

NO.

IN THE

SUPREME COURT OF THE UNITED STATES

Betty Caitlin Nicole Smith-Petitioner

Vs.

Zachary Taylor Daniel-Respondent

APPENDIX TO PETITION FOR WRIT OF CERTORARI

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FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D18-3222

BETTY CAITLIN NICOLE SMITH,

Appellant,

v.

ZACHARY TAYLOR DANIEL,

Appellee.

On appeal from the Circuit Court for Madison County.
Andrew J. Decker, Judge.

February 8, 2019

PER CURIAM.

AFFIRMED.

MAKAR, WINOKUR, and M.K. THOMAS, JJ., concur.

*Not final until disposition of any timely and
authorized motion under Fla. R. App. P. 9.330 or
9.331.*

Betty Caitlin Nicole Smith, pro se, Appellant.

Zachary Taylor Daniel, pro se, Appellee.

DISTRICT COURT OF APPEAL, FIRST DISTRICT
2000 Drayton Drive
Tallahassee, Florida 32399-0950
Telephone No. (850)488-6151

March 18, 2019

CASE NO.: 1D18-3222
L.T. No.: 16-249 DR

Betty Caitlin Nicole Smith

v.

Zachary Taylor Daniel

Appellant / Petitioner(s),

Appellee / Respondent(s)

BY ORDER OF THE COURT:

Motion for rehearing en banc and written opinion filed by the appellant on February 11, 2019, is denied.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

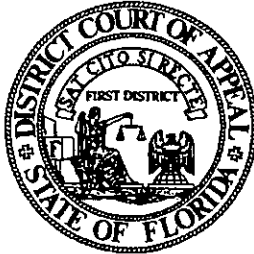
Served:

Betty Caitlin Nicole Smith

Zachary Taylor Daniel

th


KRISTINA SAMUELS, CLERK



IN THE CIRCUIT COURT, THIRD
JUDICIAL CIRCUIT, IN AND FOR
MADISON COUNTY, FLORIDA.

CASE NO. 2016-249-DR

In re: The Former Marriage of

Zachary Taylor Daniel,

Petitioner/Former Husband,

and

Betty Caitlin Nicole Smith,

Respondent/Former Wife.

**AMENDED FINAL JUDGMENT OF DISSOLUTION OF MARRIAGE
UPON REMAND FROM FIRST DISTRICT COURT OF APPEAL**

THIS CASE was before the Court on July 2, 2018, on the Court's Order Setting Evidentiary Hearing After Remand from Appellate Court and present were the Petitioner, Zachary Taylor Daniel ("Zachary"), and the Respondent, Betty Caitlin Nicole Smith ("Betty"), who both appeared in propria persona, and having carefully considered the entire docket of this case as well as the Per Curiam Opinion dated June 4, 2018, of the First District Court of Appeal, it is upon due consideration that the Court

FINDS, ORDERS and ADJUDGES as follows:

Instructions on Remand

1. In its Per Curiam Opinion, the First District Court of Appeal held as follows:
"Thus, we reverse that portion of the "Final Judgment of Dissolution of Marriage with Dependent or Minor Child" relating to shared parental responsibility and parenting time. We remand the case to the trial court with instructions for it to reconsider, and if necessary, to take additional evidence

on and make findings concerning, the Kentucky Domestic Violence Protection Order and the best interests of the child, as those factors directly affect the issues of shared parental responsibility and parenting time.”

2. In compliance with the instructions on remand of the First District Court of Appeal, the Court conducted an evidentiary hearing on July 2, 2018, (i) to make findings concerning the Kentucky Domestic Violence Protective Order and (ii) the best interests of the parties' minor child, M■■■■.

3. At the commencement of the case, the parties stipulated that all the papers, documents, photographs and exhibits each had filed in this case would be deemed admitted in evidence with the parties reserving the right to argue the weight, relevancy and credibility to be afforded a particular item of evidence.

4. To assist the parties and the Court, each party was provided with a copy of Section 61.13(3)(a) through (t), Florida Statutes, and the Court guided each party through the offering of testimony and evidence with respect to the factors set forth in that statutory provision.

5. Although there were some moments of acrimony and aggressiveness, the Court takes this opportunity to again commend the parties for the generally courteous, cogent and forthright testimony and presentations they made during the evidentiary hearing.

Madison County Procedural History

6. On November 8, 2016, Zachary commenced this dissolution action by filing his Petition for Dissolution of Marriage with Property and Dependent or Minor Children. In his Petition, Zachary sought to:

- a. Dissolve his marriage to Betty; and
- b. Address the allocation of any marital assets; and

c. Determine parental responsibility and timesharing.

7. Zachary specifically alleged in his Petition that:

“2. JURISDICTION OVER PARTIES. The Wife and the child have been a resident of Madison County, Florida for more than six (6) months before filing this Petition. The parties were married in Kentucky, however, Kentucky refuses to acknowledge or accept jurisdiction over the parties.”

8. On November 28, 2016, Betty filed her Answer and Counter-Petition to Zachary's Petition and agreed with Zachary's statements for the basis of this Court's jurisdiction:

“1. The Respondent agrees with the allegations raised in the following numbered paragraphs in the Petition and, therefore, admits those allegations: 1, 2, 3, 4, 5, 10, 12, 14 and 15.”

9. Betty also asserted in paragraph 1 of her Counter-Petition that this Court had jurisdiction to consider and rule upon the issues presented including any order with respect to the Kentucky Domestic Violence Protection Order.¹

10. On January 13, 2017, the Court conducted a hearing on Zachary's Motion for Temporary Timesharing. At the hearing, the Court found from the evidence presented that Zachary had proven the following allegations in his Motion:

“1. A temporary timesharing schedule should be ordered as it is in the best interest that the minor child have a meaningful relationship with both parents.

2. The Father, Mother, and minor child all lived together. The child now resides with the mother and the child's maternal grandmother. The child's maternal grandmother pled guilty by insanity to manslaughter in the neglectful death of the child's maternal great grandmother and guilty to second degree criminal abuse and second degree criminal possession of a forged instrument in Christian County, KY. The Father has serious concerns for his child's safety in the mother's care while residing with the maternal grandmother.

3. There is a Domestic Violence Order of November 25, 2015, however, there is not a history of domestic violence with the Father and his child nor was visitation addressed in the Temporary Order on November 25, 2015.

¹On January 9, 2017, however, Betty filed a Motion to Dismiss any allegations or prayers for relief in the pending dissolution action pertaining to timesharing.

4. On or about November 30, 2014, there was a small burn on the child which was investigated and deemed an accident. The Petitioner/Father was not charged with any criminal abuse. The Mother had no concerns with the Father caring for his child after the incident in 2014, in fact, the Respondent and Petitioner were married on January 12, 2015 and resided together with the minor child until November 2015.

5. The Mother is refusing the Father time with the minor child even though he has a stable and satisfactory residence and employment.

6. The Father had to hire a private investigator to find his minor child.

7. The Father is more than capable of tending to the needs of his minor child as he has before. He loves his child and wants to spend time with him."

11. Zachary and his grandmother had temporary timesharing and visitation with the parties' minor child, M [REDACTED] ("M [REDACTED]"), following the conclusion of the January 13, 2017, hearing. Based on the photographs in evidence and the testimony of the parties, no problems arose during this temporary timesharing. By all accounts, and the photographs confirm, M [REDACTED] was happy, playful and readily bonded with Zachary and his grandmother. Nothing occurred during this temporary timesharing to raise any concern for the health or safety of M [REDACTED].

12. After limited pre-trial discovery and the filing of pre-trial motions by Betty with the apparent intent of obtaining an Order from this Court to abstain from any consideration of timesharing issues, the Court held a final hearing on June 6, 2017.

13. On October 6, 2017, the Court² entered a Final Judgment of Dissolution of Marriage with Dependent or Minor Child in which the Court decreed as follows:

- a. The Court had jurisdiction of the parties, the subject matter of this case and the issues presented for adjudication.

² The Honorable E. Bailey Browning, III, Acting Circuit Judge.

- b. The parties' marriage was dissolved.
- c. There are no marital assets or debts to allocate through equitable distribution, and the Court directed that "[a]ny property in the parties' possession is the property of the party currently in possession of the item" and "a]ll debts presently in the name of or incurred by any party shall be the sole obligation of that party."
- d. Florida is the home state of M [REDACTED] and Florida "is the sole jurisdictional state to determine child custody, parental responsibility, time-sharing [and] rights of custody."
- e. Zachary was allowed supervised timesharing with M [REDACTED] in the State of Florida.

14. The Final Judgment established Zachary's present and future timesharing as

follows:

"14. Father's parenting time should be supervised, and occur in the State of Florida, initially. The Court finds that the Father should be allowed time-sharing one weekend per month, beginning the first full weekend in November, from Saturday at 9:00 a.m. until Saturday at 5:00 p.m. On Sunday, the Father's time would be from 9:00 a.m. until 1:00 p.m., in recognition of him needing to return home that afternoon, and continuing each month thereafter. The Father has spent very little time with the Child, and the Court believes a slow, "breaking in" period would be in the Child's best interests. It is clear, based upon the testimony, that the Child has special needs that should be considered when determining a parenting schedule. While no medical testimony was presented to specifically determine the severity of the Child's disabilities, the Mother's testimony was persuasive in that regard.

15. That unsupervised time-sharing shall be considered by the Court upon submission of a written request to the Court by the Father. The Father shall not be required to show a substantial change in circumstance as part of his request.

16. Supervised time-sharing shall be arranged between the Paternal grandparents and the Mother, or her designee. The person supervising shall be agreed-upon by the Parties. If the Parties cannot agree, the matter shall be submitted to the Court for resolution."

15. On October 9, 2017, Betty timely file her Notice of Appeal with respect to the Final Judgment of Dissolution of Marriage with Dependent or Minor Child.

16. On October 30, 2017, the Court granted Betty's Motion for Emergency Stay of Final Order Pending Appeal, staying that portion of the Final Judgment awarding supervised timesharing.

17. On June 4, 2018, the First District Court of Appeal reversed the Final Judgment of Dissolution of Marriage with Dependent or Minor Child because the trial court "abuse[d] its discretion by failing to accord full faith and credit due the Kentucky Domestic Violence Order of Protection under 18 U.S.C. § 2265(a) 1 and section 741.315(2), Florida Statutes (2016)." In addition, the appellate court observed that the Final Judgment "is otherwise devoid of any suggestion that the trial court considered the remaining factors in section 61.13(3)(a)-(t), Florida Statutes (2016), in order to determine the best interests of the child."

18. Accordingly, the appellate court "remand[ed] the case to the trial court with instructions for it to reconsider, and if necessary, to take additional evidence on and make findings concerning, the Kentucky Domestic Violence Protection Order and the best interests of the child, as those factors directly affect the issues of shared parental responsibility and parenting time."

19. No rehearing was requested or granted by the First District Court of Appeal which on June 25, 2018, issued its Mandate to this Court that all further proceedings be held in accordance with the Per Curiam Option dated June 4, 2018.

20. On July 2, 2018, this Court conducted an evidentiary hearing in accordance with the First District Court of Appeal's Mandate.

Kentucky Proceedings and History

21. Zachary and Betty began a relationship in 2011 and lived together in numerous locations over the next few years, primarily in Tennessee and Kentucky.

22. During the first two years of their relationship, Zachary lived with Betty and her mother, Mrs. Penny Elliott, and Betty's stepfather, George Elliott. During this period of time, they moved from multiple residences; incurred debts and accounts; and skipped out of town to avoid debt collectors. During this time, Zachary learned that Betty and her mother and stepfather had run up \$4,000.00 in debts in Zachary's name. Zachary also learned that Betty and her family were using him to obtain accounts and property with no intent of making payment. Betty's family moved frequently and discouraged Zachary from maintaining contact with his own parents and family.

23. Zachary's mother observed that it was if Zachary had joined a "cult."

24. Zachary and Betty's child, M■■■■, was born on July 11, 2013, in Tennessee.

25. On August 12, 2013, Betty and her mother induced Zachary to sign a statement, written by Betty's mother, in which Zachary purportedly waived and gave up his parental rights to M■■■■. Zachary testified that he was manipulated and deceived into signing this handwritten form by being told that it was simply a form to allow Betty to take care of M■■■■ if something were to happen to Zachary.

26. And then a few days later, on August 16, 2013, about a month after M■■■■ was born, Betty filed a case in Kentucky seeking a domestic violence injunction and attempted to use the so-called parental surrender rights form. No Order was ever apparently entered, and the Court denied issuance of any Summons.

27. On September 5, 2013, the court in Kentucky entered an Order of Protection effective until September 5, 2014, restraining Zachary from having any contact with Betty. From a review of the file, it appears that the court relied in part on the testimony of Betty's mother,

Penny Elliott, who was convicted of manslaughter in the death of her own mother. Penny has been diagnosed with bipolar disorder with intermittent psychotic episodes.

28. On November 30, 2014, Betty took M[REDACTED] to the Murray-Calloway County Hospital with complaints about a burn that M[REDACTED] had allegedly suffered as a result of parental abuse or neglect by Zachary. M[REDACTED] apparently toddled into a cigarette being held and smoked by one of Zachary's friends. The hospital notes record a small burn that is barely visible in the photographs submitted to the Court. All other signs and observations were recorded as normal. M[REDACTED] was discharged the very same afternoon that he was admitted.

29. This matter was investigated by the Maury County Sheriff's Department which included interviews of law enforcement witnesses who confirmed that there was no abuse or neglect:

"I did talk with Jerry Myers who lives at 1825 Richardson Road, Clarksville TN 931-286-0598 who gave the same story. He also advise [sic] that Leonard Cole who is a corrections officer for the Lawrence County Sheriff also saw the incident. Mr. Cole did advise the same as the others.

I did make the calls to Myers as soon as Daniels left and to Cole as soon as I was through making the call.

Case is closed due to jurisdiction issues on the burn and no neglect noticed. [emphasis supplied]"

30. The Family Law Court Judge did not perceive that this accident constituted abuse and directed Betty to comply with a previously agreed visitation schedule granting Zachary unsupervised timesharing with his son. Betty did not comply with the Court's Order for visitation but started a course of conduct to deny any parenting time between Zachary and M[REDACTED]

31. In addition, Betty tried to convince the Family Law Court Judge that Zachary had executed a waiver, surrender or abandonment of his parental rights, but the Kentucky judge rejected that argument as meritless. At the July 2, 2018, evidentiary hearing Betty aggressively

questioned Zachary about the paper he signed purportedly terminating his parental rights. Zachary acknowledged that he did, in fact, sign the handwritten paper in question. Zachary explained in a calm and composed response the fraudulent misrepresentations made by Betty and her mother to induce him into signing a the sheet that was not completed when signed and with respect to those portions actually written out, it is clear that Betty and her mother were not truthful regarding its contents.

32. On December 18, 2014, Zachary filed a Motion for Rule in Calloway Family Law Court, Kentucky, for an Order to Show Cause based on Betty's failure to comply with the court-ordered visitation schedule. The Calloway Family Law Court gave no legal effect, credence or weight to the so-called parental termination paper signed by Zachary nor did that court give any weight to the allegations of abuse.

33. On December 22, 2014, The Kentucky Family Law Judge entered an Order to Show Cause scheduling a hearing for January 12, 2015, for Betty to explain why she should not be held in contempt of court and warned her that she could face jail time for her willful refusal to allow Zachary his court-ordered timesharing with his son, M[REDACTED].

34. There was no hearing on January 12, 2015, on the Order for Rule to Show Cause why Betty should not be held in contempt because on that very date, Betty and Zachary were married thereby mooted and canceling the contempt hearing. Consistent with the pattern of manipulation and machination, between the date of her abuse allegations and claims that Zachary terminated his parental rights, Betty professed her love for Zachary and the desire to form a family. Just a few weeks after filing a complaint alleging that Zachary had committed child abuse, Betty claimed that he and Zachary were "soulmates" who should be together; be married; and live as a family.

35. Zachary admitted that he allowed Betty to manipulate him into marriage because he was naïve; separated from contact and counsel with his family; and had begun to doubt his own perceptions of things. From that point in January of 2015 through November of 2015 when the Kentucky court entered its Order of Protection, Betty and her family continued to isolate and manipulate Zachary to convinced him that he was experiencing mental health issues.

36. At first, right after the marriage, things seemed to be tranquil and peaceful between Betty and Zachary. Zachary stated that even Betty's mom was acting nicely toward him.

37. Zachary quit his job to find employment closer to Betty's parents' home in Murray, Kentucky, since she refused to move out of their house and live with Zachary and M[REDACTED] as a family. Then the pattern of manipulation and mind control started up again. Zachary was encouraged to incur debts and went through four different jobs in a few months attempting to make ends meet. Betty and her parents convinced Zachary that Children's Services would take M[REDACTED] away from him if he did not beg his parents to send money to pay for the household expenses like the light bill and satellite dish.

38. In 2015, Zachary was involved in a traffic accident and learned, contrary to Betty's mother's assurances, that he was not covered by the family auto insurance policy. Betty and her mother told Zachary that if there was a "huge, expensive lawsuit" that it would hurt his son, and he could lose any parental rights. Interestingly, these are evidently the same parental rights Zachary had supposedly "terminated" in August of 2013, two years prior to this accident.

39. By the fall of 2015, Zachary was an emotional wreck due to the manipulative threats and worries that Betty and her mother were using and playing on him. At the traffic court hearing on October 13, 2015, Betty's mother "just happened" to appear and convinced Zachary that the best way to avoid any traffic problems; an expensive lawsuit; and loss of his child was to threaten

suicide and ask to be checked into a mental hospital to stop the hearing. Unfortunately for Zachary, he trusted Betty's mother and began to feign mental health symptoms and claimed to hear voices.

40. Zachary later learned that there was never a lawsuit and the traffic case could have been handled with a simple citation and fine, but Zachary asked to be taken to Western State Hospital on October 13, 2015. Betty and her mother told Zachary to say that he was hearing things and to ignore his parents. They explained that if he was disabled he could receive payments in his name.³ To assure that neither Zachary nor his parents could administer any disability payments, Betty filed papers under oath with the Court asking for and being appointed a fiduciary over Zachary to take care of him and his property. Again, there is a disconnect between Betty's claim of abuse and fear of physical violence from Zachary and her request to manage any funds or property to which Zachary may be entitled so she can take care of him.⁴

41. On October 27, 2015, while Zachary was at Western State Hospital, Betty requested an Order for Emergency Appointment of Fiduciary so she could help assist and handle Zachary's mental health issues.

42. Zachary was discharged on or about November 6, 2015, when his parents came to Western State Hospital to take him home. The discharge summary by the doctors at Western State

³ Although there is no indication from the record of this case that Betty ever attended classes in a post-secondary educational institution, she obtained a \$3,569.00 Direct Stafford loan. Consistent with the "disability culture" practiced by Betty and her family, Betty then obtained a complete discharge of this student loan from the U.S. Department of Education based on a claim of disability. In all of the hearings Betty has attended before this Court, there was never been any sign or indication that Betty has a disability, restriction or handicap of any kind.

⁴ The disparate proceedings in Calloway County, Kentucky, demonstrates the value and wisdom of Justice Barbara J. Pariente's work spearheading the implementation of Florida's unified family court approach to different cases. If the judge handling the timesharing case who issued the Order to Show Cause why Betty should not be held in contempt had also been the same judge hearing the fiduciary appointment case and the later domestic violence proceeding, the Kentucky courts may have fashioned a significantly different solution to the issues between Zachary and Betty.

indicates that far from Zachary having any mental health issues, he displayed completely normal characteristics:

"Mental Status By Psychology:

Alert, Oriented, Coherent, Relevant, Logical, Euthymic Mood, Appropriate Affect, Denies Suicidal Ideations, Denies Homicidal Ideations, Denies Hallucinations, Denies Delusions, Other: Pt. is calm and cooperative."

43. Although Betty asked for the legal authority to assist Zachary and be appointed his guardian at the end of October 2015, only a few weeks later Betty asked a different judge to enter an Order of Domestic Protection without Zachary being present, for whom she had been appointed guardian to control his affairs, being present with the opportunity to be heard.

44. At the November 2015 hearing, Betty claimed that Zachary held M [REDACTED] hostage with a knife to his throat requiring law enforcement to go into the home with "guns drawn" to recuse the minor child.

45. On November 25, 2015, in Zachary's absence, the Kentucky court entered an Order of Protection with an expiration date of November 25, 2018.

46. In fact, the Kentucky State Police report shows that only 31 minutes elapsed from the time officers arrived on the scene until they cleared the alleged incident report. The report further shows that no force was utilized by the police, no guns were drawn and there was no reference to a knife being held, used or possessed by Zachary. They described Zachary as "calm."

47. Following Zachary's release from Western State Hospital, in 2016, Zachary obtained employment at Dollar General where he was given increasing responsibilities and promoted to Assistant Manager after working there less than four months. While working at Dollar General, the store manager entrusted Zachary to babysit her three small children. He cooked for

them, bathed them, gave them their medicine and diapered the youngest. Zachary took them to doctor's appointments when their mother's work schedule did not permit her the ability to do so.

48. After two years working as Dollar General Assistant Manager, Zachary left for more responsibilities at another job. He was employed as manager and cook at Bear Creek Pike Sports Bar and Grill. Zachary is entrusted with numerous responsibilities. He has many friends and is dating a strong, independent woman with whom he enjoys a healthy relationship.

49. In January of 2017, this Court granted Zachary's request for temporary visitation with M[REDACTED] whom he had not seen for almost two years. The photographs of their visitation, portions of which this Court directly observed, show a loving, warm and comfortable father-son relationship in which M[REDACTED] was happy, secure and enjoying interaction with his father.

50. In the three years that the Order of Protection has been in effect, Zachary has not violated that Order. There has been no hearing or alleged violation. Betty claims that Zachary violated the Order of Protection by hiring a private investigator to "stalk" her, but the evidence presented and record of this case, including representations made by Zachary's former legal counsel, establish that Zachary's lawyer employed an investigator/process server to locate Betty's principal place of abode and effect service of process.

51. Away from the toxic environment of Betty and her family, Zachary has obtained and held responsible employment and demonstrated a commitment to loving, safe, long-term and appropriate relationships with his employers, children in the community and with a girlfriend.

52. Betty lives in Lee, Florida, with her mother, Penny Smith-Elliott, who was convicted of Second Degree Murder in the death of her own mother; Criminal Abuse and Possession of Forged Instrument. The Clinical and Forensic Psychologist who examined Betty's mother to determine her competency for trial noted a family history of mental illness and found that

she has severe bipolar disorder. Dr. Eric Y. Drogin, a clinical and forensic psychologist as well as attorney at law, examined Betty's mother to determine her competency to stand trial on the charge of murdering her own mother. Dr. Drogin reported that:

During her 12 March 2007 examination, Ms. Smith endorsed a family history of mental illness that included Schizophrenia and Bipolar Disorder. She described her father as "cruel, mean, and hateful," but claimed to remember her mother fondly. [The same mother that she was charged with murdering and who she plead guilty to committing manslaughter.] Your client maintained that, as a child, she had been raped repeatedly between the ages of 4 and 13 by her sister's husband.

Ms. Smith maintained that she had gone as long as "four straight consecutive days" without sleep, and that she had suffered from depression "on and off since my late 20s" although she denied any current plans, feelings, or intent to harm either herself or anyone else. She further asserted a history of auditory and visual hallucinations, noting that her mother had consistently normalized such incidents for her as a "family tradition."

The mental health and history of Betty's mother are very significant and relevant to the issues before the Court because (i) M█████ will be growing up in the home where Betty's mother resides; (ii) Betty's mother will have an influence and effect on the mental health, socialization and adjustment of M█████; (iii) when Betty and Zachary lived apart from Betty's mother and family during a portion of their relationship between 2011 and 2015, they were happy and well-adjusted; living with Betty's mother, the Court is concerned that her family history of mental illness, Schizophrenia and Bipolar Disorder will negatively impact on M█████.⁵

53. Over the course of this case, the Court has had the opportunity to observe both Zachary and Betty.

⁵ As a further example of Betty's mother's lack of stability and bizarre behavior, on July 28, 2018, she sent an email to this Court's Judicial Assistant, Judge E. Bailey Browning, III and others in court administration offering to send "\$25 in free books... 'cause I'm cool like that."

54. Betty has displayed a continuous pattern of aggressive and scurrilous misrepresentations that are apparently designed to deny Zachary any timesharing with his son by engendering bias and animus by law enforcement and the courts against Zachary:

- a. On August 9, 2017, after this dissolution action was filed, Betty made a complaint with the Madison County Sheriff's office alleging that her "ex boyfriend" was finding ways to contact her in violation of the Kentucky Order of Protection. Contrary to this complaint, Zachary was not her "ex boyfriend" at the time; he was her husband who had filed for dissolution of marriage.
- b. In this same August 9, 2017, complaint, Betty told law enforcement that Zachary had employed a private investigator to "constantly" watch her residence in Greenville. In fact, Zachary's lawyer had employed an investigator/process server in order to serve the dissolution papers on Betty.
- c. Betty told law enforcement that Zachary was planning on kidnapping M■■■■, but there is no evidence that Zachary ever threatened such conduct or took any action to carry out any plan of that kind. Throughout these proceedings, Zachary has acted appropriately through counsel and through the judicial process.
- d. Betty has submitted hundreds of pages of postings and comments from over 5,158 commenters from a website she created to request internet users to provide their opinions as to how this Court should rule. Betty's postings do not accurately reflect the docket of this case nor do they accurately convey information about Zachary and M■■■■. For example, Betty includes a description of Zachary's legal counsel, Madison lawyer, Monica Taibl, Esquire, stating that Mrs. Taibl is a danger to children; does not care about harm to children including M■■■■ and is only out for

the money in disregard for the safety and well-being of children. Taibl's handling of this case has been professional and appropriate in every way. Betty claims that during timesharing, Zachary returned M [REDACTED] "with a bleeding hole in his head." Not only is such a description inaccurate and grossly overwrought, it ignores (i) the police report concluding that there was no neglect and (ii) the Kentucky Court's Order to Show Cause why Betty should not be held in contempt.

- e. Further, this Court knows from many cases in which Taibl has appeared as counsel for guardians ad litem and for parents and children that she is committed to the well-being, safety and best interests of children. The continuous scurrilous attacks by Betty raise the question as to why she must make such statements if the merits of the case favor her position. Taibl is deservedly recognized in the Third Judicial Circuit for her work in child advocacy.
- f. Betty is not a credible or trustworthy witness.

Gaslighting: Maliciously Induced Introjection

55. The clear and convincing evidence before the Court establishes that Betty manipulated Zachary for many years to use him to obtain money and goods for herself and her family. In addition, they "gaslighted" him into believing that he was mentally ill so they he could obtain disability payments that Betty and her family could benefit from. Lastly, Betty has used the judicial system to alienate Zachary from his own son.

56. "Gaslighting" is a term that derives from "Gaslight," a 1944 movie about a woman whose husband slowly manipulates her into believing that she is going insane. Several courts have applied the term to describe the type of manipulative behavior that Betty has consistently engaged in from the beginning of her relationship with Zachary in 2011. See Mikkelson v. Shackleton,

2015 WL 4935632, Iowa Ct. App. Aug. 19, 2015) (describing gaslighting as “methodically providing false information to a person such that the person doubts his or her own perception and memory.’ The term comes from the 1938 play Gas Light (also known as Angel Street) by Patrick Hamilton.”); Coburn v. Moreland, 433 S.W.3d 809, 818 (Tex. App. 2014) (describing gaslighting as “manipulative behavior used to confuse people into questioning their reactions to events, so much so that the victims of gaslighting begin to question their own sanity.”).

57. See also, Matter of V.R.F., 383 P.3d 932, 937 (Ore.App. 2016). (“Cleary testified that, although there was not much indication of physical abuse, there was emotional abuse. Cleary had the impression that father was “gaslighting” mother—systematically breaking down her self-esteem “by asserting [her] worthlessness and causing [her] to question [her] own version of reality.” Cleary learned from mother that father was abusing alcohol and was controlling and manipulative. To manipulate mother, father frequently has threatened suicide, and had recently warned her that she should fear homicide. Mother told Cleary that father also threatened to have her committed and to call “authorities” if mother consumed alcohol while breastfeeding. Father maintains surveillance cameras inside the house.”)

58. In viewing the seven-year period of time from 2011 through the present, there is a stark contrast in Zachary's mental health and well-being between the four years that he was with Betty and her family, and the three years that he has been away from Betty and her family. Since 2015, Zachary has held increasingly more responsible jobs. He has maintained whole, healthy and appropriate relationships with employers, friends, community, children and his girlfriend. There has been no episode of any kind that raises any concern by the Court with Zachary's state of mind to safely interact with his one, M [REDACTED] or any other person.

The Kentucky Domestic Violence Order of Protection

59. On November 25, 2015, the Kentucky court entered an Order of Protection. Although it is not clear that Zachary was served with Betty's Petition and had notice of the hearing and an opportunity to appear, it is clear that the testimony provided by Betty was false and ginned up to achieve the result she sought.

60. Nevertheless, pursuant to 18 U.S.C. 2265(a), this Court is required to accord and does accord full faith and credit to the Kentucky Order. Further, in accordance with 18 U.S.C. §2265(d)(2) and §§55.501, et seq., Florida Statutes, the Kentucky Order is deemed registered in Florida and is entitled to be treated as a Florida domestic violence Order.

61. This Court has jurisdiction to modify or dissolve the Kentucky Order of Protection based on the following considerations:

- a. Betty has admitted that this Court has jurisdiction of the child timesharing issues before the Court because "Kentucky refuses to acknowledge or accept jurisdiction over the parties."
- b. Under the provisions of §§61.501, et seq., Florida Statutes ("Uniform Child Custody Jurisdiction and Enforcement Act"), and 18 U.S.C. §2265, this Court has the jurisdiction to enforce, modify or dissolve the Kentucky Order of Protection.
- c. Based on Betty's admission as to jurisdiction and the failure or refusal of the Kentucky court to further deal with the Order of Protection and in accordance with 28 U.S.C. §1738A, this Court may modify the child custody portions of the Kentucky Order of Protection. In Michalik v. Michalik, 476 N.W.2d 586, 590 (Wisc.App. 1991), the court ruled that:

The effect of §§ 1738A(d) and 1738A(f) is to limit custody jurisdiction to the first state to properly enter a custody order, so long as two sets of

requirements are met. First, the [Parental Kidnapping Prevention Act]⁶ defines a federal standard for continuing exclusive custody jurisdiction: the first state must have had proper initial custody jurisdiction when it entered its first order (according to criteria in the Act) and it must remain "the residence of the child or any contestant" when it later modifies that order. Second, the Act incorporates a state law inquiry: in order to retain exclusive responsibility for modifying its prior order the first state must still have custody jurisdiction as a matter of its own custody law. Even if the federal and state criteria for continuing jurisdiction are met, the first state's courts can, if they choose, voluntarily relinquish their jurisdiction in favor of a court better situated to assess the child's needs.

In this case, the Kentucky court did have proper initial custody jurisdiction, but as the parties' pleadings establish, the Kentucky court no longer retains jurisdiction. This court has jurisdiction to modify the November 25, 2015, Kentucky Order of Protection,

62. There is no factually rational basis for the continuation of the Kentucky Order of Protection dated November 25, 2015, for the reason that the evidence before the Court clearly establishes that if any basis ever existed for the entry of such an Order, it has long ceased to be applicable. Zachary poses no threat or prospect of harm of any kind to Betty or his son, M[REDACTED].

63. Betty presented the telephonic testimony of Social Worker Mandy Scott regarding her reports leading up to the Kentucky Order of Protection in 2015, but Ms. Scott has had no further contact regarding that case since 2015 and has never interviewed Zachary regarding the allegations presented to the Kentucky court. Ms. Scott acknowledged that virtually everything she knew about the circumstances between Zachary and Betty were based on what Betty had told her.

⁶ As the Michalik court noted: "Despite its name, the Parental Kidnapping Prevention Act of 1980 "is not a criminal kidnapping law but rather a federal law regarding custody disputes." Shapiro, Uniform Child Custody Jurisdiction Act (UCCJA) and the Parental Kidnapping Prevention Act (PKPA): A Comparative Study, 11 Wis.J.Fam.Law 1 (1991); see also Cooper, The Parental Kidnapping Prevention Act (PKPA) of 1980-The Most Often Ignored Law in Family Court, 11 Wis.J.Fam.Law 10 (1991). Nevertheless, it was enacted to eliminate the incentive for one parent unhappy with a state's custody decree to "kidnap" his or her child and flee to another state in order to "relitigate the issue." Thompson v. Thompson, 484 U.S. 174, 180, 108 S.Ct. 513, 516, 98 L.Ed.2d 512 (1988)."

64. In any event, the Court finds that whatever circumstances actually existed in November of 2015 when the Order of Protection was issued, there have been substantial and material changes in circumstances, including (i) Zachary's demonstrated mental health and well-being; (ii) the evidence that has developed that any concerns with Zachary must be viewed in light of Betty's manipulative control over Zachary and her efforts to convince him that there was something wrong with him; (iii) the record showing that Zachary is an independent, well-adjusted person who has held responsible positions of employment, maintained friends and associates in the community and is entrusted to care for and babysit other peoples' children, all of which satisfy the Court that there is no reason for the Kentucky Order of Protection to continue in full force and effect.

65. Accordingly, the Court dissolves, vacates and sets aside the Kentucky Order of Protection dated November 25, 2015. The Court directs that this Order vacating and dissolving the Kentucky Order of Protection be registered in all appropriate government databases including the National Crime Information Center, the Kentucky Crime Information Center and the Florida Crime Information Center.

Analysis of Section 61.13(3)(a) - (t), Florida Statute Factors

66. Zachary asks this Court to provide him with a timesharing schedule that will allow him to establish, foster and enhance a father-son relationship with his son, M[REDACTED]. Betty asserts that Zachary should never be allowed any kind of timesharing with M[REDACTED] now or at any time in the future.

67. The Court will analyze the factors set forth in §61.13(3)(a) - (t), Florida Statutes, as they apply to this case.

68. The demonstrated capacity and disposition of each parent to facilitate and encourage a close and continuing parent-child relationship, to honor the time-sharing schedule, and to be reasonable when changes are required. Zachary would honor any time-sharing schedule ordered by the Court and work reasonably with Betty to accommodate any changes when required or desirable. Zachary also understands that it is in M[REDACTED]'s best interest to have a close nurturing relationship with both of his parents. On the other hand, Betty has almost no demonstrated capacity or willingness to honor a time-sharing schedule in which Zachary enjoys time with his son. Betty has worked to alienate M[REDACTED] from Zachary and to deny Zachary any kind of relationship with his son. Betty has demanded that Zachary have absolutely no contact with M[REDACTED] even if it were to be conducted in a licensed visitation center with videotaping.

69. The anticipated division of parental responsibilities after the litigation, including the extent to which parental responsibilities will be delegated to third parties. Within the parameters of any time-sharing schedule ordered by the Court, Zachary is able to assume and discharge all parental responsibilities for M[REDACTED]. Because of the geographical distance between Zachary's home in Tennessee and Betty's in Florida, it is not likely that there would be a day-to-day division of parental responsibilities. Betty would generally be able to assume and discharge her share of parental responsibilities, but the Court will address below concerns about her care for M[REDACTED].

70. The demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child as opposed to the needs or desires of the parent. Zachary has shown that he has the capacity and disposition to determine, consider and act upon M[REDACTED]'s needs. He has served as a babysitter for his former supervisor's three children and taken care of their needs. During his visitation with M[REDACTED] in January of 2017, Zachary expressed love for M[REDACTED];

bonded with him; drew M████ out; and encouraged him to express himself joyfully. Betty claims that M████ has autism and post-traumatic stress disorder and has not expressed any words in over a year. She further claims that M████ is uncommunicative and withdrawn. She attributes these problems to abuse by Zachary. The photographs of Zachary's visitation with M████ show an outgoing and happy child enjoying time with his father. The Court observed M████ warmly bonding with his father. There was no indication that M████ was withdrawn or reluctant to be with Zachary. Betty's testimony about M████'s current condition is perplexing inasmuch as she has been his primary caregiver for almost all of his young life. Given the family history of mental illness; Betty's mother's conviction on a manslaughter charge of her own mother; and the family history of disability payment abuse, the Court believes that there is a strong likelihood that Betty's interactions with M████ are a form of Munchausen by proxy. Zachary desires to make sure that M████ receives any counseling and therapy that is appropriate but has also expressed the opinion that there may be nothing wrong with M████ that a normal parent-child relationship cannot address. The Court believes that Zachary is better suited to determine, consider, and act upon the needs of M████ as opposed to his own needs or desires.

71. The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity. M████ has lived most of his life with Betty, but there are a number of indicators that the home environment with Betty has not been satisfactory or desirable. First, M████'s affect, mental and physical development appear to have become frozen or even regressed since January of 2017. Second, Betty seems focused on having M████ diagnosed as disabled by reason of autism which the Court fears is more a product of M████'s home environment with Betty and her mother who is bipolar and has had psychotic episodes. Third, Betty is likely to continue to inculcate in M████ an unfounded fear of, alienation from and

rejection toward Zachary. This is not healthy nor is it in M■■■■'s best interest. By contrast, the Court believes that Zachary will foster a positive, encouraging, "can-do" attitude in his home for M■■■■ and work to draw him out and help him grow mentally, psychologically. In many ways, Zachary's experiences with Betty and her home and the gaslighting experiences he suffered at her hands will equip him to help M■■■■ overcome the effects of living in Betty's household for the past several years.

72. The geographic viability of the parenting plan, with special attention paid to the needs of school-age children and the amount of time to be spent traveling to effectuate the parenting plan. This factor does not create a presumption for or against relocation of either parent with a child. Given the geographical distance and the beginning of the kindergarten school year for M■■■■ as well as future grade school years, any time-sharing plan would be based around M■■■■'s school year; time-sharing during major holidays and compensatory adjustments during the summer break. This factor is neutral as to Betty and Zachary.

73. The moral fitness of the parents. The Court found Zachary to be a morally fit parent to have time-sharing with M■■■■. Zachary appeared to the Court as being calm, measured, in control of his emotions, honest and candid. He understands the need and desirability to act ethically and to instill such values in M■■■■. The Court has serious reservations about Betty's moral fitness. She has acted with consistent duplicity throughout all proceedings. She has not been honest about past events. She has chosen in this litigation to post false and defamatory comments about Zachary's lawyer. She posted false and incomplete information on the internet to invite and generate negative comments about Zachary, his lawyer and the trial judge who heard this case last year.

74. The mental and physical health of the parents. The Court finds that both parents appear physically fit, healthy and well able to care for M[REDACTED]. Although Zachary experienced mental health issues periodically from 2011 through 2015, the Court believes that these problems were induced or caused by abuse, deceit and manipulation by Betty and her mother. Once Zachary removed himself from Betty's toxic environment, he reverted to the well-adjusted, content, focused and grounded person observed at the January 13, 2017, timesharing hearing and the July 2, 2018, evidentiary hearing who has shown the capacity to hold jobs with ever increasing responsibilities and to interact appropriately with fellow employees, supervisors, friends and children.

75. The home, school, and community record of the child. M[REDACTED] does not yet have a school or community record since he will just begin kindergarten this fall. There is no indication from the Betty's testimony that she allows M[REDACTED] to have any interaction with other children his age or with neighbors in the community. The Court believes that Zachary is inclined by nature to socialize with others and would help engender and foster better socialization for M[REDACTED] in the Tennessee community where Zachary resides.

76. The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference. M[REDACTED] is a five-year old child. No party asked that M[REDACTED] be permitted to testify or speak in camera with the Court. There is no indication that M[REDACTED] would have had sufficient intelligence, understanding, and experience to express a preference.

77. The demonstrated knowledge, capacity, and disposition of each parent to be informed of the circumstances of the minor child, including, but not limited to, the child's friends, teachers, medical care providers, daily activities, and favorite things. Both parents have the capacity and disposition to be informed of M[REDACTED]'s child's friends, teachers, medical care

providers, daily activities, and favorite things, although there was no indication that M[REDACTED] has any friends. The Court believes that Betty would resist or refuse to facilitate those things necessary to keep Zachary informed about such matters.

78. The demonstrated capacity and disposition of each parent to provide a consistent routine for the child, such as discipline, and daily schedules for homework, meals, and bedtime. The Court believes that both Betty and Zachary have the capacity and disposition to provide a consistent routine for M[REDACTED], but that a daily routine in Zachary's home environment would be more normal, healthy and conducive to M[REDACTED]'s well-being and psychological development.

79. The demonstrated capacity of each parent to communicate with and keep the other parent informed of issues and activities regarding the minor child, and the willingness of each parent to adopt a unified front on all major issues when dealing with the child. Betty has demonstrated no capacity or willingness to communicate with or keep Zachary informed of issues and activities regarding M[REDACTED]. On the contrary, she has steadfastly worked to deny Zachary any meaningful contact with M[REDACTED] and would almost certainly do everything in her power to alienate M[REDACTED]'s affections for his father. On the other hand, Zachary is better adjusted and psychologically prepared and willing to work with Betty to keep her informed of such matters and to help facilitate a close, nurturing relationship between M[REDACTED] and Betty.

80. Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, regardless of whether a prior or pending action relating to those issues has been brought. If the court accepts evidence of prior or pending actions regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect, the court must specifically acknowledge in writing that such evidence was considered when evaluating the best interests of the child. The Kentucky Order of Protection is, on its face, evidence of domestic violence.

However, the Court strongly believes from the evidence presented and the pattern of Betty's conduct and the marked contrast between Zachary's condition from 2011 through 2015 as compared with 2015 through the present that the Kentucky court entered the Order of Protection based on false, incomplete and guileful manipulations by Betty. If there was a basis for the entry of the Order of Protection in 2015, there has been a substantial, material and irreversible change in circumstances such that there is no reason to believe that there is or may be a risk of any domestic violence, abuse or neglect by Zachary directed toward M[REDACTED] or Betty. The Court concludes that any difficulties related to Zachary's behavior or affect were caused by Betty's "gaslighting" manipulation of Zachary. The Court has specifically considered as evidence and given full faith and credit to the Kentucky Order of Protection but concludes that that Order and the proceedings resulting in entry of that Order are entitled to little weight to the Florida proceedings.

81. Evidence that either parent has knowingly provided false information to the court regarding any prior or pending action regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect. Zachary came across to the Court as a simple soul. By this term, the Court does not suggest that Zachary is lacking in mental acumen or alertness. Zachary is a down-to-earth person who appears honest and without guile. He is not calculating. He is forthright and candid about his experiences with Betty and the problems he fell into and mistakes he made not understanding how he was being maneuvered into certain situations. Zachary has not misled the Court and has been direct in his testimony. Betty has been very aggressive, calculating and hostile in her demeanor and affect before the Court. She has provided false information on a number of occasions:

- a. She has filed false police reports alleging abuse which the police found were unsupported after conducting witness interviews.

- b. Betty has posted false and defamatory information about Zachary, his lawyer and the former judge in this case.
- c. Betty has shown a willingness to feign love and affection to talk Zachary into marriage following alleged abuse and before a contempt hearing. There is something very duplicitous about a person who would allege child abuse and profess great outrage about that situation and then, when trying to avoid a contempt hearing for denying Zachary timesharing would claim to be his soulmate and insist they marry. Betty's Machiavellian efforts raise grave concerns that she cannot be trusted.

82. The particular parenting tasks customarily performed by each parent and the division of parental responsibilities before the institution of litigation and during the pending litigation, including the extent to which parenting responsibilities were undertaken by third parties. This factor would not militate in favor of or against either parent.

83. The demonstrated capacity and disposition of each parent to participate and be involved in the child's school and extracurricular activities. Each parent would, the Court believes, have the capacity and disposition to participate in and be involved with M■■■■'s school and extracurricular activities, but the Court believes, from Betty's pattern and from the influence of Betty's mother who suffers from a family history of mental illness manifesting itself in bipolar disorder and episodic psychosis, that Betty would likely isolate M■■■■ from healthy and regular interactions and contact with others.

84. The demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse. Neither parent exhibited any sign of substance abuse, and there is no history of such abuse.

85. The capacity and disposition of each parent to protect the child from the ongoing litigation as demonstrated by not discussing the litigation with the child, not sharing documents or electronic media related to the litigation with the child, and refraining from disparaging comments about the other parent to the child. There is no indication that Zachary ever engaged in, or would engage in, any activity proscribed by this factor. The Court is concerned that as time goes by, Betty would be prone, if she has not already done so, to discussing such matters with M[REDACTED] in order to alienate his affections from Zachary and to gain an advantage in any litigation. Zachary has indicated by his testimony and general demeanor and actions in this litigation that he recognizes that such conduct would be deleterious to M[REDACTED] and must be avoided.

86. The developmental stages and needs of the child and the demonstrated capacity and disposition of each parent to meet the child's developmental needs. This factor raises grave concerns for the Court. The Court believes that M[REDACTED] may have some developmental issues in the areas of cognitive development, language and emotional affect and display. Given Betty's behavior throughout this litigation; the family history of mental illness; the fact that Betty's bipolar mother prone to episodic psychosis lives with Betty and M[REDACTED]; and the family history of working the disability system to obtain benefits, the Court has a significant concern that Betty is causing or encouraging a post-traumatic stress disorder/autism finding for M[REDACTED] to control him; assure his dependency on Betty; and qualify him for disability payments. Betty's mother neglected and starved her mother to death. Betty has shown a capacity for and disposition to manipulate others and systems for her personal benefit. The Court believes that M[REDACTED] is not in a healthy environment in which his full capacities and potential are being encouraged. If Betty is truthful in saying that M[REDACTED] has not spoken a word in the past year or so, the Court must wonder what his home environment is like since when the Court observed M[REDACTED] with his father in January of 2017

he appeared open, happy, communicative for a then three-year old. If M[REDACTED] has any special needs, Zachary is better disposed and equipped to handle such special needs in a manner that is in M[REDACTED]'s best interest.

87. Any other factor that is relevant to the determination of a specific parenting plan, including the time-sharing schedule. Overall, the Court finds that Betty has exhibited a pattern of cunning, duplicitous behavior designed to manipulative Zachary and others to obtain what she wants at the expense of permanent, healthy relationships, especially for the parties' son, M[REDACTED]

88. Based on the Court's analysis of the factors set forth in §61.13(3)(a) - (t), Florida Statutes, the Court concludes that the parties should have shared parental responsibility with Zachary having primary residential custody of M[REDACTED] and Betty having timesharing based on the following schedule:

- a. During the school year, M[REDACTED] will reside with Zachary who will enroll him in the Columbia, Tennessee school system or a private school as may be in M[REDACTED]'s best interest.
- b. Betty shall have timesharing with M[REDACTED] on Mother's Day.
- c. Betty shall have timesharing with M[REDACTED] during spring break every other year.
- d. Betty shall have timesharing with M[REDACTED] during the first half of Thanksgiving break in even years and the second half of Thanksgiving break during odd years.
- e. Betty shall have timesharing with M[REDACTED] during the first half of Christmas break through Christmas Eve day during even years and the second half of Christmas break during odd years.

- f. Betty shall have timesharing with M[REDACTED] during summer break starting the second week after school is out for the summer and ending two weeks before the fall school term begins.
- g. Betty may telephone, skype or text with M[REDACTED] as often as practical.
- h. M[REDACTED]'s pick up and drop off between Zachary and Betty for all visitation shall be in the lobby of the Madison County Jail, located at 823 Pinckney Street, Madison, Florida 32340.

89. The parties shall have shared parental responsibility for the minor child. It is in the best interest of the child that the parents confer and jointly make all major decisions affecting the welfare of the child. Major decisions include, but are not limited to, decisions about the child's education, healthcare, and other responsibilities unique to this family. Either parent may consent to mental health treatment for the child.

90. Unless otherwise prohibited by law, each parent shall have access to medical and school records and information pertaining to the child and shall be permitted to independently consult with any and all professionals involved with the child. The parents shall cooperate with each other in sharing information related to the health, education, and welfare of the child and they shall sign any necessary documentation ensuring that both parents have access to said records. Both parents shall be listed as "emergency contacts" for the child.

91. Zachary shall familiarize himself with all of M[REDACTED]'s medical and psychological records and take classes or counseling to help understand and parent a child who may be on the autism spectrum. In addition, Zachary shall make arrangements as soon as practical when he begins primary residential custody of M[REDACTED] to confer with a pediatrician and obtain all necessary referrals for M[REDACTED] to be thoroughly evaluated to determine the degree of autism, if any, that he

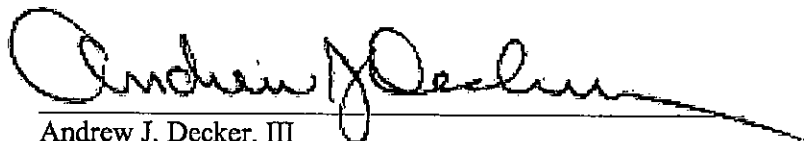
may be subject to as well as any other condition, disorder or syndrome. Zachary shall direct that all reports generated from such consultations and evaluations be promptly furnished to Betty with a copy to the Court.

92. It is the judgment of this Court based on all of the testimony and evidence that the only realistic chance that M [REDACTED] has to grow up as a healthy, well-adjusted and whole little boy and young man is to be with his father, Zachary.

93. That portion of the Final Judgment of Dissolution of Marriage dated October 9, 2018, dissolving the parties' marriage is ratified and confirmed.

94. The Court reserves jurisdiction of the subject matter of this case and the parties to enter such further Orders as may be necessary or appropriate to enforce this Amended Final Judgment.

DATE: July 30, 2018, at Madison, Madison County, Florida.


Andrew J. Decker, III
Circuit Judge

Copies furnished by Florida E-Portal to:

Zachary Taylor Daniel
Betty Caitlin Nicole Smith

Supreme Court of Florida

WEDNESDAY, FEBRUARY 27, 2019

CASE NO.: SC19-216

Lower Tribunal No(s):

1D18-3222; 1D17-4240; 402016DR000249DRAXMX

BETTY CAITLIN NICOLE SMITH vs. ZACHARY TAYLOR DANIEL

Petitioner(s)

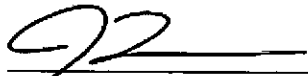
Respondent(s)

Petitioner has filed a petition for writ of mandamus with the Court. To the extent that petitioner seeks review of the First District Court of Appeal's decision in *Smith v. Daniel*, No. 1D18-3222, 2019 WL 493665 (Fla. 1st DCA Feb. 8, 2019) (table), the petition is hereby dismissed for lack of jurisdiction. *See Grate v. State*, 750 So. 2d 625 (Fla. 1999). To the extent that petitioner seeks additional relief, the petition is hereby dismissed pursuant to *Huffman v. State*, 813 So. 2d 10, 11 (Fla. 2000). No motion for rehearing or reinstatement will be entertained by this Court.

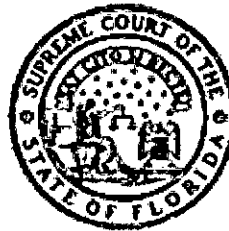
POLSTON, LABARGA, LAGOA, LUCK, and MUÑIZ, JJ., concur.

A True Copy

Test:



John A. Tomasino
Clerk, Supreme Court



dl

Served:

ZACHARY TAYLOR DANIEL
BETTY CAITLIN NICOLE SMITH
HON. KRISTINA SAMUELS, CLERK
HON. BILLY WASHINGTON, CLERK

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D17-4240

BETTY CAITLIN NICOLE SMITH,

Appellant,

v.

ZACHARY TAYLOR DANIEL,

Appellee.

On appeal from the Circuit Court for Madison County.
E. Bailey Browning, III, Judge.

June 4, 2018

PER CURIAM.

Appellant, the mother, appeals that portion of the “Final Judgment of Dissolution of Marriage with Dependent or Minor Child” ordering shared parental responsibility and granting supervised parenting time between the parties’ minor child and Appellee, the father. Because those provisions of the final judgment ignore an unexpired Kentucky Domestic Violence Order of Protection entered against the father, and for additional reasons discussed below, we reverse.

A trial court has “broad discretion” in determining time-sharing matters and parenting plans, and its decision will not be disturbed on appeal absent an abuse of discretion. *J.N.S. v. A.M.A.*, 194 So. 3d 559, 560 (Fla. 5th DCA 2016); *Miller v. Miller*,

842 So. 2d 168, 169 (Fla. 1st DCA 2003). In the present case, however, we hold the trial court did abuse its discretion by failing to accord full faith and credit due the Kentucky Domestic Violence Order of Protection under 18 U.S.C. § 2265(a)¹ and section 741.315(2), Florida Statutes (2016).² *See also* § 61.526(1), Fla. Stat. (2016).³ Significantly, the Order of Protection prohibits the father from coming within 500 feet of the minor child. By granting the father “parenting time,” even though supervised, the final order directly contravenes the explicit terms of the Order of Protection.

Furthermore, the Order of Protection was direct and unrefuted evidence of domestic violence against the mother and the minor child by the father. Although the trial court did find that domestic violence occurred during the marriage because the father

¹ 18 U.S.C. § 2265(a) states in pertinent part: “Any protection order that is consistent with subsection (b) of this section by the court of one State . . . shall be accorded full faith and credit by the court of another State . . . and enforced by the court . . . of the other State” Subsection (b) requires that the issuing state shall have had jurisdiction over the parties and given reasonable notice and an opportunity to be heard to the party against whom the order is sought. Here, the Order of Protection recites that the court had jurisdiction and Appellee (“Respondent” per the order) “was provided with reasonable notice and opportunity to be heard.” Appellee has not challenged the order in any way.

² Section 741.315(2), Fla. Stat., states:

Pursuant to 18 U.S.C. s. 2265, an injunction for protection against domestic violence issued by a court of a foreign state must be accorded full faith and credit by the courts of this state and enforced by a law enforcement agency as if it were the order of a Florida court

³ Section 61.526(1), Fla. Stat.—appearing in Florida’s Uniform Child Custody Jurisdiction and Enforcement Act—requires a Florida court to “recognize and enforce a child custody determination of a court of another state” The Kentucky Domestic Violence Order of Protection grants temporary custody of the minor child to Appellant.

did not refute the mother's allegations of the violence, there is nothing in the final order suggesting that the trial court seriously considered this finding in carrying out its duty to determine the best interests of the child according to the provisions of sections 61.13(2)(c)2.⁴ and 61.13(3)(m),⁵ Florida Statutes (2016). Nor can the court's pronouncement that the father should enjoy shared parental responsibility and visitation with the minor child be reconciled to its crediting of the mother's testimony that the domestic violence "did substantial emotional damage to the Child" and "that the Child's conditions and [medical] status require special consideration and attention by the Court."

In addition, apart from giving a passing mention to domestic violence, which, as previously noted, is a factor to be considered under section 61.13(3)(m), the final order is otherwise devoid of any suggestion that the trial court considered the remaining factors in section 61.13(3)(a)-(t), Florida Statutes (2016), in order to determine the best interests of the child. *See Bainbridge v. Pratt*, 68 So. 3d 310, 313 (Fla. 1st DCA 2011) (concluding that while "there is no statutory requirement that a trial court engage in a discussion as to each of the factors [in section 61.13(3)], a discussion of the relevant factors can be helpful in determining whether the trial court's judgment is supported by competent, substantial evidence"). For this reason, we conclude that the trial court's award of shared parental responsibility and parenting time is not based on competent, substantial evidence.

Thus, we reverse that portion of the "Final Judgment of Dissolution of Marriage with Dependent or Minor Child" relating to shared parental responsibility and parenting time. We remand the case to the trial court with instructions for it to reconsider, and if necessary, to take additional evidence on and make findings

⁴ Section 61.13(2)(c)2., Florida Statutes, provides that when considering whether to order shared parental responsibility and time-sharing, "the court shall consider evidence of domestic violence . . . as evidence of detriment to the child."

⁵ Section 61.13(3)(m), Florida Statutes, states that one of the factors to be evaluated in determining the best interests of the child is "[e]vidence of domestic violence"

concerning, the Kentucky Domestic Violence Protection Order and the best interests of the child, as those factors directly affect the issues of shared parental responsibility and parenting time.

AFFIRMED, in part, REVERSED, in part, and REMANDED for further proceedings.

LEWIS, ROBERTS, and JAY, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Betty Smith, pro se, Appellant.

Zachary Daniel, pro se, Appellee.

RECEIVED, 1/2/2019 10:10 AM, Kristina Samuels, First District Court of Appeal

Supreme Court of Florida

WEDNESDAY, JANUARY 1, 2019

CASE NO.: SC18-2134

Lower Tribunal No(s).:

1D18-3222; 1D17-4240; 402016DR000249DRAXMX

BETTY CAITLIN NICOLE SMITH vs. ZACHARY TAYLOR DANIEL

Petitioner(s)

Respondent(s)

Petitioner has submitted an “Emergency Motion to Enforce Mandate,” which this Court has treated as a petition for writ of mandamus. The petition is hereby transferred to the First District Court of Appeal for consideration in the context of case number 1D18-3222. The transfer of this case should not be construed as an adjudication or comment on the merits of the petition, nor as a determination that the transferee court has jurisdiction or that the petition has been properly denominated as a petition for writ of mandamus. The transferee court should not interpret the transfer of this case as an indication that it must or should reach the merits of the petition. The transferee court shall treat the petition as if it had been originally filed there on the date it was filed in this Court and is instructed to expedite consideration of the petition as it appears to be **time-sensitive** based upon the allegations. Any determination concerning whether a filing fee shall be applicable to this case shall be made by the transferee court. Any and all pending motions in this case are hereby deferred to the transferee court.

Any future pleadings filed regarding this case should be filed in the above mentioned appeal court at 2000 Drayton Drive, Tallahassee, Florida 32399.


NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

CASE NO.: SC18-2134

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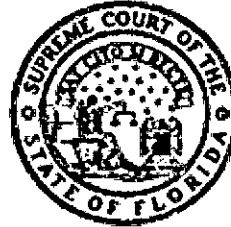
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