

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

**D. I.,
Petitioner,**

**vs.
N. F.,
Respondent,**

Case No. 0 DR 0 N

ORDER DENYING MOTHER'S MOTION

This matter having come before the court today on the mother's motion for counseling for the minor child, filed 11/10/2010, it is ordered:

1. Findings

The parties have a minor child, (*omitted*), born (*omitted*). The parties reached a settlement agreement on 10/11/2007, in which they agreed to shared parental responsibility and a time-sharing schedule. The schedule has the child with the father from after school on Friday to back to school on Monday, every other weekend, and with the father every Wednesday night from pick up at school to back to school on Thursday, and on the weeks when the child is not with the father on the weekend, then also Thursday nights.

They also agreed that neither would pay child support because both were unemployed when they reached their settlement agreement.

The mother is now receiving government benefits, so the D.O.R. has filed a supplemental petition for child support on 5/25/2010. This petition is not set for trial.

The mother's motion asks the court to order that the child may receive counseling. Her motion attached a list of concerns, some of which amount to complaints about the father's parenting practices and his parenting skills. She also alleges difficulties the child is having, none of which amount to abuse, abandonment or neglect of the child or a threat of significant imminent harm to the child. The mother took the child to a counselor but the counselor refused to begin treatment of the child without the written consent of both parents.

There is no supplemental petition pending to modify the shared parental responsibility order or the time-sharing order.

2. Ruling

The mother's motion is denied. The court has no authority in Florida Statutes Chapter 61 or anywhere else to order a child of separated parents into counseling. The court also has no authority to order the parents into counseling. In a case between separated parents, that is, a Chapter 61 case, the court can only order child support, a parental responsibility order and a time-

sharing schedule, all of which have been ordered in this case. Child support was not ordered originally, pursuant to the parties' settlement agreement, but because the mother is now receiving government benefits, the question of whether child support will be ordered and if so how much and which parent will be the payor, will be addressed in the proceedings on the D.O.R. supplemental petition.

The parties have a shared parental responsibility order and they have a time-sharing order. Those orders cannot be addressed by the D.O.R. petition. After the orders for parental responsibility and time-sharing were entered, the court has only the jurisdiction to enforce those orders. The mother's motion is not a motion to enforce either of those orders.

The court here repeats the discussion at the hearing in which the court advised both parties of Florida law regarding the legal duty of both parents when they are separated.

After parents separate, regardless of which of the three alternatives for parental responsibility that is ordered, **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. 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.

In this case the parents agreed to a shared parental responsibility order and that agreement was adopted and ordered in the Final Judgment. They also agreed to a 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 three alternatives for parental decision making allowed by §61.13(2).

“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. 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.

In this case, as noted above, the parents must share parental responsibility for all major parenting decisions because that is what they agreed to do and that is what was ordered in the Final Judgment.

“To share” means “to confer ... so that major decisions ... will be determined jointly.” **So, in this case each parent has an equal say in major decisions concerning the child.** Therefore, the counselor was correct. The counselor could not treat the child without the consent of both parents because in this case the parties have a shared responsibility order.

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. They each have equal control over parenting decisions. 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. 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 a 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. On the other hand, Chapter 39 does give the judge this authority. In a Chapter 39 case the issue is whether one or both parents are incompetent and unfit. In such a case if there is no fit, competent parent, then the judge is a “super parent” empowered to make parenting decisions for the child. *See, e.g.*, §39.407(2)(a)2. 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 in this case the court has

ordered shared parental responsibility pursuant to the parties' agreement.

Finally, the court in a Chapter 61 case does not have continuing jurisdiction to monitor, police and correct the parenting skills, or lack thereof, of either parent. The mother's motion asks the court to address the father's parenting skills and his parenting practices but it does not cite the court to any authority in Chapter 61 or elsewhere that gives the court the authority to monitor and correct a parent's deficiencies as a parent. A court in a Chapter 39 case has the jurisdiction to monitor and improve a parent's parenting skills, but a court in a Chapter 61 case does not have that jurisdiction. The court has only the jurisdiction to enforce the orders that have been entered, that is, the shared parental responsibility order and the time-sharing order.

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

R. Thomas Corbin, Circuit Judge

Copies provided to:

, Esq., and D. I., *pro se*