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

S. L. S.,
now known as S. L. P.,
Petitioner & wife,

vs. **Case No. 00 DR 000 N**

S. S.,
Respondent & husband,

FINAL JUDGMENT OF DISSOLUTION OF MARRIAGE

This matter having come before the court at trial on 10/27/2011, it is ordered:

1. Jurisdiction The court has jurisdiction of this matter and the parties. The petitioner has been a resident of Florida for more than six months before the date of the filing of the petition.

2. Irretrievably Broken The marriage of the parties is irretrievably broken. Therefore, the marriage of the parties is dissolved.

The parties were married on 8/18/2005 and they separated on 5/6/2010, so they were married for 4 years and 9 months. The parties have a minor child: R. G. S., born (*Date omitted*).

All temporary orders entered in this matter before this date are now cancelled and of no force or effect, unless specifically incorporated in this judgment. Any agreement between these parties made before this date is not canceled if the parties agreed that it was to be permanent and incorporated in this judgment.

The court's orders regarding jurisdiction entered before this date in this case are not canceled and the findings and rulings in those orders are hereby incorporated by reference.

The father appeared by telephone. With the mother's consent, he testified in the trial over the telephone. He was in Indiana. He testified at the trial that his correct mailing address as (*Address omitted*) Box 15**7**, (*Town omitted*), Texas, even though in his recent court filings he either omits the "Box" number or he put "Box 15**8**" as the "Box" number. In evidence, Wife's Exhibit 4, is a letter addressed to the husband at "Box 15**8**" was returned by the U.S.P.S.

The mother appeared in person with counsel.

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

3.1 Jurisdiction **The parties' child is R. G. S., born (*Date omitted)*.** 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 All factors considered 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 may consider the "expressed desires" of the parents in making a decision about the parental responsibility order, §61.13(2)(c)2., but the interests of the parents are not a consideration in deciding on the time-sharing schedule under the factors in §61.13(3)(a)-(t). There is no particular time-sharing schedule that is favored by the statute or assumed to be in the child's best interest. Every child is unique, every family is unique and every time-sharing schedule must also be unique. The parents do not have a right to any particular parental responsibility order, parenting plan, or time-sharing schedule. While the child, on the other hand, has a right to contact with both parents after the parents separate, §61.13(2)(c)1., the circumstances of a case may require that the child's contact with a parent must be limited, supervised or ended altogether in order to promote the best interests of the child. *E.g.*, *Hunter v. Hunter*, 540 So.2d 235 (Fla. 3d DCA 1989). The pleadings and the facts of each case determine what the court must order.

This is one of those cases in which the child's contact with a parent, here, the father, cannot be ordered in this case because the child is a petitioner in the D.V. case, and therefore the no contact provisions of the final judgment in that case, Case No. 10 DR 990, Lee County, Florida, which the court takes judicial notice of, prohibit contact between the father and the mother and the father and the child, except as provided in that D.V. judgment. The D.V. final judgment was entered after a full evidentiary hearing on 7/6/2010, in which both parties were present and both were represented by counsel. So, the court has considered the evidence of domestic violence and makes these findings, as required by §61.13(3)(m).

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. Suffice it to say that the time-sharing order in this judgment is in the child's best interest.

3.3 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. Many parents and many courts confuse these two

questions. Some reported decisions use the term "shared parenting" when referring to the time-sharing schedule, which is not helpful. "Shared parenting" is not a description of a time-sharing schedule. It is one of the alternatives for parental decision making allowed by §61.13(2).

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). However, 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* 2008-61 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 obsolete. "Primary parent," "custodial parent", "noncustodial parent" or "primary residential parent" are also now meaningless terms under Florida law.

F.S. §61.13(2)(b)(2010) 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. So, since 1982 and under the current statute the "time-sharing" order and the "parental responsibility" order must be two, separate orders.

"Parental responsibility" means parenting decision-making, and the "parental responsibility order" does not specify where the child will be living from time to time during the year. *See* F.S. §61.046(17) & (18) (2010):

"(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.*)

Further, F.S. §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, the "parental responsibility" order is concerned with how parenting decisions will be made after parents separate, and the statute gives the court three choices in that order:

(1) unlimited shared parental responsibility between the parents;

(2) sole parental responsibility to one parent for all parenting decisions; or

(3) shared parental responsibility with ultimate responsibility over one or more aspects of the child's life to one parent or divided between the parents. *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);

Further, §61.13(2)(c)2, requires the court to order the first alternative, shared parental responsibility, **unless that would be detrimental to the child, in which case the court can order sole parental responsibility**. Evidence of detriment to the child is not necessary if the third choice is ordered, shared parental responsibility with ultimate responsibility.

However, although the statute allows the judge to order one of these three choices in the parental responsibility order, the procedural law limits the judge's choice to the particular choice pleaded by the parties in their petitions. If no particular parental responsibility order is sought in a pleading, then the court can only order shared parental responsibility, even if that is not in the child's best interest. *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) *The procedural law, that is due process of law, requires that a party must plead specifically for sole parental responsibility or shared responsibililty with ultimate responsibility*, if either of these is sought, and *if sole parental authority is sought the petition must also allege ultimate facts that demonstrate detriment* to the child if shared parental responsibility is ordered, because F.S. §61.13(2)(c), 2., provides:

> "The court shall 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.... If the court determines that shared parental responsibility would be detrimental to the child, it may order sole parental responsibility* and make such arrangements for time-sharing as specified in the parenting plan ..." (*Emphasis supplied*)

So, if a party wants sole parental responsibility that party *must plead for this choice and must also plead and prove detriment to the child,* and if a party wants shared parental responsibility with ultimate responsibility that party *must plead for this choice but that party does not have to plead and prove detriment to the child*. F.S. §61.13(2)(c)2., a.. If a party wants shared parental responsibility, then this is what the court must order in every case unless sole parental or shared with ultimate is pleaded by one party or the other.

Of course, a party may plead alternatively for all three choices allowed by law. Fla. Fam. L. R. P. 12.110; Fla. R. Civ. P. 1.110(b). A "pleading" is a petition and an answer to a petition. A motion is not a pleading. Fla. R. Civ. P. 1.110(a).

Here, the mother's "Amended Petition" filed 7/2/2010 asks for "sole parental

responsibility" and it alleges ultimate facts that amount to detriment to the child if shared parental responsibility is ordered. The court finds the facts alleged are proven at trial.

In particular, among other evidence, the court has considered the evidence of domestic violence by the father on the mother, and hereby makes these findings as required by §61.13(3)(m). In Case No. 10 DR 990, a permanent injunction is ordered in the Amended Final Judgment of Injunction for Protection Against Domestic Violence filed 7/7/2011. **The minor child, R. G. S., as well as the mother, is a petitioner in that case and therefore pursuant to that judgment the father may not make contact with the child or the mother, except as provided in that judgment**. The court in this case has no jurisdiction or authority to modify the no contact orders of that D.V. judgment. Only the court in that D.V. case has the authority to modify those no contact orders, upon proper motion and notice of hearing.

In this case, the court finds merit to the mother's allegations of domestic violence, that she has been the victim of domestic violence and that she and the child are in imminent danger of becoming the victims of domestic violence by the father.

Because the child is a petitioner and a final judgment is entered in the D.V. case, this court cannot order a time-sharing schedule in violation of the D.V. final judgment. The court has no jurisdiction to do so.

Therefore, no time-sharing schedule is ordered at this time in this case. This is a final order regarding time-sharing.

3.4 Parental responsibility; detriment As discussed above, 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*.)

Many petitions ask for "shared parenting" or, more properly, "shared parental responsibility." Many settlement agreements agree upon "shared parenting." *However, "to share" means "to confer ... so that major decisions ... will be determined jointly."* So, if shared parental responsibility is ordered, then *each parent has an equal say* in major decisions concerning the child. So, if shared parenting is ordered and the parents have a disagreement on a major decision, it is not for the court to say who is right or who is wrong. They each have equal control over parenting decisions. In such a situation, nothing happens, so long as a risk to the child's life or safety is not at stake. It is not for the court to decide the winner of the debate. The court in a Chapter 61 case has no power to overrule a jointly made parenting decision or to make a parenting

decision when the parents ordered to share parenting are at an impasse.

The court in a Chapter 61 case cannot substitute its judgment for the parenting decision of either parent because the child has two fit and competent parents, absent any allegations and proof that one or both of the parents are unfit because of abuse, abandonment or neglect. Chapter 61 does not give the judge the authority to become a "super parent" empowered to make parenting decisions for the child or overrule a parenting decision or decide a parenting decision when parents ordered to share parenting are at an impasse. *Martinez v. Martinez*, 573 So.2d 37 (Fla. 1st DCA 1990), in which the court said: "[§61.13(2)] contemplates that parents, not the courts, have the responsibility of determining where their children will attend school. In situations where the parents are unable to agree on the education of their children, the court is required to designate, based on the best interests of the children, one parent to have the ultimate responsibility for making decisions regarding that specific aspect of the children's welfare. ... We decline to construe [§61.13(2)] as giving a trial court authority to direct which school the children shall attend; that section only authorizes the court to determine, based on competent substantial evidence, which parent shall make that decision based on the best interests of the children." *Id*. at 41.

In *Martinez*, the issue of the school the children would attend came up at trial on the merits of the initial petitions and no parental responsibility order had yet been entered, so the appellate court remanded for the trial court to conduct further proceedings and to pick a parent to decide upon the children's schools. Of course, before the trial court would have the authority to do that, one of the parties must plead either for (1) sole parenting authority or (2) shared parenting authority with ultimate authority over education decisions to one parent. The court's authority to designate a parent to make unilateral parenting decisions is limited by traditional concepts of due process, that is, if a party does not plead for a certain relief allowed by law, the court cannot order it even if the substantive law allows it. *See, e.g., Furman v. Furman, supra*, and *McDonald v. McDonald, supra*. The pleadings put the parties on notice of the issues that will be tried at trial. The pleadings are the petitions and answers to those petitions. Motions are not pleadings. *See* Rule 1.100(a).

So, in a Chapter 61 case parties must plead for the particular parental responsibility order requested at trial, and if shared parental responsibility is ordered in a case, the judge has no power to overrule either parent and make a parenting decision. By comparison, Chapter 39 does give the judge the authority to make parenting decision for a dependent child. In a Chapter 39 case the issue is whether one or both parents are unfit because of abuse, abandonment or neglect of the children. In such a case if there is no fit parent, then the judge is a "super parent" empowered to make parenting decisions for the children. *See, e.g.*, §39.407(2)(a)2.

However, the judge in a Chapter 61 case has no such authority. The judge in a Chapter 61 case can only order one of the three alternatives for parental responsibility allowed by §61.13(2), and the judge can order sole parental responsibility or shared parenting with ultimate responsibility over aspects of the child's life only if there is a petition asking for that relief, and if sole parental responsibility is sought, then factual allegations of detriment to the child if shared

responsibility is ordered must also be pled.

A finding that the parents do not 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., Hunter v. Hunter*, 540 So.2d 235 (Fla. 3d DCA 1989); *Roski v. Roski*, 730 So.2d 413 (Fla. 2d DCA 1999); *Grigsby v. Grigsby*, 39 So.3d 453 (Fla. 2d DCA 2010), or an order of shared responsibility with ultimate responsibility to one parent or the other. *Martinez, supra*. This is a detriment to the child because after the parents separate the best interests of the child require that someone have parental responsibility, that is, the authority to make a parenting decision. If shared parenting is ordered but in fact the parents cannot share parenting and make joint decisions together so that they are each equal participants, then no parenting decision at all can be made. But parenting decisions must be made for the child constantly. So, in a case in which the parents cannot share parenting decisions, sole parental responsibility or shared parental responsibility with ultimate responsibility to one parent or the other must be ordered so that one of them, at least, has the authority to make a parenting decision.

In addition, as the court said in *Roski, supra,*:

> "The record makes it clear that these parties were unable to reach agreement on *any* subject. [Shared parental responsibility] would be an invitation for weekly journeys to family court."
> *Id.* at 414.

The point is that in a case in which the parents cannot communicate and cannot cooperate concerning their child, ordering the parents to share major parenting decisions and requiring them to confer together and make joint decisions is an order that will keep the lawsuit going on and on with motions for contempt or supplemental petitions to modify. This is not in the child's best interest and it is a detriment to the child. An object of every legal proceeding is to bring the case to an end, not leave it open to endless litigation.

In this case the mother's amended petition filed 7/2/2010 asks for sole parental responsibility. The court finds the mother's petition has merit. An order for shared parental responsibility would be detrimental to the child because it would require the parties to confer together and make joint parenting decisions but the D.V. injunction, which is in effect until 7/7/2013, prohibits the parties from having any contact. Further, the court finds that there is no evidence at all that the parties have demonstrated a capacity to confer together and make a joint parenting decision since separation. The father has not filed a counter petition.

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 child's life.

In this particular family, from the evidence presented the court finds:

(1) **The parents do not confer and consult together about major parenting decisions**, for example, for example, exchanging the child's clothes and books, discussing their homework and school assignments;
(2) **The parents do not communicate at all concerning their child**;

(3) **The parties have not demonstrated a capacity to share parental responsibility**,

(4) **This record demonstrates that these parents have not shared parental responsibility in any significant way**;

(5) **An unlimited shared parental responsibility order would be detrimental to the child because such an order would require these parents to confer with each other over all major parenting decisions but these parents are likely to argue and bicker in these consultations, which would be detrimental to the children**;

(6) **Because of the domestic violence and the final judgment in the D.V. case and nonexistent communication between these parents, one parent or the other would simply take action and make major decisions concerning the children while the child were with one parent or the other, especially about medical decisions and school decisions, without consulting with the other parent, which would mean that parent violated a shared parental responsibility order and would lead to more disputes, arguing and litigation between these parents**; and

(7) **Ordering these parents to share parental responsibility without granting one of them either sole responsibility or shared parental responsibility with ultimate responsibility when they have demonstrated they are incapable of sharing parental responsibility for all major parenting decisions is not in the child's best interest because at least one parent needs the authority to make parenting decisions and these parents cannot consistently and**

continuously make parenting decisions together.

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

(1) **The Mother has sole and exclusive authority to make all 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 and parenting decisions. The court has considered all of the factors in §61.13(3) in making this sole parental responsibility order**.

(3) The **court does not reserve jurisdiction over this parental responsibility order**. This is a final order of parental responsibility.

3.5 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.**

3.6 Time-sharing schedule; jurisdiction

After considering all of the factors in §61.13(3) **the court finds the child's best interests are served by having the child live all 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 child's best interest.

However, the court does find that the child is doing well under the present time-sharing arrangement, in which he spends 100% of the days of the year with the mother. He is now free from the domestic violence on the mother, verbal abuse of the mother, and incessant conflict between his parents. He is doing well. Formerly, when the parties were together, because of the domestic violence, verbal abuse and incessant conflict, he was having severe mental and physical ailments. He is now free from these.

The father's testimony regarding the mother was caustic, angry, and hostile. He was not a credible witness on any issue. The mother, on the other hand, was calm, measured, and, while somewhat aggrieved at what she has experienced during this short marriage, she was a very credible witness.

Because the child is a petitioner and a final judgment is entered in the D.V. case, this court cannot order a time-sharing schedule in violation of the contact provisions of the D.V. final judgment. The court has no jurisdiction to do so.

Therefore, no time-sharing schedule is ordered in this case. This is a final order regarding time-sharing.

The court finds that the foregoing parenting plan, parental responsibility order, 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.

The **court does not reserve jurisdiction over this time-sharing schedule.** This is a final time-sharing order.

4. Equitable distribution

4.1 Identification of nonmarital and marital assets and liabilities §61.075(7) provides: "The cut-off date for determining assets and liabilities to be identified or classified as marital assets and liabilities is the earliest of the date the parties enter into a valid separation agreement, such other date as may be expressly established by such agreement, or the date of the filing of a petition for dissolution of marriage."

In this case, there is no separation agreement, so the cut-off date for determining the marital and nonmarital assets and liabilities is the filing date, which is 9/20/2010.

4.2 . Nonmarital assets and liabilities In making equitable distribution, the court must first identify the nonmarital assets and liabilities of the parties, as required by §61.075(1). The nonmarital assets and liabilities are as follows:

NONE identified in the evidence. The mother filed Chapter 7 bankruptcy while this case was pending. Most of her nonmarital property was taken in the bankruptcy. She purchased some of this property from the trustee. So, she has no nonmarital property.

The father did not identify any nonmarital property of his in his testimony or value it, except the items left by the wife in their residence when they separated.

4.3 . Marital assets and liabilities In making equitable distribution of the parties' marital assets and liabilities, §61.075(1) requires the court to begin with the premise that the distribution should be equal unless there is a justification for an unequal distribution based on all relevant factors, including:

4.3.1 .(a) "*The contribution to the marriage by each spouse, including contributions to the care and education of the children and services as homemaker:*"

4.3.2 .(b) "*The economic circumstances of the parties:*"

4.3.3 .(c) "*The duration of the marriage:*"

4.3.4 .(d) "*Any interruption of personal careers or educational opportunities of either party:*"

4.3.5 .(e) "*The contribution of one spouse to the personal career or educational opportunity of the other spouse:*"

4.3.6 .(f) "*The desirability of retaining any assets, including an interest in a business, corporation, or professional practice, intact and free from any claim or interference by the other party:*"
4.3.7 .(g) "*The contribution of each spouse to the acquisition, enhancement, and production of income or the improvement of, or the incurring of liabilities to, both the marital assets and the nonmarital assets of the parties:*"
4.3.8 .(h) "*The desirability of retaining the marital home as a residence for a dependent child of the marriage or any other party when equitable to do so, it is in the best interest of the child or that party, and it is financially feasible for the parties to maintain the residence until the child is emancipated or until exclusive possession is otherwise terminated by a court of competent jurisdiction. In making this determination, the court shall first determine if it would be in the best interest of the dependent child to remain in the marital home; and, if not, whether other equities would be served by giving any other party exclusive use and possession of the marital home.*"
4.3.9 .(i) "*The intentional dissipation, waste, depletion, or destruction of marital assets after the filing of the petition or within 2 years prior to the filing of the petition:*"
4.3.10 .(j) "*Any other factors necessary to do equity and justice between the parties:*"
4.4 . **Considering all of these factors, the court finds there are no marital assets of the parties to be divided.**

When the parties separated in Texas, they effected a division of their nonmarital property. The wife's nonmarital property was lost in her bankruptcy. She left the husband's nonmarital property in the residence in Texas.

The particular items of marital assets or property was not identified or valued in the testimony so the court has no competent, substantial evidence to identify and value any marital property.

Nevertheless, the court finds that the marital assets or property was minimal, given the short duration of this marriage and the fact that both parties had substantial nonmarital property when they married.

There is nothing of marital assets or property now to be distributed.

Regarding marital liabilities:

The mother's mother loaned the parties $7,000 in May 2008 so they could pay their 2007 income taxes. This loan is a cause of action owned by the mother's mother. The court hereby identifies and distributes this marital liability one-half each to the parties, that is, $3,500 to the husband and $3,500 to the wife.

The mother's mother also loaned the parties $4,489.60, rounded, $4,490, on a credit card to pay moving expenses for the parties. The court hereby identifies and distributes this marital liability, one-half each to the parties, that is, $2,245 to the husband and $2,245 to the wife.

The court has no authority to use contempt power to enforce the division of property in a final judgment; that is, the court has no authority to use contempt power to enforce an equitable distribution order in a Final Judgment. Rather, the aggrieved party has the usual remedies

available to a creditor for breach of contract, which means a suit in a court of competent jurisdiction for breach of a contract or to enforce the order in the Final Judgment. Contempt authority is available only to enforce support orders. *See, e.g., Whelan v. Whelan*, 736 So.2d 732 (Fla. 4th DCA 1999); *Filan v. Filan*, 549 So.2d 1105 (4th DCA Fla. 1989) and *Veiga v. State*, 561 So.2d 1335 (Fla. 5th DCA 1990), in which the court said: "Property division awards may not be enforced by contempt; the only remedies are those available to creditors against debtors." *Id.* at 1336 (*Citations omitted*).

In 2009 the parties received a tax refund $15,516, but the refund turned out to be "about" $8,500 because the husband had delinquent student loans and the wife filed an "Injured Spouse" Form 8379 with the I.R.S. Previously, the I.R.S. had sent a check payable to the parties jointly for "about" $8,500, but after the wife filed the "Injured Spouse" form the I.R.S. sent her a check payable only to her for "about" $8,500 and the I.R.S. voided the joint check. The husband still has that void joint check in his "lock box." The court values this portion of the tax refund paid to the wife by the I.R.S. at "about" $8,500, or exactly the amount paid to the wife by the I.R.S., from the 2009 tax refund and this entire amount is distributed to the wife. The husband is distributed that amount of the 2009 tax refund that was applied by the I.R.S. on his delinquent student loans.

The Volkswagon Cabriolet: The husband's claim to storage costs for this vehicle and any other property left by the wife in Texas is denied. She left his nonmarital property and that vehicle was used by the husband until the bankruptcy trustee had it repossessed in the wife's bankruptcy case.

5. Child support findings and child support order

5.1 Child support calculation The court's child support calculation is attached as Exhibit A. As required by §61.30, the calculation is based on the following findings of fact:

(1) the child spending 365 days each year, or 100% of the year, with the Father and the balance of the year with the Mother;

(2) $7,000 gross income per month for the mother. The mother is a occupational therapist working with elderly clients in nursing homes in Lee County, Florida.

(3) $1,660 gross income per month for the father. The father is receiving unemployment compensation from Texas in this amount. On April 8, 2011 the father was involuntarily terminated from his job with (*Employer name omitted*) in (*Town omitted*), Texas, for "unsatisfactory work" and "misconduct." A memo dated 3/11/2011 details the father's unsatisfactory work performance. The father said he also has a lawsuit pending against his former employer for wrongful discharge. The father was hired originally by this former employer at a salary of $80,000 a year, on 11/30/2009, or $6,666 gross per month.

(4) with the father paying $0 for his health insurance per month;

(5) the mother paying $106 for her health insurance per month;

(6) the child's health insurance costing $166 per month;

(7) being paid by the Mother;

(8) the parent with whom the child resides most of the time having an employment day care expense of $433;

(9) the parent with whom the child lives most of the time under the time sharing schedule ordered qualifying for the dependent's exemption for the child;

(10) the "net income" of each party as determined by §61.30(3), obtained by subtracting allowable deductions from gross income. Allowable deductions include:

(a) Federal, state and local income tax deductions, adjusted for actual filing status and allowable dependents and income tax liabilities.

1. The actual filing status of the Mother is: Married, filing separate and Head of Household. The allowable dependents of the Mother is: 2, for herself and the child.
2. The actual filing status of the Father is: Married, filing separate. The allowable dependents of the Father is: 1.
3. The income tax liabilities of the parties is shown on Schedule A.

(b) Federal insurance contributions or self employment tax is shown on Schedule A.

(c) Mandatory union dues.

(d) Health insurance payments, excluding payments for coverage of the minor child.

all of which the court hereby finds and orders.

5.2 Dependent's exemption order

(1) 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 100% of the days out of the year and with the Father tfor no days, so the child is with the Mother all of the days out of each calendar year.

(2) Therefore, 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.

(3) 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.

(4) 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.

5.3 Monthly current child support amount Therefore, as shown on Exhibit A attached, the monthly amount of the current child support due from the Father to the Mother is $378, plus a collection fee of $5.25 or 4% with each payment but not less than $1.25, whichever is less.

5.4 Deviation considered 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.

5.5 Retroactive child support The father did not pay any child support to the mother while this case was pending and since the date of separation, 5/6/2010.

Pursuant to §61.30(17) the court finds this is an initial determination of child support and that the court has the discretion to order that child support was owed since the date of separation, 5/6/2010, which is the first day of the calendar month following the date that the parents did not reside together in the same household that is 24 months or less before the filing of the petition. The initial petition was filed by the mother on 9/20/2010.

The father was paid $80,000 a year or $6,666 gross per month until 4/8/2011, when he was discharged by his former employer. Since then he is receiving unemployment compensation from Texas in the amount of $1,660 per month. The court's child support calculation for the period of 5/6/2010 to 4/8/2011 is attached as Exhibit B. Therefore it covers 11 months.

The clerk of the court or the D.O.R. is ordered to reflect that child support of $992 per month, as reflected on Exhibit B attached, was owed from 5/6/2010 to 4/6/2011 for each of those 11 months but no child support was paid by the father to the mother in that time.

The clerk of the court or the D.O.R. is ordered to reflect that beginning 5/6/2011 the current child support ordered is that reflected on Exhibit A attached, $378, for each month on the 6th day of every month.

The court orders that child support was payable from that date, 5/6/2010, because there is no competent, substantial evidence that justifies the nonpayment of child support since that date.

5.6 Arrearage Order The total amount of the arrearage is reflected in the depository case history for this case after these orders are followed by the clerk or D.O.R. The court finds there is an arrearage and that an arrearage payment of $80 per month must be ordered, pursuant to §61.1301(1)(b)2.

5.7 **Current Support and Arrearage Amount Per Month Therefore, the Father shall pay to the Mother the total of: (1) current child support per month, $378;(2) an arrearage payment per month, $80; and (3) collection fee of $5.25 or 4% with each payment but not less than $1.25, whichever is less, if required by law. 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.

5.8 First Payment Due Date The first payment of the current child support amount is 5/6/2011 and on a like day of each month thereafter.

5.9 Termination of child support; schedule of the amount of child support Assuming that no supplemental petition alleging a substantial change in circumstances is filed and taken to trial after this date or that no agreement between the parties is reached modifying the child support after this date, the child support ordered here shall terminate on the 18th birthday of Robert, so the last support payment under this order is due on 10/1/2024, subject to proceedings under §743.07(2), as provided below.

The court makes no finding that §743.07(2) applies in this case because there was no competent, substantial evidence in the record that this statute will apply to this child as the child turns 18 years old and there is no agreement between the parties that it will apply. This finding is without prejudice to either party to have the court determine whether this statute does apply at any time hereafter by a motion. Therefore, the court reserves jurisdiction over this child support order in order to determine whether this statute applies to the child.

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

5.11 **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) *the case number of this case* and also the words (2) "*Lee County case*".

5.12 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.

5.13 . 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 these cards or other proof of the coverage to any medical provider of the child when these are made available by the insurer and when requested by 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 separation date in an amount equal to the ratio of their net incomes reflected on Exhibit "A" attached. §61.13(1)(b); *Forrest v. Ron*, 821 So.2d 1163 (Fla. 3d DCA 2002); *Morrow v. Frommer*, 913 So.2d 1195 (Fla. 4th DCA 2005); *Salazar v. Salazar*, 976 So.2d 1155 (Fla. 4th DCA 2008).

The ratio of their net incomes is: Father 21% and Mother 79%. "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 or has incurred a medical bill on the child, he or she shall send a copy of it to the other parent with a cover note asking for payment of the other parent's share 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 his or her share 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.

6. 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.

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

8. Wife's Former Name is Restored The mother's former name of Sandra Lynn Pisano is hereby restored to her.

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

R. Thomas Corbin, Circuit Judge

Copies provided to:
, Esq.,

S. S., *pro se*
(*Address omitted*) Box 157, (*Town omitted*), Texas