

FEB 23, 2022 03:23 PM

  
Cathelene Robinson, Clerk  
Fulton County Superior Court

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

O.N.W.,	)	
	)	
Petitioner	)	
	)	CIVIL ACTION
vs.	)	FILE NO.
	)	
R.G.W.,	)	
	)	
Respondent	)	

**COMPLAINT FOR MODIFICATION OF CUSTODY/  
PARENTING TIME, COMPLAINT FOR MODIFICATION OF CHILD  
SUPPORT AND APPLICATION FOR CITATION FOR CONTEMPT**

COMES NOW Plaintiff, O.N.W., and shows this Court the following:

1.

Respondent is a resident of Fulton County, Georgia is subject to the jurisdiction of this Court. Respondent may be personally served at his home in Fulton County, or wherever he may be found, unless service is otherwise acknowledged as provided by law.

2.

The parties are the parents of two (2) minor children, C.N.W., a female born in 2016 and C.B.N.-W, male, born in 2018.

3.

The parties were divorced by Order of this Court on April 30, 2020. The Final Judgment and Decree incorporated the Parenting

Plan, Settlement Agreement and Child Support Worksheets that had been prepared in the case and were approved by the Court.

4.

Pursuant to the terms of the Parenting Plan, the parties were awarded joint legal custody and Petitioner was awarded primary physical custody of the children.

#### **COUNT I**

#### **MODIFICATION OF CUSTODY/PARENTING TIME.**

5.

The allegations included in Paragraphs 1-4 are incorporated herein.

6.

Petitioner shows the Court that at the time the parties divorced they agreed that the post-nursing schedule for both minor children would be as follows:

- a) Father would have the children every other weekend from after school or 6:00 p.m. if school was not in session, until school resumed on Tuesday, or 6:00 p.m. if school was not in session.
- b) During weeks when the Father did not have Parenting Time on Friday the immediately preceding weekend, he would have the children from the release of school on Monday, or 6:00 p.m. if school was not in session, until school resumed on Wednesday, or 6:00 p.m. if school was not in session.

c) The Parenting Plan also included an alternating holiday schedule and provided for Parenting Time for both parents during the summer.

7.

Since the time of the entry of the Final Judgment and Decree, Respondent has not exercised the parenting time schedule that was signed and executed at the time of the divorce.

8.

In mid-2020, work-related obligations began to take Respondent regularly out of town for extended periods of time.

9.

When Respondent is in Atlanta and exercises his parenting time with the children, he often solicits the assistance of caretakers and friends, thereby delegating his time to other individuals, rather than adhering to the "Right of First Refusal" signed in the original parenting plan.

10.

Petitioner shows that since the entry of the Final Judgment and Decree, a substantial change of circumstances has taken place regarding the welfare of the children which justifies a modification of the previous custody arrangement.

11.

Since the time that the Parenting Plan was entered, Respondent has taken on additional professional responsibilities which result

in most weekdays (Monday through Friday, sometimes Saturday) being spent outside of Atlanta.

12.

Petitioner has the opportunity to enroll in a Doctoral Program at Harvard University which will cause her and the minor children to relocate from Atlanta to Cambridge, Massachusetts.

13.

Petitioner seeks a modification of the existing Parenting Plan to allow Petitioner to relocate with the children and permit modification of Respondent's Parenting Time with the children.

14.

Petitioner is asking that the Custody and Parenting Time Schedule be modified in accordance with the changed circumstances of the parties and that a new schedule be arrived at that offers stability, consistency and is in the best interests of the minor children.

15.

It has been necessary for Petitioner to retain counsel in order to pursue this action. Therefore, she seeks an award of attorney's fees and expenses of litigation pursuant to O.C.G.A.

§ 19-9-3(g).

COUNT II

MODIFICATION OF CHILD SUPPORT

16.

Petitioner incorporates the allegations of Paragraph 1 through 4 herein.

17.

Petitioner shows that since the entry of the Final Judgment and Decree, there has been a substantial change in the income and financial circumstances of the parties which justifies an increase in the child support previously awarded.

18.

Petitioner shows further that the following factors are offered in support of her request for an upward award of child support which she is currently requesting:

- a) Petitioner's income has substantially decreased;
- b) Respondent's income has substantially increased;
- c) The needs of the minor children have increased; and
- d) Respondent has failed and refused to exercise his Parenting Time as previously agreed and ordered;
- e) Respondent has failed and refused to reimburse Petitioner for childcare expenses for the children during Respondent's Parenting Time, as indicated in the Final Judgment and Decree of Divorce, "In the event either parent assumes the parenting time of the other parent, and the receiving

parent incurs reasonable and necessary childcare costs, the parent who should have parenting time under the Parenting Plan shall reimburse the other parent for said costs within thirty (30) days of being presented with proof of payment of said costs";

f) The child support should be revisited in accordance with Petitioner's request for relocation;

g) Petitioner's request for relocation will bring with it an additional decrease in Petitioner's income, as Petitioner will be a full-time student for the next two (2) years and will be unable to work full-time, as she endeavors to enroll and complete doctoral studies, a goal Petitioner began years prior to the marriage;

h) Petitioner requests cost of living and daycare considerations by the Court in evaluating the new child support amount.

19.

It has been necessary for Petitioner to retain counsel to pursue this action. Therefore, she seeks an award of attorney's fees and expenses of litigation pursuant to O.C.G.A. § 19-6 15(k) and O.C.G.A. § 19-9-3(g).



COUNT III

APPLICATION FOR CITATION FOR CONTEMPT

20.

Paragraphs 1-4 of this Complaint are hereby incorporated herein.

21.

Paragraph 10 of the Final Judgment and Decree awarded Petitioner certain items of personal property which she was to be able to retrieve from the marital home within sixty (60) days of the entry of the Final Order. Petitioner has made multiple requests since the entry of the Final Decree to resolve this issue so that she could come to the home and remove her items. However, Respondent has been uncooperative and has refused to allow her to return to the home for the purpose of retrieving the items that she was awarded in the Final Judgment and Decree.

22.

Respondent should be found in willful contempt for his failure to turn over Petitioner's personal items to her as required by the Settlement Agreement and Final Judgment and Decree.

23.

Paragraph 3(K) of the Settlement Agreement specifically provides that in the event either parent assumes the parenting time of the other parent, and the receiving parent incurs reasonable and necessary childcare costs, the parent who should

have parenting time under the Parenting Plan shall reimburse the other parent for said cost within thirty (30) days of being presented with proof of payment of said cost.

24.

Respondent should be found in willful contempt of this provision. Respondent has failed and refused to reimburse Petitioner for childcare costs that she has incurred during Respondent's time, often leaving Petitioner without adequate coverage. This is particularly the case during weekdays, as Respondent was awarded two weekdays per week which he can no longer fulfill, as he is not in the City of Atlanta most weekdays.

25.

Petitioner shows the Court that the idea of reimbursement of expenses has not worked between Petitioner and Respondent. Disputes have arisen regarding the reasonable costs regarding care of the children while Respondent is out of town on an extended basis. The fact that Respondent has failed to reimburse Petitioner has left Petitioner financially strapped, leaving the children in her care when she should be concentrating on work-related and school-related responsibilities. When Respondent has reimbursed her, it has often been accompanied with an extended questioning regarding the value of and need for the services provided.



26.

That Petitioner be awarded reimbursement for the children's expenses recorded in the parenting app, Our Family Wizard, which was ordered by the Court for such purposes in the Final Judgment and Decree and have since been declined by Defendant. This Paragraph will be amended to include the specific amounts owed pursuant to violations of Paragraph 3(K) of the Settlement Agreement.

27.

The Parenting Plan Ordered that, "For so long as C.B.N.-W. is nursing or until December 31, 2020 (whichever comes first), on the days when Father has overnight parenting time with C.N.W. as set forth in the schedule below, mother will pick C.B.N.-W. up from Father's home at 9:00pm."

28.

Petitioner shows that during Labor Day weekend of 2020, Petitioner and Respondent arranged in writing, via Our Family Wizard and text, for Petitioner to meet the children in Savannah, Georgia, where Respondent was traveling with the children for work, and pick them up before 9:00 p.m. Petitioner travelled to Savannah and Respondent changed his mind. Instead, he left the minor children with a babysitter while he worked for extended periods that weekend.

29.

Petitioner further states that Respondent did not inform Petitioner of the children's whereabouts, violating the provision which states, "The traveling parent shall provide the other parent with a detailed itinerary, including locations and telephone numbers where the child and parent can be reached at least three (3) days before traveling."

30.

Respondent routinely neglects to fulfil the provision in the Parenting Plan which requires seven (7) day notice for travel out of town with the minor children, and also fails to provide a detailed itinerary with the travel arrangements and contact information for Petitioner to reach the minor children during the designated contact hours of 5:00 - 9:00 p.m.

31.

Petitioner shows the Court that when Respondent has not returned to Atlanta, he fails to communicate this to the Petitioner, thereby violating the Right of First Refusal provision of the Final Judgment and Decree, which states that "Each party shall have the 'right of first refusal' to care for the minor children during the other party's parenting time in the event that parent is unavailable to care for the minor children for a period of eight (8) hours or more," refusing to offer to leave the children with Petitioner and instead choosing to have the children

picked up from school by friends and leaving them with various babysitters overnight.

32.

Defendant is entitled to an award of attorney's fees and expenses of litigation for having to file this motion. Therefore, she seeks an award of attorney's fees for the contempt portion of this case pursuant to O.C.G.A. § 19-6-2(a).

WHEREAS, Petitioner prays:

- a) That this Complaint and Summons be served on Respondent;
- b) That the Court modify Custody and Parenting Time for Respondent as previously awarded;
- c) That there be an upward modification of child support;
- d) That Respondent be found in willful contempt for his failure to abide by the Court's orders;
- e) That Petitioner be awarded attorney's fees and expenses of litigation; and
- f) For such other and equitable relief as this Honorable Court deems just and proper.

Respectfully submitted,

/s/ Celeste Findlay Brewer

CELESTE FINDLAY BREWER  
Attorney for Petitioner  
State Bar No. 556700

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VERIFICATION

Personally appeared before the undersigned officer duly authorized to administer oaths, O.N.W., who deposes on oath that the facts set forth in the above and foregoing Complaint for Modification of Child Support and Custody/Parenting Time and Application for Citation for Contempt are true and correct.



O.N.W.

Sworn to and subscribed  
Before me this 17 day  
Of February 2022.

