

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

J. L.,
Petitioner,

vs.
H. L.,
n/k/a H. C.,
Respondent

Case No. XX DR yyyy N

ORDER DENYING FATHER’S EMERGENCY MOTION

This matter having come before the court on *Date omitted/* 2015 on the father’s “Emergency Motion to Stop Unsupervised Visitation,” filed *Date omitted /*2015, it is ordered:

1. Findings

The parties have two children, RL born 7/9/2003 and PL born 3/22/2005. In the “Final Judgment on Father’s Supplemental Petition” filed *Date omitted /*2013 the court ordered a time-sharing schedule in which the children have weekly time-sharing with the mother every other weekend from Friday at 6 PM to Sunday at 6 PM.

The mother has an adult daughter, M, age 20, who lives with her and she also has two other children by her present husband, DC. He filed a petition for dissolution of their marriage on *Date omitted /*2015. His petition alleges that they separated in “2012,” and it appears that since they separated in 2012 their two children, ages 6 and 5, have been residing most of the time with their father throughout the week and staying with their mother every other weekend from Friday after school to Sunday late afternoon. His proposed parenting plan filed in that case requests that weekly schedule, with a mid week time-sharing for some hours on late Wednesday afternoons. His petition alleges that “at this time mother is not able to care for kids.”

This is also the father’s concern for the children in this case, RK and PK, that the mother does not have the financial ability to provide a home for their children during the weekends that they are with her. He raised this concern at the hearing but he did not mention it in the motion.

The mother recently changed her job. Her previous job paid her \$1,760 gross per month and \$1,576 net, according to her financial affidavit filed 7/5/2009, and she testified on *Date omitted/* 2015 that her new job pays her “less” than her previous job, although she did not say how much less. In this case, she was ordered to pay \$215 per month in child support. She testified that she has a car payment of about \$400 a month. She testified she has a monthly expense for car insurance. She is living alone in a rented duplex apartment. It appears that she may have an undetermined liability for retroactive child support to Mr. Cravens for their two children.

On *Date omitted* /2015 the mother was pulled over in Cape Coral for having window tinting that was too dark. At that time she was given a citation for unknowingly driving on a suspended driver's license. Her license had been suspended some time earlier because her car insurance policy had expired. The mother testified that she did not pay her car insurance premium for some months before because she did not have the money. She has since had her license reinstated by the DMV after incurring some expense.

So, the evidence demonstrates that the mother may not have the financial ability to provide a home for her children during the weekends that they are with her, or, as Mr. C alleged "to take care of kids." Before she pays the electric bill, water bill, gas for her car, and buys groceries, her entire monthly income has already been spent for child support, a car payment, car insurance, and rent. It appears that she cannot afford a residence, a car, etc., for herself, much less for her children every other weekend.

The lack of money is the mother's constant problem throughout the record in this case. She testified that this is reason she was living with JM, to help her pay her living expenses, and that she will have to find another roommate in order to support herself financially.

In his emergency motion, the father's only concern mentioned is about JM, the mother's former live-in companion. JM has an extensive, serious criminal record. On 2/12/2015 he was arrested in Jacksonville on charges relating to the sale or possession of drugs. The mother and her older child M had taken him up there on that day in the mother's car so they could meet someone "to collect some money," but when they got to the place arranged for the meeting law enforcement officers were there and they arrested JM on a warrant. It seems that the person who "owed him money" called him and told him to come get the money so the mother, M, and JM left immediately. M drove the mother's car to Jacksonville with the mother and JM as passengers, but the call was a ruse, a call made by JM's associate in Jacksonville at the request of law enforcement officers in order to get JM to Duval County so he could be arrested on the warrant. The mother testified that she did not drive the car because she knew her driver's license was suspended at that time. She testified that her adult daughter did the driving.

The mother testified that she had no idea that JM was somehow involved with the sale or possession of drugs when she went to Jacksonville with him to get the money.

JM bonded out the next day. The identity of the person posting the bond premium is not in evidence. The mother and her daughter M were not arrested.

The mother drove back to Jacksonville after JM was bonded out, picked him up and returned him to her residence in Cape Coral. She made this second trip on Saturday 2/14/2015 leaving at 4 AM. This was a Saturday when the children were with her under the time-sharing schedule. She left the children in her apartment with JM's 14 year old son, MM. She thought she could drive to Jacksonville and back in about 9 hours and still make a basketball game that one of the children had that afternoon, a game that the father attended only to discover that the child was not there because the mother did not get back in time to take the child to the game.

A few days later, JM was arrested again by Lee County law enforcement officers on another warrant from Jacksonville on charges of the sale or possession of drugs. He is now in the

Duval County jail.

The father was very upset when he learned that the mother had driven to Jacksonville to pick up JM and left the children in the care of MM, JM's 14 year old son. The child missing the basketball game was upsetting but he regards her leaving the child with MM to be worse. The mother said it was "Ok" to leave both children with MM because the mother's sister and her husband live in the other half of the duplex, but the father is not "Ok" with that arrangement. In the meantime, MM is now living with his mother after the mother drove him to Ocala where his mother picked him up. So MM is not living with the mother any longer and JM is now in the Duval County jail.

The DCF got involved with the family after the 2/12/2015 arrest of JM. A "safety plan" was entered by a CPI that requires the mother to have only "supervised visits with the children. The plan requires the children to stay with the father "24/7 ... until further notice from CPI."

The mother testified that her relationship with JM and MM is over, that she will never allow them to return to her residence, temporarily or permanently.

2. Ruling

The court denies the father's motion. There is not an emergency concerning the children of the parties or a concern for their safety due to JM or MM living with the mother. This is the only issue mentioned in the father's motion and it is no longer an issue. MM is living with his mother and JM is in the Duval County jail. The mother testified neither of them will ever return to reside in her home.

If there is not an "actual, demonstrated emergency" the law does not allow the court to modify a time-sharing schedule ordered in a final judgment, temporarily or permanently, on a post judgment emergency motion to modify the time-sharing order. *Smith v. Crider*, 932 So.2d 393, 398 (Fla. 2d DCA 2006).

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

R. Thomas Corbin, Circuit Judge

Copies provided to:

J L, *pro se*

HL, *pro se*