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CAUSE NO. 360-419539-07

IN THE INTEREST OF

RONALD J. TOYE

A CHILD

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IN THE DISTRICT COURT

322nd JUDICIAL DISTRICT

TARRANT COUNTY, TEXAS

**MODIFICATION OF SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP AND
REQU EST FOR TEMPORARY RESTRAINING ORDERS**

Discovery Level

Discovery in this case is intended to be conducted under Discovery Control Plan 2 of rule 190 of the Texas Rules of Civil Procedure.

Parties

This suit is brought by ANDREA L. SEDLEMEYER, Petitioner. The last three numbers of Petitioner's Social Security number are 937.

Respondent is RONALD J. TOYE.

Petitioner is the MOTHER of the child the subject of this suit.

Petitioner has standing to bring this suit in that she is the Mother of the child.

Jurisdiction

This court has continuing jurisdiction of this suit or of the children the subject of this suit.

Child

The following child is the subject of this suit:

Name: RONALD J TOYE
Sex: Male
Birth date: 5/31/2004
County of residence: Tarrant

FILED
TARRANT COUNTY
2012 OCT 11 AM 8:19
THOMAS A. WILDER
DISTRICT CLERK

Person Entitled to Citation

Respondent and father of the children the subject of this suit is RONAD J. TOYE III.

Process should be served at 820 Perry Drive, White Settlement, TX 76108.

Previously Ordered Conservatorship

The parents of the child, the subject of the suit an Order in Suit to Modify Parent-Child Relationship in the 360th District Court of Tarrant County in cause number 360-419539-07 entered on or about 3/30/2010 (refer to attached Petitioner's exhibit one). The Order in Suit to Modify Parent-Child Relationship decreed that parents are appointed Joint Managing Conservators of the child the subject of the suit. By decree the 2010 possession schedule is as follows:

Weekend and Weekday Possession

FATHER shall have the right to possession of the child as follows:

1. Weekends – Every other weekend beginning at the time the child's school is regularly dismissed (or 6:00 p.m. in the summer when school is not in session) on every other Friday beginning February 5, 2010, and ending at the time the child's school resumes on Monday after the weekend.
2. Wednesdays and Thursdays – On Wednesday and Thursday of every week beginning at the time the child's school is regularly dismissed on Wednesday and ending at the time the child's school resumes (or 6:00 p.m. in the summer when school is not in session) on the following Friday.
3. Spring Break in Odd- Numbered years – In odd numbered years beginning at the time the child's school is regularly dismissed on the day the child is dismissed from school for the school's spring vacation and ending at 6:00pm on the day before school resumes after that vacation.

MOTHER shall have the right to possession of the child a follows:

1. Weekends – Every other weekend, beginning when the child's school is regularly dismissed (or 6:00 p.m. in the summer when school is not in session) on every other Friday beginning February 12, 2010 and ending at the time the child's school resumes on Monday after the weekend.
2. Mondays and Tuesdays – On Mondays and Tuesdays of every week beginning at the time the child's school is regularly dismissed or (7:00 a.m. in the summer when school is not in session) on Monday and ending at the time the child's school resumes on the following Wednesday.

3. Spring Break in Even-Numbered Years – In even –numbered years beginning at the time the child’s school is regularly dismissed on the day the child is dismissed from school from the schools spring vacation ending at 6:00p.m. on the day before school resumes after that vacation.

Extended Summer Possession

The parties agree and it is Ordered that each parent shall have the option of designating fourteen consecutive days for extended summer possession. As such it is ordered that in odd years mother is to elect her extended summer possession by May 1st and Father by May 15th and in even years Father is to elect his extended summer possession by May 1st, and Mother is to elect by May 15th.

THE DESIGNATED Parent shall then have possession of the child for fourteen consecutive days beginning no earlier than the day after the child’s school is dismissed for the summer vacation and ending no earlier than the day after the child’s school resumes at the beginning of the summer vacation in that year. It is Ordered that each period of possession begins and ends at 6:00 p.m. on each applicable day as specified in the written notice. It is Ordered that the Mother’s period of extended summer possession shall not interfere with Father’s Day weekend.

The Order continues with Holiday’s set according to the normal standard possession order with Andrea Sedlemeyer having possession of the child during the Christmas holidays in even numbered years.

Modification of Conservatorship, Possession and Access

The order to be modified is based on a mediated settlement agreement. The circumstances of the child, a conservator, or other party affected by the order to be modified have materially and substantially changed since the date of the signing of the mediated settlement agreement on which the order to be modified is based.

Petitioner now seeks a modification of Order in Suit to Modify Parent-Child Relationship entered in 2010.

Petitioner requests that she be appointed as the person who has the right to designate the primary residence of the child.

In the interest of consistency for the child and in his best interest ANDREA L. SEDLEMEYER Petitions the court to modify the previous 2010 Possession schedule to a standard possession schedule and appoint her primary managing conservator with the exclusive

right to appoint the child's residence and appoint RONALD J. TOYE possessory managing conservator.

It is in the best interest of the child that his school week is no longer interrupted by shared periods of possession and that he be placed in the primary care of his mother, Andrea L. Sedlemeyer.

It is in the best interest of the child and the Petitioner requests that the restriction restricting the child's residence to that of the Keller Independent School District be lifted to include a more reasonable geographical limitation of Tarrant County and contiguous county.

It is in the best interest of the child and Petitioner requests that this court order Respondent receive anger management counseling as well as parenting classes.

It is in the best interest of the child and the Petitioner requests that the court order both parties to desist from making disparaging remarks regarding the other party or the other party's family in the presence or within the hearing of the children. The parties are not to make disparaging remarks in the presence of the children about the other party. Specifically, neither party shall speak badly of, belittle, or refer to the other party by using profane names, profanity or curse words.

The requested Modifications are in the best interest of the child.

Support

The order to be modified is based on a mediated settlement agreement. The circumstances of the child or a person affected by the order have materially and substantially changed since the date of the signing of the mediated settlement agreement on which the order to be modified is based, and that Respondent, RONALD J. TOYE should be ordered is to support the child and should be ordered by the Court to make payments for the support of the child and to provide medical child support in the manner specified by the Court. Support payments should be made by Petitioner until the child the subject of the suit is eighteen years of age and, if the child is enrolled under chapter 25 of the Texas Education Code in an accredited secondary school in a program leading toward a high school diploma and complying with the minimum attendance requirements of subchapter C of chapter 25 of the Education Code, or enrolled under section 130.008 of the Education Code in courses for joint high school and junior college credit and complying with the minimum attendance requirements of subchapter C of chapter 25 of the Education Code, or enrolled on a full-time basis in a private secondary school in a program leading toward a high school diploma and complying with the minimum attendance requirements imposed by that school, until the end of the month in which the child graduates from high school.

Request for Temporary Orders

Petitioner requests the Court, after notice and hearing, to make temporary orders for the safety and welfare of the child, including but not limited to the following:

Appointing Petitioner the temporary conservator who has the right to designate the primary residence of the child.

Ordering Respondent to pay child support, health insurance premiums for coverage on the child, and 50 percent of the child's uninsured medical expenses while this case is pending.

Restricting the residence of the child to Tarrant County or contiguous counties.

Enjoining Respondent from removing the child beyond a geographical area identified by the Court, acting directly or in concert with others.

Ordering Respondent to execute all necessary releases required by Petitioner to obtain any discovery allowed by the Texas Rules of Civil Procedure.

Ordering Respondent to execute all necessary releases pursuant to the Health Insurance Portability and Accountability Act (HIPAA) and 45 C.F.R. section 164.508 to permit Petitioner to obtain health-care information regarding the child.

Ordering Respondent to execute for all health-care providers of the child[ren] an authorization for disclosure of protected health information to Petitioner pursuant to the Health Insurance Portability and Accountability Act (HIPAA) and 45 C.F.R. section 164.508.

Ordering Respondent to designate Petitioner as a person to whom protected health information regarding the child may be disclosed whenever Respondent executes an authorization for disclosure of protected health information pursuant to the Health Insurance Portability and Accountability Act (HIPAA) and 45 C.F.R. section 164.508.

Ordering a pretrial conference to simplify the issues in this case and determine the stipulations of the parties and for any other matters the Court deems appropriate.

With regard to the requested temporary order for managing conservatorship, Petitioner would show the Court the following:

These temporary orders are necessary because the child's present circumstances would significantly impair the child's physical health or emotional development.

Request for Temporary Restraining Order

Petitioner requests the Court to dispense with the necessity of a bond, and Petitioner requests that Respondent be temporarily restrained immediately, without hearing, and after notice and hearing be temporarily enjoined, pending the further order of this Court, from:

Disturbing the peace of the child or of another party.

Withdrawing the child from enrollment in the school or day-care facility where the child is presently enrolled.

Hiding or secreting the child from Petitioner.

Desist from making disparaging remarks regarding the other party or the other party's family in the presence or within the hearing of the children. The parties are not to make disparaging remarks in the presence of the children about the other party. Specifically, neither party shall speak badly of, belittle, or refer to the other party by using profane names, profanity or curse words.

Consuming alcohol within the 12 hours before or during the period of possession of or access to the child.

Desist from administering or allowing the child the subject of the suit to consume alcoholic beverages during Respondent's periods of possession.

Canceling, altering, failing to renew or pay premiums, or in any manner affecting the present level of coverage of any health insurance policy insuring the child.

Request for Temporary Orders and Injunction

Petitioner requests the Court to dispense with the necessity of a bond, and Petitioner requests that, after notice and hearing, Respondent be further restrained and enjoined, pending the further order of the Court, from:

Disturbing the child or Petitioner or interfering in any way with Petitioner's possession of the child by taking or attempting to take possession of the child, directly or through any other person, from the residence, school, or any other place.

Withdrawing the child from enrollment in the school or day-care facility where the child is presently enrolled.

Hiding or secreting the child from Petitioner.

Making disparaging remarks regarding the other party or the other party's family in the presence or within the hearing of the children. The parties are not to make disparaging remarks in the presence of the children about the other party. Specifically, neither party shall speak badly of, belittle, or refer to the other party by using profane names, profanity or curse words.

Consuming alcohol within the 12 hours before or during the period of possession of or access to the child.

Administering or allowing the child the subject of the suit to consume alcoholic beverages during Respondent's periods of possession.

Canceling, altering, failing to renew or pay premiums, or in any manner affecting the present level of coverage of any health insurance policy insuring the child.

Request for Attorney's Fees, Expenses, Costs, and Interest

Because of Respondent's violent behavior it was necessary for Petitioner to secure the services of Kate Stone, a licensed attorney, to preserve and protect the child's rights. Respondent should be ordered to pay reasonable attorney's fees, expenses, and costs through trial and appeal, and a judgment should be rendered in favor of this attorney and against Respondent and be ordered paid directly to Petitioner's attorney, who may enforce the judgment in the attorney's own name. Petitioner requests post judgment interest as allowed by law.

Prayer

Petitioner prays that citation and notice issue as required by law and that the Court enter its orders to modify the Suit to Modify Parent-Child Relationship as alleged in this petition for the safety and in the best interest of the child.

Petitioner prays for attorney's fees, expenses, costs, and interest as requested above.

Petitioner prays for any other relief allowed by law or in equity.

Respectfully submitted,

STICKELS & ASSOCIATES, P.C.
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(817) 622-8071 FAX

By: 

Kate Stone
State Bar No. 24075726
ATTORNEY FOR Petitioner

CERTIFICATE OF SERVICE

I certify that a true copy of the above was served on each attorney of record or party in accordance with the Texas Rules of Civil Procedure on the 11th day of October, 2012.

Petitioner's Supporting Affidavit

Andrea Sedlemeyer appeared in person before me today and stated under oath:

"My name is Andrea Sedlemeyer. I am above the age of eighteen years, and I am fully competent to make this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

"I am the Petitioner in this case.

I am a joint managing conservator of my son RONALD J. TOYE IV. I seek the modification requested in this suit. The modification requested is in the best interest of the child. Specific facts that support the above are:

"For approximately 2 years since the 2010 Order has been in effect my son Ronald J. Toye IV, "Joe-Joe" has developed and begun to display extreme disciplinary and anger problems at school. He has also begun to wet the bed regularly when that was never an issue before. He is also sucking his thumb. The child is eight years old.

Because of the visitation schedule my son has no stability. He is moved between my house and that of RONALD J. TOYE'S III, herein after, RONALD J. TOYE which is disruptive to both his sleeping schedule and his school schedule.

My son's father, RONALD J. TOYE has always been someone that will yell and threaten but the threats have worsened to the point that has yelled and cursed in front of my son and the incidents are increasing.

The following are a list of some of the incidents that have happened in front of my son since the last modification.

April 17th 2010- at sons baseball game RONALD J. TOYE threatened to beat up my husband another coach had to pull him away, all this was done in front of Joe-Joe.

Nov 30th 2010- My son reported to me that his father, RONALD J. TOYE told Joe to be bad after my daughter was born so he can move in with him.

OCT 25 2011- My son told me after his school's drug awareness week that his dad, RONALD J. TOYE gave him half of a beer, my son was seven at the time and I recorded the incident.

Mar 2012- My son cried after coming back from RONALD J. TOYE's weekend says he didn't get to see his very much left with Marcie his stepmother while RONALD J. TOYE is out with friends.

Petitioner's Exhibit 1

May 31 2012- Marcie, my son's stepmother reported to me that I don't need to text RONALD J. TOYE about things regarding my son just her because she is the main care giver of Joe at their house.

AUG 27 2012- Recorded my son telling me he had a "diary secret" about dad so I coaxed him to tell me and he reported that his father gave him half of a bud light lime and that it tasted like "soda". This is also recorded.

AUG 2012- A friend of mine reported that she heard RONALD J. TOYE yelling harshly at my son during a baseball game. She has also heard him talking about his sex life in front of my son. She has also heard RONALD J. TOYE threatened to kill his current wife and she described it in detail, I am not certain that my son was present for that threat.

SEPT 2012 – tried to talk to RONALD J. TOYE about my son's behavior at school. He has been seeing his school counselor for 2 years for his behavioral problems. RONALD J. TOYE responded that it was my problem and I needed to fix it.

He also says he told my son doesn't have to respect weak women (he was talking about me and Joe-Joe's teacher) only if women are strong do they deserve his respect.

September 29, 2012- RONALD J. TOYE found out that Vincent my husband had spanked Joe-Joe with my permission. The spanking consisted of approximately three "pops" on Joe- Joe's fully clothed rear end with a paint stirrer. RONALD J. TOYE found out about it and called leaving a voicemail in which he was screaming. He threatened to kill Vincent (my husband) and to beat us up and my 16 month old daughter. He said all of these things in front of my son.

This is the third time he has threatened to kill myself or someone in my family. Because of his past behavior and this most recent threat against my family and my husband Vincent, we are concerned for our safety.

October 4, 2012- RONALD J. TOYE called again stated if we spanked Joe it would not be worth Vincent's life. He also shared a bragging story of how he beat up his sister's ex-boyfriend. He stated that he kicked his ass and bit his cheek. He told us that he would do worse to Vincent.

I feel that all this behavior has really begun to take its toll on my son.

October 9, 2012 – My son was at my house and was misbehaving. I informed him that due to his behavior he would not be permitted to play with a neighbor friend. His reaction was to go to his closet and say things like "I don't deserve to live" and "I wish that I wasn't born" and began to bang his head on the wall.

I am convinced that for the safety and well-being of my son, that I should be appointed managing conservator with exclusive right to appoint the primary residence of my son. I am trying to get him into counseling and provide him with some stability. I feel that the

modification that I have requested is in the very best interest of my child for his safety and well-being.

Andrea Sedlemeyer
Andrea Sedlemeyer

SIGNED under oath before me on October 9, 2012.



Angela Stickels
Notary Public, State of Texas