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

J. D. S., II
Petitioner and father,

vs. **Case No. 0 DR N**
S. P.,
Respondent and mother,

FINAL JUDGMENT OF PATERNITY

This matter having come before the court at trial on March 24, 2010, it is ordered:

1. Jurisdiction The court has jurisdiction of this matter and the parties. The child has resided in Lee County Florida for more than six months before the date of the filing of the petition. The father filed the initial petition on 10/11/2007 and the mother filed a counter petition on 10/19/2007.

2. Child of the Parties; Paternity Established The parties have a minor daughter, A. A. P., born 4/2/2006. The parties agreed that J. D. S., II, is the biological father of this child. Therefore, the court finds and orders that J. D. S., II, is the biological father of A. A. P., born 4/2/2006. The parties agreed in a mediation agreement filed 3/26/2008 that the father is the biological father of the child. Previously, they took a DNA test.

3. Parenting plan, parental responsibility order, and time-sharing schedule

3.1 Jurisdiction **The parties' child is A. A. P., born 4/2/2006**. This court has subject matter jurisdiction and personal jurisdiction over the parties 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.

3.2 Legal duty of both parents Both parents have a legal duty to promote the other parent to the child, and the child has 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) Florida Statutes (2008)

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 child. 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 the 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.

3.3 All factors considered; findings In deciding a parental responsibility order, a parenting plan and a time-sharing schedule, the court must make the child's best interest the "primary consideration" and the court must consider all of the factors in §61.13(3). The court must also consider the "expressed desires" of the parents in these decisions, but the interests of the parents are not a consideration, §61.13(2)(c)2.,a. The parents do not have a right to any particular parental responsibility order, parenting plan, or time-sharing schedule, while the child has a right to "frequent and continuing contact with both parents after the parents separate." §61.13(2)(c)1. The court has reviewed and considered all of those factors in making a decision about the parenting plan, the 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.

The father is now unemployed, since January 2010. He was then let go from a job as a golf cart mechanic. He said he had a "disagreement" with his employer regarding some changes to operations that he thought would result in efficiencies but his employer did not agree, and his employer told him he had to "let him go" or "lay him off" because business was slow and his salary was a large expense. The father has applied for unemployment but so far his claim has not resulted in any unemployment compensation. He does not know why.

Before he had the golf cart job he worked as a mechanic for a fire department but he left that job due to "politics." He is disabled and receives a monthly payment from the V.A. of $1,219. He has back pain and he takes prescription Motrin for this condition. He has not had any back surgeries. He was in the Air Force for 9 years, working as a mechanic on fire trucks. He presently has no other income. His wife is C. S. and they married 4/28/2007. She is his fifth wife. The father is now 32 years old. They now have a child born in October 2009. The father and his wife moved to St. James City, at the south end of Pine Island, Lee County, Florida, to the home of his parents in October 2009. Before that they were living in a house owned by the father off Bayshore Road near the LCEC offices,

but he lost that house to foreclosure. He pays his parents $500 a month for rent and his mother $400 a month for day care of his infant child. His wife is a student in a X-ray technician and medical technician school in Fort Myers during the week. She is paying for this school with loans.

The father is critical of the mother and her efforts to keep the child involved with him. He is not knowledgeable of the child's medical conditions. He says the mother has not kept him informed. The mother says she has kept him informed. The mother is a CNA and recently graduated from an RN school. She worked full time while completing the RN school. The RN course required her to attend clinics for some weekends in Boca Raton. She has worked for Health Park for the last 6 years. She works three 12 hours shifts each week. She receives health insurance through her job, which costs her $37 a month for herself and $37 a month for the child.

The parties met on the Internet in the spring of 2005. In a few months they began living together and the mother was pregnant by August 2005. The father did not take the news well, in the end, although at first he was happy. The mother said the pregnancy was planned. The parties lived together for a month or two but the mother moved out of their residence in late August 2005. She asked the father to go to counseling. He went to one session but he did not like the counselor, he felt the counselor was insulting him.

Between September 2005 and December 2006 the father had no contact with the mother. The mother sent him emails that included photos of the child and kept him up to date on the pregnancy, the child's birth, her condition, etc., but he made no reply in that time. With no prior notice, on 12/24/2006 the father appeared at the mother's father's house with Xmas presents for the child. Meanwhile, the mother's work and residence address had not changed, but the father did not attempt to contact her directly or to see the child. The mother arranged a first meeting between the child and the father on 12/26/2006 at a lunch break on the father's job. She brought the child to his lunch break so he could see her for the first time.

In March 2007 the father said he wanted a paternity test. Before the parties lived together the mother resided with a male roommate. She had lived with this same man for some years before the couple met. The mother was somewhat offended by the request for a paternity test because she says the pregnancy was planned but she was always willing to have the test done. The father did not follow through and set up the test.

In 4/07 the father "texted" the mother to say he had a birthday present for the child and the mother picked it up from the father. Shortly after this the father "texted" the mother to tell her he was getting married and he did get married in late April 2007. Meanwhile, the father had not paid any child support to the mother. The mother told the father in August 2007 that she needed financial help with the child and that she was initiating child support enforcement proceedings through DOR because this was the only way she knew to get child support and a paternity test if the father would not arrange it somewhere.

The father filed his petition in October 2007. He asked for a DNA test. The mother answered and filed counter petition in which she also asked for a DNA test. Through their lawyers the parties worked out a time and place for the test to be done. The test showed J. D. S., II, is the biological father of the child. The scheduling of this test is illustrative of the communications between the parties: there is almost no communication or cooperation. This is largely the fault of the father, who has been ambivalent in his dealings with the mother and the child. The mother was always ready and willing to take the test but the father never set it up until it was arranged the hard way, that is, between the lawyers.

After the paternity test came back positive the father wanted to spend time with the child. The mother cooperated with this request by easing him into the child's life from October to December 2007 and in January 2008 they developed a "regular" schedule. They made adjustments to the schedule at a case management conference in 2/2008 and at the mediation of 3/2008. That schedule

called for mid-week contact, on Wednesdays, but at that time the father was living off Bayshore Road. On August 18, 2009 the court imposed a Temporary Order that included a time-sharing order.

The mediation agreement of 3/2008 also required the father to pay child support directly to the mother. This was the first time that the father began making child support.

The child attends a day care run by the mother's employer at Health Park. The mother pays $444 a month for this day care, whether the child is there for 2 days or 3 days a week. For a third day she pays $15 more for that day. The child is in this day care facility for 12 hours at a time because the mother works 12 hour shifts. This is an unusual day care facility because it stays open past 6:00 p.m. to accommodate the hours of the hospital's employees. The mother pays for the child to be at the day care while she works her 12 hour shifts. If the child is with the father on a weekend that she is working of course this might reduce the employment day care expense. However, the father would not agree to a change in the time-sharing schedule to allow the mother to pick up the child from him on Sundays after 7:00 p.m., which was the end of her Sunday shift, so the mother had to work 12 hour shifts during the week and she had to incur the day care expense during the week.

The father's mother provides day care for his infant child and if the child of these parties is taken care of by his mother that would also reduce the day care expense. However, the father's mother lives in St. James City and the mother works at Health Park. The father is not working. It is at least an hour's drive from St. James City to Health Park or the mother's residence. The mother lives on Summerlin Blvd., about 10 minutes from Health Park.

It is in the child's best interest to reduce the time that the child spends riding in cars. For this reason, it is in the child's best interest to make the parent acquiring the child drive to the other parent's residence. It is also in the child's best interest to see her parents cooperating and communicating and behaving civilly at exchanges and otherwise. It is in the child's best interest that she follow a consistent routine, week in and week out. This is especially the case as the child enters kindergarten and grammar school. With parents who do not communicate and cooperate it is highly unlikely that they will be able to successfully and consistently exchange the clothes, books, school assignments and coordinate after school and pre school activities and programs week to week, if the court were to order a "50/50", week to week time-sharing schedule. These parents have never demonstrated a capacity to communicate and cooperate concerning their child before this date. Past behavior is the surest indicator of future conduct, as Dr. Kelley said.

The child has chronic medical conditions: upper respiratory infections, recurring bronchitis, and asthma. She sees a pediatric pulmonologist. She is prescribed three medications, two that she takes daily and one "as needed." These medications need to be administered consistently. There is evidence that the parties have argued about these medications and that the father has resented the mother's instructions about administering the medication.

The father's wife has been making the exchanges of the child in recent months because she is in Fort Myers attending school during the week. This works better than having the parents exchange the child because the parents do not have any communication of any significance concerning their child and in the past on occasion they have not been civil during exchanges. In this case there is substantial, credible evidence that the parents do not confer and consult about parenting decisions, so they do not share parenting decisions. An inability to share parenting decisions and conflict between the parents is detrimental to the child.

The court finds that this couple is not capable of conferring together to share parenting decisions. There is no capacity demonstrated in this record that they are able to share, confer, and discuss parenting decisions and arrive at shared decisions. On the contrary, there is considerable evidence that they have no capacity to do this. They have not done this since the child was born. The court finds this is largely because of the father's attitude and inability to manage his relationship with the mother in a manner that allows them to share parenting decisions. He has been inconsistent in his

relationship with the mother and the child, at first welcoming the pregnancy and then denying responsibility for many, many months. She no doubt resented his lack of participation and denial of responsibility, which caused her to be less than welcoming of his efforts to be involved. In response, the mother has practiced some maternal gatekeeping behaviors in an effort to protect the child from the father's inconsistent behavior toward her and the child, which the father resented to some degree, but in the main the mother has managed the father's inconsistencies well and steadily so that the child is bonded to the father as well as to he mother. The mother genuinely wants the child to have a relationship with her father, just as she genuinely wants the child to have a regular, consistent routine and to have her medical needs met. The court finds the mother is ready, willing, and able to allow the father to participate in the child's life, but he is sometimes evasive, defensive and sometimes even hostile to her efforts. Continuing conflict and argument between these parents would be the result of a shared parenting order. Therefore, a shared parenting order is not in the child's best interests because continuing conflict between the parents is detrimental to the child.

3.4 Parental responsibility; detriment 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). (*Emphasis supplied*.)

With little thought, most petitions ask for "shared parenting" or, more properly, "shared parental responsibility." However, "to share" means "to confer ... so that major decisions ... will be determined jointly." This means that each parent has an equal say in major decisions concerning the child if "shared parenting" is ordered. So, if the parents have a disagreement on a major decision, it is not for the court to say who is right or who is wrong if each has a reason to support their decision that is acceptable to a reasonable person. Put another way, a decision is not arbitrary if it is "fairly debatable." *See, e.g., Island, Inc., v. City of Bradenton Beach*, 884 So.2d 107 (Fla. 2d DCA 2004) and *Martin County v. Section 28 Partnership, Ltd.*, 772 So.2d 616 (Fla. 4th DCA 2000). In such a situation, nothing happens, so long as a risk to the child's life, health, or safety is not at stake. It is not for the court to decide the winner of the debate, only to find that there is a debate with reason on both sides. The court cannot substitute its judgment for the rationally based decision of either parent because this is a proceeding under Chapter 61, not Chapter 39, and the child has two competent parents. The judge in a Chapter 39 case is a "super parent" empowered to make parenting decisions when there is no competent parent. *See, e.g.,* §39.407(2)(a)2. The judge in a Chapter 61 case has no such authority. Further, the goal of every litigation is to end the dispute, and in a Chapter 61 proceeding the court does not end the dispute if it is open to endlessly hear and overrule one parent or the other whenever they do not agree on decisions they were ordered to "share."

In this case, there is no evidence that these parents have ever demonstrated a capacity to "share" a parenting decision. Ordering "shared parenting" in this case would only further the lawsuit, it would not end it.

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 father's amended petition pled for shared parental responsibility or sole parental responsibility to him and the mother's amended petition asks for sole

parental responsibility to her.

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). The court finds that this couple is not capable of conferring together to share parenting decisions. There is no capacity demonstrated in this record that they are able to share, confer, and discuss parenting decisions and arrive at shared decisions. On the contrary, there is considerable evidence that they have no capacity to do this. The court finds this is largely because of the father's attitude and inability to manage his relationship with the mother in a manner that allows them to share parenting decisions. The court finds the mother is ready and willing to allow the father to participate but he is defensive, resentful, and sometimes even hostile to her efforts. He has been inconsistent and absent for much of the child's life. Continuing conflict between these parents would be the result of a shared parenting order. Therefore, a shared parenting order is not in the child's best interests because continuing conflict between the parents is detrimental to the child.

3.5 The parental responsibility order is separate from the time-sharing order 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):

"(17) "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.*

(18) "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).

3.6 Parenting Plan, Sole Parenting Ordered, Detriment to the Child 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.

In this case, the court finds that an order for shared parental responsibility would be detrimental to the child. In particular, the evidence demonstrates that the parties cannot share the parenting decisions for their child. There is a significant history of antagonism between these parents. Cooperation to further the best interest of their child has not happened since they separated.

A parent seeking sole parental authority or exclusive parental authority over some aspect of the child's life must first plead for this relief in his or her petition. *McDonald v. McDonald*, 732 So.2d 505 (Fla. 4th DCA 1999). In this case, the mother pled for sole parental authority or exclusive parenting authority over the child's life.

The court finds the mother's petition has merit. **Therefore, the court hereby orders that the Mother has sole and exclusive parental responsibility. Therefore, the Mother shall have the sole authority over all parenting decisions concerning the parties' minor child**. *Roski v. Roski*, 730 So.2d 413 (Fla. 2d DCA 1999). The court finds it would be detrimental to the child to order shared parental responsibility because the parents' communications have not happened, are acrimonious, and they can communicate with each other about very little concerning their child or anything else. An order for shared parenting would ask them to do the impossible, that is, make joint decisions concerning their child, and it would require them to deal with each other, which would lead to further conflict, which would be detrimental to the child. So, a shared parental responsibility order would be detrimental to the child and sole parental responsibility is necessary to avoid detriment to the child. *Grimaldi v. Grimaldi*., 721So.3d 820 (Fla. 4th DCA 1998).

Therefore, **the court orders that the Mother has sole and exclusive authority to make parenting decisions concerning the child's education, pre-schools, schools, school choice, medical needs, dental, optical, orthodontic treatments, participation in sports, extracurricular activities, curfews, driving, obtaining a driver's license, dating, and all other aspects of parenting**. The Mother may consult with the Father but the decision in any parenting issue belongs to the Mother. The court has considered all of the factors in §61.13(3) in making this parenting authority order.

The Father is hereby granted authority to authorize emergency medical treatment on the child when the child are with the Father but the Father must promptly notify the Mother of the emergency and then the Mother has the authority to make a decision about non-emergency medical treatment.

3.7. Both parents have equal access to school and medical records - Access to records and information pertaining to the child, including, but not limited to, medical, dental, and school records, may not be denied to either parent by any of these providers. 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.

3.8. Time-Sharing Schedule - The court hereby orders that the child will have contact with the parents according to the attached Time Sharing Schedule. **After considering all of the factors in**

§61.13(3)the court finds the child's best interests are served by having them live most of the time with the Mother. The time-sharing schedule ordered by the court is attached to this Final Judgment. This is a final order for a time-sharing schedule.

The court finds that the foregoing parenting plan and time-sharing schedule are in the child'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.

4. Child support findings and temporary child support order

4.1 Jurisdiction reserved Because the father is now unemployed and no income is imputed to him, the court hereby reserves jurisdiction over the issue of child support and the child support arrearage. Therefore, either party by motion may ask the court to determine the amount of current child support or the arrearage from time to time after this date as circumstances change. A substantial change in circumstances is not required for the motion and a recalculation of child support.

4.2 Findings The mother has the burden of proof on the question of imputing income to the father. She did not meet that burden. There is no competent, substantial proof to support a finding that income should be imputed to the father. He is now involuntarily unemployed. He was involuntarily let go from his last job. He is looking for work within his training and experience in this community but he has not found a job.

The mother did not carry her burden to prove by competent, substantial evidence the two-step analysis required before the court could impute income. *See, e.g., Zarycki-Weig v. Weig*, 25 So.3d 573 (Fla. 4th DCA 2009), in which the court said: "The trial court may only impute a level of income supported by the evidence of employment potential and probable earnings based on work history, qualifications, and prevailing wages in the community." *Citing Schram v. Schram*, 932 So.2d 245 (Fla. 4th DCA 2005) and §61.30(2)(b).

The two-step analysis requires, first, the trial court must determine that the termination of income was voluntary, and, second, the court must conclude that any subsequent unemployment or underemployment resulted from the spouse's pursuit of his own interests through less than diligent and bona fide efforts to find employment at least at a level equal to or better than formerly received. *See, e.g., Durand v. Durand*, 16 So.3d 982 (Fla. 4th DCA 2009). Generally speaking, as explained in *Roth v. Roth*, 973 So.2d 580 (Fla. 2d DCA 2008), "When a court imputes income, it is finding that the party to whom the income is imputed has chosen to earn less than he or she is able to and that the party has the ability to remedy the situation."

The party asking to impute income to the other party has the burden to prove jobs are available in the community consistent with the other party's experience and training. For instance, in *Owen v. Owen*, 867 So.2d 1222 (Fla. 5th DCA 2004) the undisputed evidence showed that the mother was voluntarily unemployed, which is the first step, but the court held: "However, ... it was error to impute income to her in an amount which exceeded [what] she previously earned in the job market since the former husband failed to present evidence as to the availability in the community of jobs for the former wife and the salary which she could earn at those jobs." Note, there must be evidence of jobs that are available in the community within the party's training and experience.

Again, in *Andrews v. Andrews*, 867 So.2d 476 (Fla. 5th DCA 2004) the court held that to impute income the trial court must find that the spouse's unemployment is voluntary, and resulted from either the spouse's pursuit of his or her own interests or a less than diligent and bona find effort to find employment paying at a level equal to that formerly enjoyed. To impute income, the court must "indicate the amount and the source" of the imputed income. The court must "consider the spouse's recent work history, his or her occupational qualifications, and the prevailing earnings in the community for that class of *available* jobs." (*Emphasis supplied*.) Note, again, there must be evidence

of "available jobs" in the community consistent with the party's training and experience. Further, the other spouse has the burden to prove all of this. The wife's "prior income, although relevant, is insufficient to support the amount ... imputed to her."

4.3 Temporary child support calculation; dependent's exemption The court's temporary child support calculation is attached as Exhibit A. The child support calculation is based upon $2,212 per month gross income for the mother, $1,219 gross income per month for the father, with the father paying $0 for his health insurance, the mother paying $37 for her health insurance, the child's health insurance costing $37 and being paid by the mother, the parent with whom the child resides most of the time having an employment day care expense of $444, and the Mother, who is the parent with whom the child lives 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 child, 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 child resides with the Mother for most of the days out of the year and with the Father the balance of the year, so the child is with the Mother most of the days. So, under the Internal Revenue Code, the court orders the Mother is entitled to the dependent's exemption for the child 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 child 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 child on the federal income tax return for that year, regardless of what any time-sharing order in this case may say about where the child is 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 child 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 child on the federal income tax return for that year, as ordered above.

4.4 **Therefore, the monthly amount of child support due from the Father to the Mother is $390, plus a collection fee of $5.25 or 4% with each payment but not less than $1.25, whichever is less**.

4.5 It is now ordered that child support shall not be modified during any period of contact with the Father, who is the parent with whom the child resides the least amount of time during the year.

4.6 The court finds that child support is owed since the filing of the petition. Therefore, child support was payable from the filing of the petition.

4.7 The court has considered whether a deviation from the guideline should be ordered, in particular, because the father now has a subsequent child. The father requested a deviation for this reason. §61.30(12)(b). However, no deviation is ordered at this time, up or down, for this or any other reason, without prejudice.

4.8 Arrearage Order The court reserves to determine the arrearage. The court finds there is an arrearage in child support because the father was employed and he received a disability payment each month since the child was born on 4/2/2006. The mother's counter petition was filed on 10/19/2007. The court, therefore, has the discretion to determine an arrearage from 4/2006, the month of the child's birth, because that date is within two years of the filing of the mother's counter petition. §61.30(17). The father did not pay any child support until the mediated agreement of 3/2008. Further, that agreement did not require a guideline amount of child support because it appears to have been based

on an income for the father that did not include his disability payment. His first financial affidavit did not include that disability payment, only his salary. Finally, the father says the Temporary Order of 8/18/2009 did not find the correct amount of the mother's income at that time, her affidavit filed shortly before the hearing showed income of $1,960 per month and the calculation was based on a prior affidavit showing $1,552 per month. The evidence at trial did not demonstrate when the mother's income increased. For the foregoing reasons, the court reserves jurisdiction to determine the amount of the arrearage. Either party may bring the issue of a determination of the arrearage before the court by filing and serving a notice of hearing. Although the amount of the arrearage is not yet determined, the court orders an arrearage payment because there is an arrearage.

4.9 **Current Support and Arrearage Amount Per Month Therefore, the Father shall pay to the Mother the total of: (1) current child support per month, $390;(2) an arrearage payment per month, $90; and (3) collection fee of $5.25 or 4% with each payment but not less than $1.25, whichever is less. All payments shall be paid to the Department of Revenue in Tallahassee, as provided below.** 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.

4.10 First Payment Due Date The first payment is due February 1, 2010 and on a like day of each month thereafter. This is the first date that $390 in current support and an arrearage payment of $90 a month is owed because the father was laid off from his last job in January 2010.

4.11 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. The payor must also give a copy of the IDO to his employer

4.12 **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*".**

4.13 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.

4.14. Health Insurance

(A) Health Insurance The court finds the health insurance the Mother has on the child is reasonable and affordable to the parties. This coverage shall not be canceled and shall be maintained on the child as long as possible or until the parties agree otherwise. The Mother shall promptly provide the Father with cards or other proof of the coverage when these are made available by the insurer and when requested by the Father or any medical provider of the child.

(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 current ratio of their available incomes is: Father 40% and Mother 60%. "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 child is 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 child is 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.

5. Attorney's Fees, Costs, and Suit Money The court reserves jurisdiction over the issue of attorney's fees, costs, and suit money, both entitlement and amount, for further hearings. Any further hearing on these issues must be preceded by a motion by either party asking for fees, costs or suit money, and a notice of hearing on the motion.

6. Reservation of Jurisdiction The court reserves jurisdiction of this action to enforce this final judgment and for all purposes specifically reserved.

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

_____
R. Thomas Corbin, Circuit Judge

Copies provided to:
Pamela J. Steed, Esq., and Stephanie A. Brunner, Esq.