

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 19-321

Judge:

Complainant:

ORDER

December 24, 2019

The Complainant alleged a superior court judge failed to investigate evidence in a family law matter.

The role of the Commission on Judicial Conduct is to impartially determine whether a judicial officer has engaged in conduct that violates the Arizona Code of Judicial Conduct or Article 6.1 of the Arizona Constitution. There must be clear and convincing evidence of such a violation in order for the Commission to take disciplinary action against a judicial officer.

The Commission does not have jurisdiction to overturn, amend, or remand a judicial officer's legal rulings. The Commission reviewed all relevant available information and concluded there was not clear and convincing evidence of ethical misconduct in this matter. The complaint is therefore dismissed pursuant to Commission Rules 16(a) and 23(a).

Commission members Christopher W. Ames and George H. Foster, Jr. did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on December 24, 2019.

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State of Arizona
Commission on Judicial Conduct
1501 W. Washington Street, Suite 229
Phoenix, Arizona 85007

FOR OFFICE USE ONLY

2019-321

COMPLAINT AGAINST A JUDGE

Name:

Judge's Name:

Instructions: Use this form or plain paper of the same size to file a complaint. Describe in your own words what you believe the judge did that constitutes judicial misconduct. Be specific and list all of the names, dates, times, and places that will help the commission understand your concerns. Additional pages may be attached along with copies (not originals) of relevant court documents. Please complete one side of the paper only, and keep a copy of the complaint for your records.

Judge handled this family case very careless nothing presented in his courtroom was investigated everything was just taken to be true. presented different address for his place of residence since then he has been getting returned mail meaning he is not living at the address he has provided. I had to file a motion to enforce parenting time more than times and times it was because refused to provide me or the court with his current address the other party has now fed the state of Arizona and is in . I am now paying child support for our son and I also have him in my possession I am on a job and I am also playing different games from this relationship I am barely making it while does nothing to care of his responsibilities and I pay him child support and take care of our son has lied about everything he presented and this last hearing he came to court with no proof of income and a new address and I brought an affidavit and proof he has violated the court orders more than once

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Repeatedly more than once took but
of school to without letting me know
~~has~~ held ~~to~~ him away from me by not providing
his address so I could pick him up
dropping him off and not following pick up days
and leaving him on me when it was his time
and I had to be at work. he has repeatedly
disobeyed these orders and nothing is
being looked into and nothing is being
done.

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COUNTY

Jurisdictional Findings

THE COURT FINDS that the most recent legal decision-making and parenting time determinations with respect to the minor child, _____, were made by an Arizona court.

THE COURT FURTHER FINDS that Mother, Father, and the child all still reside in Arizona and _____ since the last legal decision-making and parenting determinations with respect to the child was made. Accordingly,

THE COURT FURTHER FINDS that this Court has exclusive, continuing jurisdiction over legal decision-making and parenting time determinations. See A.R.S. § 25-1032(A).

Modification of Legal Decision-Making

To modify a previous custody order, the Court must determine whether there has been a significant and continuing change of circumstances that materially affects the welfare of the child. *Pridgeon v. Pridgeon*, 134 Ariz. 177, 179, 655 P.2d 1, 3 (1982) (citing *Black v. Black*, 114 Ariz. 282, 283, 560 P.2d 800, 801 (1977)). Only after the Court finds that such a change has occurred does the court reach the question of whether a change in custody would be in the child's best interest. *Id.* Thus, the Court will consider the factors enumerated in A.R.S. § 25-403 only if the Court first finds a change in circumstance exists.

Substantial change in joint physical custody constitutes a change in "custody" even if legal decision making is not changed requiring A.R.S. §25-403 findings. *Owen v. Blackhawk*, 206 Ariz. 418, 421, ¶ 11, 79 P.3d 667, 670 (App. 2003).

Further, A.R.S. § 25-411(A) provides:

A person shall not make a motion to modify a legal decision-making or parenting time decree earlier than one year after its date, unless the court permits it to be made on the basis of affidavits that there is reason to believe the child's present environment may seriously endanger the child's physical, mental, moral or emotional health. At any time after a joint legal decision-making order is entered, a parent may petition the court for modification of the order on the basis of evidence that domestic violence involving a violation of § 13-1201 or 13-1204, spousal abuse or child abuse occurred since the entry of the joint legal decision-making order. Six months after a joint legal decision-making order is entered, a parent may petition the court for modification of the order based on the failure of the other parent to comply with the provisions of the order. A motion or petition to modify an order

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shall meet the requirements of this section. Except as otherwise provided in this section, if a parent is a member of the United States armed forces, the court shall consider the terms of that parent's military family care plan to determine what is in the child's best interest during that parent's military deployment.

Here, legal decision-making and parenting time was established pursuant to the *Order for Paternity, Legal Decision Making, Parenting Time and Child Support* filed on (). The Order gave the parties joint legal decision-making authority and a parenting time schedule as agreed upon by the parties. Mother filed her *Petition to Modify Legal Decision Making, Parenting Time and Child Support* filed less than after the Order, alleging that Father does not follow the parenting time orders and that Father took the child out of Arizona without her permission.

At Resolution Management Conference which took place on the parties reached agreement on a modification to the parenting time orders, which was put in the record as a binding . An evidentiary hearing was set to address issues pertaining to travel with the child only.

With regard to travel, the Order states:

Travel: If either Mother or Father has any desire to travel with the child outside of the state of Arizona, that parent must provide the other parent with a written itinerary of their travel by no later than days prior to the intended date for travel. If either parent travels within the state of Arizona but more than from that parent's home, that parent must provide the other parent with a written itinerary of their travel by no later than days prior to the intended date for travel.

At trial, Mother testified that Father took the child to for days. Mother's stated that the school called her and told her that Mother testified that she was not notified and that she was that Father was taking the child out of school. The Court finds this testimony credible, as it is confirmed by the school records which state that the child was absent on , because he was " " [Exhibit 4]. Father testified that he did not take the child to but the Court does not find this testimony credible in light of the evidence from the school records. Thus, by taking the child out of the without providing Mother with the appropriate notification, Father violated the travel provision of the Order.

Having said this, the Court does not find this one violation to constitute " " that materially affects the welfare of the child or to show that

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the child's “]

” Thus, while the Court would admonish Father to follow the above travel provision and advise him that any further failures to strictly follow this provision may support a modification of legal decision-making and parenting time in the future, the Court does not find this evidence to be sufficient to justify modification at this time.

THE COURT THEREFORE FINDS that there is insufficient evidence to establish a significant and continuing change of circumstances that materially affects the welfare of the child. Therefore, the Court will not address the Best Interest Findings required by A.R.S. § 25-403.

THE COURT FURTHER FINDS that, as the petition to modify in this case was filed after the last order on legal decision-making and parenting time, there is no reason to believe the child's present environment may seriously endanger the child's physical, mental, moral or emotional health. A.R.S. § 25-411(A).

THE COURT FURTHER FINDS that although there is evidence to establish that Father provisions of the Order on one occasion, the Court does not find this single violation to justify modification in this case. A.R.S. § 25-411(A).

IT IS THEREFORE ORDERED denying and dismissing Mother's *Petition to Modify Legal Decision Making, Parenting Time and Child Support* filed

IT IS FURTHER ORDERED denying any affirmative relief sought before the date of this Order that is not expressly granted above.

IT IS FURTHER ORDERED signing this minute entry as a formal order of this Court pursuant to Rule 78(C), *Arizona Rules of Family Law Procedure*. No further claims or issues remain for the Court to decide.

JUDICIAL OFFICER OF THE COURT

All parties representing themselves must keep the Court updated with address changes.
A form may be downloaded at: