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

L. L.P.,
a/k/a L. L. N.,
Petitioner & wife,

vs. **Case No. 0 DR N**
E. H. P.,
Respondent & husband,

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TEMPORARY ORDER

This matter having come before the court today on "Wife's Emergency Motion for Parenting Time" filed 2/15/2010, it is ordered

1. Findings

The parties have two minor children, E. H. P., II, born x/x/2002, and C. L. P., born x/x/2001. The wife has an older child from another relationship. Her name is G. and she is now 14 years old and she is in the 8th grade.

The parties have a domestic violence case, Case No. 09 DR 219. The husband filed a petition in that case on 1/28/2009. His UCCJEA affidavit lists 10 places that the children have lived since 2004. A temporary injunction was granted. It set a hearing on 2/5/2009. The wife was removed from the marital home. She did not have a job or income at that time. The wife has not had a driver's license since 1999. G. remained in the marital home with the husband and the parties' minor children.

The parties were living on Mae Avenue in Lehigh when the husband filed his D.V. petition. The husband filed a financial affidavit in the D.V. case, in which he said he was a car salesman at Honda of Fort Myers and he was earning gross income of $1,500 per month. On 1/29/2009 the husband filed an affidavit in the D.V. case in which he said the mother violated the temporary injunction by calling her sister who then called G., by calling directly to G., and by calling directly to talk to the minor children. This affidavit resulted in an Order to Show Cause dated 2/13/2009, which came up at arraignment on 3/5/2009. At arraignment, the husband dismissed the Order to Show Cause.

At the hearing on 2/5/2009 on the husband's temporary injunction the parties agreed to extend the husband's temporary injunction for a hearing on 8/4/2009, and they agreed that the wife would move back to the Mae Avenue house, which she did.

On 5/26/2009 the wife filed a counter petition in the D.V. case, in which she alleged acts of domestic violence against her by the husband on 5/17/2009. She also filed a financial affidavit, which shows she then had no income. She filed a UCCJEA affidavit and it lists 14 places that the children have lived since 2004. A temporary injunction was granted on her counter petition and after a final hearing on 6/2/2009 the court granted a permanent counter injunction against the husband. The Final Judgment on the wife's counter petition left the husband in possession of the marital home on Mae Avenue, pursuant to his temporary injunction, and also left the children at that address. The judgment ordered that the children would be with the wife every Friday at 6 pm to Sunday at 6 pm beginning 6/5/2009. The children were to be exchanged at the Fort Myers Police Department. However, the wife did not have a driver's license or a car.

The Final Judgment on the wife's counter petition also required the wife to take a drug test at Southwest Florida Addiction Services, Inc. However, she did not take that test. Instead, today she said

that someone at BAN, perhaps an evaluator of some sort, told her she did not need to do that and instead recommended that she take some sort of short course, perhaps at BAN, on alcohol abuse. It seems odd that someone at BAN would tell a person to ignore a court order or that a party would believe the advice of anyone supersedes and cancels a court order, but that is what the wife said. She said that is the reason she ignored the order to take a drug test at SWFAS. The wife said that she did complete the short course, but she has no documentation evidencing an evaluation, a recommendation for this course, or a certificate that she completed it.

On 6/2/2009 the husband filed another affidavit in the D.V. case, in which he said the wife violated his temporary injunction by "trying to pick" up the children at school "as to take them from me." He also said she had been in touch with his employer's secretary. An order denying the issuance of an Order to Show Cause on this affidavit was entered on 6/8/2009.

On 8/4/2009 the husband's temporary injunction was dismissed when he did not appear for the hearing on that injunction. The wife did appear.

On 1/5/2010 the husband filed a motion to modify the wife's Final Judgment on her counter petition. In this motion he alleged the children had seen the mother on only four weekends since 6/5/2009, all of which occurred in June and July of 2009. He also alleged that he believed the parties' daughter had been sexually abused by "Mom's Boyfriend 'Richard'". Today, he explained that he believes this abuse occurred sometime in June or July 2009 at a time when the mother was then living in a motel. On 2/11/2010 after a hearing on this motion to modify, the court amended the Final Judgment on the wife's counter petition to require supervised contact between the mother and the children. The supervisor was to be a "family friend", a Ms. M.

The husband's testimony concerning any sexual abuse of the parties' daughter is not competent evidence and it is hearsay. He is not a competent witness of the facts. He testified today that he believes the wife is a good mother who takes good care of the children and he has no objection to the children being with her. He said that he does not want the children around "any other man." The wife denies that she has had a boyfriend since the parties' separated, whether named "Richard" or anything else, and she never heard of any abuse of the parties' daughter until she was contacted by a D.C.F. investigator early in January 2010. There is no evidence of any protective action taken by D.C.F. and the clerk's computer does not reveal a pending dependency case.

In this case, the wife filed the initial petition for dissolution of marriage on 2/10/2010. Her petition asks for "shared parental responsibility ... However, the Wife requests the minor children reside primarily with her." It does not ask for a time-sharing schedule. It does not propose a parenting plan. The wife has not filed a financial affidavit or a UCCJEA affidavit. She has not filed a certificate of compliance with mandatory disclosure. There is no evidence that she has any employment day care expense, or would have any if the children lived with her Monday through Friday. There is no evidence of her health insurance premium, if any, or the children's health insurance premiums.

On 3/2/2010 the husband filed a *pro se* answer to the petition, a financial affidavit, a UCCJEA affidavit, a proposed parenting plan, and a notice of related cases. His financial affidavit does not indicate any health insurance premium for himself and none is indicated for the children. He lists "$200" a month for employment day care expense for the children.

On 3/3/2010 the wife filed for a clerk's default against the husband. However, there is no proof in the court file that a summons was served on the husband; the original summons and the return of a process server is not in the court file. In any event, the husband filed an answer and other papers on 3/2/2010. For these reasons the default was denied by the clerk.

In May 2009 the mother was arrested for domestic violence on the husband. As a result of that arrest, the state attorney agreed to a diversion contract with the mother. The contract requires the mother to complete a 27 week batterer's intervention program at B.A.N. She has been enrolled in that course for some weeks and she testified that she is attending the weekly sessions.

In his testimony, the husband offered a series of criticisms of the wife. The wife also had nothing good to say about the husband but her criticisms were muted. They have no communication or cooperation at all concerning their children. The husband has made no effort at all to keep the children in frequent and continuing contact with the mother. Rather, he criticizes her for making only four weekends of contact with the children since 6/5/2009. Of course, the wife had no ability to pick up the children at the Fort Myers Police Department and sometimes the husband was not there at the appointed time when she did get there. Although he had access to a vehicle and he has a driver's license, the husband never took the children to where the wife was living at any time since 6/5/2009.

The wife has no car and no driver's license. She says she has no clear idea why she does not have a driver's license, which is very odd. She has not had a license since 1999. She said she thinks she does not have a license because she owes a traffic fine, but a search of the Lee County clerk's filings does not reveal any traffic citations. She also said she did not have a license because she refused to take a breathalyzer and that the "DMV" has told her she must take some sort of "alcohol course." However, there is no record of anything in the clerk's computer that indicates such a course is required, and the suspension of a driver's license for a first refusal to take a breathalyzer is for only one year. Perhaps she has two refusals on her driving record. Her driving record is not in evidence. The husband said the wife owes "$3,500" in Arkansas for a fine or restitution, it is not clear which, in a case in which he says she was charged with leaving the scene. The wife denies this testimony of the husband. Of course, this testimony by the husband is not competent evidence. It is entirely hearsay and he is not a competent witness of the facts.

The wife has been living in an apartment on Colonial Boulevard since September 2009. She lived in a motel in June, July and August. Her apartment is adequate for the children. The wife walks to work. She takes a bus to her batterer's intervention course at B.A.N. G. lives with her and she takes a bus to school. She says her "net take home" is "$1,000" every two weeks. It is not clear whether she is paid 26 times a year or 24 times a year, that is, biweekly or bimonthly. She does not have a pay stub in evidence or a financial affidavit. She has not complied with mandatory disclosure.

The husband now lives in a house on Cypress Lake Drive. His house is adequate for the children. He lives with another woman who has a child, age 17, who is a "quadriplegic." The husband does not have a regular job at this time. He says he is self-employed, working to renovate "foreclosure houses." His affidavit says he is now earning "$1,000" every month. He does not have a car. He does have a driver's license. The woman he lives with has a van that is outfitted to accommodate her son.

The parties' children are enrolled in an elementary school on Colonial Boulevard, about a mile or so from the wife's apartment. They can ride a bus from her apartment to the school. They can also get a bus from the husband's house to their school.

The parties have a third case between them, Case No. 09 DR 8327, which is a child support case brought by the Department of Revenue on behalf of the husband against the wife. The petition was filed in this case on 10/27/2009. The return of service and the original summons were filed on 2/18/2010. These indicate the wife was served on 2/16/2010 and that a response is due on 3/8/2010. This case has been reassigned to the undersigned judge pursuant to this circuit's unified family court order.

2. Ruling - Temporary Parenting plan, temporary parental responsibility order, and temporary time-sharing schedule

2.1 Jurisdiction **The parties' children are E. H. P., II, born 2/22/2002, and C. L. P., born 1/29/2001**. Although the wife has not filed a UCCJEA affidavit, the husband did file one, so this court has subject matter jurisdiction and personal jurisdiction over the parties and the children. 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.

Further, pursuant to §741.30(1)(c) any order entered in this dissolution action concerning a parenting plan, a parental responsibility order, a time-sharing schedule, or child support takes precedence over any order on these issues entered in any D.V. case, such as Case No. 09 DR 219.

2.2 Legal duty of both parents Both parents have a legal duty to promote the other parent to the children, and the children have a right to regular and frequent contact with both parents:

> "It is the public policy of this state to assure 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)(b)

Both parents are ordered to "go the extra mile" with the other parent and make an extra effort to promote the other parent to the children. 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).

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 a 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.

2.3 All factors considered In deciding a parenting plan and time-sharing schedule, the court must consider all of the factors in §61.13(3). The court has reviewed and considered all of those factors in making a decision about the parenting plan, parental responsibility order, and the time-sharing schedule. The court declines to make findings under each of the factors because the court finds

this would not be in the child's best interest.

2.4. <u>The parental responsibility order is separate from the time-sharing order</u> Since 1982, Florida law has separated the child's time-sharing schedule, that is, the calendar schedule detailing where the child will be living from time to time during the year, from "parental responsibility." *Session Law* 82-96 effective July 1, 1982. "Parental responsibility" means parenting decision-making. *See, e.g.*, F.S. §61.046(17) & (18) (2009):

"(15) "Shared parental responsibility" means a court-ordered relationship in which both parents retain full parental rights and responsibilities with respect to their child and in which *both parents confer with each other so that major decisions affecting the welfare of the child will be determined jointly.*
(16) "Sole parental responsibility" means a court-ordered relationship in which *one parent makes decisions regarding the minor child*." (*Emphasis supplied.*)

So, "parental responsibility" is concerned with how parenting decisions will be made after parents separate. It is not concerned with where the child will be living from day to day during the calendar year. The order detailing where the child will be living from day to day is now called the "time-sharing order." Formerly, the "time-sharing order" was the order that named a "custodial parent" or "primary residential parent", which meant "the parent with whom the child maintains his or her primary residence." F.S. §61.046(3)(2004). On October 1, 2008 the terms "custody", "visitation", "custodial parent", and "primary residential parent" were deleted from all Florida statutes dealing with separated parents. *Session Law* 2000-61 effective 10/1/2008. Before that change in the statutes, the terms "custody and visitation" were generally used to describe the "time-sharing" order, but those terms are now incorrect. "Primary parent" or "primary residential parent" also have no meaning under Florida law.

F.S. §61.13(2)(b)(2009) now requires the court to order a "parenting plan" that includes a "time-sharing schedule" and a "designation of who will be responsible for" parenting decisions. Therefore, under current law the "time-sharing" order and the "parental responsibility" order should be two, separate orders.

Regarding the parental responsibility order, since 1982 and until the present under §61.13(2) the court can order (1) the parents must share parental responsibility; or (2) the parents must share parental responsibility and one parent may have ultimate responsibility over some or all aspects of the child's life, *see, e.g., Watt v Watt*, 966 So.2d 455 (Fla. 4th DCA 2007); *Hancock v Hancock*, 915 So.2d 1277 (Fla. 4th DCA 2005); *Schneider v. Schneider*, 864 So.2d 1193 (Fla. 4th DCA 2004); or (3) one parent may have sole parental responsibility. Those are the only three options under Florida law for allocating parental responsibility between the parents after the parents separate.

Further, the statute, F.S. §61.13(2)(c)2, requires the court to order shared parental responsibility unless that would be detrimental to the child. So, sole parental responsibility can be ordered only if it is pled and proven that a shared parenting order would be detrimental to the child. *See, e.g., Furman v. Furman*, 707 So.2d 1183 (Fla. 2d DCA 1998).

2.5 <u>Temporary parental responsibility; detriment</u> The law requires the court to "order that the parental responsibility for a minor child be shared by both parents unless the court finds that shared parental responsibility would be detrimental to the child." F.S. §61.13(2)(c)2.

The law defines "shared parental responsibility" as:

"...a court-ordered relationship in which *both parents retain full parental rights and responsibilities with respect to their child and in which both parents confer with each other so that major decisions affecting the welfare of the child will be determined jointly*." §61.046(17) Florida Statutes (2009). (*Emphasis supplied*.)

Further, a parent seeking sole parental responsibility over some aspect or all aspects of the child's life must plead for this in a petition. In this case, the mother's petition pleads for shared parental responsibility. The father has not filed a counter petition. So, neither parent's petition asks for sole parental responsibility.

A finding that the parents are unable to confer together and share parenting decisions is a detriment to the child sufficient for a sole parental responsibility order to one parent, *see, e.g., Roski v. Roski*, 730 So.2d 413 (Fla. 2d DCA 1999). However, because neither parent pled for sole parental responsibility in a petition the court cannot order sole parental responsibility and the court must order shared parental responsibility even if the evidence demonstrates that the parents cannot confer together and share parental responsibility for their children. Due process of law prevents the court from ordering something that neither party asked for in a petition. *See, e.g., McDonald v. McDonald*, 732 So.2d 505 (Fla. 4th DCA 1999).]

Therefore, the court hereby orders shared parental responsibility because due process requires the court to do so and not because it is in the children's best interest to do so. The court has considered all of the factors in §61.13(3) in making this parental responsibility order.

Regarding a shared parental responsibility order, §61.13(2)(c)2., a. provides:

"In ordering shared parental responsibility, the court may consider the expressed desires of the parents and *may grant to one party the ultimate responsibility over specific aspects of the child's welfare or may divide those responsibilities between the parties based on the best interests of the child*. Areas of responsibility may include education, health care, and any other responsibilities that the court finds unique to a particular family." (*Emphasis supplied.*)

So, when the parties plead for shared parental responsibility, or, at least, fail to properly plead for sole parental responsibility, the court must order the parties to share parental responsibility and as part of the shared parental responsibility order the court may grant ultimate responsibility to one parent or the other over some or all aspects of the children's lives.

In this particular family, from the evidence presented the court finds (1) the parents do not confer and consult together about parenting decisions; (2) the parents have no communication at all concerning their children; (3) the parties have not demonstrated a capacity to share parental responsibility; (4) on the contrary, this record demonstrates that these parents cannot share parental responsibility, (5) an unlimited shared parenting order would be detrimental to the children because such an order would require these parents to confer with each other over all major parenting decisions but these parents would argue and bicker in these consultations, which is detrimental to the children; and (6) ordering these parents to share parental responsibility without granting one of them ultimate responsibility when they have demonstrated they are incapable of sharing parental responsibility is not in the children's best interest because at least one parent needs the authority to make parenting decisions and these parents cannot make parenting decisions together.

Therefore, pursuant to §61.13(2)(c)2. the court hereby orders that:

(1) **The parties are ordered to share parental responsibility but the Mother shall have the ultimate responsibility for the children's (a) education, including change of schools and school choice, (b) health care, including health insurance provider, dental, orthodontic, optical and**

mental health care, elective and emergency, and any counseling of either child for any purpose, (c) the choice of the employment day care provider and whether the children will be taken to a day care provider on any day, (d) extracurricular activities including sports, religious training, and summer camps and summer activities even though these might encroach on the children's attached time-sharing schedule with the mother or the father, and (e) whether the children will participate in religious ceremonies, services, training and education during portions of the time-sharing schedule when the children are with him. When the children are with the Mother, the Mother may take them to such religious activities as the Mother deems appropriate. Likewise, the Father may do so during the time the children spend with her under the schedule §61.13(2)(c)2., a. (2008) ; *Watt v Watt*, 966 So.2d 455 (Fla. 4th DCA 2007); *Hancock v Hancock*, 915 So.2d 1277 (Fla. 4th DCA 2005); *Schneider v. Schneider*, 864 So.2d 1193 (Fla. 4th DCA 2004). The Father shall have the authority to consent to emergency medical care when the children are with the Father.

(2) The **Mother shall consult and confer with the Father** about all important decisions pertaining to the aspects of the children's lives specified above, so that the parties share parental responsibility, but in the event that the parties are unable to agree on an issue on these aspects of the children's lives, the Mother is hereby granted the ultimate responsibility to make the decisions in these aspects without obtaining the Father's consent and without court approval before making the decision. The best interests of the children require that one parent be able to make prompt decisions for the children if the parties do not agree. The Father may seek the court's review and modification of a decision made by the Mother by a motion and a hearing on the motion.

(3) This is a temporary order of shared parental responsibility, so the court has jurisdiction to modify this order from time to time as the situation and evidence develop until the trial, at which time the court will enter a final order of parental responsibility.

2.6 Both parents have equal parental rights to information - Access to records and information pertaining to a minor child, including, but not limited to, medical, dental, and school records, may not be denied to either parent. Either parent has the same rights upon request as to form, substance, and manner of access as are available to the other parent of a child, including, without limitation, the right to in-person communication with medical, dental, and education providers. §61.13(2)(b)3. **However, this is not a final order of equal access to records and information and the court hereby reserves jurisdiction over this right of access.**

2.7 Temporary time-sharing schedule; jurisdiction

After considering all of the factors in §61.13(3) **the court finds the children's best interests are served temporarily by having the children live most of the days during the year with the Mother**. The court declines to make findings under all of the factors in the statute because these findings would not be in the children's best interest.

The court also notes that the law requires the court to give little weight to the temporary time-sharing arrangement after the parents separate and until trial. When the parents separate, a children have a time-sharing schedule by formal or informal agreement, a temporary order, or acquiescence. The temporary time-sharing arrangement does not determine what is in the children's best interest over the long term. The court must decide the best interest of the children over the long term. **Effective immediately the time-sharing schedule now ordered is attached to this Temporary Order.**

The court finds that the foregoing parenting plan and time-sharing schedule are in the children's best interests after considering all of the factors in §61.13(3). The court orders that the parents shall follow this plan and time-sharing schedule.

2.8. Order for Pretrial Conference to consider the amendment of the pleadings

Pursuant to Rule 12.200(b) by separate order the court will set a Pretrial Conference for the purpose of considering and determining the necessity or desirability of amendments to the pleadings regarding a parenting plan, parental responsibility order and a time-sharing schedule. The parties are ordered to bring proposed amended pleadings consistent with this order to that Pretrial Conference.

Amendments to the pleadings may be necessary or desirable because the parties' pleadings do not ask for all three alternatives to parental responsibility allowed by the law, that is, (1) sole parental responsibility over some or all parenting decisions to one parent or the other; (2) unlimited shared parental responsibility over all parenting decisions; or (3) shared parental responsibility with ultimate responsibility over some or all parenting decisions to one parent or the other. §61.13(2)(c)2., a.; *Watt v Watt*, 966 So.2d 455 (Fla. 4th DCA 2007); *Hancock v Hancock*, 915 So.2d 1277 (Fla. 4th DCA 2005); *Schneider v. Schneider*, 864 So.2d 1193 (Fla. 4th DCA 2004).

Further, if a sole parental responsibility order is requested in a pleading, the pleading must also allege ultimate facts demonstrating a detriment to the children if shared parental responsibility is ordered. F.S. §61.13(2)(c)2. requires the court to order shared parental responsibility "unless the court finds that shared parental responsibility would be detrimental to the child", so if a party pleads for sole parental responsibility, the party must also plead ultimate facts and then prove facts that demonstrate a detriment to the child if shared parental responsibility is ordered. In this case, the evidence at the hearing demonstrates that the facts of detriment may be the inability of the parents to communicate and cooperate concerning parenting decisions.

An amendment to the pleadings may be necessary or desirable because the evidence at the hearing indicates that these parents might prove to be unable share all parenting decisions. The court cannot order the parties to do something that they are incapable of doing, or, at least, something that they have not demonstrated they have a capacity to do. In other words, the court cannot enter orders that are impossible to perform, such as a child support or alimony order that is beyond the financial ability of a party or an order to share parenting decisions when the parents have not demonstrated a capacity to share parenting decisions.

Further, the court cannot order something that is detrimental to the children. If the evidence at the trial proves the parties are unable to share all parenting decisions, this would prove a detriment to the children if shared parenting were ordered. A shared parenting order is detrimental to the children if the parents are in fact unable to share parenting decisions because such an order only promotes bickering, arguments, and conflict between the parents, which is detrimental to the children, because a shared parental responsibility order requires the parties to "confer with each other so that major decisions affecting the welfare of the child will be determined jointly." F.S. §61.046(17) and *see, e.g., Roski v. Roski*, 730 So.2d 413 (Fla. 2d DCA 1999). However, the court cannot order sole parental responsibility if neither party has pled for this relief. *See, e.g., Furman v. Furman*, 707 So.2d 1183 (Fla. 2d DCA 1998)*; McDonald v. McDonald*, 732 So.2d 505 (Fla. 4th DCA 1999). Pleading for relief in the alternative is permitted by the rules of procedure. Fla.R.Civ.P. 1.110(b).

Of course, the time-sharing order is a separate question from the parental responsibility order, and both of these, the time-sharing order and the parental responsibility order, are part of the parenting plan that the court must establish under §61.13(2). Further, a pleading that asks for "primary residence" or "custody" is meaningless because effective 10/1/2008 the terms "primary residential parent," "custody," and "visitation" were deleted from all Florida statutes concerning separated parents. *See Session Law* 2008-61 effective 10/1/2008.

Therefore, the pleadings may also need to be amended to ask for the relief that is allowed by Florida law, that is, a parenting plan that includes a parental responsibility order and a time-sharing schedule. If either party wants a final time sharing schedule in which the children reside

most of the days of the year with that party then they must plead for that relief and then at trial must prove a parenting plan and time-sharing schedule that are in the children's best interest, taking into consideration all of the factors in §61.13(3).

A "pleading" is "a complaint or, when so designated by statute or rule, a petition and an answer to it ..." Fla.R.Civ.P. 1.100(a). The requirements of a pleading are specific. Fla.R.Civ.P. 1.110(b): "A pleading which sets forth a claim for relief ... must state a cause of action and shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends ..., (2) a short and plain statement of the ultimate facts showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which the pleader deems himself or herself entitled. Relief in the alternative or of several different types may be demanded."

So, a pleading is the document in which a party asks for the relief in the case that the party believes it is entitled to and the request for judgment in the pleading must be supported by allegations of ultimate facts that demonstrate a right to the relief. A "motion" is not a pleading, Fla.R.Civ.P. 1.100(b). Motions address only temporary matters or the process of the case and only certain motions are permitted by the rules. A motion cannot request the ultimate relief in the case and the court cannot grant ultimate relief based only on a motion and a hearing on a motion. The issues raised by petitions and answers, that is, the pleadings, can be decided only after a trial on the pleadings and a trial can be held only after the court issues a trial order. Fla.R.Civ.P. 1.440(c): "If the court finds the action ready to be set for trial, it shall enter an order fixing a date for trial."

Originals or copies of documents that a party believes amount to evidence or documents produced in discovery or pursuant to mandatory disclosure under Rule 12.285 must *never* be filed in the court file. These must be brought to a hearing or trial if they are relevant to a parties' evidence at the hearing or trial, and any document can be seen and considered by the judge only if it is admitted into evidence at the hearing or the trial pursuant to rules of procedure and the rules of evidence. Any document that is filed in the court file that is not a proper pleading or a proper motion or that is not admitted into evidence at a hearing or a trial according to law will not be looked at or considered by the judge.

3. <u>Temporary Child Support Findings and Child Support Order</u>

3.1 <u>Temporary Child Support Calculation</u> The court's child support calculation is attached as Exhibit A. The child support calculation is based upon $2,150 per month gross income for the mother, $1,000 gross income per month for the father, with the father paying $0 for his health insurance, the mother paying $0 for her health insurance, the child's health insurance costing $0, the parent with whom the children reside most of the time having an employment day care expense of $0, and the Mother, who is the parent with whom the children live most of the time under the time sharing schedule ordered, qualifying for Head of Household status with the I.R.S., and the dependent's exemption for the children, and qualifying for the Earned Income Tax Credit, all of which the court hereby finds and orders.

Regarding the dependent's exemption, at this time the court finds that under the attached time-sharing schedule the children reside with the Mother for most of the days out of the year and with the Father the balance of the year. So, under the Internal Revenue Code, the court orders the Mother is entitled to the dependent's exemption for the children on the federal income tax return. The court orders that for any calendar year after this date, the parent or other person with whom the children stayed at least 183 days out of the calendar year is the parent or person who is entitled to the dependent's exemption for the children on the federal income tax return for that year, regardless of what any time-sharing order in this case may say about where the children are ordered to live. Of course, for any calendar year, the parent or person entitled to the exemption under this order may sign and deliver to the other parent the required I.R.S. form to allow the other parent to claim the

exemption. In other words, as allowed by the Internal Revenue Code, the parent or person entitled to the exemption may allow the other parent to claim it if that is what they agree to do for any calendar year. However, if there is no such I.R.S. form signed and delivered by the parent or person entitled to the exemption under this order for any calendar year then the parent or other person with whom the children stayed at least 183 days out of the calendar year is the parent or person who is entitled to the dependent's exemption for the children on the federal income tax return for that year, as ordered above.

3.2 **Therefore, the monthly amount of temporary child support due from the Father to the Mother is $300, plus a collection fee of $5.25 or 4% with each payment but not less than $1.25, whichever is less.**

3.3 The court has considered whether any circumstances exist to support a deviation from a guideline calculation. There are no circumstances justifying a deviation from a guideline calculation.

3.4 F.S. §61.13(4)(b) provides: "When [the parent with whom the child lives most of the time] refuses to honor [the children's right of contact with the other parent] the [parent owing child support] shall not fail to pay any ordered child support..." This is the law because the children have a right to be supported by both parents all of the time.

3.5 It is now ordered that child support shall not be modified during any period of contact with the parent with whom the children reside the least amount of time during the year.

3.6 The court finds the foregoing facts have been substantially the same since the filing of the petition. Therefore, child support was payable from the filing of the petition.

3.7 Arrearage Order The court reserves for further hearings the question of an arrearage and whether the mother owes the father child support.

3.8 The court hereby reserves jurisdiction to modify the interval for which support is payable to weekly, biweekly, bimonthly or any other interval at any time hereafter upon motion by either party or the court's own motion.

3.9 First Payment Due Date The first payment is due 3/8/2010 and on a like day of each month thereafter.

3.10 Income Deduction Order As required by §61.1301, Fla. Stat., a separate Income Deduction Order shall issue directing the payor's current employer and any future employer of the payor to deduct the child support due under this order from any income due to the payor and forward it the depository, the "Florida Support Disbursement Unit", as required by said statute, as amended from time to time hereafter. The form of the income deduction order shall be prepared by the payee or the payee's counsel and sent to the undersigned judge for signing and filing. Serving the IDO on any employer is the responsibility of the payee.

3.11 **Place of Payment Child support shall be paid by check or money order payable to and sent to the "Florida Support Disbursement Unit", P.O. Box 8500, Tallahassee, FL 32314-8500. The payor must write on each check (1) *this case number* and also the words (2) "*Lee County case*".**

3.12 Addresses and Social Security numbers As required by §61.13(8)(a), F.S., within 30 days of this order both parties are ordered to write to the "State Case Registry", P.O. Box 8500, Tallahassee, FL 32314-8500 and advise that agency of this Case Number in Lee County, Florida, and their current names, addresses, social security numbers, telephone numbers, driver's license numbers, and their employer's name, address, and telephone number, as these presently exist and as they change in the future. A copy of any letter with that information sent to the "State Case Registry" must also be delivered or mailed to the Clerk of the Court, Lee County, Florida, 1700 Monroe Street, Fort Myers, FL 33901.

3.13 Temporary Order on health insurance and uncovered medical bills

(A) Health Insurance The court finds there is no health insurance on the children.

(B) Uncovered Medical Bills The parties shall be responsible for any uncovered reasonable and necessary medical bills of the child incurred since the trial date in an amount equal to the ratio of their available incomes. *Forrest v. Ran*, 821 So.2d 1163 (Fla. 3d DCA 2002); *Salazar v. Salazar*, 976 So.2d 1155 (Fla. 4th DCA 2008). The ratio of their available incomes is: Father 20% and Mother 80%. "Medical bills" includes counseling, psychological, psychiatric, orthodontic, dental, optical, prescription, physician, hospital and other medical expenses. If either parent pays for any such treatment or bill, they shall be reimbursed for any amount paid beyond their share of it by the other parent. They shall be reimbursed only for treatments that are reasonable and necessary.

(C) Prompt Request and Prompt Payment If either parent incurs a "medical bill", as defined below, on a child, he or she shall send a copy of it to the other parent with a cover note asking for payment of one-half of the bill. He or she must keep a copy of the bill and the note asking for payment. Upon receipt of such correspondence, the parent receiving it shall promptly reimburse one-half of the bill to the other parent, or he or she shall promptly send a written objection or explanation to the other parent explaining why the payment is not being made.

(D) Record Keeping During the minority of the child, each parent must maintain a chronological, serial list of all uncovered medical bills they incur until the children are 18, if he or she expects to be reimbursed for such medical bills, along with copies of each bill on the list, which bill copies shall be attached to the list with a staple in the same order as the items on the list. The list of bills shall be in chronological order and must be serially numbered on the list, that is, "1", "2", "3", and so on until the children are 18. The same number must be written on each copy of the bills attached to the list so that each copy of an attached bill matches the correct item on the list.

Each item on the list shall (1) state the name of the medical provider, (2) the date the treatment happened, (3) what the bill was for, (4) the amount of the bill, and (5) whether it has been paid in full or in part.

The parents shall reimburse the other only by check or money order and shall keep all cancelled checks or money order receipts.

(E) Enforcement; Mediation If either parent hereafter seeks enforcement of this order for reimbursement, they shall first seek mediation with a mediator provided by court administration. They shall bring three copies of the list and each numbered bill for which they seek reimbursement to the mediation for use in the mediation. If mediation is unsuccessful and either parent thereafter files a motion to enforce reimbursement of medical bills on the child, he or she must bring three copies of list and each numbered bill for which they seek reimbursement to the hearing on the motion. The parent claiming payment for a disputed item must bring three copies of his or her proof of payment, such as cancelled checks, money order receipts, or receipts from insurance companies for payments, to mediation and any hearing.

4. Amended Final Judgment of Counter Injunction for Protection is now amended The court hereby amends the Amended Final Judgment entered 2/10/2010 in Case No. 09 DR 219 to delete all of the provisions in that judgment concerning time-sharing, parental responsibility, a parenting plan and child support, if any. The provisions allowing contact between the parties are also hereby canceled and deleted from that judgment.

The injunction is now hereby modified to allow the parties to have telephone, text, email and face to face contact for the purpose of communicating concerning child support, the care of their children and to exchange their children. Nothing may be discussed between them except child support, the care of their children and the exchange of their children. The parties may also be present together with their children or either of them for any counseling, medical treatment, school consultation, or school event at which their children are participating.

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

____
R. Thomas Corbin, Circuit Judge

Copies provided to:
Eduardo J. Mejias, Esq., and E. H. P., *pro se*
Vernon Fairchild, Esq.