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

XXX,
Petitioner & father,

vs. **Case No. 0 DR 0000 N**
YYY,
Respondent & mother,

ORDER ON PENDING MOTIONS

This matter having come before the court onDDD on (1) mother's "Motion to Strike, Etc." filed DDD; (2) mother's "Motion for Contempt, Etc." filed DDD, it is ordered:

1. Findings

The parties have a child, ZZ., born DDD. The father's petition was filed DDD. The child has the same last name as the petitioner, which indicates that he is named as the child's father on her birth certificate pursuant to F.S. §742.10 and §382.013, so no judgment of paternity is necessary to establish that he is the child's father. *Mohorn v. Thomas*, — So.3d — (Fla. 4th DCA 2010). He petitions for a time-sharing schedule, an order for shared parental responsibility, and child support. The mother's answer to the petition admits that the petitioner is the father of the child. Nevertheless, although paternity is not an issue and his name is on the child's birth certificate, the father has filed a motion for a DNA paternity test. That motion has not been noticed for a hearing.

The mother filed a counter petition. She also asks for a time-sharing schedule, an order for shared parental responsibility and child support.

The parties say they separated four years ago and that for about three years the child went back and forth between them without incident. "About a year ago," they both say, the child's contact with both of her parents was curtailed for some reason. The father says the mother blocked his access; the mother says he "dropped out of sight." The parties seem to think this debate about who is at fault for the child having no contact with one of her parents for "a year" is important. It may be, but for now the important fact is that the child's right to contact with both of her parents was curtailed for perhaps as long as 12 months. The reason is because her parents were unable to make that happen. A parent's urge to be declared "right" or "better" than the other parent may be part of that reason and therefore part of the problem.

The parties have a D.V. case, Case No. 0 DR 0, in which a final judgment of injunction for protection was entered against the mother in favor of the father on DDD. A temporary injunction was granted in that case on DDD. The basis of the petition was an incident that occurred at "McDonald's", which was an exchange place under the temporary time-sharing

schedule agreed upon by the parties in this case when exchange through drop off and pick up through the child's day care or school was not available under the schedule. At this hearing, each party testified to their version of the event alleged in the D.V. petition. The father's address is "confidential" in the D.V. file, as allowed by law. F.S. §741.30(3)(b)(a). Nevertheless, the father says the mother knows his residence address. That judgment prohibits the mother from making contact with the father and orders that his address is "confidential".

At a case management conference in this case on DDD the parties entered into a temporary agreement in which they agreed to a temporary time-sharing schedule and a temporary child support payment from the father to the mother. The agreement does not mention any agreement about a parental responsibility order, even though both petitions ask for shared parental responsibility. This agreement was adopted as the order of the court on DDD.

The father is in arrears in the child support ordered in this case. The temporary agreement required him to pay the support directly to the mother and not through the depository. The monthly amount is $X. The father said he owes the "June 10th" payment of $X and that he was short on the May payment by $X. Since it is now nearly July 10, the total now due is $X. ($X + X + X)

The father said he is "in real estate" and that "times are hard." He said he is self-employed. The court explained to the father that a monthly child support payment is the first bill he is obligated to pay every month if he has any money at all available to him. Child support is not the last bill he pays if he has money left over after his rent, groceries, utilities, car payment, etc., are paid to his satisfaction. Payment of those items before child support amounts to a willful contempt for the court order to pay child support and relegates the child support obligation to a inferior priority when the law makes that obligation the superior obligation. Just as the child's right to be in regular and frequent contact with both of her parents comes first and ahead of the parents' petty concerns and disagreements, so the child support comes first and ahead of a parent's lifestyle wishes. The court is obligated to protect the child's best interest, which is to be supported financially by both of her parents and to be in regular, frequent and continuing contact with both of her parents. Her parent's "expressed desires" may be considered by the court, but the child's best interest must be the court's "primary consideration." F.S. §61.13(2)(c)2.,a. & (3).

On 6/23/2010 the father picked up the child from her day care and she has not seen her mother since then. The father says he did so because of something a D.C.F. employee told him. He is laboring under the belief that something a D.C.F. employee says supersedes the order of a circuit judge concerning where a child will be from time to time. He said he believes a "D.C.F. investigation" is ongoing. No person from that agency was present to testify. The father is not a competent witness about whether there is any ongoing investigation by any agency. Also, statements from a D.C.F. employee offered as the truth in this hearing are hearsay and therefore inadmissible. Further, the mother has a right to cross examine witnesses called by the father, but, of course, this is impossible if the witness is not available to testify.

Regarding the time-sharing schedule, the mother is planning a vacation with the child from Tuesday morning DDD to the late evening on Saturday DDD. The schedule provides that the child

is with her father every other weekend from pick up at day care or school on Friday to return to "McDonald's" on Sunday "4:30 to 5 p.m." His first weekend began DDD. The child shall also be with her father every Thursday from pick up at school to return to school on Friday morning. So, the father will miss some of his days because of the mother's planned vacation. Before today the parties had not discussed this adjustment to the schedule, which speaks to their ability to communicate and cooperate for the best interests of their child, as does the one-year hiatus in the child's contact with her father. Of course, the D.V. temporary injunction prohibited conversations between them after DDD. The weekend beginning Friday D is a father's weekend. His next weekend is Friday DDD.

The parties agree that ZZ is a mutual friend that they can use to help them with exchanges of the child and a third party for communications concerning the child. They each have his phone number.

2. Ruling

2.1 Motion to Strike is denied This motion objects to the father's use of a P.O. Box as his address in his petition and other papers filed in this case. This motion is denied. The no contact provisions of the DV judgment control in this case. Therefore, this court has no authority in this case to require the father to disclose his residence address. Nevertheless, the father says the mother knows where he lives.

2.2 . Motion for Contempt This motion says the father is in contempt of the time-sharing schedule and child support order of DDD because the child has not be in contact with her mother since DDD and the father is in arrears in the child support.

Regarding the time-sharing order, the father was laboring under the belief that something a D.C.F. worker said supersedes a court order. This is a common misconception. Sometimes even lawyers make this mistake. The father is not represented by counsel and this is the first appearance of these parties before the court.

The court finds the father willfully violated the court's time-sharing order, because he unilaterally decided that order was no longer in effect. However, he did so because he did not understand that court orders control over conversations with D.C.F. employees. Now he understands that court orders are in effect until they are modified by the court and that parties who fail to obey court orders are subject to proceedings for contempt of court.

The court notes that no case has been filed under Chapter 39 concerning this child and there is no order regarding custody of this child entered under that statute. Such an order would supersede the time-sharing order in this case. F.S. §39.013(4).

The father's testimony that a "D.C.F. investigation" is ongoing is not competent, substantial evidence that such an investigation is taking place. He is not a D.C.F. employee and a statement to him outside of the courtroom is inadmissible hearsay if offered for the truth of the proposition. There is no evidence that D.C.F. has taken any action regarding this child. Investigations by that agency can be initiated by anyone anonymously. If there is an ongoing

investigation, and there is no substantial, competent evidence at this hearing that such an investigation is ongoing, the initiation of an investigation by that agency does not mean there is any merit to the complaint under investigation. That agency has authority to investigate complaints of abuse, abandonment and neglect of a child and to take immediate action to protect a child if there is any merit to the complaint. There is no competent, substantial evidence that D.C.F. has taken any action with regard to this child. There is also no evidence of abuse, abandonment or neglect of the child by either of her parents or anyone else.

As a sanction for the father's contempt, the court now orders that the parties shall follow the temporary time-sharing schedule order dated DDD, except it is now modified so that the child may take a vacation with her mother. The child is entitled to some make-up time with her mother because of the father's interference with her contact with her mother. The court also finds this trip is in the child's best interest. F.S. §61.13(4)(c)1. The mother may take her planned vacation with the child. Since the child has been with the father in violation of the time-sharing order since DDD, the father has already received his make-up days. Further, the court does not order any make-up days for the mother. The father shall pick up the child from the mother, using Mr. Z. as contact and exchange, at 2:00 p.m. on Sunday DDD since that weekend is a father's weekend and the mother is returning to her home late in the evening on Saturday DDD.

As a further sanction, the court now orders that the location of the exchange of the child under the temporary time-sharing schedule shall no longer be "McDonald's" when the exchange through the school is not available. This manner for making an exchange is not in the child's best interest. F.S. §61.13(4)(c)1. The incident in the D.V. case indicates this place of exchange is not in the child's best interest, and, generally, an exchange in a public place is nearly always a provision in a time-sharing schedule that is in the parents' best interest and not the child's best interest. It is never in a child's best interest to be subjected to the humiliation of her parents' public display of their dislike for each other, which occurred in this case. Disagreements and disharmony between the parents injures the child. Public displays magnify the injury to the child. The child identifies with both of her parents, not just one of them. Children, especially small children, should be exchanged in a safe, secure location, such as the parents' residences. It is telling that these parents felt compelled to use some location other than their homes. This speaks to their inability to promote and encourage the child's relationship with the other parent and their inability to place the child's needs ahead of their own needs, such as the inconvenience of driving the entire distance to the other parent's residence.

The court now orders that when the child's school is not available for the exchange, the parties shall use either their own residences or Mr. Z.'s residence as the place of exchange. The court makes this order because the parents agreed at the hearing to use Mr. Z. as a third party contact between them and they agreed that Mr. Z.'s residence is a safe, neutral place for the child to be exchanged. Therefore, the court orders that Mr. Z shall be the third party contact for these exchanges.

The parties also agreed to use Mr. Z. as a third party to communicate between them concerning the child and parenting issues in general, as well as exchanges of the child. They also

agreed to this modification of the no contact provision of the D.V. final judgment. **It is so ordered.** The D.V. Unit is ordered to prepare an amended final judgment consistent with this agreement of the parties and this Order.

Therefore, as ordered above, the temporary time-sharing schedule is now modified by the court as a sanction for the father's contempt for the time-sharing order and because the court finds these changes are in the child's best interest. No other sanction is imposed for the father's violation of the time-sharing order.

Regarding the child support arrearage, the father testified that he believes he can come up with $Z within 15 days of DDD and pay that to the mother. **It is so ordered.** If he fails to pay that sum to the mother within 15 days then the mother may renotice her motion for contempt for a hearing.

2.3 Jurisdiction **The parties' child is ZZ., born DDD.** 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.

2.4 Legal duty of both parents The court here advises both parties of Florida law regarding the legal duty of both parents when they are separated and divorced.

After parents separate and divorce, **both parents have a legal duty to promote the other parent to the child, and the child has a right to frequent and continuing contact with both parents**:

> "**It is the public policy of this state 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)(c)1.

The law requires both parents to "go the extra mile" with the other parent and to 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).

This duty of both parents is especially the obligation of the parent with whom the child lives most of the time. The child cannot have a relationship with the other parent without the continuous effort of the parent he lives with most of the time to promote and encourage his relationship with the other parent. .

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.

Therefore, both parents must put aside their differences and interests, and they must both continuously encourage and promote a relationship between the child and the other parent. This is what the law requires and this is what the court now orders. If either of them fails to do this, the court has jurisdiction to enforce the parenting plan, parental responsibility order and the time-sharing order by a motion for contempt and otherwise as allowed by law. *See, e.g.,* §61.13(4)(c)1., 2., 3., 4., 5., 6., and 7.

2.5 <u>All factors must be considered</u> 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 will review and consider all of those factors in making a decision about the parenting plan, the parental responsibility order, and the time-sharing schedule.

2.6 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**. "Parental responsibility" has nothing to do with where the child will be living from time to time during the year. *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 and the parental responsibility order 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). 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* 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 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)(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, since 1982 and under the current statute the "time-sharing" order and the "parental responsibility" order must be two, separate orders**.

Regarding the parental responsibility order under §61.13(2) the court can order (1) the parents must share parental responsibility for all decisions; 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 over all parenting decisions. **Those are the**

only three options under Florida law for allocating parental responsibility between the parents after the parents separate. Further, §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). **In this case, neither parent pled for sole parental responsibility.**

2.7 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*.)

Many petitions, like the petitions in this case, ask for "shared parenting" or, more properly, "shared parental responsibility." However, "to share" means "to confer ... so that major decisions ... will be determined jointly." **So, if shared parental responsibility is ordered, this means that each parent has an equal say in major decisions concerning the child**. 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 if 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."

Further, **a parent seeking sole parental responsibility over some aspect or all aspects of the child's life must plead for this in a petition**. In this case, both parents's petitions plead for shared parental responsibility and neither parent's petition asks for sole parental responsibility.

A finding that the parents are unable to confer together and share parenting

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

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 at this hearing the court finds (1) the parents do not consistently confer and consult together about major parenting decisions; (2) the parties have not demonstrated a capacity to share parental responsibility, (3) this record thus far demonstrates that these parents have not shared parental responsibility in any significant way; (4) an unlimited shared parental responsibility order may 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 would argue and bicker in these consultations, which would be detrimental to the child; (5) because of the hostility and low level of communication between these parents, one parent or the other would likely take action and make major decisions concerning the child while the child was 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 if one were entered and would lead to more disputes, arguing and litigation between these parents; and (6) ordering these parents to share parental responsibility without granting one of them sole responsibility when they have demonstrated they are incapable of sharing parental responsibility may not be not in the child's best interest because at least one parent needs the authority to make parenting decisions and these parents cannot make parenting decisions together.

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

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

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

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

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

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

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

Therefore, the pleadings may also need to be amended to ask for the relief that is allowed by Florida law, that is, a parenting plan that includes a parental responsibility order and a time-sharing schedule. If either party wants a final time sharing schedule in which the child resides most of the days of the year with that party then they must plead for that relief and then at trial must prove a parenting plan and time-sharing schedule that are in the child's best interest, taking into consideration all of the factors in §61.13(3).

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

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

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

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

R. Thomas Corbin, Circuit Judge

Copies provided to:
Parties, *pro se*