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

M. A. E.,
Former husband,

vs. **Case No. 00 CA 0000 N**
D. L. N.,
Former wife,

FINAL JUDGMENT ON SUPPLEMENTAL PETITIONS

This matter having come before the court on 10/12/2010 on the father's supplemental petition filed 3/2/2010 and the mother's supplemental counter petition filed 3/12/2010, it is ordered:

1. Findings

The parties have a minor child, M. L. E., (*Date omitted*). The parties divorced in 1998 when the child was a year old.

Paragraph I, A of their marital settlement agreement requires them to share parenting decisions. Paragraph I, B sets forth a time-sharing schedule. It provides that "the parties shall have the ability to review this schedule in a year without being required to show a substantial change of circumstances." So, as required by §61.13(2), their agreement separated parental responsibility from the time-sharing schedule. These two separate provisions of their marital settlement agreement became two separate orders when the Final Judgment was entered.

The parties time-sharing schedule in their marital settlement agreement has been modified since 1998 by written, mediated agreements and by informal understandings. The present time-sharing schedule has the child with her father from Friday through Monday on alternate weekends and every other Tuesday after school for four hours and the alternate Tuesday overnight. The exchange usually occurs by pick up and drop off at school. In the summer the schedule is one week with one parent and the next week with the other parent. The parties say they "split" the holidays, although the holidays are not defined and how they are "split" is not written down anywhere.

The former husband is a field supervisor for an air conditioning firm. He is paid $28 an hour plus commissions for sales of equipment. Year to date 10/8/2010 he has earned $5,432 gross per month or $65,184 gross per year. He shows $58,284 gross income for 2009 on his financial affidavit served 5/4/2010. The father pays $130 per month for his health insurance. He is remarried. He has a 19 year old stepdaughter and a younger daughter with his present wife, born in 12/2008. His present wife is not now working. She has been attending a nursing program in a local college since 2007.

The mother works for a local hospital system. She has earned $18,028 gross year to date, or $2,348 gross per month. The mother pays $120 per month for the child's health insurance. She has health insurance provided to her at no cost. The mother pays $75 per month for the child to attend a before school program because the mother must get to work.

At the trial, the father asked to change the time-sharing schedule to give him more time with the child. However, his petition does not allege that a change in the time-sharing schedule would be in the child's best interest. It also does not request a change in the time-sharing schedule. His petition alleges only that a substantial change in circumstances has occurred and then it asks for general relief. His petition does not mention parental responsibility and he does not ask for a change to the shared parental responsibility order.

His argument and his evidence repeated, over and over, that he wants more time with the child and that the mother is not agreeable to changing the schedule. He said at trial that he wants to increase his days with the child because his daughter is becoming a teenager and he knows that as she gets older she will be less and less inclined to want to come over to his house. He knows her preference is to manage her own life as she grows older, a natural development for adolescents. He knows she is less inclined to spend time with him or her mother. An adolescent naturally pulls away from both parents and becomes more independent, and her peers are more important to her than either of her parents. His solution to this situation is to ask for more days for with his daughter.

For reasons that are not clear, the father tends to blame the mother for the child's natural development and tendency to pull away from both of her parents. For instance, when the child came to his house with a new haircut, that she preferred and that she wanted, but which he did not like or approve of, he immediately called the mother and angrily told her she was a very poor parent for allowing a new haircut that he disapproved of, as if she has complete control over their daughter.

There was very little evidence from the father about a new time-sharing schedule that would be in the child's best interest. His petition does not allege ultimate facts demonstrating a different time-sharing schedule that would be in the child's best interest. His petition alleges only that a substantial change in circumstances has occurred that he said at trial justifies modifying the time-sharing schedule.

The father lives in Lehigh Acres. The mother lives in Buckingham. The distance between their homes is about 8 miles. Oak Hammock is the child's school, which is 4 miles from the mother's house and 19 miles from the father's house.

There is some evidence that the parties have not shared parental responsibility, that is, they do not always confer and together make joint parenting decisions. On the other hand, there is some evidence that they have shared parenting decisions, such as the decision for the child to attend Oak Hammock, even if the father, after the fact, discovered that the school bus will not run to his home, so he says he would not have agreed to that school if he had known that. If he has to drive the child to and from school he says he prefers a school closer to his home. A consideration that the child is or is not attending the best school for her was not expressed. The father seems to

blame the mother for the fact that the bus does not run to his house, because the school board has a rule that the bus will run only to the home of the parent with whom the child lives most of the time, a rule over which she has no control. This is a common pattern.

The court finds that the father's unreasonable attitude and unrealistic expectations from the mother and often the child are the principal reasons that the parties do not confer and share parenting decisions. The court finds that the mother is willing and able to discuss and make joint decisions, but that the father is more interested in placing blame and reacting than reaching a decision in the best interest of their daughter. For instance, the mother took the child to an orthodontist some time ago because braces were recommended for the child's teeth. She sat down with the father at the orthodontist's office to discuss the procedure and payment. The father disagreed with the entire proposition. The father objected that dentists and orthodontists always say children need braces so they can make money, that he has an over bite and it has not bothered him, that the child was too young to brush properly and her teeth would suffer, that he does not want to pay for braces, that his daughter did not need braces, that he will not reimburse the mother for half of the cost by making monthly payments of $50 a month to her, etc., etc. So, the mother paid for the braces. For instance, some time ago the mother believed the child was depressed and she conferred with the father about sending the child to a counselor. Again, the father objected, disagreed, and the mother took the child to the counselor anyway. In general, the father is convinced that the mother wants to keep the child from him without recognizing the part that his own attitudes play in separating the child from him.

The occasional failure to share a major parenting decision is not a substantial change in circumstances in this family. As the father said, this has been going on from the beginning. In this family, a failure to make joint parenting decisions is the norm. It is not a change in circumstances. It largely derives from the father's attitudes and beliefs.

Regarding the time-sharing schedule, there was very little evidence that it is not operating smoothly. On the contrary, the evidence demonstrated that the child goes back and forth without incident and that the parties make adjustments to the schedule during the year. For instance, their holiday arrangement is not plainly written anywhere yet they know what it is, make adjustments for it, and work out the kinks. They also occasionally exchange the child at their residences, rather than through school, which is an adjustment that they work out. In short, both parents have demonstrated flexibility in making adjustments to the time-sharing schedule over the years.

The evidence also showed the child is doing well in the present arrangement, that she has good grades in school and a good relationship with her stepmother and her sisters at her father's house. She also has a good relationship with both of her parents, although the mother has complained to the father that he needs to pay more attention to the child and improve his relationship with her, a complaint that he interprets as meaning the child should live with him for more days during the year.

2. Ruling

2.1 Mother's motion to enforce; no ruling made The mother filed a motion to enforce on 9/11/2009. This is a civil motion for contempt of a prior court order. The father believes this motion must be heard and ruled on at the trial. However, the court cannot consider that motion.

That motion has never been noticed for a hearing. There is no notice of hearing setting that motion for a hearing on the day of the trial. Therefore, due process dictates that the court has no authority to rule on it because there is no notice that it will be heard and ruled on. The trial order sets for trial only the pending supplemental petitions. Rules 1.440, 12.440 & 1.110(h). Motions filed before a trial are not noticed for hearing by a trial order. Many motions are filed but if they are never noticed for a hearing they are never ruled on.

If a motion in a Chapter 61 cases asks for a change to an existing order in a final judgment, it asks for relief that cannot be granted by a motion, *see, e.g., Worrell v. Worrell*, 23 So.3d 199 (Fla. 4th DCA 2009), although there are exceptions, such as a modification of a time-sharing schedule as a sanction for civil contempt under §61.13(4)(c). Generally speaking, however, a final judgment in a Chapter 61 case can be changed only by a supplemental petition alleging a substantial change in circumstances, unless that standard has been eliminated by the parties' agreement, *see, e.g., Mooney v. Mooney*, 729 So.2d 1015 (Fla. 1st DCA 1999), and also alleging that the change is in the child's best interest. *See, e.g.*, §61.13(3); *Clark v. Clark*, ___ So.3d ___ (Fla. 5th DCA 2010); *Ogilvie v. Ogilvie*, 954 So.2d 698 (Fla. 1st DCA 2007); *Wade v. Hirschman*, 903 So.2d 928 (Fla. 2005).

2.2 Father's supplemental petition is denied

The father's supplemental petition alleged a "substantial change in circumstances." He alleged the following ultimate facts:

(1) the mother does not share parenting decisions;

(2) the mother interferes with the father's time with the child and his "ability to effectively parent the minor child;"

(3) the mother refuses to allow the father "additional time with the minor child despite representations by the [mother] that the child has requested that she be allowed to spend more time with her [f]ather";

(4) the mother "acts upon her own needs and desires in direct contravention of Fla. Stat. §61.13(3)(c);"

(5) the mother refused to share health related information with the father "in direct contravention of Fla. Stat. §61.13(3)(j);"

(6) the amendments to §61.13 effective 10/1/2008 "provide [the father] with additional timesharing which the [mother] refuses to allow;" and

(7) the mother shares information related to this case with the child.

Based on these allegations, at trial the father requested that the time-sharing schedule be changed to require the child to be with him for more days during the year, although a specific

schedule was not proposed. At trial he said repeatedly that he wants more time with the child during the year and the mother will not agree to change the schedule. He did not mention the parental responsibility order at trial, just as he did not mention it in his petition.

The father's petition asks only for general relief. It does not request more time with the child. His petition does not request a modification of the time-sharing schedule. He alleged the mother refuses him "additional time with the minor child;" he alleged that the child requested more time with him; and he alleged that the 10/1/2008 amendments to the statute "provide [the father] with additional timesharing which the mother refuses to allow," but these allegations do not state that he wants more time with the child and there is no specific request for a modification of the time-sharing schedule. Nevertheless, this was what he said at trial.

The parties' original marital settlement agreement provided that a substantial change in circumstances is not required for a change in the time-sharing schedule. So, that standard does not apply on his petition. *Mooney, supra.* Nevertheless, the father argued that his evidence showed a substantial change has occurred. The court addresses his allegations:

(1) <u>The mother does not share parenting decisions</u>. This allegation was not proven. The mother put braces on the child, over the father's objection, and she took the child to a counselor, over his objection, so these are failures of the parties to make parenting decisions together. However, on other occasions the parties have made a shared decision, such as the decision to attend Oak Hammock, even if after the fact the father is unhappy with that choice because of the distance from his home to the school and the school bus will not run to his house.

However, even if there were a complete failure of these parents to make any shared parenting decisions since 1998, that might be a reason to change the parental responsibility order, but it is not a reason to change the time-sharing schedule. It seems the father has confused these two questions, that is, the parental responsibility order and the time-sharing order.

These orders are two separate and distinct orders dealing with two separate and distinct questions, that is, how parenting decisions will be made by the separated parents and where the child will be day to day during the year. Many parents and many courts confuse these two questions, so the father's confusion, if any, is understandable. Some reported decisions use the term "shared parenting" when referring to the time-sharing schedule, which is not helpful. "Shared parenting" is not a description of a time-sharing schedule. It is one of the alternatives for parental decision making.

Since 1982, Florida law has separated the child's time-sharing schedule from parental responsibility. *Session Law* 82-96 effective July 1, 1982. The time-sharing schedule is the order that details where the child will be living from day to day during the year. The parental responsibility order directs how parenting decisions will be made by the separated parents. Parental responsibility, whether shared or sole, has nothing to do with where the child will be living during the year. *See, e.g.*, F.S. §61.046(17) & (18) (2009):

"(17) "Shared parental responsibility" means a court-ordered relationship in which both

> parents retain full parental rights and responsibilities with respect to their child and in which *both parents confer with each other so that major decisions affecting the welfare of the child will be determined jointly.*
>
> (18) "Sole parental responsibility" means a court-ordered relationship in which *one parent makes decisions regarding the minor child*." (*Emphasis supplied.*)

So, "parental responsibility" is concerned with how parenting decisions will be made after parents separate. The parental responsibility order is not concerned with where the child will be living during the calendar year. Again, "shared parenting" is not a description of the time-sharing schedule; it is one of the alternatives for parental decision making.

The order detailing where the child will be living from day to day is now called the "time-sharing order." Formerly, the "time-sharing order" was the order that named a "custodial parent" or "primary residential parent", which meant "the parent with whom the child maintains his or her primary residence." F.S. §61.046(3)(2004). However, on October 1, 2008 the terms "custody", "visitation", "custodial parent", and "primary residential parent" were deleted from all Florida statutes dealing with separated parents. *Session Law* 2000-61 effective 10/1/2008. Before that change in the statutes, the terms "custody and visitation" were generally used to describe the time-sharing order, but those terms are now obsolete. "Primary parent," "custodial parent", "noncustodial parent" or "primary residential parent" are also now meaningless terms under Florida law.

F.S. §61.13(2)(b)(2009) now requires the court to order a "parenting plan" that includes a "time-sharing schedule" and a "designation of who will be responsible for" parenting decisions. Therefore, since 1982 and under the current statute the "time-sharing" order and the "parental responsibility" order must be two, separate orders because they deal with two, separate and distinct questions: (1) how will parenting decisions be made and (2) where will the child be living day to day during the year.

Regarding the parental responsibility order, under §61.13(2) the court has three alternatives: (1) the parents must share parental responsibility for all decisions; or (2) the parents must share parental responsibility and one parent or the other may have ultimate responsibility over some or all aspects of the child's life, *see, e.g.,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); or (3) one parent may have sole parental responsibility over all parenting decisions. Those are the only three alternatives under Florida law for allocating parental responsibility between the parents after the parents separate.

Further, §61.13(2)(c)2, requires the court to order the first alternative, shared parental responsibility, unless that would be detrimental to the child. Due process requires that a party must plead specifically for sole parental responsibility, if that is sought, and the petition must also allege ultimate facts that demonstrate detriment to the child. Therefore, sole parental responsibility can be ordered only if a party pleads and proves that a shared parenting order would be detrimental to

the child. *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). Of course, a party may plead alternatively for all three alternatives allowed by law. Rules 12.110 and 1.110(b)

Allegations and proof that the parents do not confer together and share parenting decisions is a detriment to the child sufficient for a sole parental responsibility order. *See, e.g., Roski v. Roski*, 730 So.2d 413 (Fla. 2d DCA 1999). An inability of the parents to make shared decisions is a detriment to the child because someone must have parental responsibility, that is, the authority to make a parenting decision after the parents separate. If shared parenting is ordered but in fact the parents cannot share parenting and make joint decisions together so that they are each equal participants, then no parenting decision at all can be made and that is not in the child's best interest. Parenting decisions must be made constantly. So, in a case in which the parents cannot share parenting decisions, sole parental responsibility or shared parental responsibility with ultimate responsibility to one parent or the other must be ordered so that one of them, at least, has the authority to make a parenting decision.

However, neither supplemental petition in this case mentions the parental responsibility order and neither requests a change to that order. Neither party requested this at trial either. So, the court has no authority to modify the parental responsibility order.

A failure to share parenting decisions, if it were proven, is also not a sufficient reason to change a time-sharing order, especially when the evidence does not show the existing schedule poses any difficulties for the child.

(2) The mother interferes with the father's time with the child and his "ability to effectively parent the minor child."

This allegation was not proven. There was no substantial, competent evidence that the mother has interfered with the time-sharing schedule or that the mother has somehow affected the father's ability to be a parent to the child.

The father's complaint, over and over, was that the mother has not agreed to change the time-sharing schedule to increase the child's time with the father. However, this is not evidence of a substantial change in circumstances or the best interest of the child. This is only evidence of the father's consistent complaint that he desires more time during the year with the child and that he expects the mother to agree to this. However, a separated parent has no legal obligation to change a time-sharing schedule. The father has no legal obligation to change it and neither does the mother.

(3) The mother refuses to allow the father "additional time with the minor child despite representations by the [mother] that the child has requested that she be allowed to spend more time with her [f]ather."

Yes, this is true. The mother does not agree to change the time-sharing schedule to increase the father's days with the child during the year, and she has asked the father to pay more attention to the child while she is with him. She has told him that the child is feeling left out and abandoned

at his house. The mother does not agree that the solution to the problem is to increase the father's days with the child. She believes the solution is for the father to improve his relationship with his daughter. She believes it would not be in the child's best interest to change the schedule, because under the present schedule, especially the "week to week" summer schedule, the child's own interests and activities are interrupted and she is sometimes prevented from spending time with her peers and pursuing her own interests, which naturally revolve around the mother's house because the child spends more time there and begins and ends most of her school days there. The mother believes that increasing the child's days at the father's house, which is removed from the activities, friends and interests that the child enjoys, would detract from her relationship with the father, not improve it. The mother is on to something here but the father does not hear it. He feels his daughter pulling away from him, a natural development at her age, but, true to his pattern, he blames the mother for this and he believes that more days at his house is the solution.

The father also argued that the mother is not "flexible," and if she were "flexible" she would agree to increase the child's time with him. While a parent should be flexible when dealing with the time-sharing schedule, that term will not stretch so far that it requires a court to modify a time-sharing schedule to accommodate the father's wish for more time with the child. Further, that terms works both ways. There is substantial, competent evidence that the father has been inflexible in adjustments to the schedule, as well as evidence that the mother has been inflexible. In fact, the court finds, in general, the father is more inflexible and indifferent to the child's interests than is the mother, when it comes to accommodating the child's schedule and her interests and activities.

(4) The mother "acts upon her own needs and desires in direct contravention of Fla. Stat. §61.13(3)(c)".

This allegation was not proven. On the contrary, just the opposite was established, that the father sees the child's best interest entirely in terms of what he wants. He wants the child to spend more days with him during the year, which he says is in the child's best interest.

So, the father's "expressed desire" is for the child to be with him more. The court "may consider the expressed desires of the parents,"§61.13(2)(c)2.,a., when deciding on the parental responsibility order, but a parent's desire for more time with a child is not a factor for the court to consider in deciding the child's best interest in a time-sharing schedule under §61.13(3)(a) - (t). That statute lists factors that the court must consider when deciding on a time-sharing schedule or a change to a time-sharing schedule. A parent's desire for more time with the child is not one of those factors. Again, the parental responsibility order and the time-sharing order are two separate concepts under the statute, with different considerations for each.

Every claim for relief in a petition must allege ultimate facts demonstrating a right to the relief requested. Rule 1.110(b). The statute, §61.13(3), and the case law, *e.g.*, *Ogilvie*, *supra*, require that a supplemental petition must allege a substantial change in circumstances, unless that standard has been changed by the agreement of the parties, and must also allege that the best interest of the child require a change in a time-sharing schedule. Here, the father's petition does not allege ultimate facts showing that a change in the time-sharing schedule is in the child's best

interest.

Even if the father's petition had alleged ultimate facts showing that the best interest of the child require a change in the time-sharing schedule, his evidence did not establish any such facts. His only evidence and argument regarding the child's best interest was that spending more time with him is in the child's best interest, which is a circular argument at best.

(5) The mother refused to share health related information with the father "in direct contravention of Fla. Stat. §61.13(3)(j)."

There was some evidence to support this allegation. The mother on occasions has failed to tell the father everything concerning the child's medical history. There was also evidence that the father is often unresponsive to the mother's efforts to communicate with him, that he ignores her telephone calls, and there was evidence that he has on occasions made conversations with her unpleasant and hostile, which discourages much communication.

However, again, a failure to share information might be a basis to change the parental responsibility order, but the relevance of this failure to a request to modify the time-sharing order is not apparent. Here, the evidence shows the time-sharing schedule operates fairly well and the child is doing well, and the father's petition does not ask for a modification of the parental responsibility order.

Further, there is no prior order in the Final Judgment or anywhere else that requires the mother to provide the father with medical information. A mediated agreement in this file mentions exchanging "report cards" but not medical information or records. Certainly, it would be appropriate for the parties to do this, but there is no clear prior order requiring this. Absent an agreement of the parties, the court has no authority to order this under Chapter 61. There is no provision in Chapter 61 that requires or authorizes the court to order parents to provide each other with information about the child that they obtain from third parties or to sign releases for third parties to provide information to the other parent.

On the contrary, §61.13(2)(b)3. provides that the parents each have equal access to information from third parties concerning their child. So, if the father wants information concerning the child from third parties, he can obtain the information himself directly from the third party.

Finally, the statute cited, §61.13(3)(j), is one of the factors the court must consider in fashioning a parenting plan and a time-sharing schedule. It does not require either parent to provide the other with information. It does not require or authorize the court to order the parents to do this. Rather, it requires the trial judge to take into consideration the "demonstrated knowledge, capacity, and disposition of each parent to be informed of the circumstances of the minor child, including, but no limited to, the child's friends, teachers, medical care providers, daily activities and favorite things."

Ironically, this factor touches on the very complaint that the mother has with the father's parenting of their child, that he is not sufficiently involved in the child's life to know these details about her, a complaint that the father interprets as meaning the child should be at his house for

more days during the year, a complaint that leads him to blame the mother for failing to fill him in on all of these details.

(6) The amendments to §61.13 effective 10/1/2008 "provide [the father] with additional timesharing which the [mother] refuses to allow."

This allegation is not a correct statement of the law. The amendments effective 10/1/2008 do not result in any particular time-sharing schedule being favored over any other. On the contrary, every case is unique, every child is unique and every time-sharing schedule must be unique and tailor-made to the circumstances of each family after considering the factors in §61.13(3)(a) - (t).

Petitions should not plead law at all, only ultimate facts demonstrating relief that is allowed by law, *see* Rule 1.110(b), but this statement of the law in the father's petition is not accurate. In fairness to the father, it seems that a notion prevails in many quarters that after the 10/1/2008 amendments to §61.13 a "presumption" was created that requires a "50/50 time-sharing" schedule unless there is some very good reason to vary from an "equal" time-sharing schedule. *Hahn v. Hahn*, ___ So.3d ___ (Fla. 4th DCA 2010).

However, as the appellate court held in *Hahn*, those amendments did not create any such assumption, much less a presumption, or favoring of some particular time-sharing schedule. Rather, in every case, "the trial court must still 'determine *all* matters relating to parenting and time-sharing of each minor child of the parties in accordance with *the best interests of the child* [.]'" (*Emphasis in original.*)

(7) The mother shares information related to this case with the child.

There is no substantial, competent evidence supporting this allegation.

Those are the father's allegations of a substantial change. The allegations are not proven. His petition did not allege and his proof do not show that putting the child with him for more time during the year is in the child's best interest. Therefore, his petition must be denied on procedural grounds for this reason alone. It fails to allege ultimate facts showing that a change in the time-sharing schedule is in the child's best interest. *See, e.g., Clark v Clark*, ___ So.3d ___ (Fla. 5th DCA 2010), in which the appellate court cited *Bon v. Rivera,* 10 So.3d 193 (Fla. 4th DCA 2009): "In the absence of a properly pled modification petition, it is error to enter a modification order." At the beginning of the trial, the mother raised the failure of the father's petition to plead the best interests of the child and she moved for directed verdict at the close of the father's case. Nevertheless, the court heard the evidence on the father's allegations.

Long term counseling, one on one and as a family, might help these parents learn how to work together for the benefit of their daughter, but the court has no authority to order such counseling and the court does not do so now.

The evidence demonstrates that the child is doing well, that her grades are good, that she has had some difficulty adjusting to the parents' dysfunction, but in general she is a happy and

well-adjusted child. Both parents are fit, loving parents who cannot consistently carry out the shared parental responsibility order, but they are doing a fairly good job with the time-sharing schedule.

Therefore, on this record, the father's supplemental petition for a change in the time-sharing schedule is denied.

3. Mother's supplemental petition regarding child support is granted There is a substantial change in circumstances regarding the child support so the mother's petition to modify the child support is granted. This is also in the child's best interest. The last child support order dated 1/8/2002 required of $559 per month from the father to the mother. A current calculation shows the father's obligation is $850 per month, which is a substantial change in circumstances because the parties' incomes have changed since 2002.

3.1 Child support calculation The court's child support calculation is attached as Exhibit A. The child support calculation is based upon (1) $2,348 gross income per month for the mother; (2) $5,432 gross income per month for the father; (3) with the father paying $130 for his health insurance per month; (4) the mother paying $0 for her health insurance per month; (5) the child's health insurance costing $120 per month and (6) being paid by the mother; (7) the parent with whom the child resides most of the time having an employment day care expense of $75; and (8) the parent with whom the child lives most of the time under the time sharing schedule ordered qualifying for Head of Household status with the I.R.S. and the dependent's exemption for the child and qualifying for the Earned Income Tax Credit, all of which the court hereby finds and orders.

3.2 Calculation of father's overnights per year.

	# overnights per yr.
(1) 3 overnights every other weekend, Friday to Monday, 3 x 26 =	78.00
(2) 1 overnight every other week, "extra day" =	26.00
(3) Alternate weeks in the summer = 4 weeks	28.00
(4) Half of the Xmas break	8.00
(5) 7 days of spring break, alternating, 1/2 with father =	3.50
(6) 1 day of Thanksgiving alternating year to year, but no overnight	0.00
(7) Less duplications:	
(A) Four weeks in summer, mother and father	
4 weekends = 8 + 1.5 for possible 3d weekend each summer	(10.50)

(B) Four weeks in summer, 2 “extra day” Tuesday nights	(2.00)
(C) 16 days of Xmas break, weekends balance out per the parties	
But Tuesday night 1 “extra” night is canceled	(1.00)
(D) Alternating spring break, 1 weekend + 1 “extra night” = 4/ 2 =	(2.00)
(E) Alternating Thanksgiving, no “extra night”	0.00
Total days per year with father:	128.00
Percentage of days each year with father:	35.07%

3.3 Dependent’s exemption order

(1) Regarding the dependent’s exemption, at this time the court finds that under the attached time-sharing schedule the child resides with the Mother for 237 days out of the year and with the Father 128 days out of the year, so the child is with the Mother most of the days out of each calendar year.

(2) Therefore, under the Internal Revenue Code, the court orders the Mother is entitled to the dependent’s exemption for the child on the federal income tax return.

(3) The court orders that for any calendar year after this date, the parent or other person with whom the child stayed at least 183 days out of the calendar year is the parent or person who is entitled to the dependent’s exemption for the child on the federal income tax return for that year, regardless of what any time-sharing order in this case may say about where the child is ordered to live.

(4) Of course, for any calendar year, the parent or person entitled to the exemption under this order may sign and deliver to the other parent the required I.R.S. form to allow the other parent to claim the exemption. In other words, as allowed by the Internal Revenue Code, the parent or person entitled to the exemption may allow the other parent to claim it if that is what they agree to do for any calendar year. However, if there is no such I.R.S. form signed and delivered by the parent or person entitled to the exemption under this order for any calendar year then the parent or other person with whom the child stayed at least 183 days out of the calendar year is the parent or person who is entitled to the dependent’s exemption for the child on the federal income tax return for that year, as ordered above.

3.4 Monthly current child support amount Therefore, as shown on Exhibit A attached, the monthly amount of the current child support due from the Father to the Mother is $850, plus a collection fee of $5.25 or 4% with each payment but not less than $1.25, whichever is less.

3.5 Deviation considered The court has considered whether any circumstances exist to

support a deviation from a guideline calculation. There are no circumstances justifying a deviation from a guideline calculation.

3.6 Child support must be paid in all events F.S. §61.13(4)(b) provides: "When [the parent with whom the child lives most of the time] refuses to honor [the child's right of contact with the other parent] the [parent owing child support] shall not fail to pay any ordered child support..." This is the law because the child has a right to be supported by both parents all of the time.

3.7 Modification during time-sharing considered It is now ordered that child support shall not be modified during any period of contact with the Father, who is the parent with whom the child resides the least amount of time during the year.

3.8 Retroactive child Pursuant to §61.30(17) the court finds this is not an initial determination of child support and that the child support ordered here was payable on the first day of the calendar month following the filing date of the mother's supplemental petition. Her petition was filed on 3/12/2010 so the child support ordered here was due beginning 4/1/2010.

3.9 Arrearage Order The total amount of the arrearage will be reflected on the depository case history after this order is entered and that history is updated accordingly.

3.10 Current Support and Arrearage Amount Per Month **Therefore, the Father shall pay to the Mother the total of: (1) current child support per month, $850;(2) an arrearage payment per month, $50; and (3) collection fee of $5.25 or 4% with each payment but not less than $1.25, whichever is less, if required by law**. All payments shall be paid to the Department of Revenue in Tallahassee, as provided below. The court hereby reserves jurisdiction to modify the interval for which support is payable to weekly, biweekly, bimonthly or any other interval at any time hereafter upon motion by either party or the court's own motion.

3.11 First Payment Due Date The first payment of child support is due 4/1/2010 and on a like day of each month thereafter. The court orders that the first day of each month beginning 4/1/2010 is the assessment date for the purposes of the depository case history.

3.12 Termination of child support; schedule of the amount of child support Assuming that no supplemental petition alleging a substantial change in circumstances is filed and taken to trial after this date or that no agreement between the parties is reached modifying the child support after this date, the child support ordered here shall terminate on the 18th birthday of the child, so the last support payment under this order is due on 6/30/2015, subject to proceedings under §743.07(2), as provided below.

The court makes no finding that §743.07(2) applies in this case because there was no competent, substantial evidence in the record that this statute will apply to this child as the child

turns 18 years old and there is no agreement between the parties that it will apply. This finding is without prejudice to either party to have the court determine whether this statute does apply at any time hereafter by a motion. Therefore, the court reserves jurisdiction over this child support order in order to determine whether this statute applies to the child.

3.13 Income Deduction Order As required by §61.1301, Fla. Stat., a separate Income Deduction Order shall issue directing the payor's current employer and any future employer of the payor to deduct the child support due under this order from any income due to the payor and forward it the depository, the "Florida Support Disbursement Unit", as required by said statute, as amended from time to time hereafter. The form of the income deduction order shall be prepared by the payee or the payee's counsel and sent to the undersigned judge for signing and filing. Serving the IDO on any employer is the responsibility of the payee. The payor must also give a copy of the IDO to his employer

3.14 Place of Payment Child support shall be paid by check or money order payable to and sent to the "Florida Support Disbursement Unit", P.O. Box 8500, Tallahassee, FL 32314-8500. The payor must write on each check (1) the case number of this case and also the words (2) "Lee County case".

3.15 Addresses and Social Security numbers As required by §61.13(8)(a), F.S., within 30 days of this order both parties are ordered to write to the "State Case Registry", P.O. Box 8500, Tallahassee, FL 32314-8500 and advise that agency of this Case Number in Lee County, Florida, and their current names, addresses, social security numbers, telephone numbers, driver's license numbers, and their employer's name, address, and telephone number, as these presently exist and as they change in the future. A copy of any letter with that information sent to the "State Case Registry" must also be delivered or mailed to the Clerk of the Court, Lee County, Florida, 1700 Monroe Street, Fort Myers, FL 33901.

3.16 . Health Insurance

(A) Health Insurance The court finds the health insurance the Mother has on the child is reasonable and affordable to the parties. This coverage shall not be canceled and shall be maintained on the child as long as possible or until the parties agree otherwise. The Mother shall promptly provide the Father with cards or other proof of the coverage when these are made available by the insurer and when requested by the Father or any medical provider of the child.

(B) Uncovered Medical Bills The parties shall be responsible for any uncovered reasonable and necessary medical bills of the child incurred since the separation date in an amount equal to the ratio of their available incomes reflected on Exhibit "A" attached. *Forrest v. Ran*, 821 So.2d 1163 (Fla. 3d DCA 2002); *Morrow v. Frommer*, 913 So.2d 1195 (Fla. 4th DCA 2005); *Salazar v. Salazar*, 976 So.2d 1155 (Fla. 4th DCA 2008). The ratio of their available incomes is: **Mother 50% and Father 50%**. "Medical bills" includes counseling, psychological, psychiatric,

orthodontic, dental, optical, prescription, physician, hospital and other medical expenses. If either parent pays for any such treatment or bill, they shall be reimbursed for any amount paid beyond their share of it by the other parent. They shall be reimbursed only for treatments that are reasonable and necessary.

(C) Prompt Request and Prompt Payment If either parent incurs or has incurred a medical bill on the child, he or she shall send a copy of it to the other parent with a cover note asking for payment of the other parent's share of the bill. He or she must keep a copy of the bill and the note asking for payment. Upon receipt of such correspondence, the parent receiving it shall promptly reimburse his or her share of the bill to the other parent, or he or she shall promptly send a written objection or explanation to the other parent explaining why the payment is not being made.

(D) Record Keeping During the minority of the child, each parent must maintain a chronological, serial list of all uncovered medical bills they incur until the child is 18, if he or she expects to be reimbursed for such medical bills, along with copies of each bill on the list, which bill copies shall be attached to the list with a staple in the same order as the items on the list. The list of bills shall be in chronological order and must be serially numbered on the list, that is, "1", "2", "3", and so on until the child is 18. The same number must be written on each copy of the bills attached to the list so that each copy of an attached bill matches the correct item on the list.

Each item on the list shall (1) state the name of the medical provider, (2) the date the treatment happened, (3) what the bill was for, (4) the amount of the bill, and (5) whether it has been paid in full or in part.

The parents shall reimburse the other only by check or money order and shall keep all cancelled checks or money order receipts.

(E) Enforcement; Mediation If either parent hereafter seeks enforcement of this order for reimbursement, they shall first seek mediation with a mediator provided by court administration. They shall bring three copies of the list and each numbered bill for which they seek reimbursement to the mediation for use in the mediation. If mediation is unsuccessful and either parent thereafter files a motion to enforce reimbursement of medical bills on the child, he or she must bring three copies of list and each numbered bill for which they seek reimbursement to the hearing on the motion. The parent claiming payment for a disputed item must bring three copies of his or her proof of payment, such as cancelled checks, money order receipts, or receipts from insurance companies for payments, to mediation and any hearing.

Done and ordered in Fort Myers, Lee County, Florida, this _____

R. Thomas Corbin, Circuit Judge

Copies provided to:
, Esq., and , Esq.