

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

MD,  
Former husband,

vs.  
FD,  
Former wife,

Case No. YY DR TTTT N

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ORDER FINDING FACTS AND MAKING RULING

This matter having come before the court on Date/2013 and Date/2013, it is ordered:

1. The Record

On J Date/2008 the parties were divorced by a Final Judgment of Dissolution of Marriage,” which incorporated an agreement. The parties have two minor children, SD, born A Date/2000, and JD, born A Date/2004. So, the children are now 13 and 9 years old.

On A Date/2012 **the mother filed a supplemental petition for modification** of the judgment. Her petition asked to modify the time-sharing order and the child support order. Regarding the child support order, she alleged her income went down while his went up.

The time-sharing schedule and other parenting provisions in a final judgment of dissolution can be modified only by a supplemental petition that alleges ultimate facts showing a substantial, material and unanticipated change in circumstances since the judgment was entered and a proposed change that is in the children’s best interest. *Wade v. Hirschman*, 903 So.2d 928 (Fla. 2005), Rule 1.110(b).

Regarding the time-sharing schedule, her petition alleged only that her work schedule has been “altered” since the judgment. Beyond that factual allegation her supplemental petition stated only the words “substantial change in circumstances.” Her supplemental petition does not allege any new proposed time-sharing schedule that would be in the children’s best interest. Her petition alleges generally that a change to the time-sharing schedule is in the “best interests of the children,” but, again, no specific time-sharing schedule is mentioned in her petition.

On A Date/2012 **the father filed a supplemental counter petition to modify** the judgment. His petition also requested a change to the time-sharing schedule and the child support order. In addition, he requested a change to the parental responsibility order.

Regarding the child support order he asked for a guideline calculation that considers the modified time-sharing schedule.

Regarding the time-sharing schedule, he said the ultimate facts amounting to a substantial, material and unanticipated substantial change since the judgment are:

(a) the mother “emotionally” abuses the children and attempts to alienate them from the father;  
(b) the mother “prohibited the children from having any contact whatsoever” with the father “for a period of three months;”

(c) the mother’s “pattern of alienating behavior” has led a counselor of the children to recommend “supervised visitation with the children” and the parenting coordinator “has observed extreme behavior on the part of” the mother and has “documented multiple violations of the shared parenting orders;”

(d) the mother has “refused to attend any meetings with the parenting coordinator;”

(e) the mother picks up the children on the father’s “days with the children” and she “makes it miserable, and stressful for the children at the majority of the exchanges.”

(f) on the children’s days assigned to the father, the mother “often will go to the school and remove the children from school claiming they are sick or some other excuse so as to prevent the father from picking up the children. In addition, [the mother] has kept the children out of school to keep them from their father causing them to miss excessive days of school for no apparent reason.”

(g) the mother “made a tremendous scene at the children’s after-school program ... in the presence of the children, and their peers. [The mother’s] actions were extremely detrimental to the children.”

(h) the mother’s “actions as it relates to their medical care, and their education are extremely detrimental to the children. It is essential to the children’s well being that the [father] be in a position to make medical decisions as well as educational decisions on his own without the interference of the [mother.]”

(i) the mother’s “actions ... have become so severe as to cause extreme stress on the part of the children.”

His petition also alleged a time-sharing schedule that he alleged is in the children’s best interest. He alleged that it is in the children’s best interest that they reside with the father “on a full time basis with the [father], and have supervised timesharing with the [mother]” and that the children “reside with the [father] during the school week and that the [mother] see the children on alternating weekends within a structured supervised setting.”

Regarding the parental responsibility order, the father requested that he should have “sole parental responsibility, with ultimate decision making authority...”

## 2. Findings

The parties have two minor children, SD, born A Date/2000, and JD, born A Date/2004. So, the children are now 13 and 9 years old. The Final Judgment was signed on J Date/2008 and it incorporated the parties’ settlement agreements.

The settlement agreements provided for an indefinite and complicated time-sharing schedule in which the children were back and forth between the parties because of the mother’s work schedule. She was then working “24 hours on, 48 hours off” as an emergency medical technician.

Since the judgment was entered substantial unanticipated changes in the circumstances have occurred.

In particular,

### (1) The change in the mother’s work schedule is substantial, material, and unanticipated

Since the judgment in 2008, the mother’s work schedule has changed substantially. The change is material and unanticipated. When the judgment was signed the mother worked “24 hours on, 48 hours off” as an emergency medical technician with the county ambulance service. Because of her schedule the parties exchanged the children more than once during the week.

Some years after the judgment was signed, the mother voluntarily reduced her hours with the ambulance service and later she quit that job altogether. She then worked at a local college as a lab instructor in the EMT program. She lost that job because the college changed the job requirements to include a degree she did not have.

Now, the mother works part time in the emergency room of a local hospital. She “puts in” for shifts and she works irregular shifts every week that amount to less than 30 hours a week.

Because of her job changes and reduced hours, the mother’s income has been reduced since

the judgment was entered on 6/30/2008. She earned \$56,810 gross per year or \$4,734 gross per month in calendar year 2007. (Child support guideline calculation filed 3/26/2008) Her gross income for calendar year 2012 was \$27,758 or \$2,313. Her most recent financial affidavit dated 6/10/2013 reports gross monthly income of \$1,488 or \$17,856 gross per year. So, her gross annual income has declined some \$39,000 since 2008. ( $\$56,810 - 17,856 = \$38,954$ )

The father's work schedule has stayed the same since the judgment. When the judgment was entered in 2008 he was a pool repairman working from early in the morning to about 4:00 PM Monday through Friday. This still his job and these are still his work hours.

When the judgment was entered in 2008 the former husband's gross annual income was \$42,276 or \$3,523 gross per month. (Child support guideline filed 3/26/2008) Now his gross annual income is \$46,764 or \$3,897 gross per month, from his testimony and his pay stub in evidence, FH Ex. 8. So, his gross annual income is \$4,488 greater now than it was in 2008.

(2) The parental responsibility order: a substantial, permanent, unanticipated inability to communicate and cooperate

When they divorced in 2008, the parties were, as the mother and her witnesses testified, amiable and agreeable and able to communicate and cooperate very well concerning the children. This continued for about a year or so after the judgment was entered, but since then they have become increasingly at odds and uncommunicative until now they communicate almost exclusively by text messages and emails. Now, they frequently argue and they have had some very ugly scenes at the exchanges of the children.

Now, the father, in general, will not talk to the mother over the telephone or otherwise, and he will not allow exchanges of the children to occur at his residence because of some very ugly scenes that have occurred at exchanges at his house. He insists on a public place for the exchanges. Generally speaking, when the children are exchanged, he does not want to discuss anything with the mother, just as he does not want to talk to her on the phone, while she often insists that he talk to her at exchanges or in text messages. The result is some very ugly scenes in the exchanges at the public places as well as at the father's residence. The mother has cursed the father at exchanges in the presence of the children.

The mother is the principal reason for the very ugly scenes at exchanges and in the parties' communications. As the father testified, the mother is "never" cooperative with the father. She "never" makes it easy on the father or the children to make a "transition" to the father's care.

The mother insists and insists and insists on having her way with the children. She believes she should control the children at all times, even on his days and even while they are with the father on his days or at his residence. As a result, the father avoids her and he resists talking to her. But the mother persists. She cannot be placated or accommodated. She can only be obeyed.

As the parenting coordinator testified, the mother is "domineering, assertive," and "emotionally reactive." This is how she presented in meetings with the father and the coordinator. This is also how she presented in the courtroom.

The father, on the other hand, is passive but communicative. This is his style and it irritates the mother. This is how her presented to the coordinator and in the courtroom. Their courtroom demeanor corroborates the coordinator's testimony.

The coordinator explained that persons with a "domineering style" push their viewpoint relentlessly. They do not compromise and they are not objective. This accurately describes the mother. The result is that the mother does what she wants with little regard for the children's best interests or the father's feelings. Her needs are paramount. Her needs take precedence over the children's and the father's.

For instance, the mother insists that she must be allowed to talk to the children "daily." She

did not explain how this is in the best interests of these children, now ages 13 and 9, or consistent with the “developmental stages and needs of the children,” §61.13(3)(s). In fact, her insistence on talking to the children on the phone every day and even showing up unexpectedly at his house or when they were on an outing with the father is an expression of her interest and her desires, not what the children need.

This intrusive behavior by her is the source of much resentment by the father. It is an intrusion and an interference with his relationship with the children during his time with the children that is not necessary or helpful to children of their ages and development. It is also upsetting and confusing for the children when the mother injects herself into their home life and relationship with the father and his wife by unannounced visits and phone calls that she initiates to the children.

For his part, the father does not insist that he speak to the children daily, he never calls them when they are with the mother, and he does not make unannounced appearances on days assigned to the mother. He recognizes that this is an intrusion and interference with the children while they are with the mother. He is objective. He can separate his needs from the children’s needs. The mother cannot.

The mother and her witnesses blamed the deterioration in the parties’ relationship on the father’s present wife, saying the parties’ relationship went “downhill in 2009” after he met her. In fact, the mother’s will to dominate and control the father and the children at all times is the reason for the deterioration in the parties’ relationship. That is the reason they are now unable to communicate and cooperate about the time-sharing schedule and parenting decisions.

The children’s stepmother, like the father, avoids the mother and makes as little contact with her as possible. The children have a good relationship with their stepmother and she is not the cause of the parties’ difficulties. The mother’s domineering personality is the cause of the parties’ difficulties and it causes some distress to the children, because her relentless intrusion into their lives with the father and insistence that the father must agree with what she thinks is best for the children makes them feel bad about their loyalty and love for their father.

For instance, the mother has led the children to believe that they are not safe taking any medicines at the father’s house, because he does not agree with medication that she believes they should take, while he believes another medicine is sufficient. This injection of her disagreements with the father into the children’s thinking undermines the children’s relationship with the father. The mother believes this is acceptable behavior by her. As she said: “I cannot trust him to do it right!” Indeed, she does not trust him and she never will. And that is the problem for these children.

In fact, the father is a capable parent and he takes good care of the children. There is nothing deficient in his parenting of the children. He is a fit parent.

The mother is also a capable parent, even if her domineering personality leads her to be overprotective of the children and overbearing with the father. She is a fit parent.

The fact is they differ starkly about parenting decisions. They will never be able to share a major parenting decision about the children’s illnesses, diagnoses, or medications or anything else.

The depth of the parties’ differences is illustrated by the father’s “Motion for Contempt” filed 9/21/2010 and the findings in the order granting that motion. The court incorporates here the findings in that order.

Their differences are so significant that they stipulated to the appointment of a parenting coordinator in 10/2011. The court entered an order on that stipulation on 10/26/2011. Less than 90 days later, on 1/17/2012, the mother filed a motion to terminate the appointment of a parenting coordinator, but she withdrew that motion on 2/23/2012.

Nevertheless, although she withdrew her motion to terminate, in 1/2012 the mother stopped participating in the parenting coordination process. The husband did not stop working with the coordinator. The mother stopped because she believed that the coordinator was biased against her.

In fact, the mother is intolerant of anyone who disagrees with her or suggests that her attitude and behavior might be inappropriate and harmful to the children and harmful to their relationship with the father. So, if the coordinator does not agree with the mother, then, as the mother sees is, she is biased against the mother.

In fact, the coordinator is a very experienced and qualified mental health professional who reported what she observed to the parties and to the court. The court accepts her expert opinions. The coordinator's opinions and factual evidence are credible and consistent with all of the other evidence in this case.

The development of an inability to communicate and cooperate between the parties concerning the time-sharing schedule and parenting decisions is substantial, material, and unanticipated because the original settlement agreements assumed that the parties could get along. The evidence shows they did get along for a year or so after the judgment was entered but now they cannot.

The reason they cannot get along is the mother's inability to stop trying to control the children while they are with the father. It has nothing to do with the father's wife, as the mother and her witnesses insisted.

As the parenting coordinator testified, the mother "does not like the father's parenting style" and she "believes she has a better capability" than the father, when in fact she is not a more capable parent. As the mother testified: "I cannot trust him to do it right!" Her dislike of the father's parenting and her belief that she cannot trust his parenting have no basis in fact. The father's care of the children is not deficient. Her antipathy for the father comes out of her compulsion to dominate the father and to control the children at all times, even when they are with the father.

The result is that now the parties are unable to share major parenting decisions. They cannot confer and consult about decisions. They cannot make joint decisions. Their original settlement agreements provided that they would share parenting decisions, but this is now impossible. This is not in the children's best interest.

(3) The original time-sharing schedule is vague and indefinite, which is not in the children's best interest

The original agreements attached to the judgment do not have a detailed weekly time-sharing schedule because of the mother's irregular, "24 hours on-shift and then 48 hours off" work schedule at the time of the judgment.

The agreements also do not specify a detailed holiday and summer time-sharing schedule. Rather, the agreements provide that the parties will "equally share the holidays" and that they "agree they shall communicate in advance of each holiday and that they shall be considerate and flexible with the holiday schedule to ensure that the children are allowed time with each party during the holidays."

By a course of dealing in the years since the judgment was entered, the parties have an informal arrangement about the weekly time-sharing schedule. The present weekly schedule by this course of dealing is Monday and Tuesday nights with the father; Wednesday and Thursday nights with the mother; and then alternating every Friday, Saturday and Sunday nights with each party.

Nevertheless, the lack of detail in the weekly and holiday and vacation time-sharing schedules results in many arguments between the parties and ugly scenes when the children are exchanged. The parenting coordinator characterized the present time-sharing arrangement as "chaos."

The lack of detail in the original agreements is part of the reason the parties stipulated to the appointment of a parenting coordinator. The coordinator helped the parties make a series of six written modifications to the original agreed time-sharing schedule. (FW Ex. A-6) These written modifications were arrived at in meetings with the parenting coordinator.

These modifications, however, have not helped the situation. Rather, they have made it more confusing. These six documents have resulted in an even more vague and indefinite understanding

between the parties about the children's time-sharing schedule. The result is, as the coordinator testified, "chaos."

These six written modifications also illustrate the deterioration of the mother's participation in the parenting coordinating process.

This vagueness about the schedule is not in the children's best interest. It has resulted in the lack of a clear time-sharing order that can be enforced by contempt proceedings. It has allowed the mother on occasions to threaten to withhold the children from an exchange or insist on a different exchange location in order to coerce the husband into talking to her about an issue that she insists they must talk about or, it seems, simply to pick a fight with the husband.

The mother testified that "he's always trying to pick a fight" with her when in fact he is only passively resisting her insistence that she controls the children all of the time. As the coordinator testified, the mother is "domineering, assertive," and "emotionally reactive" in her relationship with the father.

Because the mother is now working irregular shifts that amount to less than 30 hours a week she is often not working during the week. So, as she sees it, if she is not working on one of the father's days, she is "available" to spend time with the children on the father's days when is working and as the children's mother she has "a right" to have the children with her even on the father's assigned days. Of course, given her domineering personality, the mother believes that anyone who disagrees with her assertion of her "right" is wrong. The mother has no objectivity about her behavior and her attitude.

For instance, the mother presumes the authority to pick up the children from school or keep them at her house on the father's days if she believes they are sick, because, as she sees it, he is "not available" because he is working at his job Monday through Friday. In fact, if they are sick during the week, he can get off work or his wife can help with the care of the children. He is also capable of deciding if they are well enough to go to school.

The mother's interference with the father's days with the children has become a particular problem as the mother's work hours have decreased since 2008. She presumes the authority to have the children with her on any day that she is not working and he is working.

The mother's domineering tendencies are illustrated by the parties' disagreement about the children participating in an after school program during the week on the father's days. The mother has picked up the children from school on the father's days rather than let them participate in an after school program that the father has arranged and paid for. She does this because, again, she believes that she has "a right" to have the children with her on the father's days if he is working, rather than let them be cared for by their stepmother or an after school program. The father gets off work at 4:00 PM Monday through Friday and he has arranged for the children to go to an after school program until he can pick them up after he gets off work.

Because the mother insists that the children must be with her on his days if she is not working, the result is that on the occasions that she has picked up the children at school on his days, the father must arrange an unplanned exchange with the mother at her house rather than pick up the children from the after school program, which is closer to his home than the mother's house. It is no surprise that her presumption that she has "a right" to pick up the children when school is out rather than let them go to an after school program he has arranged annoys the father and makes him unwilling to talk to the mother at exchanges. Yet she insists that he must talk to her, she has cursed him occasions when he refuses, and she even berates him, telling him to "act like an adult."

In the parenting coordination process, the mother insisted that the children must take a bus to her residence after school on his days and the father must pick them up at her house on his days, even though this resulted in the children having to take a long bus ride to her house and then a long trip to the father's house after he picked them up at her residence. She insisted on this arrangement rather

than allow them to participate in an after school program located a short distance from their school and closer to the father's residence. (FW Ex. A-6; Agreement #1) The father accommodated the mother's insistence on the bus ride to her house on "a trial basis" from mid September to mid November 2011, (FW Ex. A-6; Agreement #2), but when he voiced the difficulties this arrangement posed for him and the children and the coordinator asked the parents to suggest solutions, the parenting coordination process broke down because the mother was not getting what she wanted. She refused to participate any further. (FW Ex. A-6; Agreement #6; and FH Ex. 5)

Likewise, on some days when the children were in the after school program on the father's assigned days, the mother insisted that she had "a right" to remove the children from the after school program and take them to a public library and then insist that the father pick them up from her there rather than at the after school program that he had arranged and paid for.

When it comes to the time-sharing schedule and parenting decisions, the mother insists on her desires. The best interests of the children are secondary. The interests of the father are no consideration at all.

So, the vague, indefinite time-sharing arrangement between the parties has been the source of much disagreement and argument between the parties. It was not a problem for a year or so after the original judgment was entered in 2008, but as the mother's work hours have declined since then, the vague and an indefinite arrangement has turned into "chaos." This is not in the children's best interests.

The vague weekly time-sharing schedule is not in the children's best interest because it requires several exchanges between the parents, which is the occasion for some ugly scenes that the children have witnessed. It is also not in the children's best interest to have such short times with either parent each week. It also cannot be enforced by contempt proceedings because there is no clear prior order for a particular, detailed time-sharing schedule. In the situation of these two parents, this is not in the children's best interest.

Regarding the holiday or vacation time-sharing schedule, there is no course of dealing or understanding, which has also resulted in disagreements and ugly scenes in front of the children on holidays that should be enjoyable and filled with happy childhood memories. The lack of any meeting of the minds about holidays and vacations is not in the children's best interest because, again, it is the source of much argument and manipulation by the mother in her campaign to control the children at all times and to fulfill her interest and desires and regardless of their best interest.

#### (4) The parental responsibility order

Regarding parental responsibility, the original agreements provided that the parties would share parenting decisions, but now this is impossible. The parties do not share parenting decisions. Rather, the mother unilaterally makes the major medical and educational decisions and informs the father of what she has decided. She insists that he must agree with her decisions. Her discussions with him about their conditions and treatments consist of her insisting that he accept her opinions and growing hostile if he does not. The mother criticized the father for not recognizing illnesses in the children from time to time, while the father criticized the mother for being overly concerned with innocuous childhood ailments. He believes she uses childhood illnesses as an excuse to keep the children away from him. They are now unable to confer and consult about major parenting decisions and reach a joint or shared parenting decision. This is not in the children's best interest.

*See, e.g.*, texts of 8/23/2013 concerning a child's asthma and the differing opinions on severity, the need for treatment, the need to discuss, etc., resulting in an escalating battle over medical decisions and illustrating that the parties cannot share and make joint medical decisions. In that text exchange on 8/23/2013 the mother concluded by saying she would refuse to exchange both children because the father would not agree with her ideas about one child's medical condition and treatment.

As the father sees it, many of the children's illnesses and doctor visits were unnecessary and were concocted by the mother to interfere with his days under the weekly time-sharing schedule. He believes the mother has kept the children school when they were not truly sick. On some of the father's days she refused to send a child to his house if she had decided to keep the child home from school that day because she thought the child was sick. She believes that she is the only parent who can properly take care of the children, a belief that has no basis in fact. The father is a fit parent.

While the father's belief that the mother keeps a child at home from school to purposely interfere with his time with the child is an exaggeration, it is a reflection of a reality, namely, that the mother has no respect for the father's ability as a parent, his ability to take care of the children, even though he is quite capable of taking care of them. As she said: "I can't trust him to do it right!" And she never will. There is no evidence or argument that will ever convince her that the children are safe and secure while in his care.

The court does not find that the father's opinions about either child's medical conditions, illnesses, and treatment are better than the mother's. Likewise, the court does not find that the mother's opinions about their conditions, illnesses or treatments are better than the father's. Rather, the court finds that the parents do not agree about the children's medical conditions and the treatments they need. This persistent lack of agreement on medical decisions for the children is a substantial, material and unanticipated change in circumstances since the judgment was entered and it is not in the children's best interest. For a year or so after the judgment was entered in 2008 they did share parenting decisions, but now they cannot.

(5) The child support order: no substantial, material and unanticipated change in circumstances

In their original agreements, the parties agreed that no child support was owed by either parent to the other.

In the mother's most recent financial affidavit dated A Date/2013 she reports gross monthly income of \$1,488 or \$17,856 gross per year.

The father's gross annual income is \$46,764 or \$3,897 gross per month., from his testimony and his pay stub in evidence, FH Ex. 8. So, his gross annual income is \$4,488 greater now than it was in 2008.

There is no evidence of a monthly health insurance premium for the mother. The father's monthly premium is \$78 as shown on his financial affidavit filed 8/13/2012. He also provides health insurance for the children through a group policy available through his wife's employer at a cost of \$80 a month, as he testified.

The father has reasonable and necessary employment day care expense for the children of \$138.50 average per month. He puts the children into an after school program Monday through Friday during the school year when he is working and while the mother is also working on occasions during the week. He also pays for summer programs for the children while he is working and on some days while the mother is also working. The mother has no reasonable and necessary employment day care expense for the children shown on her financial affidavit.

In the Child Support Guidelines Worksheet filed 3/26/2008, the father owed the mother child support of \$44 a month. In Exhibit A attached the father owes the mother child support of \$50 a month. In the original settlement agreements, the parties waived the payment of child support by either party to the other.

3. Ruling

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



3.2 Jurisdiction **The parties' children are SD, born A Date/2000, and JD, born A Date/2004.** So, the children are now 13 and 9 years old. This court has subject matter jurisdiction and personal jurisdiction over the parties and the children. 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.

3.3 All factors considered In deciding a parental responsibility order, a parenting plan and a time-sharing schedule, the court must make the children's best interest the "primary consideration," §61.13(3), and the court must consider all of the factors in §61.13(3)(a) - (t). In the decisions in this judgment the court has made the children's best interest the primary consideration and the court has considered all of the statutory factors.

Regarding the parental responsibility order, the court may consider the "expressed desires" of the parents in making that order, §61.13(2)(c)2. The court has considered the parent's expressed desires in deciding on the parental responsibility order.

Regarding the time-sharing order, the interests or wishes of the parents are not listed among the factors in §61.13(3)(a)-(t). This is not surprising because when it comes to the children's day to day schedule, the interests of the parents are sometimes at odds with the best interests of the children. Nevertheless, the court has considered their interests, biases and wishes with regard to the children.

There is no particular time-sharing schedule that is favored by the statute or assumed to be in the children's best interest. Every child is unique, every family is unique and every time-sharing schedule must be unique. Separated parents do not have a right to any particular parental responsibility order, parenting plan, or time-sharing schedule.

The children, on the other hand, have a right to "frequent and continuing contact with both parents after the parents separate," §61.13(2)(c)1., although the circumstances 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 case, like all cases, is unique. The court's decision regarding parental responsibility and time-sharing is unique to this case.

3.4 The parental responsibility order is separate from the time-sharing order Since 1982, Florida law has separated the children's "time-sharing schedule," which is the calendar schedule detailing where the children will be living every night during the year, from "parental responsibility," which is concerned with how parenting decisions will be made now that the parents are separated. *Session Law 82-96* effective July 1, 1982.

"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). Some courts use the term "joint custody" when referring to "shared parenting," which is also not helpful. "Joint custody" is not a term that has ever been used in Chapter 61.

The order detailing where the children 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)(2012) 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, under the current statute the “time-sharing” order and the “parental responsibility” order must be two, separate orders.

“Parental responsibility” means parenting decision-making. The “parental responsibility order” does not specify where the children will be living from time to time during the year. *See* F.S. §61.046(17) & (18) (2012):

“(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. 4<sup>th</sup> DCA 2007); *Hancock v Hancock*, 915 So.2d 1277 (Fla. 4<sup>th</sup> DCA 2005); *Schneider v. Schneider*, 864 So.2d 1193 (Fla. 4<sup>th</sup> 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 children, in which case the court can order sole parental responsibility.

**3.5 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 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 children have 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 children 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. 1<sup>st</sup> 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.

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, after the judgment is entered 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 decisions 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 both parents are unfit, then the judge is a “super parent” empowered to make parenting decisions for the children. *See, e.g.*, §39.407(2)(a)2.

**A finding that the parents do not confer together and share parenting decisions is a detriment to the children sufficient for a sole parental responsibility order, *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).**

This is a detriment to the children because after the parents separate the best interests of the children 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 children 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 to the need for at least one parent to have parenting authority when the parents cannot agree, the parents inability to share parenting decisions is a detriment to the children if shared parenting is ordered, because a shared parenting order when the parents demonstrate they cannot agree is an invitation for further discord and further litigation. A goal of litigation under Chapter 61 is to reduce discord in the family and to reduce the sources of litigation, not increase it. §61.001(2)(c) provides that one of the purposes of Chapter 61 is:

“To mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage.”

As the court said in *Roski, supra*:

“This was the type of custody battle that makes the term ‘embittered’ a complete understatement. ... The trial court found that shared parental responsibility would be detrimental to the children. ... The record makes it clear that these parties were unable to reach agreement on any subject. Joint custody (*sic*) would be an invitation for weekly journeys to family court. ...” *Id.* at 414.

So, when parents cannot communicate and cannot cooperate concerning their children, the court should not order the parents to do what they have demonstrated they cannot do. Ordering such parents to share major parenting decisions, requiring them to confer together and make joint decisions, creates a situation that will keep the lawsuit going on and on with motions for contempt or supplemental petitions to modify. Continuous litigation is not in the children’s best interest and it is a detriment to the children. An object of every legal proceeding is to bring the case to an end, not leave it open to endless litigation. The object is to render a judgment that is truly final.

**In this case the mother’s supplemental petition does not ask for any modification to the parental responsibility order.**

**The father’s supplemental counter petition asks that the father should have “sole parental responsibility, with ultimate decision making authority...” .**

**The court finds the father’s petition regarding modification of the parental responsibility order has merit, so his petition is granted.**

In this particular family, from the evidence presented at the trial and the court's findings above and the following findings:

- (1) **The parents do not confer and consult together about major parenting decisions**, for example, for example, discussing their homework and school assignments, major medical decisions, etc.
- (2) **The parents do not communicate concerning their children**; although they got along well when the judgment was entered, their communications have deteriorated to the point that they are almost nonexistent. The mother's domineering personality is the principal reason that their communications have broken down.
- (3) **The parties have not demonstrated a capacity to share parental responsibility, for many years.**
- (4) **This record demonstrates that these parents have not shared parental responsibility in any significant way for many years.**
- (5) **This record demonstrates that a shared parental responsibility order is detrimental to the children because such an order requires these parents to confer with each other over all major parenting decisions but these parents argue and bicker in any consultations, which is detrimental to the children.** The principal reason they cannot make a joint parenting decision is because of the mother's uncontrolled desire to dominate the father's parenting of the children.
- (6) **Because of the potential hostility and low level of communication between these parents, the mother takes unilateral action and makes unilateral major decisions concerning the children, especially about medical decisions, without consulting with the father and making a joint, shared decision, which means she consistently violates the shared parental responsibility order in the judgment, which leads to more disputes, arguing and litigation between these parents, which is not in the children's best interests; and**
- (7) **Ordering these parents to share all major parenting decisions when they have demonstrated they are incapable of sharing all major parenting decisions is not in the children's best interest because at least one parent needs the authority to make parenting decisions without being subject to repeated motions for contempt for violating a shared parental responsibility order. In sum, ordering shared parental responsibility in this case would create an open invitation "for weekly journeys to family court." *Roski, supra.***

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

- (1) **The Father is granted sole and exclusive authority to make all parenting decisions for the children concerning but not limited to the children's:**
  - (a) **education, including change of schools and school choice;**
  - (b) **health care, including health insurance provider, mental health therapy and counseling, dental, orthodontic, and optical care, elective and emergency;**
  - (c) **the choice of the employment day care provider or other day care or before or after school program or summer activity, and whether the children will be at a day care provider or program or activity on any day, except as provided in 3.7 (1) below;**
  - (d) **extracurricular activities including sports, religious training, and summer camps and**

summer activities; and

(e) all other aspects of the parenting of the children.

**So, the Mother has no authority to make any parenting decision. The Father is not required to consult or confer with the Mother about any decision and the decision in any parenting issue belongs to the Father solely and exclusively.**

**So, there are no parenting decisions that the parties must discuss or consult about.**

**The court orders that either parent's questions and concerns about parenting decisions must be taken up only with the parenting coordinator in meetings with the coordinator. Parenting decisions may not be questioned by either parent during the exchanges of the children, by text, email or phone, or otherwise in any location or communication other than in meetings with the parenting coordinator.**

**The parenting coordinator was appointed by an order dated 10/26/2011 and that order is still in effect.**

**The court has considered all of the factors in §61.13(3) and the expressed desires of the parents in making this sole parental responsibility order.**

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

3.6 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.**

3.7 Time-sharing schedule; jurisdiction

After considering all of the factors in §61.13(3) and the foregoing factors **the court finds the children's best interests are served by having the children live most of the days during the year with the Father.**

**This time-sharing schedule is effective immediately upon the signing of this judgment.**

Beyond the findings above, the court declines to make specific findings under each of the factors in the statute because these findings would not be in the children's best interest.

To summarize the findings above concerning the time-sharing schedule, the court finds that the time-sharing arrangement the parties have been following is not in the children's best interest, considering all of the factors in the statute and the facts of this case, and the court finds the attached time-sharing schedule is in the children's best interest.

**The court finds the father's supplemental counter petition to modify the time-sharing schedule has merit. Therefore, it is granted to the extent that the court orders the attached time-sharing schedule. The mother's supplemental petition regarding the time-sharing schedule is denied.**

However, the court does not grant his request for supervised contact by the mother with the children. The court finds that supervised time-sharing is not necessary to protect the children. Both

parents are fit parents. They should avoid contact with each other and now that only one of them has sole parental authority, they have less reason to make contact with each other. Further, the court has ordered that questions or concerns of either parent about parenting decisions must be addressed in meetings with the parenting coordinator.

The court notes that the attached schedule provides for the exchange of the children to take place principally by drop off and pick up at school in order to minimize the face to face exchange of the children and contact between the parents in the presence of the children.

The court must decide the best interest of the children over the long term. **The time-sharing plan now ordered by the court is attached to this Final Judgment.**

(1) Day care during mother's assigned days Under the attached time-sharing schedule, if school is in session on Thursday or Friday of the mother's assigned days, the mother may, but is not required, to make use of the father's after school or other day care provider on those days if he has arranged for such a provider on those days. Likewise, on any of her other assigned days, she may make whatever day care arrangements she wishes on her assigned days.

(2) No parent initiated contact during the other parent's assigned days Under the attached time-sharing schedule, neither parent may initiate any telephone, text, email, Skype, Facebook, or other communication with a child while the child is with the other parent or under the other parent's direction on his or her assigned days under this time-sharing schedule or otherwise. Further, neither parent may request or direct a child to initiate a call to him or her during days assigned to the other parent.

(3) No "first choice" child care order Under the attached time-sharing schedule there is no "first choice" child care order. The court now specifically orders that neither party has no a right and neither party has an obligation to use the other party as a child care provider during any of his or her assigned days under the time-sharing schedule.

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

The court finds that the foregoing parenting plan, parental responsibility order, and time-sharing schedule are in the children's best interests after considering all of the factors in §61.13(3). The court orders that the parents shall follow this plan, order, and time-sharing schedule.

#### 4. Child support order; child support calculation

4.1 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 125 days each year, or 34% of the year, with the Mother and the balance of the year with the Father;

(2) \$1,488 gross income per month for the mother;

- (3) \$3,897 gross income per month for the father;
- (4) with the father paying \$78 for his health insurance per month;
- (5) the mother paying \$0 for her health insurance per month;
- (6) the children's health insurance costing \$80 per month;
- (7) being paid by the father;
- (8) the parties have a reasonable employment day care expense of \$138.50 per month, paid by the father;
- (9) the parent with whom the children live most of the time under the time sharing schedule ordered qualifying for the dependent's exemption for the children;
- (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: Single. The allowable dependents of the mother is: 2.
    2. The actual filing status of the father is: Married Filing Joint. The allowable dependents of the father is: 3.
    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) Mandatory retirement payments.
      - (e) Health insurance payments, excluding payments for coverage of the minor children.
      - (f) Court-ordered support for other children which is actually paid.
      - (g) Spousal support paid pursuant to a court order from a previous marriage or the marriage before the court.

Resulting in net monthly income of \$1,424.53 for the mother and \$3,309.86 for the father;

all of which the court hereby finds and orders.

#### 4.2 Dependent's exemption order

(1) Regarding the dependent's exemption, at this time the court finds that under the attached time-sharing schedule the children reside with the Father for 240 days out of the year and with the Mother the balance of the year, so the children are with the father most of the days out of each calendar year.

(2) Therefore, under the Internal Revenue Code, the father is entitled to the dependent's exemption for the children on the federal income tax return.

(3) However, the parties' original settlement agreements provided that each parent received one of the children as a dependent's exemption. Therefore, in the calculation attached as Exhibit A



and by this order, the court assigns one of the exemptions to the mother.

This results in an increase in her gross income because of the Earned Income Tax Credit. The court finds this agreement regarding the dependent's exemptions is in the children's best interest, that the mother should be better able to provide for the children under the time-sharing schedule if she takes one of the dependent's exemption as the parties originally agreed.

Therefore, pursuant to §61.30(11)(a)8., the court orders the father to sign and deliver to the mother each year any paperwork required by the Internal Revenue Code, if any is required, so that she may claim the dependent's exemption for the younger child, while the father claims the exemption for the older child.

(4) The parties' original agreement provides that the parties will alternate the exemption for the younger child year to year after the exemption is no longer available for the older child. The court now adopts that agreement as the order of the court.

#### 4.3 Calculation of children's nights during the year with the Mother

	# overnights per yr.
(1) 4 overnights every other weekend, Thursday to Monday, 4 x 26 =	104.00
(2) 2 weeks in the summer =	14.00
(3) 16 nights of Winter break, alternating, 1/2 with Mother =	8.00
(4) 5 nights of Spring break, alternating, 1/2 with Mother =	2.50
(5) <u>Less duplications:</u>	
(A) Four weeks in summer, mother and father	
1 weekends =	(2.00)
(B) 16 nights of Winter break, 3 weekends,	
1 weekend =	(2.00)
Total nights per year with Mother:	124.50
Percentage of nights each year with Mother:	34.11%

4.4. Monthly current minimum child support amount Therefore, as shown on Exhibit A attached, the monthly amount of the current minimum child support due from the Mother to the Father is \$50.

4.5 Deviation factors considered; no child support owed The court has considered the factors to support a deviation from the minimum amount of support. There court finds that the child support of \$50 per month must be reduced to zero. There are circumstances justifying a deviation of the child support, namely, the age of these children and the greater needs of older children. §61.30(11)(a)5.

Under the time-sharing schedule, these children will live most of the time with the father and he will incur more expense for them. The older child is now a teenager and the younger child is now 9 years old.

The father is also responsible for 70% of the children's uncovered medical expenses, which is an expense for the children that he must pay. The mother's share is 30%.

Further, the court finds that the original Child Support Guideline Calculation filed 3/26/2008 provided that the father owed child support of \$44 per month to the mother, while Exhibit A attached shows he owes \$50 a month. This is not a material, substantial change in the child support owed.

**Therefore, the court orders that no child support is owed by either parent to the other.**

4.6 Retroactive child No retroactive child support is owed in this case. The parties agreed that no child support would be paid in their original agreements and the time-sharing schedule now ordered is in effect when this judgment is signed.

#### 4.7. Health Insurance

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

(B) Uncovered Medical Bills The parties shall be responsible for any uncovered reasonable and necessary medical bills of the children 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. 4<sup>th</sup> DCA 2005); *Salazar v. Salazar*, 976 So.2d 1155 (Fla. 4<sup>th</sup> DCA 2008).

**The ratio of their net incomes now is: Father 70% and Mother 30%.**

"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 children, he or she shall send a copy of it to the other parent with a cover note asking for payment of the 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 the other parent for the parent's 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.

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.

(D) Record Keeping During the minority of the children, each parent must maintain a chronological, serial list of all uncovered medical bills they incur until the children are 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 children are 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.

Done and ordered in Fort Myers, Lee County, Florida, this \_\_\_\_\_

\_\_\_\_\_  
R. Thomas Corbin, Circuit Judge

Copies provided to:

, Esq., and , Esq.

, parenting coordinator