

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

)	
)	
AM.,)	
Petitioner.)	Cause: 023-5695-02
)	Division 24
vs.)	
)	
N.M.,)	
Respondent.)	

**SECOND JUDGMENT IN MODIFICATION OF JUDGMENT OF
DISSOLUTION OF MARRIAGE**

Cause called for trial on June 4, 2010. Petitioner A.M. brings this action seeking sole legal and primary physical custody of the minor child, A.M. Jr., born xxx. Conversely, Respondent N.M. requests that the court award her with sole legal and physical custody and support of the minor child. Petitioner A.M. appeared in person and by and through his attorney, Nathan S. Cohen, Esq. Respondent N.M. appeared in person and by and through her attorney, Alexandra M. Hart, Esq. Likewise, Guardian Ad Litem Kimberly Levi, Esq. appeared. Cause heard and evidence also adduced and submitted.

At trial, Petitioner, Respondent and Guardian Ad Litem testified. Further, the parties and

the Guardian consented to the admission of the following evidence offered by Petitioner:

Petitioner's Statement of Income and Expense, Exhibit 1, Petitioner's Statement of Assets and Debts, Exhibit 2, Petitioner's 2009 wage withholding and income, Exhibit 3, Petitioner's 2008 Individual Income Tax Return, Exhibit 4, counseling review and report, Exhibit 7, St. Louis Children's Hospital Psychology Dept. records, Exhibit 8, Pat Dineen counseling records, Exhibit 9, Central Catholic St. Nicholas school records, Exhibit 10, Central Catholic St. Nicholas grade cards and records, Exhibit 11, Iowa standardized testing results (May 2009), Exhibit 12, Central Catholic St. Nicholas school correspondence, Exhibit 13, Central Catholic St. Nicholas school correspondence, Exhibit 14, Email communication, Exhibit 15, Central Catholic St. Nicholas registration and school information, Exhibit 16, Cathedral Basilica school behavioral report (April 2010), Exhibit 17, Cathedral Basilica grade reports, application and enrollment forms, Exhibit 18, Missouri Dept. of Health Bureau of Child Care and University City children's center documents, Exhibit 19, college school documentation, Exhibit 20, text messages, Exhibit 23, transcript, Exhibit 24, transcript, Exhibit 25, Anthony McDonald deposition, Exhibit 26, Nafeesah McDonald deposition, Exhibit 27, case law, Exhibit 28, Full Order of Protection by consent, expiring April 22, 2010, Exhibit 29, Judgment in Modification of Judgment of Dissolution of Marriage, Exhibit 30, Petitioner's proposed parenting plan, Exhibit 31, Petitioner's proposed Form 14, Exhibit 32, Petitioner's attorney fees, Exhibit 33, and three photos, Exhibit 34 A,B and C. All items were received into evidence.

Likewise, the parties and the Guardian consented to the admission of the following Respondent exhibits: Respondent's Cross-Motion to Modify & Motion for Contempt, Exhibit A,

Judgment in Modification of Judgment of Dissolution of Marriage, Exhibit B, Petitioner's Motion to Modify, Exhibit C, Respondent's Statement of Income and Expense, Exhibit D, Respondent's Statement of Property, Exhibit E, Respondent's 2009 W-2 wage withholding and income, Exhibit F, email correspondence dated April 9, 2010, Exhibit G, photo, Exhibit H, Petitioner's Statement of Income and Expense, Exhibit I-1, Petitioner's Statement of Assets and Debts, Exhibit I-2, Petitioner's 2008 Individual income tax return, Exhibit J, Respondent's proposed Form 14, Exhibit K, Missouri Dept. of Health Bureau of Childcare and University City children's center documentation, Exhibit L, College school documentation, Exhibit M, Anthony McDonald settlement agreement dated January 13, 2010, Exhibit N, Cathedral Basilica school records, Exhibit O, Pat Dineen counseling records, Exhibit P, St. Louis Children's hospital evaluation records, Exhibit Q, Central Catholic St. Nicholas school correspondence, Exhibit R, Central Catholic St. Nicholas school correspondence, Exhibit S, photocopy of book cover, Exhibit T, Family Support Division correspondence dated March 24, 2010, Exhibit U, A.M. deposition, Exhibit V, N.M. deposition, Exhibit W, Petitioner's proposed parenting plan, Exhibit X, Respondent's attorney fees, Exhibit Y, Respondent's proposed parenting plan, Exhibit Z and Missouri Department of Social Services Family Support Division calculation summary, Exhibit AA. 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, previous orders and judgments and the respective statements of property, income and expense previously filed with the court.

Petitioner asks this court to modify the previously entered modification judgment.

Specifically, Petitioner requests that the court award Petitioner with sole legal and primary physical custody of A.M., Jr., born xxx and award Respondent with a reasonable visitation, order the parties to maintain the alternating weekly visitation schedule, allow Petitioner to enroll the minor child in the Clayton school district, order Respondent to pay the guardian ad litem fees and order Respondent to pay Petitioner's attorney fees. (See Petitioner's Motion to Modify, p.3; A.M. Testimony.)

Respondent asks the court to modify the previous Modification Judgment as well, but specifically requests that the court award Respondent with sole legal and physical custody of the minor child and grant Petitioner a reasonable visitation, order Petitioner to pay a reasonable sum of child support retroactive to the date of service, order Petitioner to pay Respondent's attorney fees, all guardian ad litem fees and the court costs, cite Petitioner for contempt because he failed to comply with the previous modification judgment and order Petitioner to pay \$3,597.00 in arrearage payments. (See Respondent's Cross-Motion to Modify and Motion for Contempt, Exhibit A, p.5,8; N.M. Testimony.)

A. History.

The parties were married for less than four years, when the court entered the Dissolution of Marriage on September 23, 2003. At that time, the parties were awarded joint legal and physical custody of the minor child, A.M., Jr., born xxx. Respondent is identified as the residential parent and Petitioner agreed to pay \$350.00 monthly child support. (See Judgment of Dissolution of Marriage.)

On September 25, 2008, the court entered the Judgment in Modification of Judgment of Dissolution of Marriage. Again, the parties were awarded joint legal and physical custody of the minor child and Petitioner agreed to pay \$136.00 monthly child support. Also, judgment was entered in favor of Respondent, and against Petitioner, in the amount of \$4,900.00 relating to unpaid child support and educational expenses for the minor child. The judgment specifies that Petitioner pay \$250.00 monthly to Respondent, in addition to the monthly child support obligation, until the \$4,900.00 arrearage is paid in full. If Petitioner is more than thirty days late in making the monthly arrearage payments, then the remaining balance becomes immediately due and subject to execution. (See Exhibit B, p.16-19,27.)

On October 15, 2009, Petitioner filed his Motion to Modify the Modification Judgment entered September 25, 2008. On October 21, 2009, Respondent filed an Answer to Petitioner's Motion to Modify, a Cross-Motion to Modify and Motion for Contempt. (See Petitioner Motion to Modify; Exhibit A.)

B. Custody.

Petitioner alleges that a substantial and continuing change in circumstances exist to justify modification. Among other allegations, Petitioner asserts that the minor child struggles in school while in Respondent's custody; Respondent is verbally and physically abusive to the minor child; Respondent is verbally abusive to Petitioner; Respondent backs out of mutual decisions regarding school choice, using the minor child as leverage when she is offended by Petitioner's conduct. (See A.M. Testimony; Petitioner's Motion to Modify.)

Further, Petitioner argues that it is in the best interests of the minor child to award Petitioner with sole legal custody so Petitioner can enroll the minor child in Captain elementary school in the Clayton school district. Petitioner requests that the alternating weekly visitation schedule remain unchanged. (See A.M. Testimony.)

Respondent also alleges a substantial and continuing change in circumstances that justify modification but requests that the court award her with sole legal and physical custody of the minor child. Respondent asserts that this is in the best interests of the minor child because Petitioner relocated five times since the Dissolution was entered in September 2003; Petitioner's driver's license is currently revoked; Petitioner cancelled visitations; Petitioner is physically aggressive with school officials, resulting in the minor child's dismissal from two different schools; Petitioner refused to participate in a psychological evaluation involving the minor child. (See N.M. Testimony; Exhibit A.)

Respondent requests that the court award her with sole legal custody of the minor child so she can enroll him at Cathedral Basilica catholic grade school. Respondent also requests that the court award her sole physical custody and award Petitioner with a reasonable visitation, granting Petitioner visitation beginning at 3:00 p.m. on the second Thursday until 7:00 a.m. on the following Monday during the school year. (See N.M. Testimony; Exhibit Z.)

Likewise, the Guardian Ad Litem asks the court to award the Respondent with sole legal custody of the minor child, citing the parties' failure to communicate as the principle obstacle to joint legal custody. The Guardian agrees with Respondent that the minor child should remain at Cathedral Basilica grade school. Further, the Guardian Ad Litem requests that the court award

the parties with joint physical custody, but award Petitioner with a more limited visitation schedule during the school term, with Petitioner's visitation beginning on the second Thursday afternoon and ending on the following Monday morning. (See Kim Levi Testimony.)

1. Child & School History.

The minor child currently attends Cathedral Basilica grade school in the City of St. Louis, but he has attended four different schools since 2003. (See A.M. Testimony.) Respondent believes that the minor child should remain enrolled at this location, whereas Petitioner desires to enroll him at Captain elementary school in the Clayton School District because Petitioner asserts that Cathedral Basilica does not adequately challenge his son's math skills and he does not believe his son should attend a catholic school when both he and his ex-wife are Pentecostal. (See A.M. and N.M. Testimony.)

The minor child attended Central Catholic St. Nicholas grade school from 2007 through 2009. In May 2009, the minor child took the Iowa Tests of Basic Skills while he was in first grade and still attending Central Catholic St. Nicholas. According to the narrative accompanying the test results, his core total national percentile rank of 20 means that he scored higher than 20 percent of first grade students. (See Exhibit 16, p. 3-20; Exhibit 12.)

Before allowing the minor child to return in fall 2009, Central Catholic St. Nicholas requested that the minor child participate in a psychological evaluation. (See Exhibit 16, p.28.) Earlier in 2009, the minor child met with Pat Dineen, a licensed professional counselor, who diagnosed him with post-traumatic stress disorder. Dineen also cited difficulty with the Petitioner when coordinating a May 27, 2009 visit and Petitioner's uncooperative telephone

behavior. (See Exhibit P, p.149.)

Later in 2009, the minor child consulted Dr. Susan Sylvia, a licensed psychologist. She met with the minor child on three different occasions between September 14 and October 8, 2009. Sylvia concludes that the minor child is experiencing mild to moderate emotional behavioral symptoms. (See Exhibit 8, p.6.)

Again, the Sylvia summary identifies specific examples of the parties' uncooperative, unsupportive and destructive behavior and the detrimental impact on the minor child. While Petitioner attended the initial evaluation with his son on September 14, 2009, Petitioner did not schedule any subsequent appointments and did not return the questionnaire or the release forms. The minor child also shared that he only has trouble attending school during his visitation with Petitioner. Although Respondent did complete the applicable forms and attended two different sessions with the minor child, the minor child reported that Respondent 'yells and is mad a lot.' (See Exhibit 8, p.4.)

Further, Sylvia concludes that the minor child's "variable" responses were a likely reflection of the "emotional turmoil in (the) family" and that both parties should consider individual psychotherapy for managing their emotions as well as their relationship. (See Exhibit 8, p.6.)

In late 2009, Central Catholic St. Nicholas communicated in writing that the minor child could no longer attend the school "... based on the recent actions of Mr. A.M., Sr." (See Exhibit S.) In early 2010, Petitioner entered into a settlement agreement with the St. Louis Archdiocese. Under this agreement, the minor child receives \$7,500.00 used solely for the minor child's

catholic school tuition, assuming he attends a catholic school. If the minor child does not attend a catholic school, then the archdiocese agrees to create a settlement fund, in the child's name, which shall be administered by a court appointed guardian. (See Exhibit N, p.108.)

In return, Petitioner agrees that he will not enter any catholic school where the minor child attends and, further, Petitioner shall not make any direct physical contact with school officials or teachers, except for specific circumstances such as transporting the minor child to and from school or attending any other school sponsored event. The settlement agreement is signed by Petitioner, who is also identified as the minor child's "next friend." (See Exhibit N, p.108,110.)

The minor child has attended Cathedral Basilica catholic grade school since leaving Central Catholic St. Nicholas in October 2009. He is enrolled in the second grade and "loves" the school. The minor child has friends and participates in extra-curricular activities, such as chess club. Most recently, the minor child received three different awards at a school awards banquet that both parties attended. Further, the minor child receives counseling services at his present school. He "looks forward" and "feels comfortable" at these sessions, which have "alleviated some of his stress." (See N.M. Testimony.)

According to his third quarter report card from the 2009-2010 school term, the minor child "mastered" math, spelling and reading, but his writing skills are "developing."¹ Further, the report card identifies "areas of concern" for the minor child as his ability to express feelings appropriately, cooperate with others in work and play and read with fluency. (See Exhibit O,

p.118.)

Respondent works as a teacher for the St. Louis school district and, moreover, Respondent asserts that she is familiar with the state's academic prerequisites. Respondent argues that Cathedral Basilica provides a proper academic foundation for her son. Respondent is concerned about the minor child transferring to yet another school and believes that the current environment provides sufficient academic challenges as well as fosters the minor child's social and psychological needs. (See N.M. Testimony.)

The Guardian argues against yet another school interruption and recommends that the minor child remain at Cathedral Basilica, where he is very happy, likes his teacher, has friends and is performing well. (See Kim Levi Testimony.)

Petitioner agrees that the minor child receives good grades, benefits from the counseling program and profits from his friendships at Cathedral Basilica grade school, but he does not feel that the school adequately challenges his son's math skills. Further, Petitioner complains that the settlement agreement obligates him to stay away from the catholic school, versus Captain elementary school located a short distance from his Clayton residence. (See A.M. Testimony.)

The Cathedral Basilica school tuition and the before/aftercare are entirely subsidized. More specifically, 75 percent is funded through a grant, while the remaining balance is subsidized through the settlement agreement. The parties do not shoulder "any out of pocket expenses" by the minor child attending Cathedral Basilica. (See Exhibit N, p.108; N.M. Testimony.) While Captain is a public school, the before/aftercare is an additional expense. (See

¹ The report card does not reflect an A-F grade scale. More specifically, it defines "mastered" as understands and uses skills

N.M. Testimony.)

Further, Respondent is concerned about transporting the minor child to Clayton and arriving in time at her place of employment. (See N.M. Testimony.) Conversely, Petitioner argues that the transportation issue can be resolved by Respondent dropping off the minor child at his Clayton residence early each morning and, subsequently, Petitioner will ensure the minor child gets to school. (See A.M. Testimony.)

The parties identify themselves as “non-denomination” but, at times, attend “Believer’s Temple” and “Lively Stone” according to documents filed with Central Catholic St. Nicholas. (See Exhibit 16, p.7,17.)

2. Parties & Problematic Conduct.

Respondent resides in the 2800 block of Delmar and works for the St. Louis school district. (See Exhibit O, p.134.) Petitioner works as a media consultant for Mpower Media. Further, he wrote a book that focuses on the importance of fatherhood in the family relationship. (See A.M. Testimony; Exhibit Q, p.180 and T.)

In May 2009, Petitioner moved to the 6400 block of Clayton Road to live within the boundaries of the Clayton school district. Before moving there, Petitioner consulted Respondent about Clayton as a viable schooling alternative for the minor child. (See A.M. Testimony; Exhibit 23, p.2-3.) Initially, Respondent enthusiastically supported the Clayton school idea, according to a series of text messages sent to Petitioner. In fact, she inquired on two separate occasions between May 1 and May 11 about Petitioner’s success finding a Clayton apartment.

consistently and defines “developing” as understands and uses skills sometimes.

(See Exhibit 23, p.2.)

Petitioner even forewarned Respondent that relocating to Clayton would be expensive and would hinder his ability to reduce the child support deficit. At that time, Respondent was unconcerned, responding that she was more worried about promptly enrolling the minor child in the Clayton school district rather than the \$3,000.00 in unpaid child support. (See Exhibit 23, p.3.)

Later, Respondent breached the agreement about the minor child attending Captain in Clayton. (See A.M. Testimony.) Respondent argues that she “withheld her consent” because Petitioner failed to pay for the minor child’s summer camp experience and he was not paying child support during the summer when Respondent was not working. (See N.M. Testimony.)

Petitioner asserts that Respondent has a history of recanting on important, mutually agreed decisions, especially after she becomes angry with the Petitioner. Prior to the Captain school and Clayton relocation incident, the parties agreed to send the minor child to the College school in Webster Groves beginning 2007. After initially agreeing on this school, Respondent later recanted, blaming the withdrawal on transportation issues. Petitioner contends that Respondent revoked her consent upon learning about Petitioner’s relationship with another female and the alleged transportation issue was a convenient excuse. (See A.M. Testimony; Exhibit 20, p.11,14,15.)

Respondent uses abusive, even threatening, language when communicating with the Petitioner. In one text message, Respondent informs the Petitioner that she may retain someone to harm Petitioner, even recognizing that this action would leave the minor child without a

father. In another, Respondent challenges Petitioner's masculinity, accusing him of being less than a man. (See Exhibit 23, p.23 msg.9,11.)

On another occasion and in the presence of a third-party, Respondent threatens to "bust (Petitioner's) head." (See A.M. Testimony; Exhibit 24, p.35.) In still other text messages, Respondent uses profanity and name calling when referring to the Petitioner. (See Exhibit 23, p.18 msg.8, p.23 msg.14.)

At one point, Petitioner requested the court intercede because of Respondent's hostile conduct. Consequently, Respondent entered into a full order of protection by consent, specifically agreeing to stay away from Petitioner between October 22, 2009 and April 22, 2010. (See Exhibit 29.)

Respondent partially concedes that her anger issues are problematic and are adversely affecting her relationship with her son. When meeting with her uncle and Petitioner on October 1, 2009, Respondent regrets yelling at the minor child at times, but excuses her conduct due to stressful job responsibilities. (See Exhibit 25, p.30,33.)

Petitioner's conduct is equally troubling. Despite requesting and receiving a full order of protection, Petitioner went uninvited to Respondent's place of employment and caused a disturbance in October 2009. Consequently, Respondent was reprimanded in writing and placed on probation by her employer. (See N.M. Testimony; Exhibit 29.)

Most alarming, Petitioner is physically aggressive with school officials. He choked the principal at Central Catholic St. Nicholas, forcing the minor child to leave the school as documented in the October 16, 2009 letter. (See N.M. Testimony; Exhibit 24, p.8, Exhibit S.)

Prior to that incident, the minor child was expelled from a previous school, where Petitioner grabbed the principal by the shirt and the police were contacted. (See A.M. Testimony.)

Further, Petitioner's driver's license is suspended for one year, beginning March 2010. Despite this, Petitioner frequently transports the minor child and even drove his mother's vehicle to court for the June 4 trial. (See A.M. Testimony; Exhibit U.)

Petitioner engages in additional deceptive behavior. On April 9, 2009, Petitioner notified Respondent in writing that an "out of town emergency" prohibited him from exercising his visitation with the minor child from April 12 until April 15. (See Exhibit G.) On April 14, Respondent photographed Petitioner sitting behind the wheel of a motor vehicle, while in St. Louis, and accompanied by a woman later identified by Petitioner as his publicist. (See N.M. and A.M. Testimony; Exhibit H.)

C. Child Support.

On September 25, 2008, the court entered the Judgment in Modification of Judgment of Dissolution of Marriage. At that time, the parties restructured Petitioner's monthly child support obligation to \$136.00. Also, judgment was entered in favor of Respondent, and against Petitioner, in the amount of \$4,900.00 relating to unpaid child support and educational expenses for the minor child. (See Exhibit B, p.15,18,19.)

Further, the stipulation for settlement specifies that Petitioner pay \$250.00 monthly to Respondent, in addition to the monthly child support obligation, until the \$4,900.00 arrearage is paid in full. If Petitioner is more than thirty days late in making the monthly arrearage payments,

then the remaining balance becomes immediately due and subject to execution. (See Exhibit B, p.19,27.) Petitioner agrees that he has not paid the child support in full. As of May 10, 2010, Petitioner owes \$3,597.00 in unpaid child support. (See A.M. Testimony; Exhibit AA, p.1.)

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 September 23, 2003, this court entered a judgment dissolving the marriage and awarding the parties with joint legal and physical custody of the minor child, A.M., Jr., born xxx. Respondent was identified as the residential parent and Petitioner agreed to pay \$350.00 monthly child support. (See Judgment of Dissolution of Marriage.)

On September 25, 2008, the court entered the first judgment in modification, where the parties were again awarded joint legal and physical custody of the minor child and Petitioner agreed to pay \$136.00 monthly child support. At that time, judgment was also entered in favor of Respondent, and against Petitioner, in the amount of \$4,900.00 for unpaid child support and educational expenses for the minor child. Moreover, if Petitioner is more than thirty days late making the monthly arrearage payments, then the remaining balance is immediately due. (See Exhibit B, p.15-19,27.)

The minor child has attended four different schools since 2003. (See A.M. Testimony.) He has attended Cathedral Basilica, since leaving Central Catholic St. Nicholas in fall 2009. He

likes the school, enjoys his existing friendships, benefits from counseling and his grades reflect that he is academically competitive. The Guardian Ad Litem recommends that he remain there. (See N.M., A.M. and Kim Levi Testimony.)

Significantly, the minor child benefits from the school counseling services, where he “looks forward” and “feels comfortable” at these sessions, which have “alleviated some of his stress.” (See N.M. Testimony.) Equally, the minor child is performing well academically. Although his writing skills could improve, his report card reflects that he is “master(ing)” core subjects like math, spelling and reading. (See Exhibit O, p.118.) Further, Cathedral Basilica grade school offers a solid academic foundation that meets the applicable state standards and meets the educational needs of the minor child.

The tuition and before/after care are entirely subsidized through a grant and the St. Louis archdiocese settlement agreement, leaving the parties without expenses. Further, Respondent can transport the minor child to the school and arrive at her work location in a timely fashion. (See N.M. Testimony.)

The parties’ ongoing conflict has had a detrimental impact on the minor child. One licensed professional counselor diagnoses the minor child with post-traumatic stress disorder. (See Exhibit P, p.149.) Another licensed psychologist concludes that the minor child is experiencing mild to moderate emotional behavioral symptoms and that the minor child would benefit from individual and family work with a therapist. (See Exhibit 8, p.6.)

Credible evidence reveals that the parties do not communicate. Moreover, their past behavior resembles a trail of egregious and unacceptable conduct. Respondent’s conduct reflects

that she harbors considerable animosity toward Petitioner. Respondent uses the school discussions as leverage against the Petitioner and she acts on these issues without regard for the minor child. She breached the agreement regarding two different school decisions, one of which occurred after the Petitioner physically relocated. Attempting to hide her real reasons, Respondent offers disingenuous explanations for “withholding her consent” for the minor child attending either the College school or Captain. (See N.M. Testimony.) On this issue, Respondent was lacking any credibility.

At one point, Petitioner received a full order of protection, by consent, but against Respondent. (See Exhibit 29.) Respondent’s anger is palpable in her text messages and conversations with Petitioner. Her text messages and conversations are laden with profanity, name-calling and threats. (See Exhibit 23, p.23,msg.9,11,14, p.18, msg.8; Exhibit 24, p.35.) Even more concerning, she directs her hostile attitude toward her son, who complained to both Dr. Sylvia and Petitioner about Respondent’s anger issues. (See Exhibit 23, p.18,msg.6; Exhibit Q, p.155.)

Petitioner’s conduct is extremely alarming. He has been physically confrontational with two different school officials, resulting in the minor child withdrawing from both schools. (See A.M. and N.M. Testimony; Exhibit 24, p.8, Exhibit S.) Despite losing his driver’s license for at least one year, Petitioner continues to drive, even driving with the minor child and to the June 4 court proceeding. (See A.M. Testimony; Exhibit U.) Also troubling, Petitioner went uninvited to Respondent’s place of employment and caused a disturbance, resulting in a written reprimand for Respondent. (See N.M. Testimony.)

He deceived Respondent about the reasons for canceling his visitation during the week of April 12. Contrary to his assertions about traveling out of town on an emergency, Petitioner remained in the St. Louis area, where he was photographed behind the wheel of a vehicle. (See Exhibit G,H, N.M. Testimony.)

Although ostensibly concerned about his son, Petitioner neither cooperates nor supports counseling assistance focusing on his son's emotional and psychological needs. He did not communicate with Pat Dineen and he neither completed the appropriate forms nor signed the medical releases as requested by Dr. Sylvia. Further, Petitioner did not schedule any follow-up sessions with Dr. Sylvia. (See N.M. Testimony; Exhibit 8, p.4; Exhibit 9, p.13.)

Finally, Petitioner owes \$3,597.00 in unpaid child support. (See Exhibit AA, p.1; A. M. Testimony.)

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 of 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.)

Similarly, the overriding concern in child custody cases is whether the trial court's order serves the best interest of the child. Miller v. Miller, 184 S.W.3d 174, 180-181 (Mo.App.S.D.2006.)

When requiring a party to provide private or parochial schooling for a minor child, it must be shown this form of schooling will meet the particular educational needs of the child. Goins v. Goins 224 S.W.3d 69,71 (Mo.App.E.D.2007) (citing Drury v. Racer, 17 S.W.3d 608,611(Mo.App.E.D.2000.); Seyler v. Seyler, 201 S.W.3d 57, 64 (Mo.App.E.D.2006.).

The court did not err in modifying custody from joint legal to sole legal based on evidence of a breakdown in communication and cooperation between the parents. Huekel v. Wondel, 270 S.W.3d 450,454. (Mo.App.S.D.2008.)

Section 452.340.1 authorizes the court to order retroactive child support, but it does not require it. Snell v. Snell, 916 S.W.2d 414, 416 (Mo.App.1996) (citing Mistler v. Mistler, 816 S.W.2d 241,255 (Mo.App.1991.)). It is within the discretion of the trial court to order the effective date at a time subsequent to the date of filing. State v. Ramsey, 820 S.W.2d663, 667 (Mo.App.1991) (citing Torrence v. Torrence, 774 S.W.2d 880, 882 (Mo.App.1989)).

The court finds that there is a substantial and continuing change in circumstances to justify modifying legal custody but not a substantial and continuing change in circumstances to modify physical custody. The court finds that this is in the best interests of the minor child.

A. School.

Applying the applicable case law, the court finds that Cathedral Basilica catholic grade school meets “the particular educational needs” of the minor child. See Goins v. Goins 224 S.W.3d 69,71 (Mo.App.E.D.2007); Drury v. Racer, 17 S.W.3d 608,611(Mo.App.E.D.2000.); Seyler v. Seyler, 201 S.W.3d 57, 64 (Mo.App.E.D.2006.).

It is remarkable that the minor child has succeeded at his current school thus far, considering the detrimental parental behavior and the environment of negativity created by the parties. Despite the numerous distractions, the minor child appears to be succeeding at Cathedral Basilica, where he profits from friendships, benefits from the school counseling sessions and he

is academically productive. Significantly, the court found Respondent credible when testifying about the benefit that the minor child receives from the school counseling sessions. Also, the minor child's tuition and before/aftercare are completely subsidized, so the parties are left without any expenses. Considering the minor child has attended four schools since 2003, the court is disinclined to move the minor child again, especially when he is performing well academically.

For these reasons, the court finds that it is in the best interests of the minor child that he attend Cathedral Basilica grade school currently and, further, the court orders that he remain there, absent the agreement of Petitioner, Respondent and the Guardian Ad Litem. The court makes this decision after finding that Respondent arbitrarily recanted from the original Clayton school agreement and Respondent did so after Petitioner relocated. However, the court firmly believes that it is in the minor child's best interests to attend Cathedral Basilica grade school.

Among other reasons, Petitioner objects to the minor child attending a catholic school, such as Cathedral Basilica, because it is incompatible with the family's pentecostal religious affiliation. Petitioner's argument is a recently developed opinion considering he did not object to the minor child attending the previous catholic grade school. In fact, Petitioner found that particular catholic environment acceptable enough that at one time he served as the president of the Central Catholic St. Nicholas parent teacher conference. Despite his religious reasons, Petitioner is not presently proposing to send the minor child to a pentecostal school. Further, the court notes that the minor child was expelled from the only pentecostal school he attended because Petitioner was physical with the principal.

B. Custody.

The failure to communicate is reflected in the parties' conduct, with Respondent demonstrating especially poor communication skills. However, Respondent selected a suitable, productive and worthwhile academic environment at Cathedral Basilica that has proven to be in the minor child's best interests and Respondent is more sensitive, responsive and cognizant about the minor child's counseling needs.

Based on these factors, as well as others, the court finds that there has been a showing of a change of circumstances affecting the minor and unemancipated child and, consequently, justifying the modification of the Judgment in Modification of Judgment of Dissolution of Marriage. Further, this is necessary to serve the best interests of the minor and unemancipated child.

IT IS ORDERED, ADJUDGED AND DECREED that Petitioner's Motion to Modify is denied and Respondent's Motion to Modify is granted in part and denied in part. The Judgment in Modification of Judgment of Dissolution of Marriage entered on September 25, 2008 in the Twenty-Second Judicial Circuit, state of Missouri, is modified as follows:

Respondent N.M. is awarded sole legal custody of the minor child, A.M., Jr., born xxx, pursuant to Court Exhibit A, the court approved parenting plan.

Pursuant to the parenting plan, Respondent shall confer with Petitioner before making any final decisions affecting the health and welfare of the minor child, including work-related child care, special tutoring, psychological or psychiatric treatment, counseling and the choice of

counselors, doctors, surgeons and dentists. However, the minor child shall remain at Cathedral Basilica catholic grade school, absent the agreement of Petitioner, Respondent and the Guardian Ad Litem.

Depending on funding availability and the parties' financial situation, the court does not preclude itself from revisiting the schooling issue at, or around, the time the minor child completes eighth grade and considers high school alternatives. Petitioner shall not communicate directly with school officials, as specified in the previously entered "Mutual Release of All Claims," Exhibit N. If Petitioner has questions or concerns about schooling issues, he shall communicate these in written or electronic form to Respondent, who shall follow-up with the appropriate school officials on behalf of Petitioner and report back to Petitioner as soon as is reasonably possible and convenient.

Respondent shall provide Petitioner with copies of any and all school documentation including, but not limited to, correspondence, announcements, parent/teacher conference schedules, class schedules and report cards. Further, Respondent shall share with Petitioner any and all oral communication from the school involving the minor child.

Petitioner shall comply with all terms specified in the St. Louis archdiocesan Mutual Release of all Claims, including the provisions outlining his presence on school property. Petitioner shall not transport the minor child while his driver's license remains suspended.

Any additional relief requesting custodial modification is denied. Petitioner and Respondent shall retain joint physical custody of the minor child. The parties shall continue exercising alternating weekly visitation with the minor child, pursuant to the attached, court

approved parenting plan.

When either party makes travel arrangements for the minor child, they shall immediately notify the other party in writing, providing the itinerary and any all necessary contact information, including phone numbers, location and the identity of those traveling with the minor child.

The court finds that this custody plan is in the best interests of the minor child. 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 child to the extent available through her employment. Further, Respondent shall be allowed to claim the minor child as a dependent on her state and federal tax returns.

1. Relocation Notice.

Notice of a proposed relocation of the residence of the minor child, or any party entitled to custody or visitation of the minor, unemancipated child 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 child 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 child. 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.

2. Form 14. When preparing the Form 14, attached and marked as Court Exhibit B, the court imputes \$1,800.00 gross monthly income to Petitioner. Petitioner works at Mpower Media, 40 hours per week. Besides a base salary, he receives 7.5 percent commission involving all sales. His income is supplemented by speaking engagements, where the fees range between \$500.00 and \$1,000.00. Petitioner sold the rights to his book after receiving the negotiated royalties. (See A.M. Testimony.) The court did not hear any evidence contradicting Petitioner's allegation that he no longer receives any revenue relating to the book.

Further, the court imputes \$2,500.00 gross monthly income to Respondent. (See Exhibit D, p.2.) According to the Form 14 calculation, Petitioner assumes a 42 percent proportionate share of the combined adjusted monthly gross income, while Respondent assumes a 58 percent

share of that responsibility.

Petitioner does receive a visitation credit because he is awarded 50 percent visitation with the minor child. Based on the Form 14 calculation, Petitioner is responsible for \$333.60 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 or inappropriate and assigns Petitioner's monthly child support payment as \$200.00. (See §452.340 RSMo.)

Although Petitioner receives a ten percent visitation credit under the form 14, the same form fails to sufficiently credit Petitioner considering his visitation amount. Additionally, the parties shall evenly divide all expenses associated with the minor child's extra-curricular activities involving, but not limited to, all athletic programs, scouting, karate, summer camp and/or school mandated summer school academic programs.

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.

3. 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.

C. Child Support Arrearage.

Petitioner is aware that he has not paid the child support arrearage pursuant to the first Judgment in Modification entered September 25, 2008. As of May 10, 2010, Petitioner owes \$3,597.00 in unpaid child support. (See A.M. Testimony; Exhibit AA, p.1.)

Judgment for Respondent N.M. against Petitioner A.M. in the amount of \$3,597.00. Collection to issue immediately. If not, an accruing annual interest rate pursuant to state statute attaches for any unpaid balance effective the date of this order.

D. Court Costs, Attorney and Guardian Ad Litem Fees.

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). However, a court is permitted though not required, to award attorney fees under section 452.355.1 RSMo. The court must consider all relevant factors including the merits of the case, the extent to which the parties' conduct required the expense of attorney fees and the financial resources of both parties.

Tremble v. Tremble, 978 S.W.2d 55, 58-59 (Mo.App.S.D.1998); Geary v. Geary, 697 S.W.2d

318, 320-21(Mo.App.E.D.1985).

Having considered all the relevant factors, including the parties' conduct, the court orders each party to pay their own attorney fees. Petitioner shall pay the court costs. Further, the parties shall pay the Guardian Ad Litem as previously ordered. Petitioner's motion is denied. Respondent's motion is granted in part and denied in part. Any and all additionally requested relief is denied. Finally, the court enters this order incorporating Exhibit A, parenting plan, Exhibit B, Form 14 completed by the court.

Dated and entered this seventh day of July 2010.

SO ORDERED:

Thom C. Clark, 45996
Associate Circuit Court Judge
Twenty-Second Judicial Circuit
10 North Tucker Blvd.
St. Louis, MO 63101

cc: Nathan S. Cohen, Esq., 210 South Bemiston, Clayton, MO 63105
Alexandra M. Hart, Esq., 8000 Bonhomme, Suite 112, Clayton, MO 63105
Kimberly Levi, Esq., 6625 Clayton Ave., Suite 123, St. Louis, MO 63139