

**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 0 N

ORDER TO SHOW CAUSE

This matter having come before the court on the father's "Ex Parte Emergency Verified Motion for Child Pick-Up Order" served DDD, it is ordered:

1. Findings

The sworn motion and the record demonstrate that the parties were married and divorced by a Final Judgment in this case filed on DDD. The judgment adopts the time-sharing agreement of the parties as the order of the court. There is no other time-sharing order in this file. That order directs the parties to share the child's time on certain days every week. The motion alleges that the mother is violating that order by taking the child to State in early Month 2010, which means that the child has not been able to be with both parents as required by the time-sharing order since she left. The child is now still in State. The father reports that the mother has told him she "wasn't sure when she was coming back." The father filed a UCCJEA affidavit with the motion.

The parties have a minor child, ZZ, born DDD. The child has resided in Lee County, Florida, since birth. There is no evidence that any other case is now pending anywhere concerning a parenting plan, a time-sharing order, and a parental responsibility order for this child, or what may be called "custody" issues in the nomenclature of some states other than Florida.

There is nothing in the record that demonstrates that the mother has complied with §61.13001(2009) entitled "Parental relocation with a child." That statute requires that a supplemental petition must be filed and an amended final judgment obtained that changes the time-sharing order before a parent may relocate a child more than 50 miles from a prior residence.

The father's motion is sworn and it swears that the father believes the mother has left Lee County, Florida, with the child and that she and the child are at an address in State: (*Address omitted*) The motion does not cite any authority for *ex parte* relief.

2. Ruling

2.1 Jurisdiction - **This court has subject matter jurisdiction and personal jurisdiction over the parties and the child, ZZ, born DDD.** 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.

Under the UCCJEA, no other court anywhere has jurisdiction over these issues or can obtain jurisdiction over these issues absent a proceeding and findings that satisfy F.S. Chapter 39.

2.2 Order To Show Cause - The mother, YYY, is hereby ordered to appear personally before this court and show cause why the child should not be returned immediately to Lee County, Florida. F.S. §61.13001(1)(e) applies because the Final Judgment orders a time-sharing schedule in which the child is with both parents on certain days during every week. The motion swears that the mother left Lee County, Florida, with the child and she took the child more than 50 miles from his prior residence to a new residence in State and she has no intention of returning.

The motion is also a civil motion for the mother’s willful contempt of a court order, for which the mother may be sanctioned as allowed by law. Sanctions permitted by law for violation of a time-sharing order include, but are not limited to: (1) awarding make-up time-sharing to the child and the father; (2) fines; (3) ordering the mother to pay the father’s attorney’s fees and costs; (4) ordering the mother to perform community service; (5) ordering the mother to attend parenting classes; and (6) modifying the time-sharing schedule to reduce and even eliminate the mother’s time with the child. F.S. §61.13(4)(c).

The mother, therefore, is hereby ordered to personally appear before the court on the date, time and place below with the child and show cause why she is not in willful contempt of the time-sharing order in the Final Judgment and why the child should not be immediately returned to Lee County, Florida.

If she fails to appear or if she fails to show cause as ordered here, the court may order that the father shall have the full assistance of law enforcement officers in every jurisdiction to remove the child from the mother’s custody or from any other person with whom the child may be found and to deliver the child to the father who shall then return the child to Lee County, Florida.

The hearing on this Order to Show Cause shall be before undersigned judge at .m., on _____, _____, _____, in Courtroom 4 I, on the 4th Floor of the Lee County Justice Center, 1700 Monroe Street, Fort Myers, Florida.

If the mother fails to appear at the above time and place with the child, the court may grant the motion and may order all law enforcement officers in every jurisdiction to remove the child from the custody of the mother or any other person with whom the child may be found and deliver the child to the father who shall then return the child to Lee County,

Florida.

Although the court already has personal jurisdiction over the mother and the child, the court orders that a certified copy of this order shall be personally served on the mother by a process server authorized to serve process in the jurisdiction where she may be and the return made before the above date.

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

R. Thomas Corbin, Circuit Judge

Copies provided to:

, and

, (*Addresses omitted*)