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

LANDRE SMITH, Petitioner,	)	
	)	Cause Number: 16SL-DR05871-03
vs.	)	
	)	Division Number: 36
ARIEL ALTON, Respondent.	)	

MOTION TO DISMISS

COMES NOW Petitioner, LANDRE SMITH (hereinafter FATHER), by and through his attorney with his Motion to Dismiss and states the following in support thereof:

1. On February 3, 2017, a Default Paternity Judgment under cause number 16SL-DR05871 was entered, finding FATHER the biological/legal father of FATHER and Respondent's, ARIEL ALTON (hereinafter MOTHER), minor child, namely: [redacted], born March of 2013 (hereinafter CHILD).
2. On February 3, 2017, the Default Paternity Judgment awarded FATHER sole legal custody of CHILD, the parties joint physical custody of CHILD, and no child support.
3. On February 14, 2017, the court set aside the Default Paternity Judgment.
4. On August 17, 2017, the court under cause number 16SL-DR05871-01 entered a Consent Paternity Judgment naming FATHER as CHILD'S legal and biological father, awarded the parties joint legal and physical custody of CHILD, and ordered FATHER to pay MOTHER monthly child support of $226.00 per month.
5. In 2018, under cause number [redacted], a petition of child abuse and neglect was filed; and a finding of abuse and neglect was entered against MOTHER for physical abuse of CHILD.
6. On May 25, 2021, under cause number 16SL-DR05871-02, the court found due to MOTHER'S poor insight into the best interest of CHILD as exemplified by MOTHER'S inability to recognize appropriate discipline methods for CHILD, continued denial of her perpetrated physical abuse upon CHILD, and lack of progress in the Juvenile case, MOTHER was only granted supervised visitation with CHILD: FATHER was awarded sole legal and physical custody of CHILD.
7. On September 16, 2021, MOTHER filed under case number 16SL-DR05871-03 the Motion to Modify the May 25, 2021 court ruled parenting plan.
8. On October 5, 2022, a Referral Order for Exchanges at Family Court Exchange Center was entered to facilitate supervised visits between MOTHER and CHILD.
9. On July 13, 2023, MOTHER filed an Amended Motion to Modify seeking joint legal and physical custody of CHILD with unsupervised visitation with CHILD.
10. Since October 5, 2022, MOTHER has not exercised any visitation between herself and daughter through the Exchange Center.
11. "He that hath committed inequity shall not have equity." Seaman v. Cap-Au-Gris Levee Dist., 117 S.W. 1084, 1094 (Mo. 1909). Courts must search the consciences of

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the parties and shall not provide equity to the wrongful or unjust attitude of the party seeking relief. Equity will not assist a party who enters court with unclean hands. Mahaffy v. City of Woodson Terrace, 609 S.W.2d 233, 238 (Mo.App.1980). The unclean conduct need not be fraudulent, but suggestive of lacking good faith. Moore v. Carter, 201 S.W.2d 923, 929 (Mo.1947).

12. In Harlow, (Mo. App. ED 2009) and Staples, [895 S.W. 2d. 265 (Mo. App. ED) 1995] the appellate court embraced the lower court's reasoning for involuntarily dismissing a Motion to Modify, stating a party should not expect sympathy for a claim of affirmative relief especially since they had made no good faith effort to fulfill the court obligations.
13. MOTHER'S pleading should be dismissed as she enters these proceedings with unclean hands and no change in circumstances.
14. MOTHER'S failure to exercise custody is a conscious act and lacks good faith or her motion to have more custody of the current custody she is not exercising.
15. Pursuant to 452.410, a modification of an existing custody order requires a change in circumstance.
16. The current custody order was based upon MOTHER'S poor insight into the needs of CHILD.
17. Failure to exercise custody with CHILD pursuant to the court's directives is indicative of poor insight into the needs of CHILD; hence no change of circumstance exists to modify the current custody order.
18. MOTHER Motion to Modify and Amended Motion to Modify should be dismissed for lack of change in circumstances.
19. FATHER has incurred reasonable attorney's fees in defense of MOTHER'S motion.

WHEREFORE, the Petitioner/FATHER prays this court grants this motion; dismiss MOTHER'S Motion to Modify; and for any and all other relief this court deems just and fair.

Respectfully submitted,

By: */s/ Kelly Bolan Chevalier*

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CERTIFICATE OF SERVICE

Pursuant to Missouri Supreme Court Rule 55.03(a), the undersigned hereby certifies that on the 11th day of November, 2023, a copy of the foregoing document was filed through electronic filing, to: Kristen Dunnett and Laura Stobie.

/s/ Kelly Bolan Chevalier

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