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

T. E. M.,
Petitioner,

vs. **Case No. 00 DR 0000 N**
C. D., o/b/o
E. L., a minor
Respondent,

ORDER CONTINUING HEARING

This matter having come before the court on 10/31/2011 on the petitioner's "Motion to Set Temporary Time-sharing and Holiday Time-Sharing and Motion for Injunction", filed 9/22/2011, it is ordered:

1. Findings

The petition is an action to determine paternity. The mother's answer admits paternity. The mother filed an answer on 2/28/2011, through her mother on her behalf, *pro se*.

Therefore, the petitioner, T. E. M., is the biological father of the minor child known as H. L. E., born (*Date omitted*).

On 2/28/2011, the mother filed a counter petition, through her mother, not through a lawyer. The legal authority of the mother's mother to file pleadings on her behalf, *pro se*, was not brought to the court's attention at this hearing. The mother's counter petition attaches voluminous documents, which is contrary to what is allowed by the rules of procedure. The father's petition also attaches voluminous documents, none of which are permitted by any rule of procedure.

The court cannot consider any of the documents attached by either party to their petitions or any others filed by the parties that they think amounts to evidence because those documents have not been admitted into evidence according to Chapter 90, Florida Statutes, at a duly noticed hearing. Therefore, the court has not looked at them and will not do so.

The father filed an answer to this counter petition on 3/17/2011.

The father has not paid any child support, even though he is employed at Walgreen's. Regarding time-sharing, this is also not occurring. The parties each have their own convictions for why it has not occurred. The principal difficulty is that the child is an infant. The evidence of either parent's ability to nurture and care for an infant was not presented at this hearing. For instance, the furnishings, etc., necessary to properly care for an infant and whether these are in either home was not proven. At the hearing, the court heard unsworn comments of the father's lawyer, which, of course, are not evidence, and some sworn testimony from the mother's mother, which, of course, is evidence, along with some sworn testimony from the father, which is also

evidence.

Regarding parental responsibility, there is so far no evidence demonstrating a capacity in these parents to confer together and make a joint parenting decision. In the alternative, the father's petition asks for all three alternatives to parental responsibility that are allowed by law, that is, sole parental responsibility to the father, shared parental responsibility with ultimate responsibility to the father, and shared parental responsibility between the parents.

The mother's *pro se* counter petition asks that the mother be named "primary residential parent" and for "shared parental rights," two terms that have no definition under Florida Statute Chapter 61, so, therefore, no meaning at all in this case.

As for the words "primary residential parent," effective 10/1/2008 those three words were specifically deleted from all of the Florida Statutes concerned with separated parents, so those three words are a meaningless phrase in this case and the court cannot designate any parent such a thing.

As for "shared parental rights", this term is also not found in any Florida Statute concerning separated parents. However, F.S. §61.13(2)(c)3. does provide that "[a]ccess 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. ... A parent having rights under this subparagraph has the same rights upon request as to form, substance, and manner of access as are available to the other parent of a child ..."

Regarding the mother's request that the parents keep each other informed regarding the child, there is no statute that specifically allows the court to order that separated parents must keep each other informed about a child, even if this is good parenting and even if it is in the child's best interest. Under §61.13(3)(l) the demonstrated capacity or incapacity of both parents to do this is a factor that the court must consider when deciding on a time-sharing schedule and the parental responsibility order that is in the child's best interest.

The mother's counter petition also asks for "limited supervised visitation" between the child and the father, although, again, the word "visitation" was deleted from all Florida Statutes concerned with separated parents effective 10/1/2008, so that word is a meaningless word in this case. It also asks that the mother be the "sole residential parent." This phrase looks like "primary residential parent," which, again, is a meaningless request because the court cannot order such a thing in any case.

After 10/1/2008, the court in a case between separated parents can order only a time-sharing schedule for the child and a parental responsibility order, of which there are only three options: (1) shared parental responsibility; (2) shared parental responsibility with ultimate authority to one parent or the other over some or all aspects of the child's life; and (3) sole parental responsibility to one parent or the other. §61.13(2)(c)2. So, the "parental responsibility" order details how parenting decisions for the child will be made by these separated parents. *See* §61.046(17) & (18).

The time-sharing order must "specify the time that the minor child will spend with each parent." §61.13(2)(b).

The court is also required to "establish" a "parenting plan" for the child if the parents do not agree upon a "parenting plan." §61.046(14) & §61.13(2)(a) - (c). The parenting plan order must include the time-sharing schedule and the parental responsibility order.

The mother's counter petition also asks for "Restitution for costs and expenses pregnancy," which is allowed under F.S. §742.031(1).

The mother is a minor. Her birthday is 11/11/1994, so she will be 18 on 11/11/2012. The father is an adult, born 4/4/1991. So he is now 20 years old.

The father's financial affidavit was filed 4/15/2011, but his "[p]ay stubs or other evidence of earned income for the 3 months prior to service of the financial affidavit" are not in evidence today, although the father testified to working many hours every week at Walgreen's. So he has pay stubs or other evidence of earned income from Walgreen's, such as a print out from his employer showing exactly what he has been paid to date. In any event, by late January 2012 his W-2's for 2011 will be available and his W-2's from all of his employers along with his 2010 federal 1040 tax return are already available. Presumably, these for 2010 have already been disclosed.

2. Ruling

2.1 Both parents have a responsibility to support the child financially Both the mother's income and the father's income, among other variables, that is, employment day care expense, health insurance for the child, health insurance for the parents, go into a guideline child support calculation. Although she is now a minor, like every parent of a child in Florida, at some point, perhaps not until she is 18 years old, the mother has a responsibility equal to that of the father to provide for her child financially. The parties have not briefed the court about a minor parent's financial responsibility for her child.

In any event, at least when the mother is 18, unless there is substantial, competent evidence of an involuntary ability to provide for the child financially, both parents have a responsibility to provide for their child financially. Income can be imputed to an unemployed or underemployed parent, as provided by §61.30(2)(b). So, income can be imputed to both parents, if warranted by the evidence, if a parent is voluntarily unemployed or underemployed, even if their actual income is something less. A parent's first financial obligation is to support his or her child before the parent's own financial needs are met. *See, e.g.,* §742.031(1): " ... The court shall order either or both parents owing a duty of support to the child to pay support pursuant to s. 61.30. ..." An income deduction order takes the child support from the parent's wages and the parent must live on what is left. §61.1301.

So, under §61.30 the income of both parents, actual or imputed, is used to arrive at a guideline calculation.

Further, guideline child support may be ordered from birth. §61.30(17).

2.2 Hearing continued Thirty minutes was the requested hearing time. Time expired before the court had received sufficient evidence to make any decision regarding the relief sought in the

father's motion, that is, a temporary time-sharing schedule, a temporary parental responsibility order and an "injunction to enjoin Respondent form removing the minor child from the jurisdiction of this Court," and "to enjoin Respondent from changing the current residence of the minor child."

2.3 Parenting coordination suggested The parties brought up the subject of parenting coordinating, which is relief that is allowed by law, §61.125. However, there is no motion for this relief so the court cannot order this.

Nevertheless, as suggested at the hearing, the parties might contact Ann Sell, LCSW, regarding mediation of the temporary issues in this case and also parenting coordinating. She is an experienced family mediator and a parenting coordinator.

This might be a far more efficient way to resolve the temporary issues in this case than returning to court for more hearings.

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

R. Thomas Corbin, Circuit Judge

Copies provided to:
, Esq., and

L. E., *pro se*, c/o C. D.