

IN THE DISTRICT COURT IN AND FOR WAGONER COUNTY

STATE OF OKLAHOMA

2017 JUN 15 PM 1:06

WAGONER COUNTY
JAMES E. HIGHT
CLERK

IN RE THE MARRIAGE OF)
)
TOSHA V. MCDUGLE,)
)
Petitioner,)
and)
)
KEVIN W. MCDUGLE,)
)
Respondent.)

Case No. FD-2017- 181

**PETITION
APPLICATION FOR TEMPORARY ORDER**

Comes now Tosha V. McDugle, Petitioner, and for her Petition and Application for Temporary Order she states as follows:

PETITION

1. Petitioner and Respondent were lawfully married in Tulsa, Oklahoma, on March 14, 2003. Their marital relation has existed since that time. The parties have two minor children, to wit: K.A.M. born XX/XX/ 2007, in Tulsa, Oklahoma; and K.A.M. born XX/XX/ 2006, in Tulsa, Oklahoma. Petitioner is not pregnant.

2. Petitioner is entitled to dissolution of marriage/divorce from Respondent for the following causes: adultery and incompatibility. Both parties have resided in Oklahoma for more than six consecutive months immediately preceding the filing hereof and this Court has dissolution of marriage/divorce subject matter jurisdiction herein. Both parties reside in this county and venue is proper herein.

3. Jurisdiction is present in this Court to hear and determine all issues pertaining to the minor children of the parties and all such jurisdiction should be exercised herein. More particularly, Petitioner states that:

A. Oklahoma is the "home state" of the parties' minor children and each of them as that phrase is defined by Oklahoma's Uniform Child Custody Jurisdiction and Enforcement Act, 43 O.S. §551-101 et seq., and by the federal Parental Kidnapping Prevention Act, 28 U.S.C. §1738A, and by Oklahoma's Uniform Interstate Family Support Act, 43 O.S. §601-101 et seq. Under said acts, Oklahoma and this Court has jurisdiction to hear and determine all issues pertaining to the custody, visitation and support of the minor children.

B. Further, it is in the best interest of the parties' minor children that this Court assume custody, visitation and support jurisdiction under said acts because the children and these parties each have significant connections with this state and there is available in this state substantial evidence concerning the children's present and future care, protection, training and

personal relationships. No other state has child custody, visitation and/or support jurisdiction. Each such category of jurisdiction should be exercised herein.

C. No person other than the parties hereto has or claims to have any custody or visitation rights concerning the parties' children or any of them. Neither Oklahoma's Indian Child Welfare Act, 10 O.S. §40.1 et seq., nor the federal Indian Child Welfare Act, 25 U.S.C. §1901 et seq., apply to this proceeding. Other than this action, no other action has been filed in this or any other state in which the custody, visitation or support of the minor children has been at issue and Petitioner has not participated in any such other litigation as a party, witness or in any other capacity.

D. During the past five years, the minor children have resided at the following locations and with the following persons: from June 2012 until December 2013 with both these parties at 5732 E. 21st Pl, Tulsa, Oklahoma; from December 2013 until April 2017 with both these parties at 29521 E. 65th St. S, Broken Arrow, Oklahoma; and from April 2017 until today with Petitioner at 29521 E. 65th St. S, Broken Arrow, Oklahoma.

4. It is in the best interests of the mental, physical and moral welfare of the minor children that their custody be awarded to Petitioner. Respondent should receive visitation with the minor children as follows: Very Short Day Visits no more than 2 hours and the Respondent shall not scream or yell at the minor children during said visits. That during said visits the Respondent shall have no other individuals at visits with whom he is romantically involved. That the minor children have returned after only two (2) one (1) hour visits with Respondent and their behaviors have deteriorated and if such behavior continues then the visits should be supervised by the children's counselor or another professional supervisor. Respondent needs to seek counseling for his mental health issues and his anger management.

5. For purposes of computing child support under the Child Support Guidelines, the parties earn or should be attributed approximate monthly gross incomes as follows: Petitioner, \$1,257.00; Respondent in excess of \$20,000.00. Child care expense does not exist. Health insurance does not exist for the minor children. That the Respondent should be ordered to carry health insurance on the minor children. Each party should be required to contribute to the support of the minor children as required by law. Reference is made to Petitioner's Application For Temporary Order for additional allegations and requests concerning the parties' support of their minor children.

6. Each party should be awarded and set aside all of his or her separate property and the same should not be accounted for or included in the Court's division of the parties' marital estate. All items of marital property and marital debt should be identified and valued and should be equitably divided between the parties according to law.

7. Petitioner is in need of and Respondent has the means and ability to pay Petitioner a reasonable amount of support alimony upon the granting of a dissolution of marriage/divorce herein and Petitioner is entitled to the same.

8. Petitioner is not possessed with the financial resources from which to pay her reasonable and necessary attorney fees, costs and litigation expenses herein but Respondent has the means and ability to do so. Petitioner is entitled to an award against Respondent for her reasonable and necessary attorney fees, costs and litigation expenses herein.

APPLICATION FOR TEMPORARY ORDER

For her Application for Temporary Order, in addition to all allegations above set forth in Petitioner's Petition which are adopted by reference, and to preserve the peace, marital estate and security of the parties and minor children, and to clarify the financial and personal relationships arising from the marriage of the parties while this action remains pending, Petitioner is entitled to and requests that the temporary order requests hereinafter set forth be maintained or entered herein to govern the parties during the pendency of this action.

1. **AUTOMATIC TEMPORARY INJUNCTION ORDERS.** Except as is noted below concerning removal of the parties' minor children from this state, the orders contained within the Automatic Temporary Injunction Notice herein should all remain in full force and effect, to wit: Both parties should continue to be restrained, enjoined and prohibited from:

- A. Molesting or disturbing the peace of the other party or the children of the marriage.
- B. Disrupting or withdrawing the children of this marriage from an educational facility, program, or day-care where the children historically have been enrolled.
- C. Hiding or secreting the children of this marriage from the other party.
- D. The Automatic Temporary Injunction Notice order which prohibited both parties from removing any children of this marriage beyond the jurisdiction of the State of Oklahoma, acting directly or in concert with others, except for vacations of two (2) weeks or less duration, without the prior written consent of the other party, which shall not be unreasonably withheld, should be modified as is hereinafter set forth.
- E. Selling, mortgaging, encumbering, transferring, loaning, giving away, concealing or in any way disposing of, without the written consent of the other party or an order of the Court, any marital property, except:
 - (1) in the usual course of operating a business;
 - (2) for the purpose of retaining an attorney for the case; or
 - (3) for the necessities of life.

Each party shall notify the other party of any proposed other expenditures, and shall account to the court for all such expenditures made after this injunction went into effect.

- F. Intentionally or knowingly damaging or destroying the tangible property of the parties, or either of them, including, but not limited to, any document that represents or embodies anything of value.
- G. Making a withdrawal for any purpose from any retirement, profit-sharing, pension, death, or other employee benefit plan or employee savings plan or from any individual retirement account or Keogh account.
- H. Withdrawing or borrowing in any manner all or any part of the cash surrender value of life insurance policies on either party or their children.
- I. Changing or in any manner altering the beneficiary designation on any life insurance policies of either party or any policy of their children.
- J. Canceling, altering, or in any manner affecting any casualty, automobile, homeowners', or health insurance policies insuring the parties' property or persons.
- K. Opening or diverting mail addressed to the other party.
- L. Signing or endorsing the other party's name on any negotiable instrument, check, or draft, such as tax refunds, insurance payments, and dividends, or attempting to negotiate any negotiable instruments payable to either party without the personal signature of the other party.
- M. Regarding insurance, both parties are ordered to maintain and keep in force all presently existing health, property, vehicle, homeowners', life and other insurance which you are presently carrying on any member of this family unit, or property or vehicle, and to cooperate as necessary in the filing and processing of claims. Any employer provided health insurance currently in existence shall remain in full force and effect for all family members.

2. **ADDITIONAL TEMPORARY ORDERS REQUESTED.** In addition to the aforesaid Automatic Temporary Injunction Orders, Petitioner requests entry of the following temporary orders, to wit:

- A. Temporary custody of the said minor children should be awarded to Petitioner and Respondent should be awarded visitation with them as follows, to wit: Very Short Day Visits no more than two (2) hours and the Respondent shall not scream or yell at the minor children during said visits. That during said visits, the Respondent shall have no other individuals at visits with whom he is

romantically involved. That the minor children have returned after only two (2) one (1) hour visits with Respondent and their behaviors have deteriorated and if such behavior continues then the visits should be supervised by the children's counselor or another professional supervisor. Respondent needs to seek counseling for his mental health issues and his anger management.

- B. Each party should be restrained and prohibited from involving the minor children in disputes between the parties in this litigation. Particularly, each party should be ordered not to speak negatively to, or within the hearing of, the minor children about the other party; each party should immediately notify the other of his/her changes of address and telephone numbers; each party should encourage the minor children's contact with the other party; and each party should insure all reasonable telephone communication between the minor children and the other parent while the minor children are in his/her physical possession. Neither party should ever prevent or interfere with the minor children from contacting the other parent.
- C. Instead of the similar order contained in the said Automatic Temporary Injunction Order, each party should be ordered not to remove the minor children from Oklahoma during the pendency of this action without the express written consent of the other party, and, in the event that a child is removed from this state without the express written consent of the other party or an order of this Court, the party so removing or authorizing the removal of a child from this state should be immediately deprived of all right to the physical possession of the child so removed and the other party should be immediately entitled to the physical possession of the child.
- D. Each party should be prohibited from permitting a person of the opposite gender from spending the night in his or her respective dwelling or other sleeping location while the minor children are present. This provision should not apply to family members.
- E. For purposes of computing child support under 43 O.S. §118 and §119, Petitioner earns or should be attributed gross monthly income of \$1,257.00 and Respondent earns or should be attributed gross monthly income in excess of \$20,000.00. At present, work related child care expense is not incurred by either party. In the event that work related child care expense is incurred by either party during the pendency of this action, such expense should be divided proportionately between the parties in accordance with the Child Support Computation form. Child health insurance does not presently exist for the children. That the Respondent should be ordered to carry health insurance on the minor children. Respondent should be ordered to pay Petitioner child support pursuant to the Oklahoma Child Support Guidelines.

- F. Each party should be restrained and prohibited from incurring any new debt which would add to the marital debt of the parties and/or which would increase the debt associated with any security interest upon of any existing property of the parties. In the event that either party makes any new debt hereafter, the same should be the separate debt of the party incurring the same.
- G. Each party should be restrained and prohibited from altering any instrument which provides for disposition of any property upon death, including but not limited to any life insurance policy, trust, retirement interest, will, or other instrument or account which provides for the payment and/or disposition of interest upon the death of the owner of such interest.
- H. Each party should be restrained and prohibited from entering within or upon the residence of the other during the pendency of this action, unless the express consent of the other party be given.
- I. Petitioner is in need of and Respondent has the means and ability to pay Petitioner a reasonable amount of temporary support alimony during the pendency of this matter and Petitioner is entitled to the same. That the amount shall be determined by the Petitioner once she has computed the monthly bills and care for the children and submitted to the Court for consideration.
- J. Petitioner should be granted temporary possession of the marital residence located at 29521 E. 65th St. S, Broken Arrow, OK 74014 and Respondent should be ordered to maintain the mortgage and debt thereon during the pendency of this action.
- K. Petitioner should be granted temporary possession of her marital vehicle the 2011 Honda Pilot during the pendency of this action.
- L. Respondent should be granted temporary possession of his marital vehicle the 2014 Dodge Ram Truck and the debt thereon during the pendency of this action.
- M. Respondent should be ordered to maintain and pay all marital debt and bills that currently exist during the pendency of this action.

Wherefore, Petitioner requests that she be granted a dissolution of marriage/divorce from Respondent; that she be granted all relief above set forth; that the Court issue its Order Setting Hearing setting hearing upon said application; that, upon such hearing being conducted, the Court issue the temporary orders above requested; and that Petitioner be granted all further ancillary and proper relief as is warranted by the evidence and circumstances presented.

[Handwritten Signature]

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Verification

State of Oklahoma, County of Wagoner, ss:

Tosha V. McDugle, of lawful age and being first duly sworn upon oath, states: I am Tosha V. McDugle, Petitioner above named. I have read the foregoing instrument and state that all statements contained therein are true and correct.

[Handwritten Signature]
Tosha V. McDugle, Petitioner

Subscribed and sworn to before me on June 14, 2017, by Tosha V. McDugle, Petitioner above named.

My Commission Expires:
04-19-2021
Commission # 01006692

[Handwritten Signature]
Notary Public

