

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI
FAMILY COURT

FILED

DEC 23 2020

JOAN M. GILMER
CIRCUIT CLERK, ST. LOUIS COUNTY

ANGELA FREINER,)	
)	
Petitioner,)	
)	Cause No. 14SL-DR02617-01
vs.)	
)	Division No. 31
JAMES JUDY,)	
)	
Respondent.)	

**ORDER AND JUDGMENT ON POST-TRIAL MOTIONS
(AMENDING JUDGMENT OF AUGUST 28, 2020)**

Before the Court are Petitioner’s Motion to Amend/Modify or for New Trial (filed on September 28, 2020) and Petitioner’s Memorandum Alerting Court to Inconsistency in Judgment (filed on December 14, 2020). The Motion to Amend/Modify or for New Trial was called and heard on November 16, 2020 and the Court took the Motion under submission at that time. Thereafter, Petitioner filed the Memorandum Alerting Court to Inconsistency in Judgment. Both Motions relate to the Court’s Modification Judgment entered on August 28, 2020. The Court has carefully considered both Motions and the arguments made by counsel and finds as follows:

1. As to the Motion to Amend/Modify or for New Trial, the Court finds the vast majority of issues that Petitioner now alleges as error were issues within her control at trial (at which time she represented herself). For instance, Petitioner now complains that the Guardian ad Litem did not testify at trial as to her recommendation (or otherwise) and, instead, after the conclusion of evidence submitted a written recommendation. As

Petitioner knows well, Petitioner could have called the Guardian ad Litem as a witness. She chose not to do so. Instead, at the conclusion of the evidence, the Guardian ad Litem *requested* that she be able to submit her recommendation in writing and *all* parties—including Petitioner—*agreed* to this process (see Trial Memorandum dated August 14, 2020). Therefore, Petitioner cannot now be heard to complain about the process to which she herself consented.

Similarly, Petitioner complains that the timing to exchange trial exhibits was too short, “denying Respondent [sic.] the ability to adequately prepare for trial.” However, the Court conducted a pre-trial conference on August 12, 2020 to discuss the logistics of a trial by video. During that conference, Petitioner did not raise any concerns about the exchange of exhibits occurring the day before the trial and, indeed, consented to the deadline and other logistics discussed and decided at the conference. By giving a specific deadline for the exchange of exhibits, all parties were in the same boat on this issue—with neither party having any advantage or disadvantage over the other. The Court memorialized that conference in its Trial Order of August 12, 2020.

Another example of alleged error raised now, but not at trial, was testimony that included “impermissible hearsay.” Again, Petitioner raised no such objection at the trial. Accordingly, Petitioner did not preserve any error on this point.

As to Petitioner’s other points of error, the Court finds none to have merit. For instance, the Court clearly recalls the testimony of Petitioner (and the minor child) on the issue of Petitioner’s desire/intent to relocate and did not “misstate or mishear” any testimony. Similarly, the Court can fairly infer that Petitioner’s failure to submit to a

Court ordered drug test was because the test results would not be favorable to Petitioner (and the Court did not need to put Petitioner on notice that the failure to take the test could result in such an inference). Petitioner even goes so far as to suggest that it was error to give Petitioner a *second opportunity* to take the drug test after the initial deadline passed, arguing there was “no need to order Petitioner” to take another test if the Court was going to make a negative inference from the missed test. The Court worked hard to ensure that the *pro se* Petitioner had every opportunity to fully and appropriately participate in the case, hence second chances. Additionally, Petitioner’s argument that it was error to include a positive marijuana drug test for Petitioner as one factor in the Court’s decision on custody is a non-starter. Marijuana is an illegal drug in Missouri and is an appropriate fact to consider when considering custody issues—and was certainly not the “only” factor the Court considered in its custody analysis (contrary to Petitioner’s argument in her post-trial motion). The Court also notes that when considering the custody factors, the Court recognized and weighed carefully the minor child’s preference to remain primarily in St. Louis with Petitioner. However, the totality of the factors weighed against the minor child’s wishes in this case.

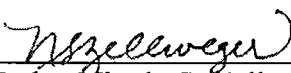
Petitioner’s Motion to Amend/Modify or for New Trial (filed on September 28, 2020) is DENIED.

2. Petitioner’s Memorandum Alerting Court to Inconsistency in Judgment (filed on December 14, 2020) is hereby GRANTED as the Court was not advised that Petitioner’s birthday is also Christmas Day. The Court hereby amends the Judgment of

August 28, 2020 by deleting from the Parenting Plan Part A “Holiday Exchange Schedule” both “Mother’s Birthday” and “Father’s Birthday.”

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Motion to Amend/Modify or for New Trial (filed on September 28, 2020) is DENIED and Petitioner’s Memorandum Alerting Court to Inconsistency in Judgment (filed on December 14, 2020) is hereby GRANTED and the Court hereby amends the Judgment of August 28, 2020 by deleting from the Parenting Plan Part A “Holiday Exchange Schedule” both “Mother’s Birthday” and “Father’s Birthday.”

SO ORDERED



Judge Nicole S. Zellweger
Family Court Judge
December 23, 2020