

MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(City of St. Louis)

L.B.,)	
Petitioner.)	
)	
vs.)	Cause: 0922-FC1426
)	Division 14
)	
C.P.)	
(AKA C.F.),)	
Respondent.)	

JUDGMENT OF MODIFICATION AND FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Cause called for trial on November 23, 2009. Petitioner brings this action seeking sole legal and physical custody of the minor children, B.B.1, born November 22, 1996, and T.B., born January 15, 1998. Conversely, Respondent C.F. requests that the court award her with sole legal and physical custody and support of the minor children. Petitioner L.B. appeared in person and by and through his attorney, N. Kimasa Sindel, Esq. Respondent appeared in person and by and through her attorney, Jonathan D. Marks, Esq. Cause heard and evidence also adduced and submitted.

¹ This court refers to the older of the two minor children as "B" since the original Consent Judgment and the minor card child's social security recognizes this specific name spelling. (See Exhibit A, p.2, Exhibit R, p.7.)

At trial, Petitioner called himself, Johnna Cummins, Lisa Horner, Brent Woosly, Tessa Michaud and Mary Ann Moore. Further, Petitioner introduced Petitioner's Motion to Modify, Respondent's Answer and Respondent's Counter-Motion to Modify, Exhibit 1, Petitioner's Statement of Income and Expenses and Petitioner's Statement of Property, Exhibit 2A, Petitioner's updated Statement of Income and Expenses and Petitioner's updated Statement of Property, Exhibit 2B, Petitioner's proposed parenting plan, Exhibit 4A, Petitioner's updated proposed parenting plan, Exhibit 4B, Petitioner's proposed Form 14, Exhibit 4C, Petitioner's Notice and Affidavit of Filing of Authenticated Foreign Judgment, 25th Judicial District Court for Plaquemines Parish, State of Louisiana, Consent Judgment filed November 2, 1999, 25th Judicial District Court for Plaquemines Parish, State of Louisiana, Consent Judgment filed July 22, 2008, Exhibit 5, Petitioner's Motion for Contempt for failure to permit custodial access, modification of custody, appointment of mental health care professional and consolidation of cases filed July 18, 2008 in Plaquemines Parish, Exhibit 6, Temporary Custody Agreement, Exhibit 7A, Child Visitation Agreement dated July 2, 2009 and Child Visitation Agreement dated July 3, 2009, Exhibit 7B, Child Visitation Agreement dated January 6, 2009, Exhibit 7C, Custody Agreement, Exhibit 7D, St. Ambrose school records, Exhibit 8, St. Ambrose school records, Exhibit 9, Lisa Horner resume, Exhibit 10, Missouri Department of Social Services Children's Division correspondence, Exhibit 11A, Missouri Children's Division safety assessment, Exhibit 11B, Missouri Children's Division Report, Exhibit 11C, parenting program completion, Exhibit 12, written materials documenting activities, Exhibit 13, tutoring expenses, Exhibit 13B and Petitioner's attorney fees, Exhibit 14. All of these items were admitted into

evidence.

Respondent called herself and Jason Wallbridge. Likewise, she introduced assorted written documentation including, Consent Judgment dated November 2, 1999, Exhibit A, Consent Judgment dated July 22, 2008, Exhibit B, Petitioner's Motion to Modify Consent Judgment, Exhibit C, Respondent's Answer, Exhibit D, Respondent's Counter-Motion, Exhibit E, Petitioner's proposed parenting plan, Exhibit F, Respondent's proposed parenting plan with custody to Mother and proposed Form 14, Exhibit G, Respondent's proposed parenting plan with custody to Father and proposed Form 14, Exhibit H, Petitioner's Statement of Property, Exhibit I, Respondent's Statement of Property, Exhibit J, Petitioner's Statement of Income and Expenses, Exhibit K, Respondent's Statement of Income and Expenses, Exhibit L, Affidavit and Centerpointe Hospital records involving T.B., Exhibit P, Affidavit and Centerpointe Hospital records involving B.B., Exhibit Q, Affidavit and MBCH Children and Family Ministries records, Exhibit R, St. Ambrose school records, Exhibit S and St. Ambrose school records, Exhibit T. Similarly, all of these items were received into evidence.

Finally, the court takes judicial notice of the court file including, but not limited to, all the pleadings, orders, minor children correspondence, and the respective statements of property, income and expenses previously filed with the court.

Petitioner asks this court to modify the Consent Judgments entered in the 25th Judicial District Court in Plaquemines Parish, State of Louisiana and, specifically, award Petitioner with sole legal and physical custody of both B.B. and T.B. and award Respondent with a reasonable visitation, order Respondent to pay child support to Petitioner retroactive to the date of filing and

order a party to provide health insurance for the minor children. (See Exhibit 1, Petitioner's Motion to Modify Custody Judgment, p.5.)

Respondent asks the court to modify the Judgment and award Respondent with sole legal and physical custody of the minor children but grant Petitioner supervised visitation, order Petitioner to pay a reasonable sum of child support, order Petitioner to pay his own attorney fees and order Petitioner to pay Respondent's attorney fees. (See Exhibit E, Counter-Motion to Modify Consent Judgment, p.6-7.)

A. Jurisdiction.

The parties never married, but resided in Louisiana where they had two children during their relationship. The children are B.B., age 13 and born on xxx, and T.B., age 12 and born on xxx. (See L.B. and C.F. Testimony.)

On November 2, 1999, the parties initially signed a Consent Judgment that was entered in the 25th Judicial District Court in Plaquemines Parish, State of Louisiana. According to the Judgment, the parties agreed to "joint and shared" custody of the minor children, Petitioner agreed to pay \$300.00 monthly child support and Respondent agreed to withdraw all proceedings initiated against Petitioner. Petitioner's visitation is specified as every other weekend, beginning 6:00 p.m. Friday through 7:00 p.m. Sunday, alternating holidays and an additional six floating days per month to be determined by the parties. (See Exhibit A; C.F. Testimony.)

On July 22, 2008, the parties entered into a subsequent Consent Judgment, also in Louisiana district court. The second Consent Judgment specifies Petitioner's telephone access to

the children and requires the parties observe specific guidelines regarding communication and sharing contact information. The parties were also ordered to split the costs of school uniforms. (See Exhibit B.)

The following month, Petitioner relocated to the City of St. Louis. After relocating, he purchased a home in the 1900 block of xxx. The minor children have resided with him and have attended St. Ambrose Catholic School, also located in the City of St. Louis, since October 23, 2008. (See L.B. Testimony; Exhibit 8,9.) Respondent still resides in Louisiana, specifically at xxx Street, Slidell, Louisiana. (See Exhibit E, p. 2; C.F. Testimony.) On July 24, 2009, Petitioner registered the Louisiana judgments in this jurisdiction. On August 5, 2009, Petitioner filed his verified petition for a writ of habeas corpus and his Motion to Modify the Custody Judgment. (See court file.)

A court of this state has jurisdiction to decide child custody determination by initial or modification decree if this state is the home state of the child at the time of the commencement of the proceeding or had been the child's home state within six months before commencement of the proceeding and the child is absent from this state for any reason, and a parent or person acting as parent continues to live in this state. (See §452.450.1(1) RSMo.)

“Home state” means the state in which immediately preceding the filing of custody proceeding, the child lived with her parents, a parent, an institution; or a person acting as parent, for at least six consecutive months; or, in the case of a child less than six months old, the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the six-month or other period. (See

§452.445(4) RSMo.)

The court finds that it has jurisdiction to enter a modification judgment in the present matter. The minor children were residing with Petitioner at the time he filed this proceeding. In fact, more than nine months separate the period of time that the minor children began residing with Petitioner in the City of St. Louis and Petitioner filed this action.

B. Custody.

Petitioner alleges that a substantial and continuing change in circumstances exist. Consequently, Petitioner requests that the court modify the Judgment and award him with sole physical and legal custody of the minor children. Petitioner asserts that this is in the best interests of the minor children because Petitioner purchased a home in the City of St. Louis and he can provide a disciplined, structured environment for the minor children; Petitioner enrolled the minor children at St. Ambrose Catholic School, scheduled summer school sessions and encouraged their participation in extra-curricular activities; Respondent agreed, in writing, that the minor children could live with Petitioner in the City of St. Louis. (See L.B. Testimony; Exhibit 1.)

Respondent also alleges a substantial and continuing change in circumstances that justify modification. Respondent requests that the court award her with sole legal and physical custody of the minor children and award Petitioner with supervised visitation. Respondent asserts that this is in the best interests of the minor children because the St. Louis relocation was intended to be temporary; Petitioner failed to get the minor children to school in a timely manner, did not

provide a regular meal schedule and exposed them to verbal and emotional abuse; Petitioner failed to parent effectively and contacted the police and involuntarily committed the minor children to psychiatric hospitals when they misbehaved; Petitioner video-taped B.B. in the bathroom while she was only wearing a towel; the minor children prefer to live in Louisiana with their mother as opposed to living as de facto servants with their father; Petitioner refused Respondent access to the minor children since their relocation. (See Exhibit E; C.F. Testimony.)

Background.

In August 2008, Petitioner relocated to St. Louis to seek extensive medical treatment at St. John's hospital. Shortly after relocating, Petitioner purchased a residence in the 1900 block of xxx and located nearby St. Ambrose Catholic Church and school. The minor children first visited their father in St. Louis in late August 2008. Their visit was extended another two weeks after Hurricane Gustav forced the minor children's school to close in Louisiana. (See L.B. Testimony.)

In the fall of 2008, Respondent consented for the minor children to relocate to St. Louis for a limited time period so they could assist Petitioner with his medical recovery. Respondent believed that Petitioner required at least two different surgeries, further separated by three months of recovery time. Respondent asserts that the relocation to St. Louis was not supposed to exceed one year and the girls were to return by June 2009, in time to reenroll in their Louisiana school. (See Exhibit E; C.F. Testimony.)

Petitioner asserts that the St. Louis relocation was intended to be long term, based on a

hand-written document signed by Respondent. In 2008, Petitioner was diagnosed with degenerative spinal disease and diabetic myopathy. Since receiving care and treatment in St. Louis, Petitioner's health has improved and, for example, "(he) can walk much better." (See L.B. Testimony.)

Due to financial constraints, Petitioner returned the Lincoln Towncar that he had been leasing. Instead, he rents and drives a cab for additional income; however his fares barely cover the rental expense. Petitioner receives income through the sale of a business, unemployment benefits and subsidies through the food stamp program. Among Petitioner's monthly expenses, Petitioner pays Ms. Brenda Williams in the amount of \$600.00 per month to work as a housekeeper/babysitter. Besides cleaning, Ms. Williams provides "a women's touch" by getting the children up in the morning and laying out their clothing. (See Exhibit 2B; L.B. Testimony.)

Respondent currently resides in Slidell, Louisiana with her boyfriend, Jason Walbridge. Prior to moving to Slidell, Respondent resided in Belle Chase, Louisiana. Prior to the Belle Chase residence, Respondent lived with Brittany, her oldest daughter from a previous relationship. Besides Brittany and the two B. minor children, Respondent has another five-year-old daughter, who resides with the minor child's father. Previously, Respondent worked at Fortmayer Bush Hog Service but now Respondent works 40 hours a week at "Rooms to Go." (See Exhibit E; C.F. Testimony.)

The minor children's extended family resides in Louisiana. (See C.F. Testimony.) Petitioner concedes that even his side of the family remains in Louisiana; however he asserts that Brenda Williams, his neighbors and the St. Ambrose community provide an extremely

supportive network for Petitioner and the minor children. (See L.B. Testimony.)

Both parties submitted proposed parenting plans. Petitioner proposes his address shall be the principal residence of the minor children. Further, he proposes that Respondent is awarded visitation one weekend every two months from September through June, three weeks during the summer months, and some holidays. (See Exhibit 4A; 4B.) Respondent proposes that her address is the principle address for the minor children. Further, she proposes that Petitioner is awarded one weekend per month, beginning in September and ending in May. (See Exhibit G; H.)

Written Agreements.

Petitioner asserts that Respondent agreed, in writing, for the minor children to reside with Petitioner on a long-term basis. First, Petitioner refers to a single page, handwritten document, entitled “Custody Agreement.” The document is dated October 20, 2008 and includes both parties’ signatures. It reads:

“I C.F. give L.B. permission to have B. & T.B. domiciled with him in St. Louis, Mo. He shall have authority for their medical, educational and parenting responsibilities. This shall serve as written notice as required by LA. Law.” (See Exhibit 7D.)

Petitioner asserts that Respondent signed additional agreements that also defined Respondent’s visitation for a specified time period. On January 6, 2009, Respondent signed a typed, single-space, two page document entitled “Child Visitation Agreement.” This document outlines Respondent’s custody when the minor children travel to a family wedding in New Orleans between February 5 and 8, 2009. (See Exhibit 1, p.8; Exhibit 7C, p.1.)

This Child Visitation Agreement was notarized in Plaquemines Parish, Louisiana and refers to an agreement executed between the parties on or about October 6, 2008 that specifically

states "...Louis is and shall remain the custodial parent of both children. Louis shall have the responsibility to make all parenting decisions including but not limited to, education, religion, medical and place of residency." (See Exhibit 1, p.8; Exhibit 7C, p.1.)

Petitioner refers to another writing that reflects the parties' intention that Petitioner remains the custodial parent for both children. Again, this document is typed, single-spaced, two-pages in length and entitled "Child Visitation Agreement." This writing also refers to Petitioner as the custodial parent and refers to the previous agreement executed between the parties on, or about, October 6, 2008. (See Exhibit 1, p.10; Exhibit C, p.10.) In short, this writing specifies the custodial arrangements for the minor children when visiting Respondent in Louisiana between July 3 and August 2, 2009. There are two original documents; each is signed by Respondent but one document is witnessed by a Missouri notary on July 3, 2009 while the second document is witnessed by a Louisiana notary on July 2, 2009. (See Exhibit 1, p.10-13; Exhibit C, p.10-13.)

On September 11, 2009, both parties signed another two-page, typed single space document entitled "Temporary Custody Agreement." This document specifies Respondent's "visitation and temporary custody" of both children in St. Louis, during the weekend of September 11, 2009. This document does not refer to any previous written agreements, including the document dated October 6, 2009. (See Exhibit 7A.)

Respondent asserts that she allowed the children to temporarily relocate to St. Louis to assist Petitioner while he was seeking medical treatment and recovering from surgery. Before agreeing to the relocation, Respondent insisted that she enjoy weekend visitations and the

children were enrolled in school while staying in St. Louis. Respondent also specified that the minor children were to return to Louisiana no later than June 2009. (See Exhibit E; C.F. Testimony.)

Respondent admits that she permitted the temporary, conditional relocation, but she insists that she did not sign the hand-written, single page, custody agreement dated October 20, 2008. However, Respondent acknowledges signing all three Child Visitation Agreements outlining the custodial arrangements for, first, February 5 through February 8, 2009 and, second, July 3 through August 2, 2009. She complied with Petitioner's request and signed these later agreements because he would prohibit her from seeing the children unless she did so. Petitioner agrees that he would not have allowed Respondent to see the minor children unless Respondent signed the Child Visitation Agreements. (See Exhibit C, p.7-13; C.F. and L.B. Testimony.)

Further, Respondent alleges that Petitioner failed to comply with his own agreement outlining the summer 2009 visitation because Petitioner had B.B. admitted to Centerpointe Hospital between June 29, 2009 and July 6, 2009, making B.B. unavailable for Respondent's visitation. In fact, Respondent did not learn that B.B. had been admitted to Centerpointe until after she arrived in St. Louis to exercise her visitation. (See Exhibit 7B; Exhibit Q, p.17; C.F. Testimony.) Besides failing to notify her about B.B.'s hospitalization, Respondent similarly asserts that Petitioner does not identify the therapists or other medical personnel treating the minor children and, further, Petitioner does not share any academic information with her. (See C. F. Testimony.)

Videotaping Incident.

In late August 2009, the Missouri Department of Social Services Children's Division investigated an incident occurring at Petitioner's residence. Following up on a hotline call, Johnna Cummins investigated Petitioner about videotaping B.B., who was wearing a towel, and about the Petitioner inappropriately touching B.B. Following her investigation, Johnna Cummins concluded that the report was "unsubstantiated" and did not find any safety concerns. (See Johnna Cummins Testimony; Exhibit 11C, Exhibit 11B.)

Petitioner explained that he videotaped B.B. misbehaving so he could later show B.B. that her behavior was inappropriate. Ms. Cummins spoke with both minor children about the videotaping incident. T.B. said that her father videotaped B.B. to document her misbehavior. Also, T.B. confirmed that B.B. was never fully naked during the videotaping incident. Likewise, B.B. denied anyone videotaped or photographed her while she was naked. (See Johnna Cummins Testimony; Exhibit 11C, p.10.)

When investigating the inappropriate touching accusation, Johnna Cummins spoke with Sara Thornton, Det. Allen of the St. Louis Metropolitan Police Dept., Tessa Michaud, who is T.B.'s therapist, and Brett Woosly, who is B.B.'s therapist and a clinical social worker. All of these individuals denied that either minor child had communicated allegations about anyone inappropriately touching them. Johnna Cummins also spoke with both minor children. (See Johnna Cummins, Brett Woosly, Tessa Machaud and Mary Ann Moore Testimony; Exhibit 11C.)

Johnna Cummins' report further discloses that another social worker, Ms. Fitzgerald, similarly reported that the girls did not disclose anyone touched them inappropriately. Johnna

Cummins also contacted Respondent, who does not have concerns about abuse and neglect involving the minor children. (See Exhibit 11C; Johnna Cummins Testimony.)

Ms. Cummins advised Petitioner that the videotaping incident should not have occurred and that this specific conduct was inappropriate. Petitioner agreed with Ms. Cummins assessment. (See Johnna Cummins Testimony; Exhibit 11C.) Finally, Ms Cummins prepared a safety assessment report, finding that the allegations were “unsubstantiated” and that she had “no safety concerns.” (See Johnna Cummins Testimony; Exhibit 11B.)

Hospitalization.

Since the minor children have been residing in St. Louis, both minor children have received mental health treatment and Petitioner has even admitted both minor children to mental health institutions at various times. Petitioner asserts that the hospitalization has been necessary to defuse violent episodes. (See L.B. Testimony; Exhibit P,Q and R.) Respondent is critical of this decision and she further asserts that Petitioner’s parenting limitations generate problems for the minor children. Respondent did not witness violent outbursts by the minor children prior to relocating to Missouri. Further, Respondent asserts that Petitioner has not provided her with the names of any doctors or therapists who have treated the minor children in St. Louis. (See Exhibit E; C.F. Testimony.)

T.B. was admitted to Centerpointe, an outpatient clinic offering mental health treatment, on or about October 19, 2009. Petitioner took T.B. to Centerpointe because his younger daughter became enraged following her soccer game and had threatened to bash in the piano. While traveling to Centerpointe on Highway 44, T.B. struck Petitioner’s shoulder, thus forcing the car

to swerve and almost causing an accident. (See L.B. Testimony.) T.B. was mentally evaluated by Dr. Gautam Datta, who found her “calm, cooperative and verbal.” It is unclear what, if any, medical diagnosis was reached by treating officials, but the minor child was instructed to return to the clinic within four weeks. (See Exhibit P, p.8.)

B.B. has received more extensive mental health evaluation and treatment. In May 2009, B.B. was diagnosed with “Cyclothymic Disorder” because her mood changes were “unpredictable” and “intense.” Although the treating physician concluded that B.B. did not suffer from major depression or BiPolar disorder at this time, the clinician did conclude that B.B. displayed symptoms that “...cause clinical distress and impairment in her home environment.” (See Exhibit R, p.9.)

Shortly thereafter, B.B. was admitted to Centerpointe for mental health treatment from June 19, 2009 through June 25, 2009, then again from June 29, 2009 through July 6, 2009 and September 28, 2009 through October 3, 2009.² (See Exhibit Q, p.10, 14, 18.)

On June 19, 2009, B.B. was first admitted to Centerpointe following a violent outburst, where B.B. allegedly punched and threatened to kill her sister and punched and bit the Petitioner. Prior to her discharge, B.B. admitted that she had been violent with her sister and the Petitioner and, at times, it was necessary for her to be restrained. (See Exhibit Q, p.78, 38, 87.)

Shortly after her initial discharge, B.B. was readmitted to Centerpointe on June 29, 2009 and was not released until July 6, 2009. Again, B.B. was admitted for assaulting both her sister

² B.B.’s medical records reflect that she was also treated for mental health issues at DePaul Hospital in February 2009 and Missouri Baptist Hospital in June 2009. (See Exhibit Q, p.34.)

and Petitioner and damaging property. (See Exhibit Q, p. 374.) According to the Child Visitation Agreement, Respondent was allowed to collect both minor children and begin her visitation on July 3. Since B.B. was hospitalized at this time, Respondent returned to Louisiana with T.B. only. (See Exhibit 7B; C.F. Testimony.) When B.B. was discharged on July 6, she was prescribed both Risperdal, a mood stabilizer, and Prozac. (See Exhibit Q, p. 374, 415.)

On September 28, 2009, B.B. returned to Centerpointe following an incident where she was punching Petitioner in the ribs as well as scratching and clawing Petitioner. This time, she stayed at Centerpointe and received treatment through October 3, 2009. According to this discharge summary, B.B. was previously diagnosed with episodic mood disorder. B.B. remained medicated on Risperdal but her Prozac dosage was doubled. (See Exhibit Q, p.216.)

Brett Woosly worked as B.B.'s therapist between June and September 2009. During this treatment period, Woosly was concerned about B.B.'s rages. As a consequence of B.B.'s chemical unbalance, Woosly believes that it was "reasonable" for Petitioner to initially contact the police as well as hospitalize B.B. (See Brett Woosly Testimony.)

Mary Ann Moore succeeded Woosly as B.B.'s therapist. Both Mary Ann Moore and Woosly assert that B.B. has been diagnosed with BiPolar disorder. (See Mary Ann Moore and Brett Woosly Testimony.) Further, Moore believes that B.B. is "impulsive," "hyperactive" and cannot control her anger. Like Woosly, Moore agrees that Petitioner had "good reason" to admit B.B. into Centerpointe because she assaulted her sister. (See Mary Ann Moore and Brett Woosly Testimony.) Now that B.B. has been diagnosed with a mental health disorder, Respondent will accept responsibility for her daughter's care and ensure that she receives the proper treatment.

(See C.F. Testimony.)

School and Activities.

Prior to enrolling at St. Ambrose, the minor children were attending different schools in Louisiana. In the fall 2008, T.B. was enrolled in fifth grade at Belle Chase Primary School in Plaquemines Parish, Louisiana. In the first quarter, Tina obtained a “C” average in most core classes including, math, English and science, however she obtained a “B” in reading. After one quarter, T.B. was absent on six occasions. In math, T.B. was absent on 12 occasions however, and she was tardy an additional 4 occasions. (See Exhibit S, p.12.)

T.B. completed fifth grade at St. Ambrose catholic school after relocating to St. Louis during the fall 2008 semester. The 2008-2009 end of term report card reflects that T.B. obtained an 81 or “C” in grammar/writing, an 80 or “C” in reading, a 78 or “C” in spelling, a 72 or “D” in math and a 77 or “D plus” in science. During the second, third and fourth quarters of the 2008-2009 school term, T.B. was absent 14.5 times and tardy an additional 14 occasions. (See Exhibit S, p.8.)

Presently, T.B. is enrolled in sixth grade at St. Ambrose. After the first two quarters or the fall semester ending in 2009, T.B. is averaging a 62 or “F” in grammar/writing, a 81 or “C” in Literature, a 67 or “F” in math and a “C” in science. (See Exhibit S, p.4-5.)

Like her sister, B.B. was enrolled previously at Belle Chase elementary school in Louisiana. In January 2008 however, B.B. transferred to St. Andrew the Apostle catholic school in New Orleans, where she enrolled in the fifth grade. B.B. received an “F” in most core subjects, including reading, spelling, science and received a “D” in math when the school term

ended in spring 2008. (See Exhibit T, p.17.)

After transferring to St. Ambrose catholic school in St. Louis during the fall 2008 semester, B.B. remained in fifth grade. The 2008-2009 end of term report card reflects that B.B. obtained an 82 or “C plus” in grammar/writing, an 82 or “C plus” in reading, a 89 or “B” in spelling, a 77 or “D plus” in math and a 78 or “C” in science. During the second, third and fourth quarters of the 2008-2009 school term, B.B. was absent 13 times and tardy an additional 19 occasions. (See Exhibit T, p.8.)

Presently, B.B. is enrolled in sixth grade at St. Ambrose. After the first two quarters or the fall semester ending in 2009, B.B. is averaging an 80 or “C” in grammar/writing, an 88 or “B” in Literature, a 73 or “D” in math and a “C” in science. (See Exhibit T, p.4-5.)

Lisa Horner is a learning consultant employed at St. Ambrose. She evaluated the minor children’s academic history and their performance on standardized tests. Horner concluded that the minor children suffer from poor work and study habits. Although T.B. scored in the average range in reading, language and math on a recently administered achievement test, Horner recommended both girls acquire tutors because of their poor grades. Horner found Petitioner to be “responsive” about addressing the minor children’s poor academic performance. (See Lisa Horner Testimony.) Petitioner forced the minor children to spend more time studying and completing homework assignments and Petitioner retained tutoring assistance for them. (See Lisa Horner Testimony; Exhibit 13B.)

Petitioner has enrolled the minor children in extra curricular activities, since moving to St. Louis. The minor children play soccer, are enrolled in girl scouts and they also participate in

a catholic youth group. As a Christmas gift, Petitioner purchased a baby grand piano for the minor children in hopes that they would pursue this musical interest. (See L.B. Testimony; Exhibit 13.)

Minor Children Living Preference.

The minor children do not wish to reside with Petitioner in St. Louis, but they would rather live with Respondent in Louisiana. Both minor children have expressed their living preference to their therapists; T.B. even submitted a five-page letter to the court, expressing her desire to live in Louisiana with her mother. (See Exhibit Q, p. 3,384,390,423; Johnna Cummins, Tessa Machaud and Mary Ann Moore Testimony; Tina Badalamenti letter, filed August 19, 2009.)

In fact, the minor children miss their mother. (See Exhibit P, p.5; Exhibit Q, p.421; Brent Woosly Testimony.) Moreover, the minor children allege that they were misled about the St. Louis relocation, which was intended to be temporary and not long term. (See Exhibit Q, p.80; T.B. letter, filed August 19, 2009.)

FINDINGS OF FACT

After considering the testimony of the witnesses and having determined the credibility of those witnesses and also having taken into consideration the collective evidence in this matter, the court makes the following findings:

On November 2, 1999, the 25th Judicial District Court, in Plaquemines Parish, State of Louisiana awarded the parties with joint and shared custody of the minor children, B.B. and T.

B. Further, the parties entered a Consent Judgment, which specifies that Petitioner agrees to pay \$300.00 monthly child support to the Respondent and Petitioner's visitation is specified as every other weekend, beginning 6:00 p.m. Friday through 7:00 p.m. Sunday, alternating holidays and an additional six floating days per month to be determined by the parties. On July 22, 2008, the parties again entered into a subsequent Consent Judgment, also in Louisiana district court. This subsequent judgment did not alter the visitation arrangements.

In August 2008, Petitioner relocated to St. Louis to seek medical treatment for his health problems including, degenerative spinal disease and diabetic myopathy. Respondent consented to the minor children relocating to St. Louis to assist Petitioner with his medical recovery. Petitioner promptly enrolled the minor children St. Ambrose, an accredited, private catholic grade school located a short distance from Petitioner's residence.

On October 20, 2008, Respondent signed an agreement, allowing the minor children to live with Petitioner in St. Louis. The written agreement empowers Petitioner with medical, educational and parenting responsibilities for the minor children. Subsequent to the October 2008 agreement, Respondent signed additional custodial agreements that specified Respondent's visitation periods during the weekend of September 11, 2009, the summer period of July 3 through August 2, 2009 and the weekend of February 5 through February 8, 2009.

Respondent signed the July and February Child Visitation Agreements and the September Temporary Custody Agreement because she feared that she would not be allowed to see the minor children. Petitioner concedes that he would not have allowed Respondent to see the children unless she signed these agreements, narrowly defining her custodial rights.

The minor children's academic record is woeful and their attendance record is unacceptable. In Louisiana, T.B. obtained a "C" average in most core classes including, math, English and science, however she obtained a "B" in reading. Her attendance record was extremely unsatisfactory. After only one quarter, T.B. was absent on six occasions, however in math class, she was absent an alarming 12 occasions and tardy an additional four occasions.

After T.B. transferred to St. Ambrose to complete fifth grade, she primarily maintained her "C" average in the core classes, except for math and science where she received a "D" and "D plus" respectively for her final grades. Her attendance remained unimpressive. For the remaining second, third and fourth quarters, T.B. was absent 14.5 times and tardy an additional 14 occasions. Subsequently, her performance has declined. Presently enrolled in sixth grade, T.B. is failing math and grammar/writing and she is maintaining a "C" average in science and literature.

In Louisiana, B.B. failed most core subjects and received a "D" in math for the school term ending spring 2008. She remained in fifth grade after transferring to St. Ambrose. The 2008-2009 end of term report card reflects that B.B. obtained between a "C plus" and a "D plus" in most core classes, but managed to receive a "B" in spelling. For the remaining second, third and fourth quarters in the 2008-2009 school term, B.B. was absent 13 times and was tardy an additional 19 occasions. Like her sister, B.B. is enrolled in sixth grade and the grades she received for the fall semester ending 2009 were comparable to the grades she obtained the previous school term.

The minor children's attendance record has not improved since relocating. Both children

are frequently absent and tardy, which further impedes their academic progress. The minor children must not only get to school, they must get to school on time to succeed academically.

B.B. has been diagnosed with BiPolar Disorder and Cyclothymic Disorder. Presently, B.B. takes Risperdal, a mood stabilizer, and Prozac to address her mental health issues. Petitioner acted responsibly when seeking professional assistance, including police intervention, to manage B.B.'s erratic, unstable and violent behavior.

In fact, both minor children have engaged in threatening behavior, complicating their relationship with Petitioner and prompting him to seek professional intervention. In all three incidents culminating in hospitalization, B.B. had engaged in violent or threatening conduct, targeting Petitioner and/or her sister, T.B. Even B.B. admits that she has been violent with her sister and the Petitioner and, at times, it has been necessary to restrain her.

T.B. has physically engaged Petitioner as well. On October 18, 2009, Petitioner took T.B. to Centerpointe following her threatening behavior. While Petitioner was driving on Highway 44, T.B. made contact with Petitioner's shoulder forcing him to swerve and almost causing a vehicular accident.

Petitioner deeply cares about his daughters; however, he occasionally demonstrates poor judgment. The videotaping incident is concerning. Petitioner explains that he felt compelled to record his daughter's bad behavior, but his reasoning is illogical and this specific conduct is misguided. The Missouri Department of Social Services Children's Division investigated this incident and did not find any safety concerns but cautioned Petitioner that his conduct was inappropriate. The Children's Division investigated a second allegation, which was

unsubstantiated.

The parties do not communicate well. This is unacceptable and must change for the minor children's benefit. Petitioner did not actively inform Respondent about B.B.'s mental health problems. More specifically, Petitioner did not steadily inform Respondent about the minor children's hospitalization and Petitioner did not identify the therapists or physicians treating the minor children. Petitioner did not even inform Respondent that B.B. had been admitted to Centerpointe on June 29. Instead, Respondent first discovered that her daughter was currently hospitalized when she arrived in St. Louis in July to exercise her visitation pursuant to their written agreement. Likewise, Respondent has been disengaged. After learning about B.B.'s mental health issues, Respondent did not insist that Petitioner provide her with the names, telephone numbers and contact information for all mental health professionals treating her daughters.

CONCLUSIONS OF LAW

The court shall determine custody in accordance with the best interests of the child. The court shall consider all relevant factors including: (1) The wishes of the children's parents as to custody and the proposed parenting plan submitted by both parties; (2) the needs of the child for a frequent, continuing and meaningful relationship with both parents and the ability and willingness of parents to actively perform their functions as mother and father for the needs of the child; (3) the interaction and interrelationship of the child with parents, siblings and any

other person who may significantly affect the child's best interests; (4) which parent is more likely to allow the child frequent, continuing and meaningful contact with the other parent; (5) the child's adjustment to the child's home, school and community; (6) the mental and physical health of all individuals involved, including any history of abuse of any individuals involved. If the court finds that a pattern of the domestic violence has occurred, and, if the court also finds that awarding custody to the abusive parent is in the best interest of the children, then the court shall enter written findings of fact and conclusions of law. Custody and visitation rights shall be ordered in a manner that best protects the child and the parent or other family or household member who is the victim of domestic violence from any further harm; (7) the intention of either parent to relocate the principal residence of the child; and (8) the wishes of a child as to the child's custodian. (See §452.375.2 RSMo.)

The court shall not modify a prior custody decree unless it has jurisdiction under the provisions for section 452.450 and it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of the prior decree, that a change has occurred in the circumstances of the child or his custodian and that the modification is necessary to serve the best interests of the child. (See §452.410 RSMo.)

If either parent of a child changes his residence to another state, such change of residence of the parent shall be deemed a change of circumstances under section 452.410, allowing the court to modify a prior visitation or custody decree. (See §452.411 RSMo.)

In Missouri, a contract will not be enforced where there is coercion, duress, misrepresentation or fraud. Estes v. Estes, 166 S. W. 2d 1061, 1064 (Mo. 1942); In Re Marriage

of Harrison, 734 S. W.2d 934, 941 (Mo.App. 1987). Coercion or duress will invalidate a contract where a party to the contract is prevented from exercising free will by the threats of another. McCandlish v. Linker, 231 S.W.2d 162, 164 (Mo. 1950).

The July and February Child Visitation Agreements and the September Temporary Custody Agreements are invalid. Respondent signed these agreements while under duress because Respondent feared that she would not see the minor children unless she signed. Even Petitioner concedes that he would not have allowed Respondent to see the children unless she signed these agreements. Since Petitioner threatened Respondent with prohibiting visitation, then Respondent was under duress and the July and February Child Visitation Agreements and the September Temporary Custody Agreement are invalid.

The minor children have not adjusted well to the St. Louis community. Among other problems, the minor children are not academically engaged. B.B.'s grades have improved after repeating fifth grade, but her absenteeism remains problematic. T.B.'s current academic situation is highly unsatisfactory and her high level of absenteeism and tardiness is equally troubling.

To his credit, Petitioner attempted to improve the children's academic standing. Lisa Horner corroborates that Petitioner responded to the academic concerns about the minor children. Petitioner followed up and he attempted to address the minor children's academic needs by retaining tutoring services for them. Despite this assistance, the minor children have not performed at an acceptable level.

Equally commendable, Petitioner has enrolled the minor children in other activities such as girl scouts and soccer. While worthwhile, these programs cannot offset the minor children's

poor academic performance and their deteriorating relationship with Petitioner.

Petitioner cannot control the minor children and their relationship with Petitioner is heavily strained. B.B. has been physically violent with Petitioner on numerous occasions and, similarly, T.B. initiated enough physical contact, on at least one occasion, that Petitioner nearly had a vehicular accident. The minor children's threatening conduct is creating an unhealthy relationship with Petitioner as well as leading to an instable environment.

Undoubtedly, at least some of the tension is rooted in the minor children's belief that Petitioner is keeping the minor children in St. Louis and denying them the opportunity to return to Louisiana. Petitioner has attempted to provide the minor children with a suitable home, a safe neighborhood and an exceptional academic environment, but they have not responded. They miss their mother and prefer living in Louisiana with her.

Also, the entire family support structure exists in Louisiana. Petitioner asserts that Mrs. Williams, the neighborhood and the St. Ambrose community provide an adequate support structure. While the St. Ambrose community is giving, charitable and undoubtedly supportive of Petitioner and the minor children, even Petitioner's family, including his sister, still resides in Louisiana. The opportunity to interact with extended family is invaluable and cannot be underestimated.

Like the academic situation, the minor children's health issues are deeply concerning to the court. Respondent did not observe any troubling behavior while the minor children were living in Louisiana. After arriving in St. Louis, B.B. engaged in erratic and volatile behavior, leading to hospitalization. Presently, B.B. is medicated to quell mood swings and unpredictable

behavior. Professionals corroborate that Petitioner was reasonable for contacting the police as well hospitalizing B.B. It is in B.B.'s best interest that she continues to receive professional assistance for her health issues.

Since the original order was entered in Louisiana, Petitioner has relocated to Missouri, which is deemed a change of circumstances that allow modification. Further, the court did not hear any evidence indicating that Petitioner intends to return to Louisiana.

The court considers and recognizes the parties' wishes regarding custody and the proposed parenting plans. Historically, Respondent has been more likely to allow the children frequent, continuing and meaningful contact with Petitioner. Respondent allowed the minor children to relocate to St. Louis pursuant to Petitioner's request. Petitioner also recognizes the importance of the minor children to interact with Respondent, but he relies on written agreements that narrowly define Respondent's visitation rights.

Based on these collective factors, the court finds that there has been a showing of a change of circumstances affecting the minor and unemancipated children as a result of which modification of the 25th Judicial District Court, in Plaquemines Parish, State of Louisiana Consent Judgment is necessary to serve the best interests of the minor and unemancipated children.

IT IS ORDERED, ADJUDGED AND DECREED that Petitioner's Motion to Modify is denied in part and granted in part and Respondent's Motion to Modify is denied in part and granted in part. The Consent Judgment entered in the 25th Judicial District Court, in Plaquemines Parish, State of Louisiana is modified as follows:

Petitioner L.B. and Respondent C.F. are awarded joint legal custody of the minor children B.B., born November 22, 1996, and T.B., born January 15, 1998, pursuant to Court Exhibit A, the court approved parenting plan.

Respondent C.F. is awarded sole physical custody and Petitioner L.B. is awarded a reasonable visitation with the minor children. The court did not hear any evidence that Petitioner intends to return to Louisiana. Assuming Petitioner remains in the St. Louis area and does not return to Louisiana, Petitioner's reasonable visitation is the first weekend each month, excluding June, July and August, from 6:00 p.m. Friday through 6:00 p.m. Sunday, eight weeks during the summer months and some holidays, pursuant to Court Exhibit A. Respondent is awarded physical custody at all other times. (If Petitioner relocates his residence to Louisiana or even if Petitioner is temporarily, physically located in Louisiana, Petitioner is awarded every other weekend from 6:00 p.m. Friday until 6:00 p.m. Sunday and every Wednesday evening following school until Thursday morning before school. If school is not in session, then the weekday visitation will begin 3:00 p.m. Wednesday and end 9:00 a.m. Thursday. Respondent shall have custody at all other times.)

Respondent shall take custody of the minor children at noon, on Monday, May 31, 2010, so the minor children may complete the St. Ambrose school term and give Respondent the opportunity to identify a school for the minor children, beginning fall 2010, and a mental health care professional for B.B. Petitioner's summer visitation begins Monday, July 5, 2010 and ends Sunday, August 15, 2010. Petitioner's monthly weekend visitation begins Labor Day weekend, specifically 6:00 p.m. September 3 through 6:00 p.m. September 6, 2010. Petitioner's monthly

visitation will continue on the first weekend each month for the remaining year.

Up and until May 31, 2010, Respondent may exercise visitation every other weekend from 6:00 p.m. Friday through 6:00 p.m. Sunday, beginning February 19, 2010. Respondent's weekend visitations shall occur in St. Louis.

For the remaining period of 2010, Petitioner is awarded the Easter holiday, Labor Day weekend and the Christmas holiday period beginning on the afternoon of the last day of school preceding the holiday and ending 6:00 p.m. the evening before the first day of school following the holiday. Respondent is awarded Independence Day and the Thanksgiving weekend, November 25-28, 2010.

The minor children's travel costs will be evenly divided between the parties. The parent initiating custody shall be responsible for providing transportation. The minor children may travel without parental escort, but preferably the minor children shall travel together.

The parties shall notify each other, in writing, four weeks prior to a scheduled visitation about how they intend to transport the minor children. The notification should include the travel itinerary and any all necessary contact information, including, but not limited to, the applicable cell phone numbers that will be utilized during the travel period. Each party is responsible for transporting the minor children to the appropriate transportation venue, such as the airport, to accommodate any and all transportation schedules initiated by either parent. If there are travel delays, the appropriate party shall notify the other party immediately.

If Petitioner exercises a weekend or holiday visitation in Louisiana, then he shall provide Respondent with the applicable four weeks notice and all relevant contact information, including

the location, names of the individuals with whom he and the minor children are staying and all applicable telephone numbers, including cell phone. (If Petitioner relocates his residence to Louisiana, the custody exchanges shall occur curbside and the party initiating custody shall provide transportation.)

Respondent shall provide Petitioner with any and all athletic information involving the minor children including, but not limited to, game and practice schedules, athletic banquets, team photograph announcements, as well as any all academic information including, but not limited to, parent/teacher conferences, class schedules and report cards. If either child requires summer school assistance that conflicts with Petitioner's visitation, Petitioner has the option to coordinate this activity through St. Ambrose or any accredited state school, assuming the requesting jurisdiction's academic prerequisites can be satisfied.

The court finds that this custody plan is in the best interests of the minor children. Respondent is designated the residential parent for mailing and educational purposes, as outlined in Court Exhibit A, the court approved parenting plan. Respondent is ordered to provide medical insurance for the minor children to the extent available through her employment. Further, Respondent shall be allowed to claim the minor children as dependents on her state and federal tax returns.

Relocation Notice.

Notice of a proposed relocation of the residence of the minor children, or any party entitled to custody or visitation of the minor, unemancipated children shall be given in writing by certified mail, return receipt requested, to any party with custody or visitation rights.

Absent exigent circumstances, as determined by the court, each party shall notify all other parties to this judgment in writing, by certified mail, return receipt requested, at least sixty days prior to any proposed relocation of the principal residence of the minor and unemancipated children of the following:

- (a) The specific address and mailing address of the new residence or, if not known, the new city of residence;
- (b) The home telephone number of the new residence, if known;
- (c) The specific reasons for the proposed relocation; and
- (d) A proposal for any necessary revisions to the schedule for physical custody and visitation with the minor and unemancipated child under this judgment.

The obligation hereunder to provide this information shall continue so long as any party to this judgment is entitled to physical custody or visitation with any minor and unemancipated children. Any failure of a party to provide this information to all other parties to this judgment may (1) result in further litigation to enforce this judgment, including contempt of court, (2) be considered in any proceeding to modify any party's rights to physical custody or visitation with the minor and unemancipated child and (3) cause reasonable costs and attorney fees to be assessed. See §452.377 RSMo.

C. Child Support.

When preparing the Form 14, attached and marked as Court Exhibit B, the court imputes \$3,042.00 gross monthly income to Petitioner, L.B. Among his sources of income, Petitioner

receives food stamp assistance, \$1,660.00 gross monthly from the sale of a business, and \$1,200.00 from unemployment benefits. Further, he has applied for disability benefits, but has not yet received this form of assistance. (See Exhibit 4C,2B, p.2; L.B. Testimony.) Further, the court imputes \$1,802.66 gross monthly income to Respondent, after concluding that she earns \$21,632.00 gross annual income based on her hourly wages at “Rooms to Go.” (See C.F. Testimony.) According to the Form 14 calculation, Petitioner assumes a 63 percent proportionate share of the combined adjusted monthly gross income, while Respondent assumes a 37 percent share of that responsibility.

Petitioner does receive a visitation credit because, at a minimum, he is awarded eight weeks during the summer period, monthly weekends and a holiday schedule, beginning in 2011. Based on the Form 14 calculation, Petitioner is responsible for \$651.24 monthly child support payments. (See Court Exhibit B.)

After considering all relevant factors, including the factors enumerated in §452.340.1 RSMo., the court finds that the Form 14 is unjust and inappropriate. (See §452.340 RSMo.) The initial Form 14 fails to anticipate that Petitioner’s unemployment benefits will expire shortly. Petitioner’s income sources are further limited because he is dependent on food stamp assistance. Further, the Form 14 fails to recognize Petitioner’s expense to transport the minor children and/or himself between Louisiana and St. Louis to exercise visitation. (See Court Exhibit B.)

After considering the relevant factors enumerated in §452.340.1 RSMo., the court assigns Petitioner’s monthly child support payment as \$350.00, beginning June 1, 2010. When the first child emancipates, then the monthly child support amount recedes to \$200.00. Petitioner shall

make these payments directly to the Family Support Payment Center. All payments are due on the first day of each month, beginning June 1, 2010.

Additionally, Petitioner shall pay one-half of all expenses associated with the minor child's extra-curricular activities involving soccer, girl scouts and/or school mandated summer school academic programs. Respondent shall pay the remaining one-half of these specific expenses and the entire fees associated with any additional activities.

Longterm Obligations.

To remain eligible to receive support after minor child's graduation from high school, a child must (1) enroll in an institution of vocational or higher education not later than October 1 following graduation; (2) enroll in and complete each semester, not including summer, at least 12 hours of credit or, if employed at least 15 hours per week, at least nine hours of credit; (3) achieve grades sufficient each semester to enroll at such institution for the next semester; and (4) submit to each parent at the beginning of each semester an official document from such institution that identifies the courses enrolled in and completed each semester, the grades and credits received for each course, and the courses and number of credit hours of each course enrolled in for the next semester. Failure to comply with these requirements may result in the child's ineligibility to receive support during a semester or termination of the child's support. (See §452.340.5 RSMo.)

D. Attorney Fees and Court Costs.

Generally, parties in a domestic relations matter are obliged to pay their own attorney

fees, Mistler v. Mistler, 816 S. W.2d 241, 256 (Mo.App.S.D.1991). Therefore, Petitioner is ordered to pay his own attorney fees and Respondent is ordered to pay her own attorney fees. Petitioner is ordered to pay the court costs in this matter. Any and all other requested relief is denied. Finally, the court enters this order incorporating Exhibit A (parenting plan), Exhibit B (Form 14 completed by the court).

DATED this fifth day of February 2010.

SO ORDERED:

Thom C. Clark, 45996
10 North Tucker Blvd.
St. Louis, MO 63101

cc: N. Kimasa Sindel, Esq., Sindel & Emmel, 7711 Bonhomme, Suite 815, Clayton, MO 63105
Jonathan D. Marks, Esq., 4 CityPlace Dr., Suite 497, Creve Coeur, MO 63141