

Filed in The District Court
of Travis County, Texas
ER SEP 30 2010
8:24 AM
At Amalia Rodriguez-Mendoza, Clerk

IN THE MATTER OF	§	IN THE DISTRICT COURT OF
THE MARRIAGE OF	§	
	§	
KRISTIN NICOLE MORGAN	§	
AND	§	TRAVIS COUNTY, TEXAS
JOSHUA JAMES MORGAN	§	
	§	
AND IN THE INTEREST OF	§	
HANNAH ELIZABETH MORGAN,	§	
A MINOR CHILD	§	345 TH JUDICIAL DISTRICT

RESPONDENT'S ORIGINAL ANSWER TO PETITIONER'S MOTION FOR CONTEMPT
and
MOTION TO DISMISS AND FOR SANCTIONS

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, KRISTIN NICOLE MORGAN, Respondent herein and files this her Original Answer to *Petitioner's Motion for Contempt*, together with her *Motion to Dismiss and for Sanctions*, and would show the Court as follows:

I.
ORIGINAL ANSWER

Respondent denies each and every, all and singular, allegation in *Petitioner's Motion for Contempt* and demands strict proof thereof.

II.
SPECIAL EXCEPTIONS

- Petitioner's Motion for Contempt fails, in ordinary and concise language, to:
- (1) identify the provision of the order allegedly violated and sought to be enforced;
 - (2) state the date of or otherwise adequately identify the manner of the Respondent's alleged noncompliance; or
 - (3) state the relief requested by the movant.

Accordingly, Petitioner's pleadings fail to provide Respondent with legally adequate and requisite notice which would allow Respondent to defend against Petitioner's false accusations.

Failing timely and adequate repleading, the Court should strike Petitioner's Motion for Contempt with prejudice. However, as shown in section III directly below, the Petitioner cannot truthfully or in good faith meet these specially exceptions, so his pleadings should be stricken with prejudice.

III.
FAILURE TO STATE GROUNDS FOR RELIEF

The *Petitioner's Motion for Contempt* is wholly frivolous and without legal basis or factual support. None of the Petitioner's allegations set forth any legally adequate grounds on which this Court's contempt powers may be properly invoked.

Petitioner has either filed the present contempt action in utter bad faith, thereby intending to harass and improperly harm Respondent, or he has negligently failed to read or comprehend the terms of the Orders that he claims have been violated.

A) Allegations involving Travis County Standing Order Regarding Children, Property and Conduct of the Parties

1) "Disconnection of utility services to the marital residence."

The Standing Order clearly states that Section 3 of said order (including section 3.14) applies only to pending Divorce actions.

Petitioner fails to inform the Court that:

- a) Petitioner directed the disconnection of utility services in her sole name on June 8, 2010, at the time of the parties separation. The present lawsuit was not filed until June 10, 2010 and was not served on respondent until June 12, 2010;
- b) the Petitioner's Original lawsuit was filed solely as a *Suit affecting the Parent-Child Relationship*, not as a divorce. This cause did not involve a divorce action until the Respondent filed her Counter-Petition for Divorce in August of 2010.

As a matter of law, Respondent did not and could not have violated the Travis County Standing Order by the conduct alleged above.

2) "Disconnection of . . . the marital phone line."

The Petitioner again fails to inform the Court that there was never a "phone line" or dedicated telephone service at the Petitioner's residence. Petitioner's actual complaint is that Respondent's cell phone account was suspended for non-payment.

Prior to separation, Petitioner had obtained a second cellular telephone on Respondent's cellular account. This account was past due when the parties separated in early June 2010. Respondent lacked funds to pay this bill and Petitioner failed to provide any funds whatsoever for his wife or daughter between June 4, 2010 and being ordered to do so beginning September 1, 2010. Petitioner made no payment toward maintaining his own telephone service during this period. After several months of neither Petitioner nor Respondent making any payments on this account, both party's cellular phone service was suspended in early August 2010, solely due to non-payment.

Even if Section 3.14 of the Travis County Standing Order was otherwise applicable, the cellular account at issue was not a "service . . . at the other party's residence."

Accordingly, Respondent did not and could not have violated the Travis County Standing Order by the conduct alleged above.

B) Allegations of Violation of Order of Tennessee Juvenile Court

Petitioner next seeks to enforce by contempt an Emergency Order of the Juvenile Court for Union County Tennessee regarding the allocation and liability for certain travel expenses. This is not an Order capable of enforcement in Texas by contempt or otherwise.

Motions for Enforcement and Contempt are governed by Chapter 157 of the Texas Family Code. Family Code Section 157.001(a) specifically provides that only Final Orders may be the subject of a contempt or enforcement action (Texas Family Code Section 105.001(f) provides that temporary orders issued by this Court pursuant to Texas Family Code Section 105.001 are also enforceable under Chapter 157 of the Texas Family Code).

The Tennessee Order that Petitioner seeks to enforce is not a Final Order, has not been registered in this state, is not an order issued by this Court under the Texas Family Code, and has been supplanted by a contrary and governing Texas Order. The Tennessee Order specifically states that it is a "Temporary Order for Protection of the child, to remain in place until the matter can be heard by the Travis County, Texas Court, and an Order be set in place." This case was heard and a Travis County order was rendered and "set in place" on August 6, 2010. The Travis County Temporary Order specifically provides that "Each Party shall pay their own costs of travel to the other's residence for the purposes of exercising their respective periods of possession of the child." The Travis County Temporary Order could have affirmed the terms of the Tennessee Temporary Order regarding possession and travel. However, after a full adversarial hearing, Associate Judge Hathcock specifically rejected the terms of the Tennessee Temporary Emergency Order, supplanting it with very different possession, travel, and support orders.

Lastly, Petitioner recites and seeks to enforce paragraph number 7 of the Tennessee Temporary Order. However, this provision specifically requires partial reimbursement of Respondent's travel expenses by Petitioner, not the opposite as asserted by Petitioner.

The Tennessee Order is not capable of enforcement in Texas by contempt or otherwise. Consequently, the foregoing allegation fails to set forth any legal grounds on which this Court's contempt or enforcement powers may be properly invoked.

C) Allegation concerning Rights and Duties

Petitioner generally avers that Respondent has somehow violated the following provision of this Court's Temporary Order of August 6, 2010:

Rights and Duty at All Times. IT IS ORDERED that, at all times, Kristin Morgan, as temporary managing conservator, and Joshua J. Morgan, as temporary possessory conservator, shall each have the following rights and duty:

1. the right to receive information from any conservator of the child concerning the health, education, and welfare of the child;
2. the duty to inform the other parent in a timely manner of significant information concerning the health, education, and welfare of the child;
3. the right to confer with the other parent to the extent possible before making a decision concerning the health, education, and welfare of the child;
4. the right of access to medical, dental, psychological and educational records of the child;

The alleged violations that Petitioner seeks to see enforced by contempt are as follows:

- a) That Respondent has refused to speak directly to Petitioner in regards to the well being of the Child; and
- b) That Respondent has refused to turn over medical records purportedly requested by some unknown day care facility and some unnamed Physician;

The Respondent has no duty to speak directly to the Petitioner whose communications have been and continue to be highly offensive. Indeed, from July 9, 2010 through August 6, 2010, all direct contact between the parties was forbidden by the Emergency Temporary Order of the Juvenile Court for Union County Tennessee.

Further, the Respondent has no duty under the provisions cited to produce medical records that are alleged to have been requested by either a day care facility or a physician.

As a matter of law, Petitioner's allegation once again fail to set forth any legal grounds on which this Court's contempt or enforcement powers may be properly invoked.

D) **Allegation that Respondent has refused Petitioner's requests to "contribute to marital liabilities"**

This purported contempt allegation does not require nor deserve response, other than to point out that no such order exists, although August 6, 2010 a temporary hearing regarding support and the parties' financial conditions was had and an Order was rendered.

As a matter of law Petitioner again fails to state any legally cognizable enforcement claim.

- E) Allegation that "Respondent left the State of Tennessee to Kentucky for several days for a family funeral and did not obey the court order requiring her to notify the Petitioner"

Simple stated, no such order exists. This final contempt allegation by Mr. Morgan only serves to emphasize his current abuse of this Court process and of the Respondent.

As a matter of law Petitioner again fails to state any legally cognizable enforcement claim.

IV.

MOTION TO DISMISS AND FOR SANCTIONS

Respondent would show Petitioner is aware that the allegations asserted by Petitioner in the present *Petitioner's Motion for Contempt* are inappropriate, false and frivolous.

Respondent would further show that Petitioner, in direct violation of Travis County District Court Local Rule 3.2, presented a request for and obtained a Show Cause Order in this pending divorce case without first notifying the undersigned attorney whom Mr. Morgan knew to be representing KRISTIN NICOLE MORGAN at that time.

The filing and pursuit of *Petitioner's Motion for Contempt* constitutes the knowing prosecution of a frivolous pleading in violation of Rule 13 of the Texas Rules of Civil Procedure and Chapter 9 of the Civil Practices and Remedies Code. The Petition for Enforcement has been filed in bad faith, for the purpose of harassment, and constitutes an abuse of the legal process by Petitioner in an attempt to injure the Respondent.

The present *Petitioner's Motion for Contempt* should be dismissed with prejudice, and sanctions should be issued pursuant to Rules 13 and 215 of the Texas Rules of Civil Procedure, Chapter 9 of the Civil Practices and Remedies Code, and in accordance with this Court's inherent power to protect the integrity of the judicial system.

Sanctions should include, but not limited to, an award of all attorneys fees, travel expenses, and other costs incurred by Ms. Morgan in responding to this poorly conceived action of Petitioner.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Respondent prays that all relief requested by Petitioner be denied, that *Petitioner's Motion for Contempt* be dismissed with prejudice, and that sanctions issue against the Petitioner as and for the reasons set forth above.

Respondent prays that she recover judgment against the Petitioner for all attorney's fees, cost, and expenses incurred in defending this action.

Respondent prays for general relief.

Respectfully submitted,

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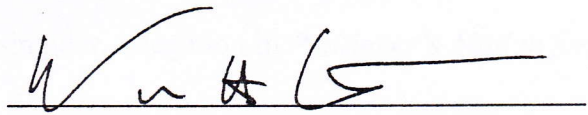


WILLIAM H. ALBERTS
State of Texas Bar No. 00971500
ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing has been served in accordance with the Texas Rules of Civil Procedure to Pro Se litigant, JOSHUA JAMES MORGAN, on this the 30th day of September, 2010, by:

Hand Delivery; Certified Mail, Return Receipt Requested; Via E-mail to joshutup@gmail.com



WILLIAM H. ALBERTS