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IN THE TWENTY FIRST JUDICIAL CIRCUIT
COUNTY OF ST. LOUIS, STATE OF MISSOURI

IN RE: THE MARRIAGE OF:	)	
[redacted]	)	
	)	Cause No. 09SL-DR03797-03
Petitioner,	)	Division 32
v.	)	
[redacted]	)	
Respondent.	)	

FIRST AMENDED MOTION FOR CIVIL CONTEMPT AND MOTION FOR ATTORNEY'S FEES

Respondent [redacted], by and through counsel Denise N. Gabel and Marler Law Partners, submits the following First Amended Motion for Civil Contempt and Motion for Attorney's Fees:

Background

1. On September 27, 2010, this Court entered its Judgment of Dissolution of Marriage, issuing orders regarding the custody and support of the Parties' children, including [redacted]

2. The dissolution judgment contains the following orders specific to the care and custody of [redacted]

A. [redacted] shall have joint legal custody of the children. "Major decisions shall be made by [redacted] jointly."

B. "[redacted] shall notify each other of any doctor's appointments scheduled for the children in a timely manner and shall not prevent the other parent from attending said appointments."

C. "[redacted] shall have custody of [redacted] n Tuesday and Wednesday nights from 4:00 pm on Tuesday until school begins or 9:00 a.m. on Thursday each week and every other weekend from 4:00 pm on Friday until 4:00 p.m. on Sunday."

D. In regard to the emancipation of [redacted] the dissolution judgment orders, "[t]he parties agree [redacted] hough not a child, is and remains unemancipated. The child support pursuant to the terms of this Parenting Plan shall continue."

E. "The parties agree to divide the social security disability benefits as follows: via check or money order, [redacted] hall receive $345 (57%) and [redacted] shall receive $261 (43%) of social security benefits."

3. While this dissolution matter was pending before the Court, the Parties also engaged in litigation related to guardianship for [redacted]

4. On November 16, 2010, the Probate Court of St. Louis County appointed [redacted] and [redacted] as co-guardians for Jacob, consistent with the Family Court's judgment for joint legal custody.

5. On December 29, 2014, this Court entered its Family Court Modification Judgment with the following orders:

A. Modifying the custody order for another child of the marriage, but ordering that "[a]ll of other portions of the original Parenting Plan as attached to the original Judgment shall remain in effect";

B. Ordering [redacted] to pay [redacted] $170 per month in child support fo [redacted] hen age 25, effective January 1, 2015;

C. Entering a judgment in favor of [redacted] and against [redacted] n the amount of $2,105.74.

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6. At the present time, [redacted] remains unemancipated because he is physically or mentally incapacitated from supporting [redacted] and insolvent and unmarried.

COUNT I – FIRST AMENDED MOTION FOR CIVIL CONTEMPT

7. [redacted] reasserts Paragraphs 1 through 6 above as if asserted in Count I herein.

8. [redacted] has consistently failed to notify [redacted] of all doctor's appointments for [redacted] in violation of the Court's judgments in this matter.

9. By failing to notify [redacted] of doctor's appointments for [redacted] [redacted] has willfully deprived [redacted] of an opportunity to attend doctor's appointments as required in the judgments.

10. [redacted] has willfully refused to pay [redacted] $2,105.74 as ordered in the modification judgment.

11. Since approximately 2012, [redacted] has been the recipient of [redacted] social security disability benefits and has willfully refused to provide [redacted] with 43%, or any portion or amount, of [redacted]'s social security disability benefits.

12. [redacted] has willfully refused to comply with custody orders for [redacted] as ordered in the dissolution judgment and referenced and reincorporated into the modification judgment, by refusing to provide [redacted] with custody of [redacted] during his custody times as ordered in the dissolution judgment.

13. In the dissolution judgment, this Court acknowledged [redacted] disability and that child support shall continue beyond the age of majority. The same emancipation provisions for child support under § 452.340, RSMo, apply to custody orders. See *In re S.J.M.*, 453 S.W.3d 340, 244 (Mo. App. E.D. 2015); *Scruggs v. Scruggs*, 161 S.W.3d 383, 390 (Mo. App. W.D. 2005).

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14. The Probate Court of St. Louis County's judgment appointing [redacted] as co-guardians for [redacted] does not conflict with this Court's judgments, granting [redacted] and [redacted] joint legal custody of [redacted] and ordering the Parties to make major decisions for [redacted] together.

15. "Many types of cases may present issues where more than one court properly has subject matter jurisdiction over the same matter or issue." *S.J.M.* at 344 quoting *Kelly v. Kelly*, 245 S.W.3d 308, 312-12 (Mo. App. W.D. 2008). The Court errs if it issues an order conflicting with a previous Court order in regard to custody. *S.J.M.* at 344.

16. The guardianship judgment for [redacted] is consistent with this Court's finding for joint legal custody and does not override or negate the custody provisions, including the custody schedule, in this matter.

17. To the extent the first or most recent judgment would control on these issues, this Court's dissolution judgment was the first judgment to address custody of [redacted] and this Court's modification judgment, reaffirming the Parenting Plan for [redacted] is the most recent judgment relevant to this issue.

WHEREFORE, [redacted] prays this Honorable Court cite [redacted] for Contempt; order [redacted] to show cause why [redacted] should not be punished for contempt in this case, by sanctioning [redacted]; order [redacted] to reimburse [redacted] for his reasonable attorney's fees and litigation costs incurred herein; and for such further relief as this Court deems just and proper in the circumstances.

COUNT II – MOTION FOR ATTORNEY'S FEES

18. [redacted] reasserts Paragraphs 1 through 17 above as if asserted in Court II herein.

19. [redacted] actions have necessitated the filing and prosecution of this Motion.

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20. [redacted] has incurred attorney's fees as a result of Mother's actions.

21. Section 452.355, RSMo., allows the Court, "from time to time," to consider the financial resources of the parties, the merits of the case, and the actions of the parties and order a party to pay "a reasonable amount for the cost to the party of maintaining or defending any proceeding."

22. [redacted] requests that this Court issue an order requiring [redacted] to pay [redacted] reasonable attorney's fees and costs expended in this matter.

WHEREFORE, Respondent/[redacted] respectfully requests that this Court order Petitioner/[redacted] to pay his reasonable attorney's fees and costs expended in this matter, and for further relief as this Court deems just and proper.

Respectfully submitted,

MARLER LAW PARTNERS
Attorneys for Respondent/[redacted]

/s/ Denise N. Gabel
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STATE OF MISSOURI)
) **SS.**
COUNTY OF St. Louis)

COMES NOW Respondent [redacted] being of lawful age and after being duly sworn, states [redacted] has read the foregoing document, and the facts stated therein are true and correct according to the best of [redacted] knowledge, information, and belief.

[redacted]

Subscribed and sworn to before me, a Notary Public, this 27 day of September 2023.

Denise Gabel
Notary Public

My Commission Expires:

DENISE GABEL
My Commission Expires
08-22-2025
NOTARY SEAL
St. Louis
County
Commission # 21778214
NOTARY PUBLIC - STATE OF MISSOURI

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