

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOU
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

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**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:

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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.

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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.”

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Nicole S. Zellweger

Family Court Judge

December 23, 2020