This is a report form TLS Counseling. It shows he is participating in the counseling program and that "His THC Level has decreased to 351, prior to that it was 788." It also says that "He has completed 5 of 6 Group Therapy Session."

This report may satisfy the SAO that the father is complying with the diversion contract, and, of course, the performance of that contract and satisfaction of the SAO is of marginal relevance in this case.

The father testified that he regularly uses marijuana and that "so what, it's going to be legal pretty soon" and "why would I lie" about his marijuana use. He claims he does not use marijuana "around my son."

The father's driver's license was suspended for being a habitual traffic offender in 5/2011. Nevertheless, the father continues to drive a motor vehicle. He admitted to using a car on one occasion.

The mother testified that the child is "acting out." The mother is a "clinical assistant" at the Gulfcoast Hospital, part of the Lee Memorial system. She works 8 am to 4:30 pm. She has insurance coverage through her job and that coverage is providing her with counseling, through

McG., Ph.D., concerning the child's "acting out." The child is not in counseling; the mother is in counseling. Dr. McG. has told her that the child is "demanding her attention" by his acting out. This is no doubt exactly right.

The mother's sister used to live with the mother but the mother says she "made" her sister move out of the mother's residence about a month ago. The mother's sister, J. S., is age 22. The father says the mother's sister is a "drug addict."

The mother lives with J. G. who was arrested for DV on her on 9/2/2011. Mr. G. has no other cases in the clerk's computer record. Mr. G. works as a bartender. On 9/27/2011 Mr. G. and the SAO entered into a diversion contract in that case. That contract allows Mr. G. to make "no violent contact" with the mother, so he can have any "nonviolent" contact with her.

The mother's home life has been confused, to say the least, for some months. The father leaving and going to Miami and being erratic in his contact with her and the child is not helping much, but as a result of her confusing home life, the mother is not giving the child her undivided attention and loyalty, which is what he is demanding. This is the reason he is acting out at home and at school. He feels insecure and he feels that his needs are not being met, principally his need to his mother's attention and nurturing.

Certainly the father's failure to pay child support, his drug use, and his erratic performance of the time-sharing schedule, moving to Miami for 8 months, 8/2010 to 3/2011, then returning, is not helping the mother at all, and it contributes the child's insecurity and demands for the mother's attention because he is not getting the father's attention either, but the principal cause of the child's acting out is the mother's distraction from the child, due to her sister living in her home, her verbal and physical abuse between her and Mr. G., her work schedule, and the father's lack of help and erratic behavior.

The mother needs to focus on the child and give him her undivided attention so that she can meet his needs. The court understands the pressures on her to pay her bills, with no financial help from the father, and perhaps spotty help from Mr. G. and likely none from her sister, and the pressure on her otherwise to live and get by day to day and take care of a 5 year old child.

Nevertheless, the child needs her attention more than all of those distractions that she must deal with. That is what he is telling her unconsciously by his "acting out."

## 2. Ruling

2.1 **Mother's motion for contempt, filed 10/4/2011 - granted** - This is a motion for civil contempt. This motion is granted. The father is in willful contempt of the child support order, \$300 per month for 5/4/2011 and 6/4/2011, and also \$452 per month 8/1/2010 to 4/1/2011. He was employed for each and every month in that time, at West Kendall Animal Hospital in Miami and again at the Animal E.R. in Lee County but he willfully failed and willfully refused to obey the court order to pay child support. He has paid his rent, bought his own groceries, and otherwise paid his living expenses. His child support is his first obligation, not his last after all of his own living expenses are paid to his satisfaction. An income deduction order operates on the first dollars that an obligor earns. It does not operate against his income only after he has paid all of his bills to

his satisfaction.

Based on this ruling and finding on the mother's motion for civil contempt, the court will begin an indirect criminal contempt proceeding under Rule 3.840 against the father, by separate Order to Show Cause and otherwise proceeding with a criminal proceeding pendent to this civil action under that Rule.

The court reserves to consider sanctions on the mother's motion for civil contempt, based on the foregoing findings and ruling, for later hearings. The mother's motion for civil contempt is continued for further hearings, upon notice to both parties. Therefore, no civil sanctions to compel compliance with the child support order are entered at this time, pursuant to Rule 12.615, and consideration of these is reserved for later hearings.

**2.2 Mother's "Emergency/ Expedited Motion, Etc." filed 10/4/2011 and "Emergency Motion for Drug Testing" filed 10/4/2011 - both are granted**

These motions are granted. The father has THC in his body. As long as he has THC in his body, his time-sharing with the child is suspended.

**Therefore, at this time and until further order, the father's contact with the child is canceled and shall not occur. The time-sharing schedule between the father and the child is suspended pending further order of the court.** F.S. §61.13(3)(q).

The court makes no order regarding how the father will demonstrate to the mother and the child that there is no THC in his body. **This is his burden of proof.** The court reserves for further hearings all issues raised on these two motions of the mother, so the hearing on these two motions is continued for further hearing time, upon notice to both parties.

Southwest Florida Addiction Services, Inc., is the local, nonprofit drug treatment provider. SWFAS provides its services to anyone who comes to them. SWFAS's main office is located at 3763 Evans Ave., Fort Myers, Florida, phone 332-6937. SWFAS' charges are based on the addict's ability to pay. The standard outpatient model for drug treatment at SWFAS requires a weekly group therapy session. It might also include one-on-one counseling. A SWFAS outpatient program may be from 90 to 180 days.

Every participant must also attend 12 step meetings every week and must obtain a 12 step sponsor.

Participants are typically required to submit to random drug tests at SWFAS. SWFAS uses the same laboratory for analyzing all samples and the laboratory meets accepted standards for analyzing the samples. The court accepts the SWFAS testing protocols and the protocols of the laboratory they select.

The father may be able to demonstrate to the court and the mother that there is no THC or any other illegal substance in his body by (1) submitting to an evaluation for drug addiction before a SWFAS evaluator and then giving that written evaluation to the mother's lawyer and then following any recommendation of that evaluation; and (2) submitting to a program of random drug testing at SWFAS over a period of 60 days, regardless of what the drug addiction evaluation recommends. **If SWFAS requires a court order before they will let the father participate in a**

**program of random drug testing over a 60 day period, then this is that order.** In all events, the father shall pay all costs of the testing and any other service from SWFAS at the usual and customary charges.

Done and ordered in Fort Myers, Lee County, Florida, this \_\_\_\_\_

R. Thomas Corbin, Circuit Judge

Copies provided to:

, Esq.,

A. G. C., *pro se*  
(*Address omitted*)