

**FINAL ORDER**

~~The above referenced matter was set down for a~~ A bench trial was held in this matter on October 29, 2018. ~~On that day, At the bench trial,~~ Petitioner/Father Tyler Perry appeared with his counsel of record, Virginia Nell Morris and Respondent/Mother Kaitlyn Jenkins appeared with her counsel of record, Brad J. Evans. After hearing evidence from the parties and argument from counsel, the Court ~~enters the following order:~~ entered a Final Order on October 29, 2019. Petitioner/Father Tyler Perry appealed the Final Order to the Georgia Court of Appeals who reversed and remanded the case back to this Court for the purposes of this Court clearly expressing that the Court had considered joint physical custody and determining whether such a custodial arrangement would be the best interests of the child in this case. Therefore, for the reasons set forth below, after expressly considering joint physical custody, this Court finds that joint physical custody would not be in the best interests of the child in this case.

**FINDINGS OF FACT**

1.

The parties had the following child out of wedlock: CARSON MICHAEL PERRY, male, born in 2015 (the "minor child").

2.

On December 12, 2017, an Order for Paternity and Child Support was issued by the Walton County Superior Court requiring Petitioner/Father to pay \$445.00 per month as child support for the minor child with the first payment due on February 1, 2018. See The Georgia Department of Human Services, ex. rel., Carson Michael Perry v. Tyler Scott Perry, Walton County Superior Court, Civil Action File Number 2017-SU-CV-1939, the final order in which was admitted as Petitioner's Exhibit 4 at trial.

3.

On February 15, 2018, Petitioner/Father filed his Petition for Legitimation, Custody, Visitation, and Child Support in the Morgan County Superior Court. Respondent/Mother acknowledged service on or around March 7, 2018 and filed her Answer to Petition for Legitimation, Custody, Visitation, and Child Support and Counterclaim to Establish Custody and Visitation on or around April 5, 2018. Legitimation of the minor child was never contested.

4.

A temporary hearing was scheduled by Respondent/Mother for May 9, 2018. Respondent/Mother and her counsel of record appeared. Neither Petitioner/Father nor his counsel of record appeared. In the Temporary Order issued on May 9, 2018, CARSON MICHAEL PERRY, a male child born in 2015, was declared the legitimate child of Petitioner/Father/Father TYLER PERRY. In that same Temporary Order, Respondent/Mother was named the temporary primary physical custodian and Petitioner/Father was provided with every other weekend visitation. Petitioner's counsel of record later claimed that she did not receive notice of the temporary hearing but filed no motion to set aside the Temporary Order issued on that date and took no action to modify that Temporary Order.

5.

The following facts established at the bench trial held on October 29, 2018 provided a basis for the Court's Conclusions of Law:

- (a) Counsel of record for each party acknowledged and agreed that the bench trial was agreeable to resolve this matter and waived their respective rights to a jury trial.
- (b) On his side of the case, Petitioner/Father called as witnesses Respondent/Mother (for purposes of cross-examination), Petitioner/Father, Petitioner/Father's mother, and Petitioner/Father's wife. On her side of the case, Respondent/Mother called only herself as a witness.

- (c) The minor child has been in the custody and care of Respondent/Mother since his birth. The minor child was cared for by both Petitioner/Father and Respondent/Mother while they lived together. At some point prior to September, 2017, the parties separated and the minor child lived with Respondent/Mother at Respondent/Mother's parent's home. Petitioner/Father regularly had visitation with the minor child prior to the Temporary Order being issued but overnight stays with Petitioner/Father were rare for the minor child. Since the Temporary Order was issued, Petitioner/Father has had visitation with the minor child every other Saturday and Sunday from 9:00 a.m. to 5:00 p.m. each day.
- (d) Respondent/Mother was primarily responsible for taking the minor child to doctor's appointments both while the parties lived together and after the parties lived together. Petitioner/Father occasionally attended these appointments.
- (e) Petitioner/Father lives in Watkinsville, Georgia. Respondent/Mother lives in Madison, Georgia. Travel to/from one another takes no less than 40 minutes. Both parties have stable living situations and suitable dwellings in which to raise the child.
- (f) Petitioner/Father and Respondent/Mother each stated that the other parent was a fit and proper parent. Neither Petitioner/Father nor Respondent/Mother had any witnesses state otherwise.
- (g) The minor child is intelligent, happy, well-behaved, and well cared for.

6.

Respondent's attorney presented evidence of the attorney's fees and expenses incurred by Respondent as a result of this action. Respondent's attorney stated that his hourly rate is \$275.00, he has practiced law for about 15 years, his hourly rate for his legal experience was appropriate and reasonable for this judicial circuit, that the work performed by him was reasonable and necessary in this case, and provided a detailed billing invoice in the amount of \$3,455.30 and

requested an additional 2 hours or \$550.00 in fees for the bench trial, which brought the total attorney's fees and expenses request to \$4,005.30. It should be noted that Respondent's attorney's detailed billing invoice was admitted without objection at trial as Respondent's Exhibit 1.

7.

After the close the evidence and after each party had made closing arguments, the Court ruled that Respondent should be the primary physical custodian of the minor child with visitation rights for Petitioner. After the Court ruled, Petitioner's attorney requested that the Court make findings of fact in support of its order.

### CONCLUSIONS OF LAW

1.

Petitioner/Father has requested that the Court consider a joint physical custody arrangement. While both parties considered the other to be a proper and fit parent, the~~The~~ Court finds that it is in the best interests of the minor child that Respondent/Mother be the primary physical custodian of the minor child.~~The minor child has resided with because~~ Respondent/Mother has always primarily responsible for the child and the child's needs, Petitioner/Father's work schedule would require the child to be with another caregiver than himself when the Respondent/Mother is available, and Petitioner/Father lives no less than 40 minutes from Respondent/Mother. These facts, as well as the others set forth below, result in Respondent/Mother providing a much more stable and predictable environment for this child and the distance between the residences of the parties is not conducive to joint physical custody. Respondent/Mother since birth, has been primarily been in the care of Respondent/Mother since birth, and on all accounts, the minor child is flourishing. Petitioner/Father, Respondent/Mother, and Petitioner/Father's witnesses agreed that Petitioner/Father and Respondent/Mother were proper and fit parents. To remove the minor child from the environment and caregiver under

~~which the minor child has been excelling would be contrary to the best interests of the minor child.~~

The Court reached this conclusion by seriously considering O.C.G.A. 19-9-3(d), the custody options under O.C.G.A. S 19-9-6, applying the factors contained in O.C.G.A. 19-939-3, Urquhart v. Urquhart, 272 Ga. 548 (2000), and other relevant caselaw and applying this legal authority to the foregoing facts. The following factors had a substantial impact on the Court's determination:

- (a) O.C.G.A. § 19-9-3(a)(3)(A). While there is love, affection, bonding, and emotional ties between each parent and the minor child, Respondent/Mother has lived with and cared for the minor child his entire life and to sever the bonding and ties between the two of them by changing custody would be detrimental to the minor child's best interests.
- (b) O.C.G.A. § 19-9-3(a)(3)(B). Respondent/Mother has demonstrated love, affection, and guidance for the minor child. The minor child is with the Respondent/Mother the vast majority of the time and the evidence established that the child has learned his colors, numbers, letters, and shapes and reads regularly with Respondent/Mother.
- (c) O.C.G.A. § 19-9-3(a)(3)(D). Respondent/Mother has the greatest knowledge and familiarity with the minor child and the minor child's needs. Respondent/Mother has lived with and cared for the minor child his entire life. Respondent/Mother has taken the minor child to all of his medical appointments.
- (d) O.C.G.A. § 19-9-3(a)(3)(E). Respondent/Mother provided the minor child with food, clothing, medical care, day-to-day needs, and other necessary basic care, prior to child support payments being made and with the payment of the current child support obligation.

- (e) O.C.G.A. § 19-9-3(a)(3)(F). The home environment of each parent is a nurturing and safe environment.
- (f) O.C.G.A. § 19-9-3(G). The minor child has continuously lived with Respondent/Mother for his entire life. Respondent/Mother has maintained a stable, satisfactory environment during the minor child's entire life. The maintenance of this continuity in the child's life is paramount.
- (g) O.C.G.A. § 19-9-3(a)(3)(K). Petitioner/Father works approximately 40-48 hours per week. Respondent/Mother is currently unemployed and when she was employed, she worked part-time. Petitioner/Father's employment schedule severely limits his time available to his minor child. Respondent/Mother's schedule has no limitations of time for the minor child.

2.

(a) The parties shall have joint legal custody with Respondent/Mother being the primary physical custodian of said child and Petitioner/Father having visitation with said child every other Saturday and Sunday from 9:00 a.m. to 5:00 p.m. Said visitation shall began May 19, 2018 and continue every other weekend until the minor child reaches the age of five (5) years old, at which time the visitation schedule shall be as set forth in the Ocmulgee Judicial Circuit's Visitation schedule attached hereto as Exhibit "A". The parties shall also comply with the Standard Orders for Parenting attached hereto as Exhibit "B".

(b) While the parties shall have joint legal custody of the child for any and all purposes under Georgia and/or federal law, Respondent/Mother shall be designated as the primary physical custodian and Respondent/Mother's address shall be the minor child's legal address. The parties shall make a good faith attempt to resolve all issues affecting the child. In the event that an agreement cannot be reached, Respondent/Mother shall have final-decision making on all issues affecting the child.

3.

Petitioner shall be responsible for picking up and dropping off the minor child at Respondent/Mother's residence.

4.

(a) Child support shall remain as ordered by the Walton County Superior Court in The Georgia Department of Human Services, ex. rel., Carson Michael Perry v. Tyler Scott Perry, Walton County Superior Court, Civil Action File Number 2017-SU-CV-1939.

(b) Petitioner/Father shall continue to maintain health insurance coverage for the minor child. Petitioner/Father and Respondent/Mother shall each pay one-half (50%) of all noncovered, reasonable and necessary medical, dental, orthodontic, psychological, counseling, therapeutic, drug, hospitalization, or other health-related expenses of the children, including any deductible amounts, co-payments or other related expenses not covered by health insurance. Petitioner/Father shall provide Respondent/Mother with a copy of all policies, booklets, identification cards, or other documents provided to him by the insurer. In the event either party pays all (100%) of any uncovered expense described above, such party shall provide proof of such expense to the other party within 30 days of same, and the other party shall reimburse the paying party within 30 days of receipt of such receipt. Should insurance later reimburse a party for an expense that was previously divided by the parties, then all such reimbursements shall be equally divided.

5.

Respondent/Mother's attorney has requested an award of attorney's fees and expenses of litigation under O.C.G.A. 19-9-3(g). The Court orders an award of attorney's fees and expenses in the amount of \$2,000.00. This award is based on the financial position of each of the parties as evidenced by the pleadings and the testimony at trial. This amount should be paid [by](#)

Petitioner/Father to Respondent/Mother's attorney no later than 90 days from the date of this  
Final Order.