

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

**J. P.,  
Former husband**

**vs.  
J. P.,  
Former wife**

**Case No. 06 DR 3003 N**

**ORDER DENYING MOTHER'S MOTION**

This matter having come before the court today on the mother's "Motion for Supervised Time-Sharing" filed 10/7/2010, it is ordered:

1. Findings

The parties' child is M. P., born (*Date omitted*). The mother is a school teacher and the father an executive chef with a local restaurant chain. His wife is a server in one of the chain's restaurants. The mother's motion asks the court to modify the time-sharing schedule ordered in the Final Judgment filed 9/6/2006. She asks the court to modify the time-sharing order to allow only supervised contact between the father's wife and the child.

Since the Final Judgment the father remarried. Seven years ago his present wife was diagnosed with bipolar disorder. She is now 30 years old. She took medication for this condition since it was diagnosed, but during a recent pregnancy she went off her medication. She is now under the treatment of a psychiatrist and a mental health counselor. She is now back on medication for this condition, a generic form of Depakote.

The father's wife testified today. Her child was born in March 2010. When she became pregnant she went off her medication and after her child was born she stayed off the medication because she was breast feeding the child. She began counseling with her mental health counselor when she went off her medication, during her pregnancy and afterwards. Last summer, around 7/23/2010, she had "a manic episode." As a result, she "voluntarily" admitted herself to a local mental health hospital. She spoke to her mental health therapist on several occasions during this episode. She was not able to sleep for several days during this episode. She also called the mother during this episode and left her some phone messages that the mother found disturbing. Today, the father's wife apologized for these messages.

The mother testified that in July 2010 she was "out of state" for about five weeks and she could not receive a cell phone call in that time. The child was with the father during these weeks pursuant to the time-sharing order. During this time, the father's wife called her cell number and began leaving rambling, threatening, and vulgar messages beginning around 11 p.m. one night in July, concluding with a message that she would take the child away from the mother. Naturally,

these messages upset the mother. She says the father and her do not “communicate very well,” which is an understatement. She says their daughter was very upset by her stepmother’s behavior last July.

## 2. Ruling

The motion is denied, first, on due process grounds, and, second, on substantive grounds. Regarding the procedural grounds, a Final Judgment can be modified only by an adjudication on the merits of a supplemental petition to modify that states a cause of action. A judgment cannot be modified by a motion. There is no such thing as temporary relief from a judgment by a post judgment motion, absent an emergency and a real and present danger to the child’s health, safety or welfare, which is not present in this record.

Further, a supplemental petition to modify must allege ultimate facts that demonstrate a substantial change in circumstances since the final judgment was entered that was not contemplated at the time of the judgment and that the proposed change in the judgment is in the children’s best interest. *Cooper v. Gress*, 854 So.2d 262 (Fla. 1<sup>st</sup> DCA 2003); *Sanchez v. Hernandez*, \_\_\_ So.3d \_\_\_ (Fla. 4<sup>th</sup> DCA 2010).

Regarding the substance of the mother’s allegations, even if they were stated in a supplemental petition they may not state a cause of action to modify the judgment because even if true they do not amount to a sufficient factual basis to change the time-sharing schedule. The facts are that since the Final Judgment the father has remarried a woman who has bipolar disorder and she had a manic episode in July 2010, but these facts do not amount to a change sufficient to modify the time-sharing schedule. These parents have a low level of communication, cooperation, and trust so the mother’s complaint that the father does not meet her standards of care was foreseeable at the time the judgment was entered, in general, if not in the particulars of her complaint at this time.

A modicum of communication could have resolved this matter without a motion and a hearing. The father’s wife has appropriately addressed her problem and she is now back on her medication and it works to stabilize her moods. She also regularly meets with a mental health counselor to address her condition. Today, she is quite different from the person who left the messages on the mother’s phone in July 2010. She is remorseful and apologetic for her conduct.

So, the mother’s complaint is not a substantial change in circumstances since the Final Judgment. It is an odd episode that is passed. The underlying situation and problem, the absence of communication, cooperation and trust between the parties, was the situation existing at the time of the judgment and it is still the situation. So, there is no change at all in the underlying situation. So, all of these facts, if proven, do not state a cause of action for modification of the judgment. There is no substantial change in circumstances.

Finally, the court in a Chapter 61 case does not have continuing jurisdiction to monitor and police the parenting skills, or lack thereof, of either parent. The mother’s motion does not cite the court to any authority in Chapter 61 or elsewhere that gives the court the authority to monitor and correct a parent’s deficiencies as a parent as the children grow up. A court in a Chapter 39 case does have the jurisdiction to monitor and order improvements in a parent’s parenting skills, but a

court in a Chapter 61 case does not have that jurisdiction.

A court in a Chapter 61 case must order either sole or shared parenting, and of shared parenting can order unlimited shared parenting or shared parenting with ultimate responsibility to one parent or the other. Here, the parties entered into a marital settlement agreement that was incorporated into the Final Judgment. They agreed to “joint custody”, a term not found in Chapter 61, and they agreed to “cooperate in all decisions concerning her education, health, welfare, and care.” They also agreed that they “shall consent and confer with each other before taking any action” concerning their child, except in “the event of a medical emergency.” This sounds like an unlimited shared parental responsibility order, but those words are not found in their marital settlement agreement.

The parties also agreed to a time-sharing order. After the parental responsibility order and the time-sharing order were incorporated in the Final Judgment, the court’s jurisdiction over parenting ended. The court retains only the jurisdiction to enforce the orders that were entered. This motion asks the court to change the time-sharing order, not to enforce the parental responsibility order or the time-sharing order.

After a final judgment the court acquires the jurisdiction to change the orders in the judgment only by a supplemental petition to modify that states a cause of action. The court is not authorized to hear repetitive motions seeking the redress of one parent’s unhappiness at the parental shortcomings of the other parent and to order modifications in the other parent’s behaviors.

On this record, for these reasons the motion is denied.

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

R. Thomas Corbin, Circuit Judge

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