

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
FAMILY DIVISION

MAYA EIBSCHITZ-TSIMHONI,

Plaintiff

v.

OMER G. TSIMHONI,

Defendant.

OAKLAND
COUNTY

09-766749-DM



JUDGE LISA GORCYCA
EIBSCHITZSIM v TSIMHONI,OMER

HON. LISA GORCYCA

HERTZ SCHRAM, PC
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ALEXANDER, EISENBERG,
MIDDLEDITCH & SPILMAN, PLLC
By: KERI MIDDLEDITCH (P63088)
Attorney for Defendant
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(248) 358-8880

NOTICE OF HEARING

PLEASE TAKE NOTICE that **Defendant Father's Motion for Sole Legal and Sole Physical Custody of the Minor Children and Other Relief** shall be brought on for hearing before the Honorable Lisa Gorcyca of the Oakland County Circuit Court located at 1200 N. Telegraph Road, Pontiac, Michigan, on **Wednesday, July 22, 2015, at 8:30 a.m.**, or as soon thereafter as counsel may be heard.

ALEXANDER, EISENBERG,
MIDDLEDITCH & SPILMAN, PLLC

By: 

KERI MIDDLEDITCH (P63088)
Attorneys for Defendant
600 South Adams, Suite 100
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(248) 358-8880

DATED: July 15, 2015

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IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
FAMILY DIVISION

MAYA EIBSCHITZ-TSIMHONI,

Plaintiff

v.

OMER G. TSIMHONI,

Defendant.

OAKLAND
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**DEFENDANT FATHER'S MOTION FOR SOLE LEGAL AND SOLE PHYSICAL
CUSTODY OF THE MINOR CHILDREN AND OTHER RELIEF**

NOW COMES the Defendant, OMER G. TSIMHONI, by and through his attorneys,
ALEXANDER, EISENBERG, MIDDLEDITCH & SPILMAN, PLLC, by KERI
MIDDLEDITCH, and for his Motion states as follows:

1. A Judgment of Divorce was entered in this action on August 8, 2011 ("Judgment").
2. Three children were born to the parties, namely:

LIAM TSIMHONI	Born 07/06/01	Age 14
ROEE TSIMHONI	Born 08/29/04	Age 10
NATALIE TSIMHONI	Born 12/13/05	Age 9

3. Immediately preceding the filing of the Complaint for Divorce in this matter, the parties and their minor children resided in the State of Israel together.

4. Plaintiff abruptly left Israel, with the parties' minor children, and filed for divorce in Oakland County, Michigan on December 17, 2009.

5. After it was determined under the Hague Convention that the appropriate jurisdiction was in the United States, the case proceeded to trial before this court.

6. The Judgment of Divorce was entered after several days of trial before the Honorable Jack McDonald.

7. At the time of the entry of the Judgment of Divorce, Defendant Father was residing in Israel.

8. Since entry of the Judgment of Divorce in this matter, the issues of custody and parenting time have been in constant dispute as a result of Plaintiff Mother's refusal to cooperate with Defendant Father and her refusal to effectuate and encourage parenting time with the children and their father.

9. Since the filing for divorce and thereafter, Defendant Father has been diligent in his efforts to maintain a relationship with the children and came to the United States to see the children regularly.

10. Unfortunately, Plaintiff Mother has been a constant roadblock to Defendant Father's relationship with the children, and her campaign began the moment she left Israel and filed for divorce in the United States.

11. Plaintiff Mother has falsely maintained that Defendant Father's parenting time be supervised, as she unjustifiably believes that the children are in danger from being physically harmed or kidnapped to places unknown.

12. Defendant Father has been forced to file numerous motions to enforce the Judgment of Divorce and to exercise his parenting time as Plaintiff Mother has flatly refused to cooperate or facilitate any relationship between the three minor children and their father, even leaving the country to avoid and obstruct Defendant Father's parenting time.

13. Not only has Defendant Father had to file such motions, but the Guardian Ad Litem (GAL) has also had to file motions on behalf of the children to commence visitation with their father when he is in the United States.

14. In the past two (2) years alone, Defendant Father and the GAL have filed a combined total of at least nine (9) Motions seeking enforcement of parenting time orders and/or requesting Plaintiff Mother show cause for violating this Court's existing orders.

15. In addition, in the past two (2) years, the GAL has filed multiple reports detailing Mother's wrongful behavior and has issued many recommendations in response to Plaintiff Mother's blatant refusal to follow this Court's written orders, as well as the tenants of joint custody as defined by Michigan Law.

16. In the past two (2) years Plaintiff Mother has had at least four (4) lawyers withdraw from her case, and has had at least eight (8) lawyers in the past six (6) years discontinue their representation.

17. Numerous experts have been appointed to help these children, given the parental alienation that has transpired.

18. Plaintiff Mother has made it perfectly clear to the mental health experts that she is unwilling to follow or heed their advice and while she may appear to appease the Court by attending her appointments with these experts, her cooperation ends there.

19. This Court appointed Jennifer Hayes, MSW, a highly experienced mental health professional, to work with the parties and their children.

20. After Jennifer Hayes issued a recommendation that was contrary to Plaintiff Mother's agenda of alienation, on July 10, 2013, Plaintiff Mother promptly filed a motion with this Court asking that Ms. Hayes be disqualified from conducting any parenting time assessment.

21. Plaintiff Mother's motion to disqualify Jennifer Hayes was denied.

22. It was no surprise that Plaintiff Mother wanted Jennifer Hayes removed from the case as Ms. Hayes' report was consistent with the prior mental health professionals' reports issued in the past, which were blistering of Plaintiff Mother's actions.

23. Jennifer Hayes reported that Plaintiff Mother "was more difficult to coordinate appointments with, to interview, and appeared to be less cooperative with assessment procedures."

24. Several attempts had to be made by Jennifer Hayes to make an appointment with Plaintiff Mother, and those appointments were often rescheduled to accommodate Plaintiff Mother.

25. Plaintiff Mother failed to sign the releases necessary for Jennifer Hayes to contact the other professionals involved until both the GAL and her then counsel intervened.

26. Plaintiff Mother attempted to manipulate her interviews with Jennifer Hayes by ignoring questions posed by Ms. Hayes and only discussing topics which she wished to cover and were not part of the assessment process.

27. Jennifer Hayes' observation that Plaintiff Mother's behaviors and lack of cooperation with the assessment process speaks "to a larger historical pattern of noncompliance and lack of cooperation on Maya's part when it comes to recommendations [and] orders from the Court regarding this case."

28. It is obvious from Plaintiff Mother's continuous actions that she is crusading to eliminate Defendant Father from the lives of their children.

29. Jennifer Hayes prepared a recommendation regarding this matter and on July 24, 2013, this Court adopted each and every recommendation of Ms. Hayes, requiring that it be implemented forthwith. See Exhibit A attached hereto.

30. Jennifer Hayes concluded in no uncertain terms that there were very clear dynamics of parental alienation and indicated that the children had not been appropriately supported by their mother in maintaining a healthy relationship with their father.

31. It is Plaintiff Mother who is directly responsible, via her own attitude and actions, that have given rise to this alienation.

32. In addition, it is clear that Plaintiff Mother has not been forthcoming or honest with the professionals appointed by the court in this matter. For example, Plaintiff Mother claimed that she needed an interpreter with Jennifer Hayes, which was nothing short of rubbish, as Mother was and may still be a licensed Ophthalmologist who, upon information and belief, was formerly employed by the University of Michigan.

33. At the time of Jennifer Hayes' evaluation, there were multiple cancellations of parenting time visits that Plaintiff Mother was responsible for and that the children continued to be resistant to parenting time with Defendant Father.

34. Jennifer Hayes' report cautioned very strongly that Plaintiff Mother's actions are causing significant emotional pain to the children and could very likely lead to future dysfunction and continued emotional suffering with a very negative effect on each of these children, long-term.

35. Jennifer Hayes was not alone in her assessment of the situation.

36. In March of 2011, Dr. Katherine Okla issued a report mirroring Jennifer Hayes' findings and cautioning of the possible outcome of the situation if the situation was not addressed

appropriately. Dr. Okla reported that “[a]lthough she [Maya] does claim to believe in the importance to the children of a strong, positive relationship with their father, that is not being conveyed in a convincing manner to the children.”

37. Dr. Okla further indicates that “Omer has effectively been rendered powerless to parent the children in the face of the total alliance against him.”

38. Dr. Okla also reported that the children suffered from separation anxiety from their mother which was fostered by Plaintiff Mother’s behaviors and attitudes perceived by the children, and that Plaintiff Mother was fueling alienation from Defendant Father and reinforcing the children to depend on her and be unable to think for themselves.

39. In light of the GAL’s report and the reports of various mental health professionals, this Court plainly stated in its written order dated July 24, 2013, that if either party failed to comply with its Orders, the party would be subject to the contempt powers of this Court and be detained in jail for twenty (20) days for the first violation and forty (40) days for a subsequent violation.

40. Unfortunately, Plaintiff Mother’s tactics that intended to alienate Defendant Father from the children continued, following Dr. Okla and Jennifer Hayes’ recommendations.

41. Specifically, the Court’s Order of June 4, 2014 states “Mother is not permitted to travel out of the country with the children unless and until she provides the travel itinerary to Father. Further, Mother is not permitted to travel outside of the country unless she provides Liam’s Bar Mitzvah details to Father.” See attached Exhibit B.

42. However, when Defendant Father was here in the United States and visiting the children in June 2014, there were significant difficulties with Father exercising his parenting time, and the parties were at the courthouse two (2) weeks in a row, trying to resolve the various parenting time issues with the assistance of Art Gallagher, the parenting time supervisor, as well as the GAL.

43. Again, on July 29, 2014, Defendant Father notified the GAL that he would be in Michigan in August for a couple of weeks and indicated that while he could not give thirty (30) days’ notice, this was an unplanned business trip and he was hoping to see the children.

44. Defendant Father also told the GAL that he had been having phone contact with Plaintiff Mother and knew that the children had been on a trip down South. See attached Exhibit C.

45. Counsel for Defendant Father was then apprised by the GAL that he told Plaintiff Mother's counsel right away that Father was coming to Michigan in August. In fact, the GAL sent an email to all of the parties involved that Defendant Father would be in the State of Michigan from August 12th to August 28th, 2014. See attached Exhibit D.

46. Neither Plaintiff nor her counsel objected to the parenting time request of Defendant Father.

47. It was not until August 7, 2014 that counsel for Plaintiff Mother advised that Plaintiff Mother was affirmatively leaving on vacation on Friday, August 8, 2014, and Defendant Father would not be allowed to exercise parenting time during the August 12th to August 28th, 2014 time requested.

48. Plaintiff Mother never provided the itinerary or any sort of information regarding her planned trip prior to traveling with the children in August 2014, as required by the June 4, 2014 Order.

49. Defendant Father was traveling in from Israel and should have been permitted to see the children while he was in the State of Michigan in August 2014.

50. Defendant Father filed an Emergency Motion to Enforce the Court's June 4, 2014 Order and the Court entered yet another Order for parenting time on August 20, 2014.

51. As this Court is well aware, the initial pickup at the courthouse for parenting time on August 21, 2014 was a disaster that required numerous court personnel to intervene to require the children to even speak with their father in the jury room with the assistance of the Friend of the Court Family Counselor, Tracey Stieb.

52. Parenting time was supposed to occur for only two days because Plaintiff Mother planned to go to the west coast for an "emergency."

53. Although Defendant Father was still in town until August 28, 2014, Plaintiff Mother cancelled her emergency trip and went "up north" with the children, denying Defendant Father any further parenting time.

54. Given the long-standing history of Plaintiff Mother's actions and her significant efforts to foil the parenting time of Defendant Father, the GAL filed an extensive Recommendation dated November 3, 2014 with this Court.

55. The GAL cautioned the Court at this time that letting Plaintiff Mother's behavior to go unchecked would be condoning her alienating and bizarre behavior.

56. The GAL's ultimate recommendation was that each child see Defendant Father separately to eliminate the children's undesired behavior in which the children essentially gang up on their father and won't talk to him.

57. In addition, the GAL also recommended that Art Gallagher, the parenting time supervisor, be present for no other reason than to protect Defendant Father from the false allegations made by Plaintiff Mother and the children.

58. The GAL also recommended that the parenting time exchanges for the initial pickups occur at the courthouse.

59. A hearing was held on November 12, 2014 at the request of the GAL and in conjunction with his Recommendation.

60. During this hearing, Plaintiff Mother's behavior and words were nonsensical and reprehensible:

... I think the ... intimidation that has been caused ... and Mr. Lansat's threats and Mr. Lansat had told them [the children] that it's their responsibility that their grandfather will die and – and all that just upsets them and – and if there are – if the visit starts with intimidation and threats and – and force it creates a situation that is hard to overcome. ... You only hear Mr. Lansat's report that is based on his – on Omer's report to Mr. Lansat and it kind of escalates to a level that was not even the case ... every time something started to go in the right direction immediately they come to you and complain ... like Mr. Lansat puts in his report, compares it to serial killers and I don't know illusional – delusional accusations that I think he should apologize for ...

61. This Court ordered that Defendant Father would have parenting time with the minor children during his visit to Michigan which started on November 12, 2014.

62. Plaintiff Mother was ordered to follow the GAL's Recommendation regarding parenting time and that she was not allowed to be a part of the parenting time between Defendant Father and the children.

63. Pursuant to this Court's Order, the GAL has made every effort to facilitate parenting time, and Plaintiff Mother continues to make up her own rules as she goes.

64. Plaintiff Mother repeatedly refuses to comply with the plan outlined by the GAL in conjunction with the parenting time supervisor.

65. The manipulations are too numerous to mention.

66. One particular example occurred in January 2015 where the transition of the children was to take place at 4 p.m.

67. When the parenting time supervisor spoke with Plaintiff Mother, she moved the time to 4:30 p.m. and said she might be a little late.

68. When Defendant Father appeared for parenting time at 4:30 p.m. as advised, Plaintiff Mother had arrived at 4:15 p.m. so the children were waiting, as if Defendant Father was the one who was late.

69. Frequently, Plaintiff Mother stays during Defendant Father's parenting time contrary to the Court's Order, claiming that she is trying to facilitate the parenting time but, in reality, it only aggravated the situation.

70. When Plaintiff Mother does leave, the children follow her and Plaintiff Mother does not do anything to encourage them to stay with their father.

71. In January 2015, Defendant Father returned to live permanently in the United States in an effort to improve his relationship with the children and overcome the untruths that Plaintiff Mother had imparted to them.

72. At that time, Defendant Father sought a parenting time schedule consistent with what the Judgment of Divorce contemplated.

73. Defendant Father's permanent return to the United States only fueled Plaintiff Mother's obstruction and denial of his parenting time.

74. Plaintiff Mother also continued to deny Defendant Father standard information concerning the children as one would have as a joint legal custodian.

75. Plaintiff Mother has not only been reluctant but patently refused to provide information regarding the children as it relates to their education and extracurricular activities.

76. It has taken numerous emails from counsel for Defendant Father to counsel for Plaintiff Mother to obtain minimal information about the children's extracurricular activities, as well as the intervention by the GAL.

77. These antics continue as the parenting time supervisor's reports indicate.

78. The parties again appeared before this Honorable Court on March 23, 2015 as a result of Plaintiff Mother's continued violations of the current parenting time Orders, as well as Plaintiff Mother's responsive Emergency Motion to Suspend Parenting Time.

79. In her usual fashion, Plaintiff Mother alleged that Defendant Father physically abused his son, Roe, during the scheduled parenting time on March 19, 2015.

80. Nothing could be further from the truth.

81. In fact, Plaintiff Mother took Roe to the Emergency Room for examination of his alleged injury to his arm which resulted in Plaintiff Mother purchasing a sling for Roe's arm, when one was not prescribed by the treating physician in the emergency room or by Roe's pediatrician.

82. Despicably, Plaintiff Mother said, in front of the children, that she was upset by the "abuse" that allegedly occurred in Defendant Father's home.

83. On March 23, 2015, after an extended and arduous hearing on the parenting time issues before this Court, during which time testimony was taken from the Parenting Time Supervisor, an Order was entered denying Plaintiff Mother's Motion to Suspend Parenting Time and awarding Defendant Father continued parenting time with the parties' three minor children. See Order attached hereto as Exhibit E.

84. The Court also ordered the parties to utilize Our Family Wizard, the costs of which are to be paid solely by Plaintiff Mother, to compel Plaintiff Mother to include dates, times and locations for all of the children's events as she continually refused to advise Defendant Father of same.

85. The March 23, 2015 Order also provided specific parenting time, as follows:

Father shall have parenting time beginning today 3/23 through 3/26 and 3/30 – 4/1/2015. Parenting time shall be from 6:30-7:30 p.m. On 3/23, 3/24, 3/25 Father shall have parenting time with Natalie and Liam. Father shall have p-time with Roe on 3/26/2015. Father shall have parenting time with Natalie and Liam on 3/30 and 3/31. Father shall have p-time with Roe on 4/1/2015. The location to be determined by Art Gallagher [Parenting Time Supervisor] if the parties cannot agree.

86. For the parenting time scheduled on March 23, 2015 at 6:30 p.m. as identified above, it was arranged for Defendant Father's parenting time with Natalie and Liam to take place at J. Alexander's restaurant in the presence of the Parenting Time Supervisor.

87. Mere hours after the entry of the March 23, 2015 Order, Plaintiff Mother again violated the Court's Order by not appearing at the location for the Defendant Father's parenting time with Natalie and Liam.

88. Upon information and belief, Plaintiff Mother advised the Parenting Time Supervisor that “after what happened to Roe,” neither Liam nor Natalie would come to the scheduled parenting time.

89. On March 24, 2015 at 6:30 p.m., one day later, Plaintiff Mother was again instructed to bring Liam and Natalie to J. Alexander’s restaurant for Defendant Father’s parenting time.

90. Yet again, Plaintiff Mother violated this Court’s Order and failed to appear or otherwise bring the children for Defendant Father’s parenting time.

91. Unfortunately, since Jennifer Hayes’ report in July 2013, Plaintiff Mother’s campaign of alienation has only intensified.

92. The parties were again in Court on June 23, 2015 to arrange for specific parenting time between the minor children and their Father, and an Order was entered on that same day.

93. Pursuant to the Court Order of June 23, 2015, Father was to exercise parenting time with his two (2) youngest children at the courthouse on June 24, 2015.

94. Unfortunately, although not surprisingly, Plaintiff Mother was late in her arrival to the courthouse on June 24, 2015, and she had all three (3) children in her care.

95. It became apparent to the Court on June 24, 2015 that the children had not improved at all, despite their Father’s permanent return to the United States and his significant efforts to see them on a regular and consistent basis several times a week.

96. It was also apparent that the children had adopted whatever mindset Plaintiff Mother forced upon them, and they refused to cooperate in the court-ordered parenting time.

97. It was also became clear to the Court that what Dr. Okla had foreshadowed in her report years earlier had come to fruition and the Court was forced to take drastic measures to address this serious situation.

98. Regrettably, before the Court placed the parties’ three (3) minor children in shelter care and despite requests from the Court, Plaintiff Mother did nothing to rectify the situation and help the children reconcile with Defendant Father.

99. Having exhausted all other possible remedies, this Court adopted the GAL’s recommendation and opted to remove the three (3) minor children from Plaintiff Mother’s physical custody, given the emotional/psychological abuse they were enduring in her home at that time.

100. Plaintiff Mother denied any wrongdoing and chose to contact numerous media outlets, making allegations that the parties' minor children were detained against their will. All the while, Plaintiff Mother trampled on the privacy rights of the children and allowed various news outlets to post pictures of the minor children who are just ages 14, 10 and 9.

101. Next, without consultation with or consent of Defendant Father who shares joint legal custody of the minor children, Plaintiff Mother allegedly retained an attorney from New York to represent the minor children, for purposes not yet clear.

102. Counsel for Defendant Father has requested that this New York attorney cease her communication with the parties' minor children as Defendant Father has not provided consent to any such legal representation.

103. Pursuant to the Court's Order of July 10, 2015, the children are currently enjoying the events at summer camp with children their own age.

104. Nevertheless, this New York attorney is sending mail to the parties' children while they are at summer camp, despite counsel for Defendant's request that she not communicate with them.

105. Plaintiff Mothers' attempt at communication with the minor children in and of itself demonstrates her disregard for the children's well-being and attempts by the Court to afford them an opportunity to be free of the conflict imposed upon them as a result of this custody dispute.

106. It is clear that Plaintiff Mother is again trying to obstruct or otherwise interfere with Defendant Father's relationship with the children by engaging this New York attorney to send such communications.

107. The GAL filed an Emergency Petition for Instructions Re: Letters, and the Court entered an Order on July 14, 2015 which ordered the summer camp to deliver the unopened letters to the GAL and not the children until further order of the Court.

108. Despite the drastic measures taken by this Court to protect the children, Plaintiff Mother continues to act in a manner that is harmful to their emotional well-being and demonstrates that she will go to no lengths, including sacrificing the well-being of the children for her own personal agenda.

109. Based upon the foregoing, Plaintiff Mother is not a fit and proper person to have legal or physical custody of the children, and should be allowed supervised parenting time only when a mental health professional deems it appropriate.

110. It would be in the best interest of the minor children for Defendant Father to be awarded sole legal and sole physical custody of the minor children.

111. The Child Custody Act, specifically MCL 722.27(1)(c) provides that the court may “modify or amend its previous judgments or orders for proper cause shown or because of change of circumstances until the child reaches 18 years of age.”

112. The Court of Appeals in *Vodvarka v. Grasmeyer*, 259 Mich App 499, 508; 675 NW2d 847 (2003) stated that in order to establish proper cause, “[t]he appropriate ground(s) should be relevant to at least one of the twelve statutory best interest factors, and must be of such magnitude to have a significant effect on the child’s well-being. When a movant has demonstrated such proper cause, the trial court can then engage in a reevaluation of the statutory best interest factors.”

113. To establish “change in circumstances” for custody modification purposes, the moving party must show that the children’s living situation has **materially** changed since the entry of the last custody order as to have a significant effect on their well-being. See also *Rittershaus v Rittershaus*, 273 Mich App 462, 473; 730 NW2d 262 (2007).

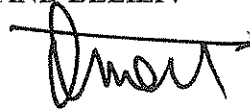
114. Given the facts as outlined above, Defendant Father can demonstrate to this Court by clear and convincing evidence that proper cause and/or change of circumstances exist to warrant a change in custody.

WHEREFORE, Defendant, OMER G. TSIMHONI, requests the following relief:

- A. Grant immediate interim sole legal custody of the parties’ three children to Defendant Father;
- B. Schedule this matter for an evidentiary hearing regarding Defendant Father’s request for permanent legal and physical custody of the children;
- C. Thereafter, grant sole legal and physical custody of the parties’ three minor children to Defendant Father;
- D. Require intensive therapy focused on the reunification and reintegration of Defendant Father into the children’s lives at Plaintiff Mother’s sole expense;

- E. Require Plaintiff Mother to submit to a psychological and, if deemed necessary by the psychologist, a psychiatric examination at her sole expense;
- F. Permit Plaintiff Mother to have supervised visitation only after consultation and approval of a court-approved mental health professional and the GAL;
- G. For an award of attorney fees and costs for having to file this Motion in the amount of \$5,000.00;
- H. For such other relief as the Court deems just and appropriate.

I DECLARE THAT THE STATEMENTS ABOVE ARE TRUE TO THE BEST OF MY INFORMATION, KNOWLEDGE, AND BELIEF.



OMER TSIMHONI

Dated: July 15, 2015

Respectfully submitted,

ALEXANDER, EISENBERG,
MIDDLEDITCH & SPILMAN, PLLC

By: 

KERI MIDDLEDITCH (P63088)
Attorney for Defendant
600 South Adams, Suite 100
Birmingham, MI 48009
(248) 358-8880

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

Maya Eibschitz-Tsimhoni
Plaintiff,

Case No. 09-7166749 DM
HONORABLE LISA GORCYCA

Imer Tsimhoni
Defendant.

ORDER / RE: MOTION

At a session of said Court, held in the City of Pontiac, Oakland County, Michigan, this 24 day of July, 2013.

Present: HONORABLE LISA GORCYCA
Circuit Court Judge

This matter having come before the Court on (Plaintiff/Defendant):

Defendants 's, Motion for Adoption of Jennifer
Name State nature of motion

Hayes' Recommendation

and the Court being advised in the premises;

IT IS HEREBY ORDERED that the motion is:

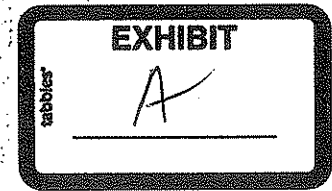
- Granted
- Denied
- Granted in part, as explained in the comment below.
- Other

Comment: It is hereby ordered that each and every recommendation of Jennifer Hayes ~~et al~~ report shall be implemented forthwith. Defendant's Motion to Disqualify Jennifer Hayes is denied. If either party fails to comply with this Court's orders they will be subject to

(see page 3)
HON. LISA GORCYCA Circuit Court Judge

APPROVED AS TO SUBSTANCE AND FORM

[Signature]
[Signature]



Maaya Erbschitz - Ts. minon
Plaintiff


Simon Ts. minon, Defendant

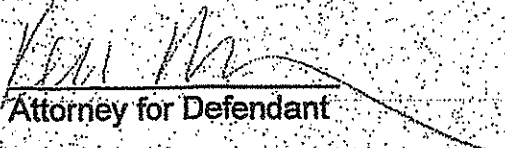
Case Number: 09-766749 DM

PAGE 2 OF ORDER

The contempt powers of this court and be
detained for 20 days for the first violation
and 40 days for a subsequent violation. Therapeutic
parenting time shall be implemented as soon
as possible after the GAT in consultation with
counsel for both parties selects a therapist.
The therapist shall meet and counsel the
parties, the children and conduct therapeutic
parenting time as appropriate and as ordered
by this court. The costs of the therapist

(see page 3)
JUDGE


Attorney for Plaintiff


Attorney for Defendant

_____, Plaintiff

_____, Defendant

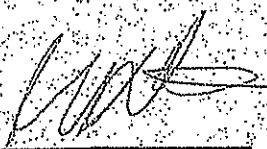
Case Number: 2009-766749-D117

³
PAGE 2 OF ORDER

shall be split 100/40, with Defendant
responsible for 100% Defendant's therapy,
sessions may occur in person or via internet
(program to be determined) as determined by the
therapist. The therapist shall supervise
and facilitate the parenting between Defendant
and the children via internet (like Skype or
other live interactive video). Plaintiff shall be
responsible for 40% of all costs associated
w/ Jennifer Hayes Therapist/costs

Lisa Gorcyca

JUDGE



Attorney for Plaintiff




Attorney for Defendant

A TRUE COPY

LISA BROWN

Oakland County Clerk - Register of Deeds

By 
Deputy

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

OAKLAND COUNTY 09-766749-DM
Case No. 0
Honorable L
JUDGE LISA GORCYCA
EIBSCHITZSIM v TSIMHONI,OMER

M

Maya Eibschitz-Tsimhoni
PLAINTIFF

-v-

Omer Tsimhoni
DEFENDANT

At a session of said Court held in the
Courthouse in the City of Pontiac,
County of Oakland, State of Michigan
On 6/4/2014

RECEIVED
JUN 11 2014
BY: [Signature]
DEPT. CLERK

The GAL's recommendation dated 5/13/2014 shall be adopted as it relates to counseling and the parenting time for the two (2) minor children. The parenting time supervisor shall pick-up each child individually from Mother and bring the minor child to parenting time w/ Father. Mother nor Liam shall be a part of the parenting time exchange between the minor child and Father. Father shall have parenting time with the minor children when he is in the U.S. 4/14/2014 - 6/27/2014. The parties shall follow the schedule/logic of the GAL designated in his 5-13-14 recommendation. In Addition Father shall have

NOTICE
THIS ORDER CONTAINS A DATE
SET BY THE COURT. YOU WILL NOT
RECEIVE FURTHER NOTICE OF THIS
DATE.
JUDGE S CHAMBERS

Approved as to form:

Attorney for Plaintiff

Attorney for Defendant

(see page 2)
LISA GORCYCA, Circuit Judge

EXHIBIT
B

lot 3

_____, Plaintiff

Simon, Defendant

Case Number: 9009-76749 DM

PAGE 2 OF ORDER

parenting time via Skype with ~~all 3~~ ^{all 3 kids.} children.

The Skype shall be supervised by Art twice

weekly on the days previously designated by the GAL: ^(Wednesdays at 4:30 and Sundays at 2pm)

Mother is not permitted to travel out of the country with the children unless and until she provides the travel itinerary to Father ~~with~~

Further, Mother is not permitted to travel outside of the country unless she provides Liam's ^{to Father}

Bar Mitzvah information/Details. This matter shall be scheduled for review hearing 6-16-2014 @ 3pm.

[Signature]
JUDGE IRS

A DATE WILL NOT BE OF THIS

Attorney for Plaintiff

Attorney for Defendant

NOTICE
THIS ORDER IS NOT IN A DATE SET BY THE COURT. YOU WILL NOT RECEIVE FURTHER NOTICE OF THIS DATE.
JUDGE'S CHAMBERS

_____, Plaintiff

Tsimkhoni, Defendant

Case Number: 2009-7160-749 DM

³
PAGE ~~2~~ OF ORDER

The parties and GAL may mutually agree to cancel the review hearing if parenting time is ~~is~~ transpiring as required by this Court Order.

Pam Ludolph shall prepare a report and provide report to the GAL and attorneys for the parties by 6-14-2014. The parenting time supervisor is intended to be Art Gallagher. Mother shall appear at all future court dates unless the Court states otherwise. There shall be no counseling with the children unless deemed necessary & appropriate by the GAL.

Lisa Janczyk
JUDGE

Attorney for Plaintiff

Attorney for Defendant

THIS ORDER CONTAINS DATE SET BY THE COURT. YOU WILL NOT RECEIVE FURTHER NOTICE OF THIS DATE. JUDGE'S CHAMBERS

Pg 3 of 3

Keri Middleditch

From: Omer Tsimhoni <omer.tsimhoni@gmail.com>
Sent: Tuesday, July 29, 2014 4:38 PM
To: Bill Lansat
Cc: Keri Middleditch
Subject: August

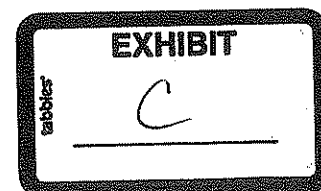
Hi Bill,

There is a good possibility I will be in Michigan later in August for a couple of weeks. I will know during the next few days.

Unfortunately, I am unable to provide a 30 day notice as recommended.

I hope to see the kids.

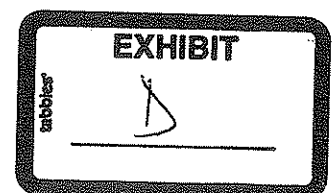
I have been in phone contact with Maya. They are in North Carolina sightseeing. I don't know when they plan to return. The kids are not speaking but Maya is communicating with me and bring very nice. No Skype, however, because there is no internet connection where they are staying.



Keri Middleditch

From: Bill Lansat <blansat@comcast.net>
Sent: Wednesday, July 30, 2014 11:07 AM
To: Renee K. Gucciardo; Keri Middleditch; Omer Tsimhoni; mayaelrn@gmail.com
Cc: art gallagher
Subject: Omer coming in

Because of the situation in the middle east, Omer would like to come in from August 12th to August 28th. This is not the 30 day notice but it is due to the uncertainties over there. Further, Father needs to find out when Maya is returning from her trip, in any event. I believe the court order requiring 30 days has a provision to excuse the requirement. Things are in flux over there so I understand the scheduling difficulty.



STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

Case No. 2009-746749 DM
Honorable Lisa Gorcyca

Tsimhoni
PLAINTIFF

-v-

Tsimhoni
DEFENDANT

At a session of said Court held in the
Courthouse in the City of Pontiac,
County of Oakland, State of Michigan
On 3/23/2015

The Court finds there is not enough
evidence to suspend parenting time @
this time. Additional testimony may be
presented at the hearing on 4-2-2015.
Plaintiff's Motion seeking counsel for the
children shall be heard April 2, 2015
@ 9am

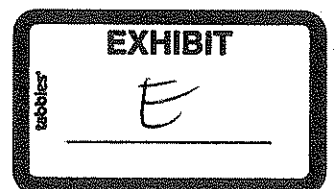
Rose may not participate in any extra-
curricular activities while he is absent
from school.

Approved as to form:

Attorney for Plaintiff

Attorney for Defendant

LISA GORCYCA, Circuit Judge



Tsimhoni, Plaintiff

Tsimhoni, Defendant

Case Number: 2009-7610749 DM

PAGE 2 OF ORDER

The GAL may meet with the children at the Court house. The GAL shall coordinate, said meeting with the children ~~with the~~ family, counselor Traci Stieb. Plaintiff shall cooperate and get the children to the courthouse and inside expeditiously. The GAL and Ms Stieb will only wait 5 minutes for a child to enter the jury room alone. If that does happen the GAL and Ms. Stieb

JUDGE

Attorney for Plaintiff

Attorney for Defendant

Tsimhoni, Plaintiff

Tsimhoni, Defendant

Case Number: _____

³
PAGE 2 OF ORDER

may leave however, Mother shall remain
in Judge Gorayca's courtroom until
noon if the meeting is at 9 and until
4:30p if the meeting is scheduled after
lunch.

Father shall have parenting time,
beginning today, 3/23 thru 3/24 and
3/30 - 4/1/2015. Parenting time shall
be from 6:30 - 7:30pm. On 3/23, 3/24, 3/25

Father shall have parenting time w/ Natalie

JUDGE

Attorney for Plaintiff

Attorney for Defendant

Tsimhon, Plaintiff

Tsimhon, Defendant

Case Number: 2009-7667498M

⁴
PAGE 2 OF ORDER


and Liam. Father shall have ~~p~~time
w/ Rose on 3/26/2015. Father shall
have parenting time w/ Natalie and ~~Rose~~ ^{Liam}
on 3/30 and 3/31. Father shall have
~~p~~time w/ Rose on 4/1/2015. The location
to be determined by Art Gallagher if
the parties cannot agree.

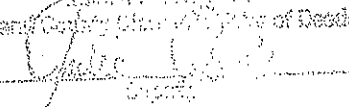
The parties shall sign-up for "Our Family
Wizard" today. Costs to be pd. by Mother.
Mother to include dates, times and locations for all
Children's events.

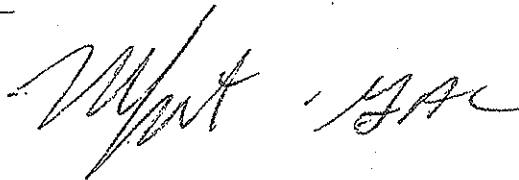
Lisa Gorevca

JUDGE


Attorney for Plaintiff


Attorney for Defendant

A TRUE COPY
LISA GOREVCA
Clerk of Court, Office of the Judge of the Peace
By 



STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
FAMILY DIVISION

MAYA EIBSCHITZ-TSIMHONI,

Plaintiff

v.

OMER G. TSIMHONI,

Defendant.



HON. LISA GORCYCA

HERTZ SCHRAM, PC
By: LISA D. STERN (P53804)
Attorney for Plaintiff
1760 S. Telegraph Rd., Ste. 300
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(248) 335-5000

SCHNELZ WELLS, PC
By: WILLIAM LANSAT (P36752)
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280 N. Old Woodward Ave., Ste. 250
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(248) 258-7074

ALEXANDER, EISENBERG,
MIDDLEDITCH & SPILMAN, PLLC
By: KERI MIDDLEDITCH (P63088)
Attorney for Defendant
600 South Adams, Suite 100
Birmingham, MI 48009
(248) 358-8880

**BRIEF IN SUPPORT OF
DEFENDANT FATHER'S MOTION FOR SOLE LEGAL AND SOLE PHYSICAL
CUSTODY OF THE MINOR CHILDREN**

FACTS

Defendant Father relies upon the facts contained in his accompanying Motion. Defendant Father's Motion to change custody should be granted as he has met the threshold to establish that a proper cause or change of circumstances exist. Defendant Father submits his request for temporary sole custody so that he and the children may have a real and uninterrupted opportunity to reestablish a relationship.

Defendant Father does not want to punish Plaintiff Mother, prevent her from seeing the children, or take the children away from her permanently. He would like both of the parties to have a healthy, loving relationship with the children.

In the event Defendant Father's motion for temporary sole custody is not granted, this may be the end of any chance for him to play any active role in the lives of these children or have any kind of relationship with them. This is a crucial next step.

LAW

Once an initial child custody order is issued, the order may not be changed unless specific thresholds are met. MCL 722.27(1)(c) provides that the court may "modify or amend its previous judgments or orders for proper cause shown or because of change of circumstances until the child reaches 18 years of age."

The Court of Appeals in *Vodvarka v. Grasmeyer*, 259 Mich App 499, 508; 675 NW2d 847 (2003) stated that in order to establish proper cause, "[t]he appropriate ground(s) should be relevant to at least one of the twelve statutory best interest factors, and must be of such magnitude to have a significant effect on the child's well-being. When a movant has demonstrated such proper cause, the trial court can then engage in a reevaluation of the statutory best interest factors."

To establish "change in circumstances" for custody modification purposes, the moving party must show that the children's living situation has **materially** changed since the entry of the last custody order as to have a significant effect on their well-being. See also *Rittershaus v Rittershaus*, 273 Mich App 462, 473; 730 NW2d 262 (2007). *Vodvarka* specifically states that not just any change will suffice; the evidence "must demonstrate something more than the **normal life changes** (both good or bad) that occur during the life of a child." *Id.*, at 513-514. (Emphasis added).

The *Vodvarka* definitions of proper cause and change of circumstances for custody modification are consistent with the goal of maintaining a child's established custodial environment and minimizing disruption in a child's life in terms of custodial placement by requiring clear and convincing evidence under the best interest facts for such a change. *Baker v Baker*, 411 Mich 567, 576-577, 309 NW2d 532 (1981).

If the moving party does not meet the initial burden of establishing proper cause or a change in circumstances, the trial court cannot completely reevaluate the statutory best interest factors or consider whether an established custodial environment exists. *Vodvarka, supra* at 509.

Pursuant to MCL 722.27(1)(c) a “court shall not modify or amend a previous custody order unless there is presented clear and convincing evidence that it is in the best interest of the child.” This applies to temporary and interim orders as well as post-judgment custody modifications. However, the trial court also has the authority to act in emergency situations in order to protect the safety and well-being of a child pending a more in depth hearing.

MCL 722.27(1)(e) provides:

“If a child custody dispute has been submitted to the circuit court as an original action under this act or has arisen incidentally from another action in the circuit court or an order or judgment of the circuit court, for the best interests of the child the court may do 1 or more of the following:

....

(e) Take any other action considered to be necessary in a particular child custody dispute.

Mann v. Mann, 190 Mich App 526, 531; 476 NW2d 439 (1991), interpreted this provision, (cited as MCL 722.27(1)(f) at that time), as giving the trial court authority to grant an interim order changing custody. Both the statute and the *Mann* court recognized that “situations might arise in which an immediate change of custody is necessary or compelled for the best interests of the child pending a hearing with regard to a motion for a permanent change of custody.” *Id.*, at 532. (Emphasis supplied).

Likewise, in *Ruppel v. Lesner*, 127 Mich App 567; 339 NW2d 49 (1983), reversed on other grounds, the Court found no reversible error where the trial court temporarily changed custody on an emergency basis from the mother to third party petitioners – the maternal grandparents – after hearing limited testimony where the child refused to return to her parents’ home and would either remain in a juvenile home or with her grandparents. The Court stated that “given the emergency nature of this temporary custody proceeding, we find no reversible error,” *Ruppel* at 573, and acknowledged that the case “must necessarily return to the trial court for a determination of the issue of permanent custody.” *Id.*, at 575. As recognized in *Ruppel*, “no rigid rule determines which interests will be protected or unprotected; the conclusion to be drawn is that what is

procedurally fair in one situation to protect the rights of individuals may be unfair in another.” *Ruppel* at 575. Where the immediate safety of a child is at risk, as Plaintiff Mother’s actions made plain in the case at bar, the procedural rights of a party must defer to the imperative need to protect a child from harm.

Nonetheless, even an emergency determination “can only be made after the court has considered facts established by admissible evidence – whether by affidavits, live testimony, documents or otherwise.” *Mann*, supra, at 533. *Mann* involved the trial court’s entry of an interim order changing custody solely on the basis of a Friend of the Court referee recommendation and pending a de novo hearing. While the Court of Appeals held that relying on the recommendation without holding a hearing constituted clear legal error, even that conclusion “does not, however, compel us to reverse the trial court’s final order changing custody, because a hearing de novo was eventually held.” *Id.*, at 533.

Both *Mann* and *Ruppel* are factually analogous to the situation presented in the instant matter. The request before this Court for an interim change of custody due to Plaintiff Mother’s severe alienation of Defendant Father from the parties’ children constitutes significant emotional/psychological abuse. In addition, the false allegations of physical abuse by one of the children, and Plaintiff Mother’s numerous violations of various court orders regarding parenting time and counseling, provide this Court with significant proper cause and change of circumstance to modify custody immediately. This Court can consider all the prior testimony offered to this Court by the parties, the Guardian Ad Litem and the parenting time supervisor, Art Gallagher. All of the aforementioned testimony is exactly the kind of evidence acknowledged to be sufficient in *Mann*, and which was far more extensive than simply the arguments of counsel.

Accordingly, this level of admissible evidence more than satisfies the standard enunciated in *Mann*, supra, to enable the Court to make a ruling on an emergency basis. Plaintiff Mother has already demonstrated to this Court that she will stop at nothing to isolate the children from their Father and will use whatever means necessary to achieve that end, no matter the cost. This Court has the discretion to award temporary custody to Defendant Father, and all the evidence supports such a decision as it would serve the children’s best interests. A full evidentiary hearing can be scheduled in the foreseeable future.


RELIEF REQUESTED

WHEREFORE, Defendant, OMER G. TSIMHONI, requests the following relief:

- A. Grant immediate interim sole legal custody of the parties' three children to Defendant Father;
- B. Schedule this matter for an evidentiary hearing regarding Defendant Father's request for permanent legal and physical custody of the children;
- C. Thereafter, grant sole legal and physical custody of the parties' three minor children to Defendant Father;
- D. Require intensive therapy focused on the reunification and reintegration of Defendant Father into the children's lives at Plaintiff Mother's sole expense;
- E. Require Plaintiff Mother to submit to a psychological and, if deemed necessary by the psychologist, a psychiatric examination at her sole expense;
- F. Permit Plaintiff Mother to have supervised visitation only after consultation and approval of a court-approved mental health professional and the GAL;
- G. For an award of attorney fees and costs for having to file this Motion in the amount of \$5,000.00;
- H. For such other relief as the Court deems just and appropriate.

Respectfully submitted,

ALEXANDER, EISENBERG,
MIDDLEDITCH & SPILMAN, PLLC

By 
KERI MIDDLEDITCH (P63088)
Attorney for Defendant
600 South Adams, Suite 100
Birmingham, MI 48009
(248) 358-8880

Dated: July 15, 2015

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
FAMILY DIVISION

MAYA EIBSCHITZ-TSIMHONI,

Plaintiff

v.

OMER G. TSIMHONI,

Defendant.



HON. LISA GORCYCA

HERTZ SCHRAM, PC
By: LISA D. STERN (P53804)
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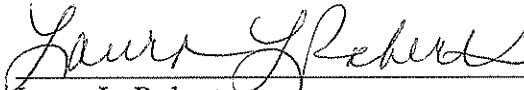
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MIDDLEDITCH & SPILMAN, PLLC
By: KERI MIDDLEDITCH (P63088)
Attorney for Defendant
600 South Adams, Suite 100
Birmingham, MI 48009
(248) 358-8880

PROOF OF SERVICE

I certify that on July 15, 2015, I served a copy of the *Praecepte, Notice of Hearing, Defendant Father's Motion for Sole Legal and Sole Physical Custody of the Minor Children and Other Relief, and Brief in Support* upon each party or attorney of record listed below by **emailing and mailing** the same to each of them with sufficient first class postage affixed. I declare that this Proof of Service is true to the best of my information, knowledge and belief.

William Lansat, Esq.
Schnelz Wells, PC
280 N. Old Woodward Ave., Ste. 250
Birmingham, MI 48009
e-Mail: blansat@comcast.net



Laura L. Roberts

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
FAMILY DIVISION

MAYA EIBSCHITZ-TSIMHONI,

Plaintiff

v.

Case No. 09-766749-DM

OMER G. TSIMHONI,

HON. LISA GORCYCA

Defendant.

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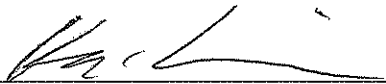
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I certify that on July 15, 2015, I served *via hand delivery* a copy of the *Praecipe, Notice of Hearing, Defendant Father's Motion for Sole Legal and Sole Physical Custody of the Minor Children and Other Relief, and Brief in Support* upon each party or attorney of record listed below. I declare that this Proof of Service is true to the best of my information, knowledge and belief.

Lisa D. Stern, Esq.
Hertz Schram, PC
1760 S. Telegraph Rd., Ste. 300
Bloomfield Hills, MI 48302



Ko C. Shih