

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

KIMBERLY O'CONNELL, INDIVIDUALLY AND AS NEXT
FRIEND FOR DAVID HORTON, A MINOR CHILD

Appellant

v.

JON P. HORTON

Respondent

DOCKET NUMBER **WD71056**

DATE: June 15, 2010

Appeal From:

Circuit Court of Platte County, MO
The Honorable Daniel M. Czamanske, Judge

Appellate Judges:

Division Four: Thomas H. Newton, C.J., James Edward Welsh and Gary D. Witt, JJ.

Attorneys:

Brent L. Winterberg, Kansas City, MO

Counsel for Appellant

Attorneys:

Jason A. Davey, Kansas City, MO

Counsel for Respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

KIMBERLY O'CONNELL, INDIVIDUALLY AND AS
NEXT FRIEND FOR DAVID HORTON, A MINOR
CHILD, Appellant, v. JON P. HORTON, Respondent

WD71056

Platte County

Before Division Four Judges: Thomas H. Newton, C.J., James Edward Welsh and Gary D. Witt, JJ.

Mother and Father sought custody modification of Son. The trial court granted modification and adopted Father's parenting plan. Included in its order was a "special condition" restricting Mother from having overnight guests not related by blood or marriage during her parenting time with Son. Mother appeals, raising four points.

AFFIRMED AS MODIFIED.

Division Four holds:

Custody modification requires a change in the circumstances of the child or the custodian; and the modification is in the child's best interests. Here, there was sufficient evidence supporting a change in circumstances of the Mother. There was also evidence supporting the trial court's finding that Father's parenting plan was in Son's best interest. Son had a very good relationship with Father, and the home was a stable and positive environment. Consequently, the trial court did not abuse its discretion in adopting Father's parenting plan.

Finally, to place a restriction on visitation, the trial court must make a finding that the child's emotional development will be impaired or that the child is in physical danger. Here, the trial court made no finding that future danger to Son's physical health or emotional development required Mother to be restricted from having overnight guests in her home. Rule 84.14 empowers us to give such judgment as the trial court ought to have given. We therefore strike the entry of the restriction of overnight guests as a special condition and otherwise affirm.

Opinion by: Thomas H. Newton, Judge

June 15, 2010

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