

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

**XXX,**  
**Petitioner & father,**

**vs.**

**Case No. 0 DR 0 N**

**YYY,**  
**Respondent & mother,**

**FINAL JUDGMENT OF PATERNITY**

This matter having come before the court at trial on DDD, it is ordered:

1. Jurisdiction The court has jurisdiction of this matter and the parties. The child has resided in Lee County Florida for more than six months before the date of the filing of the petition.
2. Child of the Parties; Paternity Established The parties have one minor child: ZZZ., born DDD. The parties agreed that XXX. is the biological father of this child. Therefore, the court finds and orders that XXX. is the biological father of ZZZ., born DDD.
3. Parenting plan, parental responsibility order, and time-sharing schedule
  - 3.1 Jurisdiction The parties' child is ZZZ. born DDD. This court has subject matter jurisdiction and personal jurisdiction over the parties and the child. This court has jurisdiction over all parenting issues under the Uniform Child Custody Jurisdiction and Enforcement Act, the International Child Abduction Remedies Act, 42 U.S.C. ss. 11601 et seq., the Parental Kidnaping Prevention Act, and the Convention on the Civil Aspects of International Child Abduction enacted at the Hague on October 25, 1980. Under Florida law, an order for a parenting plan, parental responsibility order, and a time-sharing schedule is a "custody" order under those laws. Florida law does not use the terms "custody", "visitation", or "primary residential parent" in a proceeding between separated parents. Those terms have no meaning under Florida law in a case between separated parents.
  - 3.2 Father's petition granted; mother's counter petition denied The court hereby incorporates the findings in the "Order Finding Facts" this date. The court finds the father's petition has merit. Therefore, it is granted. The court finds the mother's counter petition does not have merit. Therefore, it is denied. In denying the mother's counter petition the court has considered the factors in §61.13001(7) and §61.13(3).

3.3 Legal duty of both parents Both parents have a legal duty to promote the other parent to the child, and the child has a right to regular and frequent contact with both parents:

"It is the public policy of this state to assure that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parties is dissolved and to encourage parents to share the rights and responsibilities, and joys, of childrearing." §61.13(2)(b)

Both parents are ordered to "go the extra mile" with the other parent and make an extra effort to promote the other parent to the child. Both parents must work to solve any parenting difficulties that may arise. The Supreme Court of Florida has explained that both parents have an

"...affirmative obligation to encourage and nurture the relationship between the child and the [other] parent... This duty is owed to both the [other] parent and the child. This obligation may be met by encouraging the child to interact with the [other] parent, taking good faith measures to insure that the child visit and otherwise have frequent and continuing contact with the [other] parent and refraining from doing anything likely to undermine the relationship naturally fostered by such interaction." *Schutz v Schutz*, 581 So. 2d 1290 (Fla. 1991).

Florida law also provides:

"When a parent who is ordered to pay child support ... fails to pay child support ... , the parent who should have received the child support ... may not refuse to honor the time-sharing schedule presently in effect between the parents." §61.13(4)(a)

"When a parent refuses to honor the other parent's rights under the time-sharing schedule, the parent whose time-sharing rights were violated shall continue to pay any ordered child support ..." §61.13(4)(b).

The point is that the child has a right of contact with both parents and a failure to pay child support does not take away the child's right of contact with both parents. Likewise, child support must be paid regularly and on time even if the parent owing child support is not in contact with the child because the child has a right to be supported by both parents all of the time.

3.4 All factors considered In deciding a parental responsibility order, a parenting plan and a time-sharing schedule, the court must make the child's best interest the "primary consideration" and the court must consider all of the factors in §61.13(3). The court must also consider the "expressed desires" of the parents in these decisions, but the interests of the parents are not a

consideration, §61.13(2)(c)2.,a. The parents do not have a right to any particular parental responsibility order, parenting plan, or time-sharing schedule, while the child has a right to “frequent and continuing contact with both parents after the parents separate.” §61.13(2)(c)1. The court has reviewed and considered all of those factors in making a decision about the parenting plan, the parental responsibility order, and the time-sharing schedule. The court declines to make findings under each of the factors because the court finds this would not be in the child’s best interest.

The court incorporates here the findings in the “Order Finding Facts” entered this date.

3.5 The parental responsibility order is separate from the time-sharing order Since 1982, Florida law has separated the child’s time-sharing schedule, that is, the calendar schedule detailing where the child will be living from time to time during the year, from “parental responsibility.” *Session Law 82-96* effective July 1, 1982. “Parental responsibility” means parenting decision-making. *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, and “shared parental responsibility” does not mean “a time-sharing schedule in which each parent has equal time with the child” because parental responsibility is concerned only with decision making. The parental responsibility order is not concerned with where the child will be living from day to day during the calendar year.

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.

Regarding the parental responsibility order under §61.13(2) the court can order (1) the parents must share parental responsibility for all decisions; or (2) the parents must share parental responsibility and one parent 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. 4<sup>th</sup> DCA 2007); *Hancock v Hancock*, 915 So.2d 1277 (Fla. 4<sup>th</sup> DCA 2005); *Schneider v. Schneider*, 864 So.2d 1193 (Fla. 4<sup>th</sup> DCA 2004); or (3) one parent may have sole parental responsibility over all parenting decisions. Those are the only three options 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 shared parental responsibility unless that would be detrimental to the child. So, sole parental responsibility can be ordered only if it is pled and proven 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).

3.6 Parental responsibility; detriment The law requires the court to “order that the parental responsibility for a minor child be shared by both parents unless the court finds that shared parental responsibility would be detrimental to the child.” F.S. §61.13(2)(c)2.

The law defines "shared parental responsibility" as:

*"...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."* §61.046(17). (*Emphasis supplied.*)

Many petitions ask for “shared parenting” or, more properly, “shared parental responsibility.” However, “to share” means “to confer ... so that major decisions ... will be determined jointly.” This means that each parent has an equal say in major decisions concerning the child if “shared parenting” is ordered. So, if the parents have a disagreement on a major decision, it is not for the court to say who is right or who is wrong if each has a reason to support their decision that is acceptable to a reasonable person. Put another way, a decision is not arbitrary if it is “fairly debatable.” *See, e.g., Island, Inc., v. City of Bradenton Beach*, 884 So.2d 107 (Fla. 2d DCA 2004) and *Martin County v. Section 28 Partnership, Ltd.*, 772 So.2d 616 (Fla. 4<sup>th</sup> DCA 2000). In such a situation, nothing happens, so long as a risk to the child’s life, health, or safety is not at stake. It is not for the court to decide the winner of the debate, only to find that there is a debate with reason on both sides. The court cannot substitute its judgment for the rationally based decision of either parent because this is a proceeding under Chapter 61, not Chapter 39, and the child has two competent parents. The judge in a Chapter 39 case is a “super parent” empowered to make parenting decisions when there is no competent parent. *See, e.g., §39.407(2)(a)2*. The judge in a Chapter 61 case has no such authority. Further, the goal of every litigation is to end the

dispute, and in a Chapter 61 proceeding the court does not end the dispute if it is open to endlessly hear and overrule one parent or the other whenever they do not agree on decisions they were ordered to “share.”

A parent seeking sole parental responsibility over some aspect or all aspects of the child’s life must plead for this in a petition. In this case, both parents’s petitions plead for shared parental responsibility and sole parental responsibility in the alternative. Due process of law prevents the court from ordering something that neither party asked for in a petition. *See, e.g., McDonald v. McDonald*, 732 So.2d 505 (Fla. 4<sup>th</sup> DCA 1999).

A finding that the parents are unable to confer together and share parenting decisions is a detriment to the child sufficient for a sole parental responsibility order to one parent, *see, e.g., Roski v. Roski*, 730 So.2d 413 (Fla. 2d DCA 1999). **This record demonstrates that these parents have not conferred with each other, shared and agreed upon very basic decisions regarding their child, for instance, medical and school questions.**

Regarding a shared parental responsibility order, §61.13(2)(c)2., a. provides:

“In ordering shared parental responsibility, the court may consider the expressed desires of the parents and *may grant to one party the ultimate responsibility over specific aspects of the child’s welfare or may divide those responsibilities between the parties based on the best interests of the child.* Areas of responsibility may include education, health care, and any other responsibilities that the court finds unique to a particular family.” (*Emphasis supplied.*)

So, when the parties plead for shared parental responsibility, or, at least, fail to properly plead for sole parental responsibility, the court must order the parties to share parental responsibility and as part of the shared parental responsibility order the court may grant ultimate responsibility to one parent or the other over some or all aspects of the child’s life.

**In this particular family, from the evidence presented the court finds:** (1) the parents do not consistently confer and consult together about major parenting decisions, for example, health insurance for Z., which the mother wants to purchase through her work and the father is purchasing, or, for example, whether the child needs shoe inserts; (2) the parents do communicate somewhat concerning their child but not consistently; (3) the parties have not demonstrated a capacity to share parental responsibility, although before DDD the mother kept the father informed and he was involved with Z. since she was born and since DDD the father has informed the mother and the mother has been involved in the child’s life; (4) this record demonstrates that these parents have not shared parental responsibility; (5) an unlimited shared parental responsibility order would be detrimental to the child because such an order would require these parents to confer with each other over all major parenting decisions but these parents would argue and bicker in these consultations, which would be detrimental to the child; (6) because of the hostility and

low level of communication between these parents, one parent or the other would simply take action and make major decisions concerning the child while the child was with one parent or the other, especially about medical decisions and school decisions, without consulting with the other parent, which would mean that parent violated a shared parental responsibility order if one were entered and would lead to more disputes, arguing and litigation between these parents; and (7) ordering these parents to share parental responsibility without granting one of them sole responsibility when they have demonstrated they are incapable of sharing parental responsibility is not in the child's best interest because at least one parent needs the authority to make parenting decisions and these parents cannot make parenting decisions together.

**Therefore, pursuant to §61.13(2)(c)2. the court hereby orders that the Father has sole and exclusive authority to make parenting decisions concerning the child's education, pre-schools, schools, school choice, medical needs, dental, optical, orthodontic treatments, participation in sports, extracurricular activities, curfews, driving, obtaining a driver's license, dating, and all other aspects of parenting. The Father may consult with the Mother but the decision in any parenting issue belongs to the Father. The court has considered all of the factors in §61.13(3) in making this parental responsibility order. The court finds that this sole parental responsibility order is in the child's best interest.**

The Mother is hereby granted authority to authorize emergency medical treatment on the child when the child are with the Mother but the Mother must promptly notify the Father of the emergency and then the Father has the authority to make a decision about non-emergency medical treatment.

3.7 Both parents have equal parental rights to information - Access to records and information pertaining to a minor child, including, but not limited to, medical, dental, and school records, may not be denied to either parent. Either parent has the same rights upon request as to form, substance, and manner of access as are available to the other parent of a child, including, without limitation, the right to in-person communication with medical, dental, and education providers. §61.13(2)(b)3. **However, this is not a final order of equal access to records and information and the court hereby reserves jurisdiction over this right of access order.**

3.8 Time-sharing schedule: jurisdiction

After considering all of the factors in §61.13(3) **the court finds the child's best interests are served by having the child live most of the days during the year with the Father according to the time-sharing schedule attached to this judgment.** The court declines to make findings under all of the factors in the statute because these findings would not be in the child's best interest. The court incorporates here the Order Finding Facts entered this date.

The court also notes that the law requires the court to give little weight to the temporary time-sharing arrangement after the parents separate and until trial. When the parents separate, a child has a time-sharing schedule by formal or informal agreement, a temporary order, or acquiescence. The temporary time-sharing arrangement does not determine what is in the child's

best interest over the long term. The court must decide the best interest of the child over the long term. **The time-sharing plan now ordered by the court is attached. The court finds this time-sharing schedule is in the child's best interests.**

The court finds that the foregoing parenting plan and time-sharing schedule are in the child's best interests after considering all of the factors in §61.13(3). The court orders that the parents shall follow this plan and time-sharing schedule.

### 3.9 Parenting plan

After considering all of the factors in §61.13(3) **the court finds the child's best interests are served by ordering the parenting plan, parental responsibility order, and time-sharing order now ordered in this judgment.**

## 4. Child support findings and child support order

4.1 Child support calculation; dependent's exemption The court's child support calculation is attached as Exhibit A. The child support calculation is based upon \$X per month gross income for the mother, \$X gross income per month for the father, with the father paying \$X for his health insurance, the mother paying \$X for her health insurance, the child's health insurance costing \$X and being paid by the father, the parent with whom the child resides most of the time having an employment day care expense of \$X, and the father, who is the parent with whom the child lives most of the time under the temporary time sharing schedule and the time sharing schedule now ordered qualifying for Head of Household status with the I.R.S. and the dependent's exemption for the child, all of which the court hereby finds and orders.

Regarding the dependent's exemption, at this time the court finds that under the time-sharing schedule ordered below the child resides with the father for most of the days out of the year and with the Mother the balance of the year. So, under the Internal Revenue Code, the court orders the Father is entitled to the dependent's exemption for the child on the federal income tax return. 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. 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.

4.2 **Therefore, the monthly amount of child support due from the Mother to the Father**

**is \$X, plus a collection fee of \$X or 4% with each payment but not less than \$1.25, whichever is less.** The court finds the low guideline amount, \$X, is appropriate in this case because the mother's available income after payment of support is less than half of the father's.

4.3 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.

4.4 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.

4.5 It is now ordered that child support shall not be modified during any period of contact with the Mother, who is the parent with whom the child resides the least amount of time during the year.

4.6 The court finds that child support is owed since the filing of the petition. Therefore, child support was payable from the filing of the petition.

4.7 Arrearage Order The court finds there is no arrearage in child support owed by the father to the mother for the period from DDD to DDD. The court finds the father paid the mother's grandmother \$X in 2005 and 1/2006, to reimburse her for unpaid hospital and doctor bills attendant to ZZ.'s birth and for support of the mother and the child. The father paid the mother \$X in 2006, \$X in 2007 and \$X in 2008. The court finds the child was living with the father for 50% of the time beginning in 6/2007 and that he appropriately reduced the support he was paying to the mother in 7/2007. Given the time periods that the mother was unemployed, which the court has considered, and the fluctuations in the father's income, the court finds he paid all of the child support that he owed.

The court finds there is an arrearage in the child support owed by the mother, from DDD to DDD, or 10 months. The court allows that the mother needed some months, from 9/2008 to 2/2009 to establish her recovery and that during these months her effective income was zero, although she did work some of that time as a waitress. After 2/2009 and until 9/2009 the mother found part time work as a nurse, despite making her best effort to find a full time job. She found full time work in 9/2009. The court does not have competent, substantial evidence sufficient to impute income to the mother before 9/1/2009 or to calculate child support month to month before that date.

So, the mother owes an arrearage of \$X. (10 months X \$X a month less \$X) **The clerk is ordered to enter an arrearage in the depository case history in the amount of \$X as of 6/30/2010, which is the amount of the child support arrearage that the mother owes the father as of that date.**

4.8 Current Support and Arrearage Amount Per Month Therefore, the Mother shall pay to the Father the total of: (1) current child support per month, \$X;(2) an arrearage payment per month, \$X; and (3) collection fee of \$5.25 or 4% with each payment but not less than \$1.25, whichever is less. 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.

4.9 First Payment Due Date The first payment is due July 1, 2010 and on a like day of each month thereafter.

4.10 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

4.11 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) *this case number* and also the words (2) "*Lee County case*".**

4.12 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.

4.13 . Health Insurance

(A) Health Insurance The court finds the health insurance the Father 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 Father shall promptly provide the Mother with cards or other proof of the coverage when these are made available by the insurer and when requested by the Mother 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 trial date in an amount equal to the ratio of their available incomes. *Forrest v. Ran*, 821 So.2d 1163 (Fla. 3d DCA 2002); *Salazar v. Salazar*, 976 So.2d 1155 (Fla. 4<sup>th</sup> DCA 2008). The ratio of their available incomes is: Father 70% and Mother 30%. "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 a “medical bill”, as defined below, on a child, he or she shall send a copy of it to the other parent with a cover note asking for payment of one-half 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 one-half 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.

5. Attorney's Fees, Costs, and Suit Money The court reserves jurisdiction over the issue of attorney's fees, costs, and suit money, both entitlement and amount, for further hearings. Any further hearing on these issues must be preceded by a motion by either party asking for fees, costs or suit money, and a notice of hearing on the motion.

6. Reservation of Jurisdiction The court reserves jurisdiction of this action to enforce this final judgment and for all purposes specifically reserved.

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

R. Thomas Corbin, Circuit Judge

Copies provided to:  
    , Esq.