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David Trantham
Denton County District Clerk
By: Alyssa Gongora, Deputy

NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA

CAUSE NO. 15-10574-211

IN THE INTEREST OF	§	**IN THE DISTRICT COURT**
	§	
RYAN BENNETT PURCELL,	§	**481st JUDICIAL DISTRICT**
	§	
A CHILD	§	**DENTON COUNTY, TEXAS**

THOMAS PURCELL'S MOTION TO RECONSIDER AND/OR CLARIFY COURT'S ORAL RENDITION

THOMAS PURCELL, Movant herein, files this *THOMAS PURCELL's Motion to Reconsider and/or Clarify Court's Oral Rendition* requesting the Court to reconsider and/or clarify its Oral Rendition on the following matters, and in support thereof would show the Court the following:

I. Procedural History

1. This case was commenced by Petitioner, Michelle Eiland, as a Modification, on or about June 6, 2019 filing her *Petition to Modify Parent Child Relationship. (hereinafter* "Mother").

2. On or about November 19, 2019 Respondent, Thomas Purcell, (*hereinafter* "Father") filed his *Counterpetition to Modify Parent Child Relationship.*

3. On or about May 6-May 10, 2024, this matter was tried to a jury. The jury was asked if Mother should be awarded sole managing conservatorship of the child, and if not, if mother should be made the conservator with the right to designate the primary residence. After a nearly four day jury trial, the jury deliberated for over seven hours over the course of two days and found that the parties should remain Joint Managing Conservators and that neither party should be allowed to designate the primary residence of the child.

4. On or about June 17, 2024, the Court heard additional evidence over objection of counsel and rendered on the rights and duties of the parents and the visitation schedule. The Court deprived Father of many of the fundamental rights and duties of a joint managing conservator and gave Father less than a standard visitation schedule- the new standard being the expanded standard under the previous statute. This rendition improperly contradicts the jury's findings.

5. The Court also ordered Father to pay Mother's attorneys' fees, although the Court offset Father's fees against Mother's much higher bill, as child support in direct contradiction to the Texas Supreme Court's stated authority on this position after opposing counsel assured the Court that it could do so. Father's attorney twice requested information on if and when this authority had changed, having been unable to see that it had, and received no answer.

II. Matters for Requested Reconsideration and/or Clarification

A. Award of Attorney's Fees as Additional Child Support

6. Father requests that the Court reconsider its order that he pay Mother's attorney's fees as necessaries of the child as additional child support as that order violates Texas law.

7. Specifically, in ***Tucker v. Thomas,*** 419 S.W.3d 292, 293 (Tex.2013) the Texas Supreme Court held that a trial court does not have the discretion to characterize attorney's fees awarded in a non support enforcement modification suit as necessaries or as additional child support stating

> *"noticeably absent from Section 106.002 is authority for a trial court to characterize an attorney's fees award as necessaries or as additional child support. In light of this absence of express authorization, we conclude that the legislature did not intend to provide trial courts with discretion to assess attorney's fees awarded to a party in a Chapter 156 modification suit as additional child support. Moreover, neither our precedent nor the plain language of Texas Family Code section 151.001(c) supports the Court of Appeals conclusion that attorney's fees in non enforcement modification suits may be characterized as necessaries enforceable by contempt."* ***Id.*** *At 644.*

8. Therefore, when opposing counsel instructed the Court that it was within the Court's discretion to make this award, that was a misstatement of the applicable law. A copy of this opinion is attached hereto for the Court's convenience.

9. Father also requests that this Court reconsider the allocation of fees as his responsibility as he was the prevailing party in the jury trial. Father did not seek or want this litigation from the beginning. Mother chose trial by jury. Mother rejected mediation. Mother began this "emergency litigation" and as indicated in trial, Mother never produced a single text or email of the like that concerns the Court prior to the institution of this matter. While it is within the Court's discretion to grant fees, it is rare that such an allocation is made and, frankly, improper that counsel allowed the Court to believe that the Court could allocate fees as a necessity.

10. Finally, if the Court is inclined to award fees, Father requests that the Court reopen evidence to allow him to present his additional fees as a further offset. As Mother's counsel repeatedly pointed out, Father had more than one attorney- one for over a two year period. If those amounts are presented, the fees will be fully offset.

B. Allocation of Rights and Duties and Visitation Schedule Constitute a Disregard for the Jury Verdict

11. The Texas Constitution guarantees that the right to a trial by jury "shall remain inviolate." Tex. Const. Art. I Section 15. Section 105.001 of the Texas Family Code provides that, with exceptions inapplicable here, a party may demand a jury trial in a suit affecting parent child relationship. Section 105.002(a), (b). A party is entitled to a 'verdict by the jury and the Court may not contravene a jury verdict' on the issues of conservatorship, which Joint Managing Conservator has the exclusive right to designate the primary residence of the child, and any geographic restriction. *Id. Section 105.002(c)(1); See Lenz v. Lenz,* 79 S.W.3d 10, 20 (Tex. 2002.); in re Reiter, 404 S.W.3d 607, 610 (Tex.App.-Houston [1st Dist.] 2010, original proceeding) ("The purpose of

enacting Section 105.002 was to distinguish binding jury findings from advisory ones.")

12. Once a jury decides the foundational issues such as conservatorship and the right to establish the primary residence, the trial court determines the attendant terms and conditions. *See In re Reiter* at 611, *See also In re Webb-Goetz,* No. 01-19-00139-CV, 2019 WL 3293697, at *2 (Tex.App.- Houston [1st Dist.] July 23, 2019, no pet.) (mem. op.)

13. While the trial court has broad discretion to award the rights and duties of the parents and to establish the visitation schedule, the trial court may not act in a way that contravenes the binding findings of the jury. *See Albrecht v. Albrecht,* 974 S.W.2d 262, 266 (Tex.App.-San Antonio 1998, no. pet) (wherein the Court of Appeals concluded that the award of a week on week off schedule, while within the Court's discretion, effectively contradicted the jury's finding that the father should have the right to designate the primary residence of the child.) *See also, Phillips v. Beaber,* 995 S.W.2d 655, 658 (Tex. 1999) (explaining that the terms "managing conservatorship", and "possession and access to a child" are not mutually exclusive and that conservatorship rights encompass certain aspects of possession and access). In the case of a geographic restriction, the Court cannot affect a schedule that takes away a binding jury finding allocating to one party the right to designate the primary residence of the child- by awarded for example a 50/50 schedule creating two such residences.

14. In the case before the Court, the Court could allocate to Mother the decision making rights such as the right to consent to psychiatric/psychological treatment, the right to consent to non-emergency invasive medical and the right to make educational decisions- which the Court did. None of those allocations deprive Father of his rights as JMC. However, the additional allocations made as follows, do deprive Father of his right to so great an extent that he is effectively made a possessory conservator (or even perhaps an effective termination) in direct contradiction to the jury's verdict. Specifically, the Court ordered that the father would not receive the following rights under Section 153.073:

a. The right to confer with the other parent to the extent possible before making a decision the health education, and welfare of the child 153.073(2);
b. of access to medical, dental, psychological, and educational records of the child under 153.073(3);
c. to consult with a physician, dentist, or psychologist of the child under 153.073(4);
d. to consult with school officials concerning the child's welfare and educational status, including school activities under 153.073(5);
e. to be designated on the child's records as a person to be notified in case of emergency under 153.073(6);
f. to consent to non-emergency **invasive AND noninvasive medical treatment** – effectively undermining his right to seek any medical treatment for the child in a non-emergency setting. (If the child has the flu in Father's possession, Father cannot seek an antiviral for the child because it is non emergent and noninvasive. Instead, Father must forfeit his already severely limited possession time or appear to be a poor parent?); or
g. Requiring father's visitation to be contingent upon his continued counseling *in*

finitum with no restriction and allocating no authority to the counselor to terminate treatment. Illegal per TX code 574.0355 blatantly illegal

15. Firstly, the Texas Supreme Court has already held the Texas Family Code Section 153.073 does NOT override Texas Health and Safety Code Chapter 611, which specifically addresses a parent's right to his child's medical and psychiatric/psychological records. That restriction is improper on its face. ***Abram v. Jones,*** 35 S.W.3d 620, 624 (Texas 2000). The Court should therefore allocate Section 153.073(3) and Section 153.073(4) to Father in accordance with the Supreme Court's decision.

16. Secondly, the Court is required under Section 153.073 to make specific written findings related to each of the Section 153.073 duties it has deprived Father of in its rendition. The mere statement "best interests of the child" or "there is child endangerment" is insufficient. In this case, the Court has removed Father as an emergency contact for his child, deprived Father of his right to consult with his child's school, deprived Father of his right to access both federally and state protected records, as well as his right to receive virtually any information regarding the child. There was NO EVIDENCE presented that his child: (1) does not love and want to see his father or that the father; (2) harmed the child via medical treatment or interference at school; (3) ever committed any act that comes remotely close to meeting the definition of child abuse or endangerment; or (4) was ever reported to CPS by a mandatory reporter herein. In fact, the evidence was contrary to that position. And the Court's statement that it cannot see how Father's communication is NOT harming the child is no evidence and is insufficient to override this man's constitutional rights in that the communication contains no threatening language, no vulgarity, and no mandatory reporter found it necessary to notify CPS throughout the term of this litigation. It should be noted that Ellen Hutton is a CCE.

17. Taken to its logical end, were this child to be sexually assaulted by a relative of mother and make an outcry to his school or counselor, his father would not be notified by the mother or the school. If this child suffered a traumatic brain injury at school, and the mother was unavailable, the school could not notify Father. This amounts to a termination in fact. The Court may limit rights in a manner that is least restrictive, but cannot terminate them, and the Court may only limit them in a manner least restrictive to address issues of concern.

18. Early in its verbal rendition, the Court appeared to grant the restrictive injunctions against Respondent's free speech. Later, the Court stated no injunctions would be issued and instead stated Respondent would have to communicate with Petitioner through a third party after extensive argument by Mr. Stewart, Father's counsel. Father reserves his right to vigorously defend these rights should injunctions be included in a proposed final order.

19. Father requests the Court reconsider the award of child support. For two and 2/3 years, Father had the child far in excess of a 50/50 schedule and requested no support. Since the child's birth, based upon the schedule and the parties' income Father would have, at a minimum, been entitled to offset support. Father did not bring this case and simply wanted to maintain his schedule. If the Court does not withdraw its child support order in its entirety, Father should at least be entitled to an equitable offset for the support he could have had but never requested.

My mother and I spent over $40,000 on the jury trial and we are not rich!!

20. Additionally, Section 153.076 REQUIRES that the Court shall "order that each conservator of the child has a duty to inform the other conservator of the child in a timely manner of significant information, concerning the health, education, and welfare of the child. This Court believes Father has no right to any of this information- rendering that the mother does not have to provide it AND that Father cannot obtain it from the direct source. The statute is mandatory. The Court "shall order" is not permissive in terms of statutory construction.

21. Also, the Court ordered a "standard non-expanded" schedule for Father- when the current statutory standard schedule is what used to be termed the "expanded standard" schedule. Again, the jury found that NO CHANGE WAS APPROPRIATE to the conservatorship between the parties or the parties' agreement to have neither party designate the primary residence. The jury heard the same evidence the Court did. However, the net effect of the Court denying Father his most fundamental rights as a Joint Conservator and coupling that with an award that makes it impossible for Father to attend virtually any childhood event not at school or to provide medical care during his periods of possession is that this Court has overridden the Jury's finding in violation of the Texas Constitution. If the Jury had believed Mother should be Sole Managing Conservator, they would have so found.

22. The Court should reconsider its removal of fundamental rights of Father herein and issue a revised rendition so that the Court does not contradict the Jury's binding finding that the parties will remain Joint Managing Conservators with neither party being primary for the following reasons: 1) the jury clearly did not see Father's communication, which was almost 90 percent of the evidence presented, as dangerous to the child; and 2) the child's appointed counselor of the last 20 months finds the child to be happy, healthy, and safe in both houses and the child wanting to stay on a 50/50 schedule that his life entailed for the last eleven years. It is important to note that since OFW was ordered on August 31, 2022, Father over 655 days sent a total of 568 messages. Mother sent 351 messages in the same timeframe- 46 of which consist of over 20 words, 20 of which consist of over 40 words and 5 of which are 67, 77, 87, 106, and 133 words, respectively. This data comes, in part, from the numerous OFW threads submitted to the Court. In short, Mother has not come before this Court with "clean hands" as was continually suggested in the jury trial. In fact, Mother and counsel for Mother misstated the Court's previous ruling threatening Father with being "cut off" from their son if he didn't provide information that was clearly not required in the Court's order. Father was often unjustly threatened with deprivation of visitation. There is no doubt that these threats left Father in "fight or flight" status mentally, as was described by his treating professionals.

Veronica's limited but it's 22 words!

* Out of touch to the extreme limited messages to 20 words. Look how short sentence I just circled is—

In short, Mother produced no evidence of danger to this child predating her filing or after filing, submitted a false narrative that she knew would escalate Father's defense of his relationship, and then manipulated Court orders to drive Father further into a panic in defense of this relationship. As was stated in Court, Mother and Father became intentionally pregnant with this child after a failed attempt. And, Mother admitted she knew Father's personality due to her long term relationship with Father, yet continued to use him as a babysitter. This Court may not approve of Father's communication style, but we don't take away fundamental rights because we don't approve of how someone communicates. **No one came for Barron Trump during his age of minority, despite his father communicating bombastically and to some offensively, yet in a way that more than half this country believes to be evidence of his strength of character.**

Maybe not quite half...

PRAYER: Movant prays the Court set this Motion for hearing and, at the conclusion thereof, the Court ORDER its rendition vacated as to the portion that allows the attorney's fees award to be taxed as additional child support, adjust child support, adjust the attorney's fees award appropriately, and render an allocation of the rights and duties of the parties ~~that does not deprive~~ Father of his position as Joint Managing Conservator of the child and issue a visitation schedule that does not create a primary conservator in contradiction to the jury finding and make such other changes and clarifications to the Court's rendition to which the Respondent shows himself justly entitled.

Respectfully submitted,

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/s/ Eliz

CELL

Certificate of Conference

I certify that a conference was held with opposing counsel via email/eservice on the merits of this Motion. A reasonable effort has been made to resolve the dispute without the necessity of court intervention and the effort failed. Therefore, it is presented to the Court for determination.

Attorney for Tom Purcell

Certificate of Service

I certify that a true copy of this document was served in accordance with Rule 21a of the Texas Rules of Civil Procedure on the following on November 1, 2024:

Lené Alley DeRudder laderudder@cowlesthompson.com via e-filing

Attorney for Tom Purcell