

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

J. P.,
Petitioner,

vs.

Case No. XX DR YYYY N

K. O.,
Respondent,

ORDER DENYING PETITIONER'S MOTION

This matter having come before the court today on the petitioner's "Emergency Motion for Contempt, Etc.," filed 6/10/2011, it is ordered:

1. Findings

The motion and the record demonstrate that the parties never married. The petition alleges that the petitioner is the father of a minor child, (*Name omitted*), born (*Date omitted*). The child was born in Cape Coral, Lee County, Florida. The UCCJEA affidavit filed by the petitioner avers the child has resided in Lee County, Florida, since birth and until at least until Tuesday, June 14, 2011. It also shows there are no other cases 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.

At the time that the child was born, the respondent K. O. was married to Kn. O. The child bears his last name. The petitioner testified today that the respondent has been married to Kn. O. for "about five years" and that she is now living with him in Maine. Kn. O. is not a party in this case. There are no allegations concerning him in the petition and he has not been served with process. The petitioner testified today that the respondent broke up with Kn. O., that the petitioner then lived with the respondent for "a couple of months" and that she became pregnant.

On 1/19/2011 the parties named above entered into a mediated agreement in which they agreed that they are "the parents" of the minor child (*Name omitted*), born (*Date omitted*). They also agreed to a time-sharing schedule in which the petitioner would have contact with the petitioner for 2 hours on Saturday, 4 hours on Sunday, and 2 hours on Wednesday beginning 1/22/2011, with the respondent present during these meetings.

Today, the petitioner testified that he has talked to the respondent on the phone and that she said she is now in Maine, that she is now living with Kn. O., and that she has no intention of returning to Florida. She said the child is also in Maine with her. The respondent and Kn. O. have three other children. The respondent was not present at today's hearing.

2. Ruling

2.1 Jurisdiction - This court has subject matter jurisdiction and personal jurisdiction over the parties named above 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 Motion denied However, the court does not have jurisdiction over an indispensable party, Kn. O., the husband of the respondent.

Further, it does not appear that the petition states a cause of action for paternity under the facts in the foregoing findings.

“Because the child was born to an intact marriage ..., the biological father was precluded from bringing the paternity suit and the trial court should not have considered it.” *Slowinski v. Sweeney*, ___ So.3d ___ (Fla. 1st DCA 2011), citing *G.F.C. v. S.G.*, 686 So.2d 1382 (Fla. 5th DCA 1997), in which the court held that a biological father lacked any right to sue for paternity.

Therefore, for failure to join an indispensable party and failure to state a cause of action for which relief may be granted under these facts, the motion for contempt is denied.

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

R. Thomas Corbin, Circuit Judge

Copies provided to:
_____, Esq., and K. O., *pro se*, (Address omitted)