

STATE OF INDIANA)

IN THE BOONE CIRCUIT COURT

) SS:  
COUNTY OF BOONE )

CAUSE NO. \_\_\_\_\_

IN RE: THE MARRIAGE OF )  
)  
EMICA M SHOWALTER (Talbot), )  
Petitioner, )  
)  
and )  
)  
STUART W SHOWALTER, )  
Respondent. )

MOTION FOR RULE TO SHOW CAUSE FOR MOTHER'S FAILURE  
TO FACILITATE VISITATION

Comes now the respondent, pro se, and moves the Court Rule to Show Cause for the Petitioners' failure to facilitate visitation and shows that:

- 1) In its' Final Decree of 18 April 2002 the Court granted custody of Therin to the Mother. The Father was to have regular visitation with Therin on alternating weekends from Friday at 6:00PM until Sunday at 6:00PM and every Wednesday from 4:00PM-8:00PM. The Father was also to have two weeks of summer vacation with Therin as long as the time requested was submitted by 01 April. The parties were to follow Rule 12 for Holiday schedules.
- 2) In 2003 the Father scheduled two weeks of vacation time with Therin by presenting such to the Mother and the Court by 01 April. The first was actually in the Spring and the latter was set for early August. There was no objection to the time scheduled by the Father.
- 3) When the Father attempted to exercise the second week of visitation the Mother refused to let Therin go with the Father stating "You are not taking him because he will be starting school and I am not going to let you take him to school". She further stated that the week would be made up from days he is not in school. To this date only one additional weekend, which was exercised, and no additional weekdays have been offered.
- 4) During the Christmas 2003 break the Father could not locate his copy of Rule 12 and retrieved a new one from the Courthouse. The "Local Rule 12" was given to him. As it conflicted with 'Rule 12' the Father was late in returning Therin and did so upon a phone call from Elica and explanation that 'we don't follow that one'. Upon querying the Court Clerk soon after the Father was told to be following the 'Rule 12' that was given with the Final Dissolution. The Father have since located that.

5) Following that the parties discussed that they may want to change to the 'Local Rule 12' since its' times seem to better coincide with regular visitation and are more consistent, usually Friday at 6:00PM. This matter had not been discussed again until the Mother mentioned it near the end of March.

6) For this year the Parties agreed that since the Father was to have Therin for this weekend and Spring Break and that Elica was to have him for Easter, which overlapped Spring Break, that they would use Spring Break as a transition to go to 'local Rule 12'. The Father told her he would make a Motion (attached) that they could mutually present to the Court to make that change. He brought it to her on Wednesday 31 March and they verbally agreed that he would have Therin from 6:00PM Friday 02 April until Tuesday evening which would split Spring Break in half. Additionally she wanted to have Therin for Thanksgiving this year which they verbally agreed to also.

7) I arrived at her residence at 6:10PM on Friday. I knocked repeatedly and got no answer. I had also been calling on my phone since about 4:30PM because I thought I would be 15 minutes late. I got no answers to any of my calls. I waited until 6:35PM and left. There was one car in the drive at that time. I also left a note on the door. I continued calling and returned at 9:00AM Saturday. I knocked repeatedly and also called. I got no response. There were two cars in the drive at this time. I had the Lebanon Police Department call at around 9:30AM. They got no response. I have continued calling and have yet to receive any response.

8) Therin had heard us discussing the schedule and he had made plans with friends for Saturday and with my parents for Tuesday.

9) In the Courts order of 11 October 2000 the Court stated "Mother is to pick the child up on time and return the child on time. She is to give at least 72 hours advance notice of her intention not to exercise any scheduled visitation and when such notice is impossible, she is to give as much notice as possible and the reason for the late notice." "The parties are to attempt to cooperate together and talk with each other concerning issues relating to their child and if they cannot, they are to at least write to each other so that the Court has evidence of their attempts to work together so that the Court may determine who is the reasonable party and who is the unreasonable party."

10) Prior to Therin's conception the parties had agreed that the father would home school their children and if that became impractical that they would go to an open concept type school. When the father was in school he always returned for fall semester in September. He had not been informed if Therin was going to go to a school or what school if he was until about a week prior to him starting. At that time he believes Elica knew when Therin would be starting school. The Father did not get told until he was in her driveway to pick Therin up for his second week of vacation which she would not let him exercise. That was clearly less than 72 hours notice which was possible. Had he been informed prior to 01 April that Therin was going to be enrolled in school and when the start date was he would have scheduled the second week of vacation time with Therin for a week earlier.

11) On 07 December 2000 a Motion for Rule to Show Cause was filed for the Mother failing to return Therin on time. She was to return him by 3:00PM. As the father was going to be out of town until shortly after that time he had arranged for his Mother to come up from Indy and be at Therin's house to get him. Elica called the Father at noon to say she had a 3:00PM doctor's appointment in Indy and would be returning Therin late. The Father was unable to contact his mother who, best he recalls, waited until nearly 4:30 for Elica to arrive.

12) Since the Final Dissolution the Father has not filed any of these Motions for the Mother's failure to timely facilitate visitation. Other than the Summer Vacation conflict of last year, mentioned in paragraph three and Spring Break this year the Father recalls only minor conflicts with visitation time. Some were accompanied by a phone call, but only after he was waiting.

13) This past weekend has been very stressful on the father because he has been unable to contact anyone at that house. He has had others call including the police and gotten no response. He even wonders with it being cold could they have all died from carbon monoxide poisoning. He has been unable to get immediate assistance from the Courts when exchange times are Friday at 6:00PM and the Police are helpful but reluctant to do much stating it is a civil matter.

14) The Father does not believe that these visitation conflicts are excessive but all have been preventable. They are disruptive and disrespectful to both Therin and him. Therin is very meticulous in his scheduling and it upsets his Father to see his plans quashed. He had plans with friends on Saturday who left for the week already. The Father also had plans to do things with him that cannot be done on the weekend or sufficiently after 4:00PM on Wednesdays.

15) The Father ask the following as relief

A) The visitation schedule for Therin be changed to that of 'Local Rule 12' which uses 6:00PM as a common exchange time. That Therin be with his Mothers' family on Thanksgiving this year, as was verbally agreed, if 'Local Rule 12' was adopted.

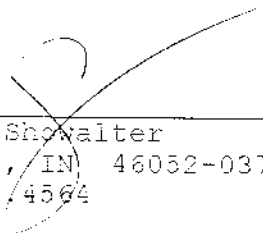
B) That 6:00PM visitation times for the Father be amended to the Father being responsible for picking up Therin from school on those days, at the end of the school day, and at the Courthouse at 3:30PM on days he is not in school so as to allow the Court to make immediate remedy if visitation is not facilitated.

C) That Therin be given additional time with his Father to compensate for his lost visitation time.

D) That the Mother provide alternate phone numbers, to the Father, Court and/or Thorntown and Lebanon Police Departments, where she may be contacted.

E) Any additional relief the Court finds necessary to insure that Therin's visitation with his Father is regularly facilitated.

WHEREFORE, the Respondent, Stuart Showalter, prays that the Court order the Petitioner to appear and show cause for her failure to facilitate visitation and for all just and proper relief.

  
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Stuart Showalter  
Lebanon, IN 46052-0374  
317.294.4564

05 APRIL 04  
Date