

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

XXX,
Former husband,

vs.
YYY,
Former wife,

Case No. 0 DR N

ORDER AT HEARING ON ORDER TO SHOW CAUSE

This matter having come before the court on DDD on the mother's motion for contempt filed DDD and the court's Order to Show Cause dated DDD, it is ordered:

1. Findings

The parties' child is ZZZ, born DDD. Pursuant to the Final Judgment dated DDD the child lives most of the time with the father. The Final Judgment contains a time-sharing order. This case was tried before the magistrate and the Final Judgment adopts the recommended orders of the magistrate.

The father and the child reside in Lee County, Florida. The mother lives in State. The mother appeared by telephone *pro se*. The father appeared before the court with counsel. The child has not seen his mother since DDD. He last talked to her on the telephone on DDD, over a year ago.

The father could not explain why the child's right to a relationship with both of his parents has not been respected while the child has been living with the father, except to say that he has not heard from the mother for a long time. However, he has not kept the mother informed of his mailing and residence addresses and his telephone number for a long time. He has made no effort whatsoever to keep in contact with the mother so that the child is in contact with her. For at least the last year he has done nothing to promote the child's right to a relationship with his mother, which is contempt for the court's time-sharing order. **Therefore, the father is in willful contempt of the time-sharing order.**

It appears that he may be unable to fulfill the primary obligation of a separated parent, that is, to promote the other parent to the child and to facilitate and encourage a close and continuing parent-child relationship between the child and his mother and to honor the time-sharing schedule. He says that he does not have the mother's address and phone number, although he has an email address for her because someone that lives with the father sent her some insulting, vulgar and obscene emails. This was the mother's testimony, which the court finds credible. Of course, the mother replied with some equally insulting, vulgar and obscene emails, which did not help the situation.

The immature and petty attitudes and behaviors of the mother and the father and the people they live with are interfering with the child's relationships with both of his parents. The father has been unable to manage his relationship with the mother and the person he lives with in a manner that would allow the child to maintain a close and continuing parent-child relationship with his mother. If he proves unable to manage that relationship in the future, the court may have to take further actions and sanctions to insure that the child's right to a close and continuing parent-child relationship with both of his parents is respected.

At the hearing, the court wrote out the mother's current U.S. mail address and telephone number and gave these to the father because he said he did not know this information.

2. Ruling

2.1 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.

2.2 Legal duty of both parents The father may not know Florida law regarding the legal duty of both parents when they are separated and divorced.

After parents separate and divorce, **both parents have a legal duty to promote the other parent to the child, and the child has a right to frequent and continuing contact with both parents:**

"It is the public policy of this state 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)(c)1.

The law requires both parents to "go the extra mile" with the other parent and to 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).

This duty of both parents is especially the obligation of the parent with whom the child lives most of the time. The child cannot have a relationship with the other parent without the continuous effort of the parent he lives with most of the time to promote and encourage his relationship with the other parent.

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.

This being Florida law, the father is, again, ordered to obey the time-sharing order in the Final Judgment dated DDD and he is ordered to follow Florida law and keep the child in frequent and continuing contact with his mother.

The court has jurisdiction to enforce the time-sharing order in the Final Judgment as allowed by law. *See, e.g.*, §61.13(4)(c)1., 2., 3., 4., 5., 6., and 7.

2.3 Hearing continued indefinitely The hearing on the mother's motion for contempt and the court's Order to Show Cause is continued indefinitely. **Having advised the father of Florida law and having found the father in contempt of the time-sharing order, the court now gives the father the opportunity to obey the court's time-sharing order and Florida law.** If he fails to do so, the mother or the court may renote the mother's motion for contempt and the court's Order to Show Cause for further hearing.

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

Copies provided to:

, *pro se*, (Mailing address), phone (Phone number)
, Esq.

R. Thomas Corbin, Circuit Judge