

custody of _____ and that Mother should have reasonable and liberal visitation on a schedule consistent with _____'s academic and extracurricular activities.

The 2013 PPP allocates 182.5 days of residential parenting time to each party, designates each party as the primary residential parent, and provides in relevant part as follows:

The parties agree that the minor child shall attend Lewis County School System on Jan. 3rd, 2013 and if he fails to do so then the Mother shall be in contempt of court. Each party agrees that before the minor child can be removed from the Lewis County School System or if the parent relocates outside of Lewis County, they SHALL [emphasis in original] have court approval.

The parties stipulate that at the time of the 2013 PPP, Mother resided in Lewis County, Tennessee, and Father was employed full time in a position that did not require him to travel overnight during periods when he was exercising residential parenting time.

TCA 36-6-101(a)(1)(B) provides that a court may modify a prior custody order upon a showing by a preponderance of the evidence a "material change in circumstances." A material change in circumstance may include, but is not limited to failures to adhere to the parenting plan or an order of custody and visitation or circumstances that make the parenting plan no longer in the best interest of the child.

TCA 36-6-101(a)(1)(C) provides that a court may modify a prior order pertaining to a residential parenting schedule, upon proof by a preponderance of the evidence of a "material change of circumstance affecting the child's best interest."

The evidence in this case proves conclusively material changes in circumstances. First, is Mother's relocation from Lewis County, Tennessee to Lawrence County, Tennessee. While it is true that the total distance that Mother moved was less than the minimum amount required to trigger the relocation statute, there can be no doubt that the

Parties considered Mother's continued domicile in Lewis County to be a material feature of the prior PPP. Father initially sought contempt sanctions against Mother on account of her moving out of Lewis County without prior court approval. The Court finds that the PPP is not sufficiently clear and unambiguous so as to subject Mother to contempt for having moved to Lawrence Co. under circumstances that did not disrupt the child's continued attendance in Lewis Co. public schools. Nevertheless, her decision to move from Lewis Co. is a material change in circumstances. Second, is Father becoming self-employed as a long-haul truck driver resulting in his now being on the road an average of three nights per week. Having found a material change in circumstances, the court must next consider the best interests of the child.

TCA 36-6-106(a) sets out factors to be considered in making a best-interest determination. Applying those factors to the evidence in this case supports the following conclusions:

1. *The strength, nature, and stability of the child's relationship with each parent.* It is uncontested that [redacted] enjoys a loving relationship with both of his parents. The court finds from the evidence, however, that the majority of the parenting responsibilities relating to his daily needs, especially in the areas of mental health/medical care, and meeting his educational needs, is performed by Father with the support and assistance of Father's wife, [redacted]'s step-mother, [redacted]. Specifically, Exhibits 1 and 2 prove that when [redacted] was in Mother's custody, he was tardy to school with such frequency that he was placed in in-school detention despite the fact that he had no control over whether he was tardy or not. Moreover, the balance of the evidence shows that Mother responded to perceived slights from father on a tit-for-tat

basis without regard to the collateral impact Mother's actions might have on [redacted] such as Mother's failure to deliver the child's medications when returning the child to Father's custody. Further, the evidence shows that Father and step-mother were meaningfully engaged with [redacted]'s educational challenges, including faithful attendance at and engagement with parent-teacher conferences, and IEP team meetings. Mother's explanation for her lack of attendance at these functions-that nobody told her about them, or did not provide her with sufficient advance notice-displays a degree of irresponsibility that cause this particular factor to weigh more favorably towards Father.

These facts also relate to factor (5)-*the degree to which a parent has taken the greater responsibility for performing parental responsibilities.*

2. *Each parent's past and potential for future performance of parenting responsibilities, including willingness to facilitate relationships with the other parent.*

The parties each profess a willingness to facilitate such a relationship, however, the evidence suggests that Father and step-mother have been more forthcoming in this regard than Mother. This finding requires the court to weigh the testimony of the witnesses and make credibility determinations. In this regard, the Court credits the testimony of Father and [redacted] over the testimony of Mother. Specifically, the Court relies upon the Court's observation of Mother's demeanor while testifying. More than once, Mother was argumentative with opposing counsel and chose to be evasive rather than admitting plain facts. Her testimony was impeached by evidence of her own prior conduct as shown in Exhibit 3.

4. *The disposition of each parent to provide the child with education and other necessary care.* The evidence shows that Father and step-mother are committed to

providing with the additional tutorial and educational support that he requires due to his diagnosed ADD/HD.

8. *The moral, physical, mental, and emotional fitness of each parent as it relates to their ability to parent the child and (9) the child's interaction and interrelationships with siblings and step-relatives:* The evidence shows that Father and step-mother are in a stable marital relationship of 4 years duration. They have a child from this union.

credibly testified that she considers to be a child of her household without differentiation in degree of relationship. This testimony is unimpeached and is credibly buttressed by the evidence of her actions in caring for, nurturing and helping to parent

. Mother has a person in her life, , who is the analogue of . Ms. and Mother have been in a committed relationship with each other for a period of approximately one year. Ms. impresses the court as a sincere, honest and well-meaning person who has genuine familial affection for . Ms. testified credibly that she and frequently are the two people who work out logistical details regarding 's care. The Court does not doubt Ms. 's testimony that she is willing to help raise .

The evidence proves that interacts well with his step-siblings in both households. The court finds that the weight of this factor falls equally between the Parties with the single exception being the greater length of the relationship between

and .

10. *The importance of continuity in the child's life and the length of time the child has lived in a stable satisfactory environment.* The evidence proves ti s greatest single need is continuity and stability in his educational setting. To this end, the Parties

agreed in 2013 that he should continue in Lewis Co. public schools. The evidence shows that his achievement level is behind his grade, and that he needs additional resources to address his academic achievement. He also needs the benefits of extra curricular activities such as the moto-cross racing he is engaged in, as well as the competitive team sports available to him in the public schools. The 50/50 parenting arrangement of the 2013 PPP is failing . Indeed, the week on/week off scheduled of that PPP is a disrupting factor, especially in light of the transportation issues created by Mother's decision to move outside of Lewis County.

14. *Each parent's employment schedule.* There is no doubt that Father's new employment schedule will be a complicating factor for him to provide direct parenting time. Nevertheless, as a self-employed person, he has greater flexibility over that schedule, and can chose to forego earnings in exchange for increased opportunities to be present for parenting time. Moreover, the evidence shows that Mother's employment also has some impact on her availability which, but for Ms. 's commendable assistance, would be problematic.

From the foregoing, the Court determines that it is in 's best interest that he continue to be enrolled in Lewis Co. public schools, as his parents agreed in 2013. In order to accomplish this interest in light of changed circumstances, the Court concludes that it is in 's best interest that Father become the primary residential parent, that during the school year Mother shall have liberal and frequent visitation including one over night during the week consistent with 's after-school sports practice schedule, and no less than every other weekend from Friday after school until Monday morning when . is taken to school.

During summer vacation and other breaks from school of at least four days in duration, Mother shall have greater residential parenting time on a schedule to be agreed upon by the parties, with the ratio of residential parenting days being not less than 1.5:1 in Mother's favor. In the event that the parties are not able to reach agreement with respect to a specific schedule, they shall engage in good-faith mediation and failing agreement following mediation, they may obtain the assistance of the court by motion.

For exercising her parenting time during the school year, Mother has the right to pick up and drop off _____ at school. The parties shall make good faith efforts to agree on a location for all other exchanges of the child. In the absence of an agreement, the parties shall meet at the Shell Station in Summertown, TN to exchange custody. Sufficient prescription medications will be delivered by the parent delivering _____. Neither party shall withhold prescription medications from the receiving parent, for any reason.

Mother's petition is dismissed.

Father's petition is granted consistent with these findings and conclusions. Father's counsel shall prepare an amended Parenting Plan consistent with these findings and conclusions. Child support shall be determined by the State Child Support Services Office.

If Father seeks an award of attorney's fees his counsel shall submit a written application for such fees within 28 days from June 24, 2015. Mother shall have 14 days after service of Father's request to respond in writing. The Court will then decide the issue on the papers.

IT IS SO ORDERED.

ENTER THIS 30th DAY OF June, 2015.



JOSEPH A. WOODRUFF
CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been forwarded via United States mail, first class postage prepaid, or via fax or via email to:

Attorney for Petitioner

Attorney for Respondent

This the 30th day of June, 2015.



CLERK