

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 20-069

Judge:

Complainant:

ORDER

June 18, 2020

The Complainant alleged a superior court judge did not afford him a fair trial 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 Denise K. Aguilar and Joseph C. Kreamer did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on June 18, 2020.

CONFIDENTIAL

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

FOR OFFICE USE ONLY

20-069

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.

On _____ there was a scheduled Evidentiary hearing for the Petitioner's petition for Temporary Orders. The hearing was held in the _____ The scheduled hearing time was _____

Judge _____ failed to conduct a proper hearing and the Respondent _____ was not afforded a fair trial against the Petitioner's allegations. Judge _____ conducted the hearing, lead the questioning, failed to hold the Petitioner in contempt for not providing the Respondent her exhibits; yet allowed all of the Petitioner's exhibits and entered the Petitioner's exhibits without showing them to the Respondent. Judge _____ failed to allow the Respondent to submit his exhibits for defense as he just admitted all _____ of them without providing the Respondent the opportunity to introduce them as well as show their purpose; failed to allow Respondent to examine the Petitioner; failed to allow the Respondent to call any witnesses.

Judge _____ showed misconduct in Court as it is evident he was not impartial and also showed bias and as he created harsh Temporary Orders which resulted in the Respondent losing parenting time with his children, loss of decision making, creating astronomical expenses toward the Respondent in regards to Therapeutic Interventionalist (T.I.) and counselings all without testimony, witnesses, or exhibits. (See _____ Temporary orders attached) Judge _____ failed to review the Respondent's _____ which was on file from a Modification of Child Support hearing held just _____ months prior. If Judge _____ would have conducted due diligence he would see his excessive order of a T.I. would financially break the Respondent.

The Petitioner has been known to have unclean hands, yet Judge _____ took the Petitioner's verbal testimony as the truth and based his decision on the testimony. The Respondent was not able to argue the validity of the Petitioner's testimony or exhibits. The Respondent was not able to introduce a witness to counter the Petitioner's allegations.

The hearing was improper which created chaos and confusion in the courtroom.

Judge _____ clearly showed bias in his Temporary orders.

Judge _____ orders were harsh to a Respondent who was charged with any crime.

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SUPERIOR COURT OF ARIZONA

HONORABLE

Case Number:

Petitioner

AND

Respondent

TEMPORARY ORDERS

The Evidentiary hearing in this matter occurred on _____ During the proceedings, the Court has considered the evidence which includes where applicable/presented, the demeanor of the witnesses, reviewed the exhibits as well as the case history, and considered the parties' arguments and agreements.

As a preliminary matter, the Court notes that a temporary order is always subject to reassessment. A temporary order "[d]oes not prejudice the rights of the parties . . . that are to be adjudicated at the subsequent hearings in the proceeding." A.R.S. § 25-315(F)(1). A temporary order also "[t]erminates when the final decree is entered . . ." A.R.S. § 25-315(F)(4). Even before the final decree, a temporary order "may be revoked or modified . . . on a showing by affidavit of the facts necessary to revocation or modification of a final decree under § 25-327," (i.e. changed circumstances). A.R.S. § 25-315(F)(2). A temporary order "[d]oes not prejudice the rights of the parties or of any child that are to be adjudicated at the subsequent hearings in the proceeding," A.R.S. § 25-315(F)(1); see Ariz. R. Fam. P. Rule 47(M) ("Temporary orders become ineffective and unenforceable upon termination of an action either by dismissal or following entry of a final decree...."). A.R.S. section 25-403 findings are not required on temporary orders. Gutierrez v. Fox, 242 Ariz. 259, 268, 394 P.3d 1096, 1105 . . .), review denied

The Court emphasizes that the rulings set forth herein arise out of requests for temporary orders. As such, these rulings are provisional only and should not be read as the Court's final determination regarding any issue. The rulings are based on the limited evidence presented in an abbreviated hearing and with the understanding that the parties might not have completed all of their discovery and disclosure. Consequently, the parties should be aware that, at a future hearing, additional evidence might be produced and that such additional evidence might compel different rulings than those made herein.

The Court makes the following findings and enters the following orders:

JURISDICTION

THE COURT FINDS the following:

- That _____ and _____ have children in common.
- Arizona was the children's home state on the date the temporary orders motion was filed or was the children's home state within _____ months before the filing of the temporary orders motion and the children are absent from this state but a parent or person acting as a parent continues to live in Arizona.
- That the Parental Kidnapping Prevention Act does not apply and that no international law concerning the wrongful abduction or removal of children applies.

TEMPORARY LEGAL DECISION MAKING

SUPERIOR COURT OF ARIZONA

HONORABLE

Case Number:

Because the Court is addressing requests for temporary orders, the Court notes it is not required to make the type of detailed findings that would accompany final orders. The Arizona Court of Appeals has explained that the statutory requirement, set forth in A.R.S. § 25-403(B), for specific findings in disputed custody cases, “exists not only to aid an appellant and the reviewing court, but also for a more compelling reason—that of aiding all parties and the family court in determining the best interests of the child or children both current and in the future.” *Reid v. Reid*, 222 Ariz. 204, 209, 213 P.3d 353, 358 (App. 2009). As to the latter reason, the specific findings “provide the family court with a necessary ‘baseline’ against which to measure any future petitions by either party based on ‘changed circumstances.’” *Id.* By implication, this means that specific findings are not required for temporary orders. Thus, while the Court has considered all of the statutory requirements the Court declines to make detailed factual findings on each statutory factor on the various issues set forth below. However, the Court rules as follows:

For

IT IS ORDERED awarding authority regarding _____ and _____ joint legal decision-making of this order, _____ s defined in A.R.S. § 25-401(2). For the purpose

“Joint legal decision-making” means both parents share decision-making and neither parent’s rights nor responsibilities are superior except with respect to specified decisions set forth herein. Shared or joint legal decision-making authority does not necessarily mean equal parenting time (A.R.S. § 25-403.02(E)).

Specific Terms

Joint with Final Decision-Making Authority – Parental decisions shall be required for major issues in raising the children and in meeting on-going needs. When they arise, each parent shall give good faith consideration to the views of the other and put forth best efforts to reach a consensus decision. If the decision involves medical or schooling issues, the parties may further elect to seek input from treating physicians or educators. Both parents shall be provided with such input.

IT IS ORDERED that if they cannot agree after making a good faith effort to reach an agreement, _____ shall have the ability to make the final decision.

IT IS FURTHER ORDERED The parties shall use ProperComm (www.propercomm.com) for all their communication. The parties shall only use text messages or phone calls to communicate when there is a medical emergency concerning a child or if there is an issue that must be resolved within a single 24-hour period. The parties shall be responsible for their own respective costs for their individual ProperComm accounts. The parties shall each check their respective account no less than once every 24 hours, and shall respond to all messages within 8 hours of reading same.

For .

IT IS ORDERED awarding _____ sole legal decision-making authority regarding as defined in A.R.S. § 25-401(6). For the purpose of this order,

“Sole legal decision-making” means one parent has the legal right and responsibility to make major decisions for the child.

SUPERIOR COURT OF ARIZONA

HONORABLE

Case Number: .

TEMPORARY PARENTING TIME

The Parties share joint legal decision making of the children listed below. "Shared legal decision-making does not necessarily mean equal parenting time." See A.R.S. § 25-403.02(E).

The Court has awarded sole legal decision making of the following child to _____, nonetheless, "is entitled to reasonable parenting time to ensure that the minor child has substantial, frequent, meaningful and continuing contact with the parent unless the Court finds, after a hearing, that parenting time would endanger the child's physical, mental, moral or emotional health."

THE COURT FINDS that the following parenting plan is practical and also maximizes each parent's parenting time to the extent it is in the children's best interests. See A.R.S. § 25-403.02(E).

THE COURT FINDS that parenting time that ensures _____ will have substantial, frequent, meaningful and continuing contact with the children would endanger the children's physical, mental, moral or emotional health because Father utilizes abusive parenting tactics and disparages Mother directly to the children. Father also has little to no insight on the impact of his abusive parenting tactics has upon his daughters.. The Court, therefore orders the following parenting plan to protect the children's physical, mental, moral, or emotional health. In that regard, the following parenting plan is practical and also maximizes each parent's parenting time to the extent it is in the children's best interests. See A.R.S. § 25-403.02(E).

IT IS THEREFORE ORDERED that parenting time shall be exercised as follows:

1. _____ shall be the children's primary residential parent. The children shall reside with _____
2. Effective _____ shall have parenting time as follows: Father shall only see these children during sessions with the therapeutic interventionist ("T.I."). These sessions shall occur no more than _____ per week.
Once the T.I. deems it to be appropriate, in addition to the T.I. sessions, Father shall be able to have _____ facetime/video chat with the girls _____ per week for up to _____ minutes (total, not per child).
Once the T.I. deems it to be appropriate, in addition to the T.I. sessions and facetime/video chats, Father shall have supervised parenting time _____ per week for _____ hours - these visits may include other children and Father's wife - they can occur in Father's home or at a public location - at Father's discretion. The supervisor of the visits shall be conducted by one of the following individuals:

Holiday Schedule: The Holiday Schedule does not apply at this time.

IT IS ORDERED that the following terms shall apply:

1. **Weekly Parental Communication Regarding the children:** To assist the parents in developing an appropriate level of communication, the parents shall exchange weekly "reports" via e-mail. The weekly email report shall be in addition to any other communication between the parents.

**THE COMMISSION'S POLICY IS
TO POST ONLY THE FIRST FIVE
PAGES OF ANY DISMISSED
COMPLAINT ON ITS WEBSITE.**

**FOR ACCESS TO THE
REMAINDER OF THE
COMPLAINT IN THIS MATTER,
PLEASE MAKE YOUR REQUEST
IN WRITING TO THE
COMMISSION ON JUDICIAL
CONDUCT AND REFERENCE
THE COMMISSION CASE
NUMBER IN YOUR REQUEST.**