

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

ANGELA FREINER, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 JAMES JUDY, )  
 )  
 Respondent. )

Cause No. 14SL-DR02617-01

Division No. 31

<b>FILED 8/28/2020 JOAN M. GILMER CIRCUIT CLERK ST. LOUIS COUNTY</b>
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**MODIFICATION OF PATERNITY JUDGMENT**

Before the Court are Respondent’s Motion to Modify (filed on April 29, 2010) and Petitioner’s Cross-Motion to Modify Child Custody (filed on June 19, 2019). The original Paternity Judgment was entered on May 20, 2015. By agreement of all parties and the GAL, the trial in this matter was conducted by video using the Zoom application on August 14, 2020. Respondent, James Judy, appeared in person and by counsel, Kathleen Shaul, by Zoom in the same room. Petitioner, Angela Freiner, appeared in person by Zoom and proceeded to represent herself. The Guardian ad Litem (“GAL”), Venus Jackson, appeared in person and for the minor child, Dalilah Judy, by Zoom. The minor child also appeared by Zoom at the GAL’s office, but in a room by herself. Trial was called and concluded in one day. By agreement of the parties, the parties and the GAL were granted until August 24, 2020 to file affidavit(s)/request(s) for attorneys’ fees, GAL fees and/or reallocation of GAL fees, and costs (including drug testing costs). By agreement of the parties, the GAL was granted until August 24, 2020 to submit a written

recommendation on custody to the Court. On August 25, 2020, the case was fully submitted to the Court.

The Court takes judicial notice of its file. The Court considers the evidence adduced, including exhibits, the witnesses' testimony and the reasonable inferences therefrom, and the credibility of the witnesses. All fact issues upon which no specific findings are made shall be considered as having been found in accordance with the results reached. Rule 73.01(a)(2). Any finding of fact herein equally applicable as a conclusion of law is adopted as such and any conclusion of law herein equally applicable as a finding of fact is adopted as such.

The Court, being fully advised in the premises, enters its Findings, Conclusions and Judgment.

#### **Findings of Fact and Conclusions of Law**

1. Petitioner is a resident of St. Louis County, Missouri. Respondent is a resident of the Bozeman, Montana.
2. The Court has personal jurisdiction over both parties and both parties participated throughout the case.
3. Petitioner's Social Security Number is #xxx-xx-2720; Respondent's Social Security Number is #xxx-xx-1746.
4. Neither party is on active duty in the armed forces of the United States of America (now or any time since the filing of the Petition) and neither are entitled to any benefits or immunities therefrom.

5. The minor child at issue in this case is Dalilah Judy, age 14 at the time of trial (hereinafter, the “Child”).

6. Pursuant to the Paternity Judgment entered on May 20, 2015 (the “Judgment”), Petitioner and Respondent have joint legal custody of the Child and joint physical custody of the Child, with Petitioner’s address being used for mailing and educational purposes.

7. By agreement of the parties, the GAL was appointed in this case on July 29, 2019.

8. To say this has been a high conflict case would be kind. At Respondent’s request, joined by the GAL, on September 11, 2019, the Court ordered Petitioner to take a drug test no later than September 13, 2019. By the next status conference, which occurred on the morning of October 29, 2019, Petitioner had not taken the drug test and moved the Court to reconsider its order to have her take a drug test. The Court denied Petitioner’s request to reconsider and entered another order for Petitioner to submit to a drug test, this time giving her a deadline of 4:00pm that day. The next conference, set for December 16, 2019, did not occur due to a logistical issue at the Courthouse (although all parties appeared—in different locations). On February 5, 2020, the Court held another status conference. At that time, Respondent requested Petitioner be held in contempt for failing to submit to the drug test on two separate occasions. Petitioner, who appeared in Court that day with counsel, acknowledged that she did not take the drug test and also advised the Court initially that she would not submit to the drug test. The Court advised Petitioner that if she refused to take a drug test that day, she would be a guest of the St.

Louis County jail until she saw fit to comply, which would require the Child to stay with Respondent/Father in Montana until compliance. Even hearing that, Petitioner continued to refuse to take the drug test. While the Court was drafting the relevant order to find Petitioner in contempt, Petitioner agreed to take the drug test that day. Unfortunately, the drug testing location closed early due to the weather, and the Petitioner was unable to complete the test that day. Petitioner appeared for Court the next day and explained the situation and the Court gave her until that afternoon, February 6, 2020, to take the drug test. On February 6, 2020, counsel for Petitioner filed a Motion to Withdraw as counsel for Petitioner.

9. The results of Petitioner's drug test were admitted at trial as Exhibit R. Petitioner tested positive for marijuana (THC).

10. On May 21, 2020, Petitioner appeared at the hearing on her attorneys' Motion to Withdraw and consented to her counsel's withdrawal from the case. Thereafter, Petitioner represented herself (although she would often request continuances—which the Court granted—with the excuse that she was looking for/hiring new counsel, which never materialized).

11. There were other Court Orders with which Petitioner did not comply. For instance, the Court entered multiple Orders for the parties to engage in mediation. Respondent introduced evidence at trial that Petitioner failed to abide by the Court's order in this regard. Petitioner acknowledged that she did not follow the Court's order as it related to mediation, but testified that it was because of monetary issues and not a willful disregard of the Court's Orders. Additionally, the Court ordered Petitioner to

make certain payments to the GAL as and for GAL fees. While the Petitioner paid the initial amount of \$350.00, she failed and refused to pay the next two Orders (2/5/2020 of \$450.00 and 7/15/2020 of \$350.00). Petitioner provided no explanation to the Court for this failure.

12. The parties and the GAL agreed at a pre-trial conference that the Child was mature enough to testify at trial. The parties and GAL further agreed and the Court ordered that the Child was to testify at the office of the GAL and would testify first. The parties agreed that the Child would testify only before the GAL and the Court and that the parties would have no participation or ability to hear the testimony, except that the parties could submit questions to the GAL the day before the trial to ask the Child. The parties also agreed at the pre-trial conference how exhibits would be handled. A Trial Order memorializing the pre-trial conference was entered by the Court on August 12, 2020.

13. All parties appeared for the trial by video (using the Zoom application) on August 14, 2020. As planned, the GAL conducted examination of the Child *in camera*. The Child expressed her wishes to remain with Petitioner during the school year. The Child expressed her view that Respondent does not listen to her feelings and makes her feel insecure at times. She further testified that she feels manipulated at times by Respondent. She testified that she is more “comfortable” with Petitioner. The Child further testified that she is looking forward to starting high school in Afton. However, the Child also testified that it is Petitioner’s intent to move out of State with the Child as soon as the litigation ends and that the Child would like to move with Petitioner. Petitioner confirmed in her own testimony that she intends to relocate out of State with

the Child. Finally, the Child testified that she is aware that Petitioner smokes marijuana, but that the Child has never done any drugs.

14. Respondent testified that he is seeking primary physical custody of the Child because he loves her, has been denied the ability to have a relationship with her due to Petitioner's conduct, and can provide the Child with stability, which does not exist with Petitioner. Respondent testified that it took him some time after leaving St. Louis to establish himself in a new place. He testified that he is now established in Bozeman, Montana and intends to remain there. Respondent testified that he is married, has a stable job, and has a home large enough to accommodate the Child. He testified that his wife and the Child have a good relationship. He testified that he only works four days per week and can spend additional time with the Child. He testified that he lives in a caring environment and City. He testified that there are no drugs in his home.

15. Respondent testified that the Child spent her 2020 summer in Montana with him and his wife. The Child was a camp counselor at a local camp (Camp Agape) and that the Child has friends in Montana. Respondent testified that the Child also enjoyed doing outdoor activities with the family and that they visited Respondent's family over the summer.

16. Respondent testified at length to concerns he has with Petitioner and her parenting style. The concerns appear to have come to a head in 2019 when he was contacted by *Petitioner's* family that Petitioner had left the Child unattended to travel to several States (Texas, New Mexico and Arizona) and was subsequently stranded in one of those States without a way to return to St. Louis. Respondent immediately drove to St.

Louis to check on the Child. Respondent introduced bank records that show Petitioner made charges in Texas, Arizona and New Mexico during this period. Petitioner confirmed that she was, indeed, stranded out of State, but testified that the Child was safe with a family friend during this time. However, there is no evidence other than Petitioner's self-serving testimony that the Child was safe during this time and the fact that Petitioner's family was concerned enough to contact Respondent indicates that the opposite was true.

17. Other members of Petitioner's extended family have advised Respondent that there were/are problems at Petitioner's home, including drug use and lots of "questionable" people coming and going. Respondent questions whether the Child is safe at Petitioner's home. Petitioner's family members also advised Respondent that the Child has been poorly dressed at times, with ill-fitting clothes.

18. Respondent testified that he often cannot reach the Child by cell phone when she is in the custody of Petitioner. Petitioner testified that she has not blocked Respondent from her phone or the Child's phone, but that she *supports* the Child's wishes not to speak with Respondent. Respondent, on the other hand, testified that when the Child is with him, he encourages the Child to call Petitioner and recognizes the importance of the Child's relationship with Petitioner. However, Petitioner testified that when Petitioner's mother died, Respondent did not allow the Child to return to St. Louis for the grandmother's funeral and that this has caused the Child to have closure issues with her grandmother's death. Respondent denied this and explained that he told

Petitioner that he did not have the money to send the Child back to St. Louis during his custody time.

19. Respondent also testified that he would send gifts to the Child for Christmas or her birthday and that Petitioner told Respondent that she either did not give the Child the gift or told the Child that the gift was from her.

20. Respondent testified that he has had considerable trouble exercising his custody time with the Child over the last few years. He recounted a time when he came to St. Louis to exercise his custody time and Petitioner would not answer the door until he had the police with him to enforce the Judgment. He also testified that there was a glitch with a flight he had scheduled for the Child and that Petitioner refused to put the Child on rescheduled flights later the same day or the next day. There was additional testimony from Respondent about additional trouble and issues he has had with exercising custody at other times. In fact, it was hard for Respondent to name any custody exchange that went smoothly over the last few years—even while the case was pending, when one would presume Petitioner would be making every effort to coordinate custody exchanges with Respondent due to being under the watchful eye of the Court. The Court finds Respondent to be credible in his testimony about the significant troubles—all due to Petitioner—that he has had exercising custody under the Judgment.

21. Petitioner also testified to having issues with Respondent over custody exchanges. Petitioner testified that Respondent failed to return the Child to her after one visit. Petitioner and Respondent both testified that in the summer of 2017, Petitioner had to drive to Montana to pick up the Child after Respondent refused to return her when



Petitioner thought the Child was due back to St. Louis. Respondent testified that this issue was the result of the parties interpreting the Parenting Plan differently (and not an intentional act by him to deprive Petitioner of her custody time). The Court again finds Respondent credible in this regard.

22. Respondent also testified that the Child has advised him at times that she will not be visiting him. Apparently this happened during the 2019 holiday break from school and the Respondent had to involve the GAL and the Court. It is unclear to the Court whether the Child's message was really from the Child (and were the Child's real feelings) or was from Petitioner and the Child was used as a messenger. In any event, the one thing that is crystal clear to the Court is that *if* these were the feelings of the Child, Petitioner encouraged such feelings, rather than encouraging the Child to visit Respondent.

23. Respondent also testified that Petitioner has made legal decisions for the Child without consulting him. For instance, Petitioner signed a parental consent form for the Child to get her nose pierced when she was thirteen years old. Respondent testified that he would have objected to the piercing because the Child was thirteen and, in his opinion, not mature enough to make the decision to pierce her nose.

24. Respondent testified that, in the past, the Child has told Respondent that she wanted to live primarily with him. He also testified that the Child did not express that same desire to Respondent while she was with him this summer. The Court finds Respondent to be credible on this point and believes that, at one time, the Child did wish to live primarily with Respondent, although that is not her current desire. Respondent

also testified that he believes the Child is conflicted because she loves both of her parents. The Court finds this statement to be absolutely true.

25. Respondent testified that he researched the local high school in Bozeman, Montana, including speaking with the principal, and determined that it is a superior high school to the one the Child would attend in St. Louis from Petitioner's address. The high school in Bozeman has a live component to classes, notwithstanding the COVID-19 pandemic.

26. Petitioner testified that the Child has done very well in school and that she is excited to attend Afton High School. Petitioner also testified that she intends to move as soon as the litigation completes, which would mean that the Child may not be attending Afton High School regardless of how that Court rules. At this time, Afton High School is doing classes entirely remotely due to the COVID-19 pandemic.

27. Petitioner and the GAL asked questions of Respondent about his past/current criminal convictions. Respondent testified that he is on probation until July of 2021 for disorderly conduct related to a domestic/family dispute that involved his wife and his step-daughter. He testified that there was no physical violence or drinking involved in the incident. Respondent also acknowledged that his 19-year old step-daughter (the Child's step-sister), who no longer resides with Respondent and his wife, gave the Child the address of a "safe house" if she needed it during her summer visit with Respondent. Respondent testified that he has a temper and that there have been arguments at his house, although he testified that things have improved and he is working

on this issue. These facts trouble the Court greatly, but the Court finds Respondent credible in his testimony that he is working on his anger issues.

28. Petitioner and the GAL also asked Respondent about the past criminal convictions of Respondent's father. Respondent testified that he learned during the pendency of this case—from the GAL—that his father is a registered sex offender. His testimony that he was not aware of this until the GAL brought this to his attention during the case is a bit suspect.

Additionally, Respondent testified that he took the Child to Arkansas to visit his parents. At that time, the GAL raised a concern about the Child spending nights at Respondent's father's house and Respondent told the GAL that he was staying at a hotel. However, Respondent acknowledged during testimony that he only stayed in a hotel one night and spent the rest of the nights at his parents' house, which was in complete disregard of the GAL's communications with Respondent. Such flagrant disregard for the GAL's position (that the Child not spend an overnight at paternal grandfather's house) concerns the GAL and this Court.

29. Petitioner played a recording for the Court of a phone conversation between Respondent and the Child. The primary subject of the call was the Child accusing Respondent of not signing an authorization form for her to obtain counseling. Both the Child and the Respondent yelled at each other during the conversation. Respondent confirmed his voice on the recording and testified that he agreed that the Child needed counseling, but had not been provided the form, which he tried to explain to the Child on the call. Respondent further testified that he was upset that Petitioner put the Child in the

middle of the issue—and the litigation in general. Respondent also testified that, to his knowledge, upon signing the consent form, the Child only attended one counseling session. He inquired with Petitioner why additional sessions were not scheduled and received no response.

It is curious to this Court why the call was recorded in the first place and who recorded the call—the Child or Petitioner. Either way, the recording certainly demonstrates that Petitioner has improperly (1) involved the Child in the litigation and (2) used the Child as a messenger between her and Respondent (this time, to obtain his signature on a consent to counseling).

30. Petitioner asked Respondent whether he has any medical conditions, which could affect his parenting, which Respondent denied. Petitioner also asked Respondent why Respondent has not come to any of the Child's events in St. Louis. Respondent testified that Petitioner has not advised Respondent of the Child's schedule and has not included him in activities with the Child. However, Respondent could contact the school or other entity that schedules events in which the Child participates and obtain a schedule if he wanted to attend the Child's activities. Similarly, Respondent testified that Petitioner did not list him on the school's records. But Respondent was certainly capable of contacting the school and providing his contact information.

31. Despite Petitioner's Cross-Motion which requests sole legal and physical custody of the Child (with visitation to Respondent), it was unclear to the Court from Petitioner's testimony at trial what modification to the current custody arrangements under the Judgment Petitioner wanted. Rather, it appeared to the Court that Petitioner

seeks to keep the same custody arrangements in the Judgment, such that the Child would be with Petitioner during the school year and spend holidays and summers with Respondent in Montana. (Petitioner never submitted a proposed parenting plan to the Court.)

32. Petitioner denied Respondent's allegations that her home is a bad environment. She reiterated in her testimony that the Child wishes to remain primarily with Petitioner. Petitioner testified that the Child has friends in St. Louis and takes part in many activities, including cheerleading. Petitioner testified that she is currently mostly unemployed due to COVID-19 and that, before it hit, she cleaned houses and made good money doing it.

33. The GAL questioned Petitioner about Petitioner sending a screenshot of a text message string between Petitioner and the Child on the day of trial to all parties. The screenshot revealed that, after the Child testified, Petitioner asked the Child about her testimony, despite the Court's prohibitions to the parties not to discuss the litigation or the Child's testimony with the Child.

34. When the GAL asked Petitioner whether she set a good example for the Child by disregarding the Court's Orders and the authority of the Court, the Petitioner responded that this was a "tough question" because she wanted the Child "to be strong." This response troubles the Court greatly. As set forth above, it is clear that Petitioner does not believe she must follow the Court's Orders (including the Parenting Plan), but this response implies that Petitioner believes following the Court's Orders could—somehow—be a form of weakness or perceived as weakness.

35. The GAL submitted a Verified Recommendation to the Court on August 24, 2020, after hearing all of the evidence at trial. The GAL concluded that the Child moving to Montana to spend the school year with Respondent/Father was in the best interests of the Child. Her primary reasons for this conclusion included Petitioner's blatant disregard of the Court's Orders during the pendency of the litigation and Petitioner's incessant and intentional interference with Respondent's relationship with the Child. Indeed, the GAL found Petitioner's conduct "actively alienated the daughter towards her Father." The Court agrees and finds Petitioner's conduct to be the cause of the negative feelings that the Child has towards Respondent.

#### **CHANGE IN CIRCUMSTANCES**

36. Pursuant to Missouri Revised Statute § 452.410, the Court shall not modify a prior custody decree unless there is a change in circumstances of the child or her custodian and the modification is necessary to serve the best interest of the child.

37. The Court finds that there has been a substantial change in circumstances which require a modification of the Judgment. Some of the substantial and continuous changes include, but are not limited to, Petitioner's disregard of the custody schedule, Petitioner's drug use, Petitioner's poor judgment related to parenting the Child (including leaving the Child with a family friend for an extended period of time when Petitioner went out of State), Petitioner's failure to consult with Respondent on legal decisions, and Petitioner's overt acts intended to harm the Child's relationship with Respondent. There was additional evidence about Petitioner's lifestyle that the Child witnessed, but which

was entirely inappropriate for the Child to have witnessed, including Petitioner smoking marijuana at the home.

### **CUSTODY**

38. Having determined that a change in circumstances exists, Missouri Revised Statute § 452.375.2 requires the Court to determine custody in accordance with the best interests of the Child. When determining all issues related to custody, the Court must make findings after considering all relevant factors, including those enumerated in Missouri Revised Statute § 452.375.2. The Court finds as follows:

**(1) The wishes of the children’s parents as to custody and the proposed parenting plan submitted by both parties.**

Respondent does not seek to change the joint legal custody established under the Judgment. However, Respondent seeks joint physical custody of the Child using Respondent’s address for the Child (for education and mailing) and has submitted a proposed parenting plan, parts A and B as Exhibit I. Respondent wishes for the Child to attend school from his address in Bozeman, Montana. While Petitioner objects to this change and her Cross-Motion seeks sole legal and physical custody of the Child, Petitioner did not file a proposed parenting plan with the Court during the pendency of the case, nor introduce a proposed parenting plan at trial. The GAL filed her Verified Recommendation on August 24, 2020, which included a proposed parenting plan with Respondent receiving sole physical custody of the Child and joint legal with a carve out.

**(2) The interaction and interrelationship of the child with parents, siblings, and any other person who may significantly affect the child's best interests.**

Respondent testified to his bond and care for the Child. Respondent is married and Respondent testified that his wife has a good relationship with the Child. Respondent testified that the Child has a step-sister, with whom she is close, and also has friends in Montana. While the Child may think Respondent does not listen to her or sympathize with her feelings, Respondent's testimony, which is credible, establishes that the two have a good relationship.

It is clear to the Court that Petitioner also has a strong bond with the Child. However, the Court has great concerns about Petitioner negatively affecting the Child's feelings towards Respondent.

Additionally, the GAL testified to the fact that the Child is bonded to her half-sister (Petitioner/Father's other child). However, the half-sister no longer lives with Respondent and his wife.

Based upon the credible evidence at trial and as set forth above, this factor weighs strongly in favor of granting residential physical custody status to Respondent.

**(3) The needs of the child for a frequent, continuing and meaningful relationship with both parents and the ability and willingness of parents to actively perform their functions as mother and father for the needs of the child.**

Respondent testified to the various parenting functions he performs for the Child, including cooking, etc. He is willing and able to perform his duties as a parent and wishes to expand his role as a parent. Similarly, Petitioner testified to various parenting



functions she performs, including setting up doctor appointments, school tutors, etc. However, Petitioner has also exhibited extremely poor judgment related to parenting the Child, including leaving the Child with a family friend for an extended period of time when Petitioner went out of State and was stranded out of State; her blatant disregard for the Court's Orders; and her drug use.

It is clear that the Child has a need for a meaningful relationship with both parents.

Based upon the credible evidence at trial and set forth above, this factor weighs strongly in favor of granting residential physical custody status to Respondent.

**(4) Which parent is more likely to allow the child frequent, continuing and meaningful contact with the other parent.**

Based on the testimony, it appears that Respondent will follow the Court's orders and allow the Child to see Petitioner as appropriate and as ordered. Based on the testimony at trial and the Court's review of the Court file, the Court finds Petitioner will not follow the Court's orders, including any parenting plan ordered by the Court. Indeed, during the pendency of the case, Petitioner refused to follow the parenting plan (so that Respondent had to involve the police in at least one custody exchange), Petitioner refused to take the Court-ordered drug test, Petitioner refused to pay the GAL as ordered, and Petitioner failed to comply with the mediation order. Petitioner essentially testified that following the Court's Orders could be a form of "weakness," which does not lead the Court to believe that Petitioner will suddenly change her tune and begin following a new parenting plan put in place with this Judgment. Additionally, Petitioner's extremely negative comments to Respondent and her admitted lack of encouragement for the Child

to spend time with Respondent show the Court that Petitioner is not likely to allow the Child frequent or meaningful contact with Respondent. Indeed, the GAL found that Petitioner has “actively alienated the daughter towards her Father.”

Based upon the credible evidence at trial and set forth above, this factor weighs strongly in favor of granting residential physical custody status to Respondent.

**(5) The child’s adjustment to the child’s home, school and community.**

The testimony supports the conclusion that the Child is well-adjusted to her environments in both St. Louis and in Bozeman.

**(6) The mental and physical health of all individuals involved, including any history of abuse of any individuals involved . . . .**

Both parents have made errors in judgment during the case, which could be taken into account in this or other factors. Respondent, for instance, allowed the Child to stay overnight at parental grandfather’s house after the GAL recommended against it. Additionally, Respondent has a criminal conviction for disorderly conduct related to a domestic dispute. This is troubling to the Court, especially in light of Petitioner’s allegations that he hit her during their relationship.

Petitioner, on the other hand, left the Child with a family friend when she went out of State (which concerned Petitioner’s relatives in St. Louis enough to contact Respondent) and then could not return to St. Louis such that the Child would have been with this family friend indefinitely had Respondent not come to St. Louis. Additionally, Petitioner tested positive for drug use and refused to take the initial drug tests, which infers that those tests would have revealed drug use.

**(7) The intention of either parent to relocate the principal residence of the children.**

It was obvious from Respondent's testimony that he is extremely happy in Bozeman, believes it is a wonderful environment and has no intention of relocating.

Petitioner, on the other hand, openly testified that she intends to move out of state with the Child and that, had the litigation ended sooner, she would have already moved. Indeed, she testified that she was waiting for the litigation to end to move. Accordingly, Petitioner is not concerned about the effect of relocating the Child out of St. Louis.

**(8) The wishes of the children as to the children's custodian.**

As set forth above, the Child has testified that she wishes to remain with Petitioner as the primary custodian/residential parent.

Accordingly, this factor weighs strongly in favor of maintaining Petitioner as residential parent. It also indicates that Petitioner should continue to have significant custody time with the Child regardless of who is named residential parent.

**LEGAL CUSTODY**

39. Petitioner seeks sole legal custody, but did not present sufficient supporting evidence to demonstrate why that would be in the best interests of the Child. Respondent requests the Court enter joint legal custody (which is what the parties currently share). Because the credible evidence shows that the parties cannot effectively communicate, the Court will require both parties to enroll in Our Family Wizard for at least the next year for purposes of communicating. Because Respondent believes that the parties can maintain and share joint legal custody, the Court will set aside its concern about

communication between the parties (having required a parenting communication application).

40. The Court has considered the above factors, the testimony of the parties and the recommendation of the GAL. The Court finds it is in the best interests of the Child that the parties share joint custody with the carve out recommended by the GAL.

41. Accordingly, pursuant to Missouri Revised Statute § 452.375, having considered all relevant factors, including but not limited to those enumerated above, the Court concludes that the Child's best interests are served by awarding joint legal custody of the Child pursuant to the Parenting Plan attached hereto as Exhibit 1.

### **PHYSICAL CUSTODY**

42. Pursuant to Missouri Revised Statute § 452.375, having considered all relevant factors, including but not limited to those enumerated above, the Court concludes that the Child's best interests are served by awarding joint physical custody, using Respondent/Father's address for education and mailing purposes as set forth in the Parenting Plan attached hereto as Exhibit 1.

43. In general, the credible evidence at trial leads the Court to conclude that the Child remaining primarily with Petitioner/Mother (during the school year) is not in the best interests of the Child. As set forth more fully above, some of the reasons for this conclusion include but are not limited to: Petitioner's complete disregard of the custody schedule and other Orders of this Court; Petitioner's drug use; Petitioner's poor judgment related to parenting the Child (including leaving the Child with a family friend for an extended period of time when Petitioner went out of State); Petitioner's failure to consult

with Respondent on legal decisions; and Petitioner's overt acts intended to harm the Child's relationship with Respondent.

### **CHILD SUPPORT**

44. In Missouri, "to determine the correct amount of child support, a trial court must apply a two-step analysis under Rule 88.01 and Section 452.340. The trial court must first calculate the presumed child support amount either by accepting the Form 14 calculations from one of the parties or by preparing its own. After determining the presumed amount, the trial court must then consider whether to rebut the presumed amount as unjust and inappropriate after considering the relevant factors." *Fowler v. Fowler*, 504 S.W.3d 790, 801 (Mo. Ct. App. 2016) (internal citations omitted).

45. Petitioner did not submit a proposed Form 14 to the Court.

46. Respondent submitted a proposed Form 14 to the Court as Exhibit J. Respondent used \$2,500.00 as Petitioner's gross monthly income. However, Petitioner testified that she made much less than that when the case was filed and, since March 2020, has been mostly out of work due to the COVID-19 pandemic. However, because the COVID-19 pandemic is temporary and the economy is improving, the evidence supports using the gross monthly income set forth on Petitioner's Statement of Income and Expense (filed on June 19, 2019) of \$1,485.00. Therefore, the Court declines to use Respondent's Form 14 and has run its own Form 14 attached to the Parenting Plan.

47. The Court's Form 14 sets child support at \$60.00 per month, using \$1,485.00 as Petitioner's gross monthly income; \$4,160.00 as Respondent's gross monthly income; and using a 20% overnight visitation credit (which would be a

reasonable credit if Petitioner exercises all time allocated to her under the Parenting Plan Part A).

48. Respondent testified that, if the Court were to create a custody schedule that would otherwise require Petitioner to pay Respondent, he waived his request for child support from Petitioner. In light of the Court's Parenting Plan Part A and Respondent's dismissal of his request for child support, after consideration of all relevant factors pursuant to Missouri Revised Statute § 452.340.8 and Form 14, the child support calculated on the Court's Form 14 is rebutted as being unjust and inappropriate.

49. The Court finds that the child support amount paid by Petitioner to Respondent shall be \$0.

50. After consideration of all of the evidence, the Court hereby enters the attached Parenting Plan Part B and requires the parties to comply with all of its terms.

### **ATTORNEYS' FEES**

51. Respondent requests attorneys' fees from Petitioner. In support thereof, Respondent has submitted the Affidavit of Attorney Fees and Costs in the amount of \$16,930.61.

52. Section 452.355 of the Missouri Revised Statutes allows the Court to award attorney's fees from "from time to time after considering all relevant factors including the financial resources of both parties, the merits of the case and the actions of the parties during the pendency of the action."

53. The Court has considered the difference in the resources of the parties, as discussed above and set forth on the Form 14. The Court has also considered the various

positions of the parties (and reasonableness thereof). After considering the statutory factors and all of the facts in this case *in toto*, including but not limited to the increase of attorneys' fees to Respondent due to Petitioner's conduct and disregard of numerous Court Orders, the Court awards Respondent attorneys' fees in this case in the amount of \$5,000.00 against Petitioner. While the Court has not awarded all of the fees requested, the Court notes that it finds Respondent's attorneys' fees to be entirely reasonable in light of the work required of his counsel in this case. The Court considered other factors in awarding \$5,000.00 of the requested \$16,930.61 (such as resources of the parties, etc.).

#### **DRUG TEST FEE**

54. Respondent initially paid for Petitioner's drug test because he requested it. The cost was \$289.00. The Court awards Respondent \$289.00 against Petitioner as and for reimbursement of that cost in light of Petitioner's positive drug test.

#### **GAL FEES**

55. The GAL filed a Verified Motion for Judgment for GAL Fees on August 24, 2020. The GAL has incurred \$3,978.17 in this case. The Court finds these fees to be more than reasonable in light of the facts and investigation required in this case. The GAL confirmed that Respondent/Father paid the previously Court ordered amount of \$1,150.00 already assessed to him. Petitioner/Mother paid the GAL \$350.00 of the \$1,150.00 already ordered by this Court for her to pay. The GAL is, therefore, left with an unpaid balance of \$2,478.17. The GAL requests a joint and several judgment against the parties in the unpaid/unallocated amount of \$1,678.17 and asks the Court to confirm

the prior judgment against Petitioner of \$800.00, which Petitioner has failed and refused to pay.

56. The Court takes into consideration the parties conduct when allocating and reallocating the GAL fees between the parties. Having considered various factors in this case, including Petitioner's conduct in this litigation, the Court finds the previous assessment of 50/50 in GAL fees is inappropriate as it relates to the unallocated amount of GAL fees. Therefore, while the Court makes the outstanding balance of GAL fees joint and several against the parties, the Court apportions the unpaid amount as between the parties as follows: \$0.00 assessed against Respondent/Father and \$1,678.17 assessed against Petitioner/Mother.

57. The Court declines to re-apportion the previously ordered GAL fees as there were issues on Respondent's side that necessitated the GAL to perform work, such as Respondent's father's sex offender status and the criminal charge of disorderly conduct.

58. In summary, the Court awards the GAL, Venus Jackson, a judgment in the amount of \$1,678.17 against Petitioner and Respondent, jointly and severally, as and for GAL fees, with the allocation as follows: \$0.00 assessed against Respondent/Father and \$1,678.17 assessed against Petitioner/Mother. Respondent's prior payments of \$1,150 satisfy the judgments entered against him and in favor of the GAL that were ordered prior to this Judgment. A judgment is also entered in favor of GAL Venus Jackson and against Petitioner/Mother for \$800.00, as and for previously ordered, but unpaid GAL fees.



WHEREFORE, the Court ORDERS, ADJUDGES AND DECREES:

A. The Court enters the Parenting Plan Part A attached hereto as Exhibit 1. The parties are ordered to perform all of the terms of the Parenting Plan Part A attached hereto as Exhibit 1, all of which take effect immediately.

B. The Court enters the Parenting Plan Part B attached hereto as Exhibit 1. The parties are ordered to perform all of the terms of the Parenting Plan Part B attached hereto as Exhibit 1, all of which take effect immediately.

C. Judgment is entered in favor of Respondent James Judy and against Petitioner Angela Freiner in the amount of \$5,000.00 as and for attorneys' fees.

D. Judgment is entered in favor of Respondent James Judy and against Petitioner Angela Freiner in the amount of \$289.00 as and for the cost paid by Respondent for Petitioner's drug test.

E. Judgment is entered in favor of the GAL, Venus Jackson, and against Petitioner and Respondent, jointly and severally, \$1,678.17 as and for GAL fees, with the allocation as follows: \$0.00 assessed against Respondent/Father and \$1,678.17 assessed against Petitioner/Mother.

F. The relocation requirements of Mo. Rev. Stat. § 452.377 shall apply to Petitioner and Respondent.

G. The costs of Court shall be paid from the cost deposit previously posted with the Court.

**IT IS SO ORDERED**

(verify signature on original)

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Nicole S. Zellweger, Judge  
Family Court, Division 31



Exhibit B *AMF*  
Refusal for Cause

August 28, 2020