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

Y. F.,
Former husband,

vs. **Case No. 0 CA 0 N**
A. F.,
Former wife,

ORDER GRANTING FATHER'S MOTION FOR CONTEMPT

This matter having come before the court on the former husband's "Expedited Motion for Contempt" filed 8/23/2010, it is ordered:

1. Findings

The parties have a minor child, A. R. F., born (*Date omitted*). In their marital settlement agreement the parties agreed to shared parental responsibility, which was ordered by the court. The father's motion says the mother violated this shared parental responsibility order.

The child has attended only Hancock Creek Elementary until this year when her mother enrolled her in Gulf Elementary. The mother told the father that she was going to move the child and the father objected to this enrollment at Gulf, but the mother nevertheless enrolled the child over his objection. The mother told the child she would be moving to the new school before the mother ever discussed this with the father, so, as she said, the "child was excited" about the move before the father ever heard of this plan. The mother communicated her request to the father by a text message sent over a cell phone. She did not take the time or effort to discuss and confer with him about this decision face to face or over the telephone. The mother's reasons for enrolling the child at Gulf are not clear, except that for some months she has been living with a man who has two daughters who also attend this same school.

Since about five months ago the mother lives with this man in NW Cape Coral, north of Pine Island. The father lives in NE Cape Coral, also north of Pine Island. Gulf Elementary is in SW Cape Coral. The mother used to live near Santa Barbara and Hancock Bridge Parkway in Cape Coral, just south of Pine Island Road.

There is no competent, substantial evidence that the child can now be reenrolled at Hancock or that this would now be in her best interest.

The mother is a (*Occupation and place omitted.*). The father is a (*Occupation and place omitted.*) The father is current in the child support.

2. Ruling

2.1 . The mother is in willful contempt of court Many martial settlement agreements provide

that the parties agree to "shared parenting" or, more properly, "shared parental responsibility." However, *"to share" means "to confer ... so that major decisions ... will be determined jointly,"* as provided in §61.046(17) and §61.13(2) and as the parties agreed in the marital settlement agreement in this case and as the court ordered in the Final Judgment.

So, if shared parental responsibility is ordered, this means that **each parent has an equal say** in major decisions concerning the child. So, if the parents have a disagreement on a major decision, such as moving the child from Hancock to Gulf Elementary, it is not for the court to say who is right or who is wrong and it is also not for either parent to act unilaterally and make a major decision concerning the child over the objection of the other parent. *In such a situation, nothing happens*, so long as a risk to the child's life, health, or safety is not at stake, and the child stays at Hancock Elementary because there is no "jointly" made decision to move her to a new school.

The mother in this case has no power to make a unilateral decision and move the child from one school to another. Neither does the father. That is a decision that the parents have to make "jointly."

So, the mother willfully violated the court order that requires the parties to share parental responsibility.

Likewise, 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, on the other hand, can become a "super parent" empowered to make parenting decisions if there is no competent parent. *See, e.g.,* §39.407(2)(a)2. The judge in a Chapter 61 case, however, has no such authority. The judge in a Chapter 61 case cannot become a "super parent." So, the court denies the father's request to "pick the school" and send the child back to Hancock Elementary. The court has no power to do that.

Likewise, the mother is not the "super parent" or a parent with sole parental responsibility. She is a parent who can only make "joint" decisions concerning the daughter with the child's father.

The mother told the child she would be moving to the new school before the mother ever discussed this move with the father, so that the "child was excited" about the move before the father ever heard of this plan, which illustrates that the mother had already made up her mind and she was just informing the father of the unilateral decision she has made, a decision she broached with the father by means of a text message, not a face to face conversation or a telephone call.

So, the mother willfully violated the court order, which is contempt for the shared parental responsibility order. She took it on herself to unilaterally make a major parenting decision without conferring with the father and without his equal, joint participation in the decision.

A finding that the parents do not 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), but in this case the parties agreed to shared parental responsibility, so that is what they must do.

Further, the court, when addressing a parent's contempt for court orders, cannot act in a

manner that is not in the child's best interest. *See, e.g., Rahall v Cheaib-Rahall*, 937 So.2d 1223 (Fla. 2d DCA 2006), in which the court said at 1225: "The ... law requires courts to decide child custody issues based solely on the children's best interests and that this consideration must govern even in the face of a party's procedural defaults or contumacious conduct," citing *Barnett v. Barnett,* 718 So.2d 302, 304 (Fla. 2d DCA 1998). Again, the court has no evidence that moving the child back to Hancock Elementary would be in the child's best interest, and, even if the court did have that evidence, the court does not have the power to "pick the school." The court only has the power to enforce the orders in the Final Judgment by contempt proceedings and sanctions allowed by law. "Picking the school" is not a sanction allowed by law. *See, e.g.,* §61.13(4)(c)1. - 7.

2.2 Sanction For her willful violation of the shared parental responsibility order, the court orders that the mother shall:

(1) Pay the attorney's fees of the father for bringing this motion. The court finds $500 is a reasonable fee for bringing the motion. The court finds the mother has the ability to pay $100 a month directly to the father's attorney, beginning 10/1/2010 and on the first day of each month thereafter for five monthly payments.
(2) Perform 40 hours of community service within the next 60 days, that is, before 11/15/2010. She may perform these hours for any nonprofit organization, such as a church, school, or nonprofit civic organization. However, she may not perform these hours for either Lee Memorial System or any of its entities or Gulf Elementary school. She must obtain proof in writing that she has performed these hours from the supervisor of the organization on paperwork that identifies the organization and she must provide that written proof to the father's counsel on or before 11/15/2010.

2.3 Reservation The court reserves jurisdiction to enforce this order according to law.

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

R. Thomas Corbin, Circuit Judge

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