

**IN THE 21ST JUDICIAL CIRCUIT, COUNTY OF ST. LOUIS
STATE OF MISSOURI, FAMILY COURT**

In re:

RT,

Petitioner,

vs.

BT, ET AL.,

Respondent.

Cause No.

Division 43

**EXHIBIT 3: ADDITIONAL ORDERS, FINDINGS OF FACT AND
CONCLUSIONS OF LAW ACCOMPANYING JUDGMENT**

On May 2, 2016, Petitioner RT (“Father”) brought his Petition for Declaration of Paternity, Custody and/or Support (“Petition”) against Respondent BT (“Mother”). In his Petition Father seeks to establish paternity, and requests custody of the parties’ minor child, who is 1 year of age (“the Child”). The Petition requests that the child be placed with Father. Mother has failed to file any responsive pleadings and is in default. This case was tried on May 3, 2017. Father appeared in person and by counsel, BM. Mother appeared in person, pro se. VJ, Guardian ad Litem, appeared in person. Father requested written findings of fact and such findings are required by Mo. Rev. Stat. § 452.375. Immediately after the close of evidence on May 3, 2017 the GAL gathered new information that was relevant to her case in chief and requested leave to reopen evidence for her case in chief. On May 5, 2017, based upon the testimony presented on May 3, 2017 and the allegations in the Motion to Reopen Evidence, the Court granted the GAL’s request to reopen evidence and suspended the temporary consent custody plan pending the Court’s final judgment. The trial was reset for hearing on May 10, 2017 at 2:00 p.m. Mother was aware of the trial

setting and called the Court to confirm the setting. Father and his counsel, BM, and the Guardian ad Litem, VJ, appeared on May 10, 2017. After multiple telephone calls with Mother, Mother told the Court she would arrive by 3:00 p.m. at the latest. Trial recommenced at 3:30 p.m. and Mother did not appear.

The Court takes judicial notice of its file in this cause and of the Court's file in the related Petition for Review of Child Support case bearing Cause No. [REDACTED]. The Court considers the evidence adduced, including exhibits, except that the Court did not consider Exhibits 15, 15a, 16, 17, 18, 18a, 20, 21. The Court considers the witnesses' testimony and the reasonable inferences therefrom and the credibility of the witnesses. All fact issues upon which no specific findings are made shall be considered as having been found in accordance with the results reached. Rule 73.01(a)(2). Any finding of fact herein equally applicable as a conclusion of law is adopted as such and any conclusion of law herein equally applicable as a finding of fact is adopted as such.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The parties stipulate that Petitioner RT is the Child's biological father. Father's name already appears on the Child's birth certificate. Petitioner's Exhibit 2 is a copy of the Child's birth certificate and the parties stipulated as to the validity of the birth certificate. In light of this fact, the Court finds that there is no need for the Court to make a paternity determination herein.
2. The parties were never married and had sexual intercourse approximately nine months prior to the Child's birth.
3. The credible evidence is that the parties never cohabitated and had a sexual, but not romantic, relationship.
4. The Court finds that Mother's testimony was not credible.

5. Father had doubts as to the paternity of the Child and was not involved with the Child until paternity was established. The Child was approximately 5 months old when paternity was established.

6. Prior to this action, the Child primarily resided with Mother with visitation to Father whenever Mother would allow.

7. An action for child support through the state of Missouri was initiated. This resulted in an order for Father to pay monthly child support to Mother in the amount of \$477.00 commencing on or about June 15, 2016 in I-D Case No. [REDACTED]. A Petition for Judicial Review of this Order was filed on July 20, 2016, Cause No. [REDACTED], and is currently pending in Cause No. [REDACTED].

8. The parties disagree about joint legal custody for the Child.

9. The parties disagree about physical custody and child support.

10. Mo. Rev. Stat. § 452.375.2 requires the Court to determine custody in accordance with the best interests of the Children. Because the parties have not reached an agreement on all issues related to custody the Court must make findings after considering all relevant factors, including those enumerated in § 452.375.2. The Court having considered all relevant factors, issues its findings of fact and conclusions of law as follows:

(1) The wishes of the children's parents as to custody and the proposed parenting plan submitted by both parties.

a. Neither parent filed a parenting plan prior to the Trial. Mother testified that she is requesting joint legal custody with sole physical custody to Father and visitation to Mother every other weekend.

b. Father testified that his proposed parenting plan requests sole legal custody and sole physical custody with supervised visitation to Mother.

c. The Court finds, based upon the credible evidence adduced at trial, that Father's proposed custody plan is in the best interests of the Child in light of Mother's unstable living environment, Mother's illegal drug use, Mother's inability to provide adequate care and supervision for the Child so as to ensure his health and safety, Mother's inability to work cooperatively and/or communicate with Father, Mother's past dishonest behavior and interference with Father's custody periods.

d. The credible evidence established several serious concerns about Mother that would support the award of sole legal custody and sole physical custody with supervised visitation to Mother:

- (1) The credible evidence established that Mother has interfered with Father's custody periods and been dishonest as to the reasons why she was unable to appear for custody exchanges;
- (2) The credible evidence established that while in Mother's care, the Child sustained injuries that were the result of Mother's failure to take proper precautions to ensure the Child's safety;
- (3) The credible evidence established that while in Mother's care, the Child is not well-kempt, is not frequently bathed, and does not eat a nutritious diet;
- (4) The credible evidence established that Mother has an unstable living situation that is not appropriate, healthy or safe for the Child;
- (5) The credible evidence established that Mother has used illegal drugs, including in the presence of the Child;

- (6) The credible evidence established that Mother, despite efforts by Father, is unable to communicate in an appropriate and honest fashion with Father with regard to Major Decisions and the Child's care, health and well-being;
- (7) The credible evidence established that Mother has refused to give Father information regarding where the Child was residing;
- (8) The credible evidence established that Mother does not have a support system in place to aid her in providing an appropriate, healthy and safe environment for the Child;
- (9) The credible evidence established that Mother was uncooperative and dishonest with the GAL; and
- (10) The credible evidence established that there are serious concerns about the type of adult activities the Child may have been exposed to while in the custody and care of Mother.

e. The credible evidence established that Father has a stable, appropriate, healthy and safe living environment, can appropriately care for the Child and ensure his health, safety, and well-being and that Father has significant family support.

(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.

a. There is no question that the Child has a need for a frequent, continuing and meaningful relationship with both Mother and Father. The Court finds that the credible evidence demonstrates that Father is able and

willing to actively perform his functions as parent for the needs of the Child. The credible evidence reflects that Mother has not demonstrated that she is able and willing to perform her functions as parent for the needs of the Child. The Court notes that the GAL and Father are concerned that if Mother has unsupervised custody of the Child that Mother will abscond with the Child and deny Father access to the Child. Father testified that he desires for the Child to have a relationship with his Mother but has serious reservations about the Child's safety and well-being when in Mother's care. Based upon the credible evidence presented, the Court shares these concerns. Based upon the credible evidence, unsupervised visitation to Mother would endanger the physical health of the Child and/or impair his emotional development. Mother's instability and inability to provide appropriate and consistent safe housing for the Child is of utmost concern. The evidence clearly demonstrates that Mother's instability, poor judgment and lack of credibility puts the Child at a significant risk of physical and/or emotional harm if he is left with Mother in an unsupervised setting. Father has no other children and based upon the credible evidence, is dedicated to providing an appropriate, safe and healthy environment for the Child that would foster his development.

(3) The interaction and interrelationship of the child with parents, siblings, and any other person who may significantly affect the child's best interests.

a. Father resides with his fiancé, KH, and has no other children. In Father's home the Child has his own room and his own bed. Mother has lived at various locations since the Child's birth (between five and eight different locations), including various hotels. The Court finds that Father's home arrangement is appropriate. Father maintains a relationship with

his extended family and they are active participants in Father and the Child's life that provide additional support for Father and the Child. Father testified that the Child has a good relationship with his fiancé. Father testified that he values the Child's relationships with his half siblings and would foster those relationships to the best of his ability, provided that the Child was safe. There was no allegations or evidence presented at trial that Father's home environment is not suitable.

b. Mother has two other children, only one of whom is a minor, who are not also the children of Father. Mother testified that she agreed to allow her other minor child to reside with his paternal grandmother because Mother is not able to provide a stable home environment that is safe and suitable for a minor child. Mother's living situation at the time of trial was not suitable for the Child and was a precarious arrangement with an unknown adult male who also resides at the location. The Child did not have his own room or his own bed at Mother's home at the time of trial. The Court finds that Mother's home arrangement is unstable and unsuitable for a minor child. Mother testified that she does not have any extended family. Mother conceded that Father can provide a better living environment for the Child.

(3) Which parent is more likely to allow the child frequent, continuing and meaningful contact with the other parent.

a. While both parents testified that they would allow the child frequent, continuing, and meaningful contact with the other parent, Mother's testimony was not credible. Mother's prior efforts to deny Father visitation, her dishonest statements to Father and the GAL, her efforts to hide the Child's residence from Father, and her threats to abscond with the Child, substantiate Father and the

GAL's concerns that if Mother does not get her way that she will prevent the Child from seeing Father. The Court finds Father's allegation that Mother denied him access to the Child is credible. The credible evidence demonstrated that Mother is not forthcoming with information about the Child and has been dishonest with Father and the GAL about Child's medical treatment and condition. Father and the GAL have serious concerns regarding the Child's safety while in Mother's care but believes those concerns can be remedied if visitation is supervised. The Court concurs.

(5) The child's adjustment to the child's home, school and community.

a. Except for the times when Mother has not appeared for custody exchanges, Father has had custody of the Child every other weekend since August 23, 2016. The Child has been residing with Father since April 21, 2017 per the GAL's request and recommendation after an incident when Mother refused to exchange the Child and lied to Father and the GAL about the circumstances. Father has enrolled the Child in day care. Father's credible testimony is that the Child is well-adjusted to his home at Father's house and there was no evidence the contrary.

(6) The mental and physical health of all individuals involved, including any history of abuse of any individuals involved

a. There is no evidence suggesting that Mother's or Father's physical health affects her or his ability to meet the needs of the Children.

b. There is no evidence suggesting a history of abuse of any individuals involved.

c. There is no evidence that Father has any mental health concern that affects his parenting. Father testified that he has concerns about Mother's

erratic and unstable behavior and has concerns about her mental health and illegal drug use. No evidence was presented that Mother has any diagnosed mental health condition but the Court notes that Mother's behavior at trial was erratic. The credible evidence further suggested that during trial Mother threatened witnesses who were called to testify on behalf of the GAL. Mother's behavior reinforces concerns about her instability and poor judgment.

(7) The intention of either parent to relocate the principal residence of the children.

a. Father recently purchased a home and has no intent to relocate. Father lived at his prior residence for an extended period of time. Mother, however, has relocated many times since the Child's birth and will likely continue to relocate until she is able to find steady employment. Both parents are obligated to follow the procedures set out in Mo. Rev. Stat. §452.377 in the event they decide to relocate. While neither parent expressed a desire to relocate them [REDACTED], Mother threatened to leave the state with the Child if Father pursued custody.

(8) The wishes of the children as to the children's custodian.

a. There was no direct evidence of the Children's wishes but even if presented, the Court would discount such evidence because of his young age.

11. In general, the credible evidence at trial leads the Court to conclude that Mother is not able to carry out her parental responsibilities and lacks the stability and judgment to do so in a way that is not detrimental to the Child's safety and development. The Court does not doubt that Mother loves the Child but does not believe that Mother is capable of providing the appropriate structure and stability necessary for the Child. Father,

on the other hand, is capable and willing to provide a safe and healthy home environment that will promote the Child's development and well-being.

12. The Court finds that it would endanger the Child's health and/or impair his emotional development if Mother's visitations are not supervised. While in Mother's custody, the Child sustained physical injuries that could have been avoided if the Child was properly supervised and Mother had used sound and reasonable judgment. Mother cannot provide a stable home with proper housing for the Child and has been neglectful of the Child's hygiene, safety, and nutritional needs. Mother's recreational drug use is also of grave concern. There is also serious concerns about what kind of adult behaviors the Child has witnessed while in Mother's custody. The credible evidence at trial also indicates that if Mother is given unsupervised visitation that Mother will not likely return the Child and may abscond with the Child by leaving the State or by hiding the Child from Father.

13. Further, as to the parties' ability to effectively communicate about the Child, the Court finds that Mother has not demonstrated a willingness and/or ability to co-parent with Father and has not been forthcoming with information regarding the Child. Mother has been blatantly dishonest with Father and refused to cooperate with Father on numerous occasions. The Court finds that the credible evidence demonstrates that the parties are not capable of effective communication about Major Decisions in the future. Given the difficulties with communication, the Court orders the parties to utilize Talking Parents to share information and communicate about the Child. The Court's Talking Parents Order is incorporated by reference and attached hereto as Exhibit A.

14. Pursuant to Mo. Rev. Stat. § 452.375 having considered all relevant factors, including those enumerated above, the Court concludes that the Child's best interests are served by awarding Father SOLE LEGAL CUSTODY, and awarding Father SOLE

PHYSICAL CUSTODY, with Mother having reasonable SUPERVISED VISITATION with the Child, as arranged and supervised by Domestic Relations Services or its designee, for a maximum of one hour per week. If after four consecutive DRS supervised visits with the Child and DRS believes additional visits are in the best interest of the child, Mother may have additional visits with Child if Mother pays for a private supervisor, who must be approved by DRS, for up to a total of five hours per week. The parenting schedule is set forth in Part A of the Court's parenting plan which is attached and incorporated into the judgment as Exhibit 1. The parties are ordered to perform the terms of Exhibit 1. Mother's supervised visits shall be arranged through DRS and commence as soon as possible.

CHILD SUPPORT

15. In Missouri, "to determine the correct amount of child support, a trial court must apply a two-step analysis under Rule 88.01 and Section 452.340. The trial court must first calculate the presumed child support amount either by accepting the Form 14 calculations from one of the parties or by preparing its own. After determining the presumed amount, the trial court must then consider whether to rebut the presumed amount as unjust and inappropriate after considering the relevant factors." Fowler v. Fowler, 504 S.W.3d 790, 801 (Mo. Ct. App. 2016) (internal citations omitted).

16. At trial, Father submitted a Form 14 but testified that he does not wish for Mother to pay child support. Mother testified that she did not want any child support from Father but wanted him to pay any arrears due and owing.

17. The Court finds from the credible evidence that Mother is unemployed but capable of earning minimum wage (\$7.70) and working full time (40 hours per week) for a total monthly gross income of \$1,334.67. The Court finds from the credible evidence that Father is currently working part-time as a barber and is looking for other full-time

employment. The credible evidence reflects that Father is capable of earning \$16.00 per hour and working full time (40 hours per week) for a total monthly gross income of \$2,773.00.

18. Father has enrolled Child in day care Monday through Friday at the cost of \$150.00 per week.

19. Thus, the average monthly work-related daycare cost for purposes of the Form 14 is **\$650.00**.

20. Child is currently without medical coverage. Father attempted to obtain medical insurance for Child but Mother refused to provide Father with Child's social security number to facilitate coverage. There was no evidence presented regarding whether Child is insured through Missouri's Medicaid program.

21. Mother is not awarded any overnight visitation. Therefore, a 0% visitation credit is appropriate.

22. As the Missouri Supreme Court has authorized, the Court has used the new schedule of Basic Child Support Obligations that becomes effective in July 2017 to calculate the presumed correct support amount in this case. Thereunder, the presumed child support amount for Mother to pay to Father each month is **\$444.00**.

23. After considering all relevant factors pursuant to Mo. Rev. Stat. § 452.340, the Court finds that the presumed correct amount is NOT rebutted as unjust and inappropriate. This in turn means that Father, as the parent receiving child support, shall claim the Child on his taxes every year, per the assumptions contained in the guidelines.

24. The child support order herein shall be retroactively applied to May 1, 2017, the first full month the Child was in Father's sole custody, and this award supersedes and replaces the child support order in [REDACTED] as of May 1, 2017. As noted in

██████████, Father is \$3,349.78 in arrears for child support due to Mother. This arrearage shall remain owing and due but may be offset by any support payments due from Mother to Father but shall not offset any monies due to the State.

25. No evidence was presented regarding the possible college expenses for the Child and the necessity of the Court making any findings regarding the allocation of those expenses. Therefore, the Court makes no determination as to possible college expenses for the Child.

ATTORNEY'S FEES

26. Neither party made a request for attorney's fees at trial nor introduced any evidence on the issue.

27. The GAL requested an award of fees. Father has paid the \$500 of the \$650 previously ordered by the Court. Mother has not paid any of the \$350 previously ordered by the Court.

28. The GAL fees are subject to reallocation.

29. Based upon the evidence presented, the GAL's fees higher due to Mother's refusal to cooperate with the GAL.

30. The total GAL fees incurred is \$2,156.86. Of that amount Father has paid \$500.00 and Mother has paid \$0. The balance due as and for GAL fees is \$1,156.85. The Court finds that the GAL fees are reasonable.

31. Therefore, the Court awards the GAL, VJ, a judgment in the amount of \$1,656.86 against Father and Mother, jointly and severally, as and for the outstanding GAL fees, with the allocation as follows: Father's allocated share is \$350.00; Mother's allocated share is \$1,306.86. In the event one party pays more than their allocated share due to the joint and several liability for this sum, that party may collect the amount

paid in excess of their allocated share from the non-paying party. If Father pays Mother's portion of GAL fees, Father may claim an offset against the child support arrearage due to Mother but shall not offset any monies due to the State.

WHEREFORE, in addition to the orders and decrees of the Judgment of the Paternity Judgment the Court hereby ORDERS, ADJUDGES AND DECREES:

- A. Father shall have SOLE LEGAL custody of the minor child, age 1.
- B. Father shall have SOLE PHYSICAL custody of the Child, with Mother receiving SUPERVISED visitation pursuant to the Parenting Plan. The supervised visitation schedule shall be arranged through the Exchange Center and commence as soon as possible;
- C. Child support shall be paid by Mother to Father in the amount of \$444.00 each month retroactive to May 1, 2017. This award supersedes and replaces the child support order in case number [REDACTED] The \$3,349.78 in arrears as set forth in in case number [REDACTED] owed by Father as of June 9, 2017 shall remain owing and due but may be offset by any support payments due from Mother to Father or GAL payments made by Father on behalf of Mother but in no event shall any offset of payments apply to any monies due to the State;
- D. Father, the parent receiving child support, shall file an amended income withholding order to reflect the current child support order if and when Mother gains employment;
- E. The parties are ordered to perform the terms of the parenting plan, Exhibits 1 and 2 attached to the Custody, Visitation and Support Judgment;
- F. Each party shall pay her or his attorney's fees; and

G. The relocation requirements of Mo. Rev. Stat. § 452.377 apply to both parents.

SO ORDERED:

Honorable Mondonna L. Ghasedi
Associate Circuit Judge, Division 43