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HEARING DATE/TIME: _____

**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
AT FAIRBANKS**

TERESSA GARDINER n/k/a
TERESSA FAUVER,

Plaintiff,

vs.

JERRY GARDINER, JR.,

Defendant.

Case No.(s): 4FA 17-02257 CI,
3AN-03-11696 CI (Original)

PLAINTIFF'S MOTION TO SET ASIDE OR
VACATE JULY 18, 2017 ORDER & STRIKE
RELATED PLEADINGS THERETO & TO
RE-AFFIRM ORIGINAL CUSTODY
ORDER(S)

I. RELIEF REQUESTED

COMES NOW Teressa (aka "Tess") Fauver-Hernandez, plaintiff in the above-captioned cause, *ex parte* and without the assistance of counsel, and hereby moves this Court for an order to vacate or set aside its July 18, 2017 order granting the defendant's motion for custody modification, and to issue a new order to strike or remove documentation filed with relation thereto from official record. In addition, she seeks judicial written affirmation of the original custody order(s) and their full and continued effect. The history of this matter is thoroughly

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disclosed below, and followed by legal arguments, written testimony, and evidence in support of the causes herein.

This motion is made for good cause, in the best interests of the minor child involved, and brings to the record evidence that provides proof beyond reasonable doubt that the July 18, 2017 order granting custody modification is absolutely detrimental to the minor child whose life it encompasses, in addition to its legally non-binding nature, and should be immediately stricken from the record. It is not meant to be interpreted as a direct response of the plaintiff to any allegation made by any other party. In the event that the court solicits the plaintiff's response to specific allegations made against her, those responses will be submitted under separate cover. Plaintiff prays that the Court consider the facts contained in the documents now being presented and any and all other material evidence brought in support thereof, and that it immediately grant the relief requested in Section IV of this motion.

II. FACTS

Plaintiff requests that the facts and evidence that embody her jointly-filed emergency motion for expedited consideration, specifically those set forth in Section II (beginning at p. ____), be incorporated herein by this reference. Below is a summary of the aforementioned Section for the court's convenience.

1. Krystin and the plaintiff are victims of an extreme incidence of tortious custodial interference (parental kidnapping).

2. The defendant obtained a non-binding custody modification order in July, 2017. Since then, he has done very little, if anything, to hide the fact that his concerns do not include Krystin's best interests. The Fairbanks Police Department, Washington Children's Administration, Seattle Police Department, Alaska's Office of Children's Services, and Alaska State Troopers have either declined to help or have been unable to help Krystin in her isolated situation.

3. Krystin recently reported to her mother (plaintiff), her paternal aunt, Sarah (the defendant's sister), and her paternal grandfather, Jerry Gardiner, Sr. (the defendant's father), some of the abusive actions and indifferent lack of any action she needlessly endured over the last calendar year:

**she has not been allowed to leave the defendant's house unless she is granted the privilege of accompanying either her biological father, defendant Jerry Gardiner, Jr., or his girlfriend, "Gabby," to the grocery store;*

**defendant is doing all in his ability to prevent Krystin from communicating with friends, family, and in truth, every human being outside of his residence since on or about July 8, 2017;*

**in addition to being unable to communicate with known persons, Krystin has not been allowed opportunity to socialize with any of her peers or persons otherwise outside of the defendant's residence and make new friends in Fairbanks, a city she has never been to;*

**Krystin's isolation is so extreme that the defendant does not allow her regular medical care or counseling services;*

**she has been regularly hungry and without enough food to eat; the defendant has ignored or "forgotten" about her many regular requests for simple and*

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inexpensive food items (even when he was employed at a grocery store);

**she has gone without or has not had enough basic hygiene or basic clothing items. She recently reported that for the past year, the defendant only allowed her to have three (3) pairs of underwear; and*

**Krystin has not been allowed to go to public school and the defendant has actually made it impossible for her to complete school work in the distance-learning education program he enrolled her in at a year lower than her actual successfully completed education level.*

Krystin reported the defendant and his girlfriend watch Netflix with the “school”-provided wireless internet router sent to them by distance-learning program for educational purposes and don't allow Krystin to use it.

Further, during Krystin's stay at Jerry Sr.'s house, Jerry Jr. somehow learned that Jerry Sr. had ordered a new router so that Krystin could begin to attempt to catch up on the ninth-grade level school work (she should have attended high school as a sophomore last year), and Jerry Jr. stopped the order from arriving.

3. The defendant regularly perpetrates severe psychological abuse on Krystin.

He regularly tells her that she is “f*****g stupid” (Tess Aff. Ex. ____) along with variances of the same (dumb, stupid, etc.), and demeans her physical appearance (Tess Aff. Ex. ____) on many levels (tells her she looks f*****g stupid, dumb, looks horrible, etc.). He calls her a “freeloader” when she is forced to request something like food or time using WiFi for school assignments. The defendant screams curses at Krystin and scares her; she has spent her life growing up alongside a young, single mother and had never been screamed violently at prior to meeting her father. Jerry Jr. tells Krystin that her mother doesn't want to talk to or hear from her, and never asked about her (when the plaintiff contacted the defendant on a regular basis

providing her phone number and demanding that Krystin contact her by the end of that day (Tess Aff. Ex. ____). During the last frozen season, Krystin's long-lost father forced her to scrape cigarette butts belonging to him and his girlfriend out of the ice with bare hands. Tess Aff. Ex. ____.

4. Krystin has good cause to feel in physical danger of and physically threatened by the defendant. He recently broke down her bedroom door with his “bare hands” (which he declined to replace).

5. Defendant has begun to arbitrarily force Krystin to and from his residence. This treatment began after he began drinking heavily “again.” The defendant has received a felonious amount of DUI arrests and has had his license suspended (although he continues to drive). Tess Aff. Ex. ____.

6. Defendant has most recently been threatening to remove Krystin permanently from his residence and relocate her to Arizona. This situation would not be in Krystin's best interests and would be against her wishes.

7. Though Krystin has vocalized protests to authorities to returning to the defendant's residence, Jerry Jr. still has not been stopped from bringing her back to continue the concealment of her location, the silencing of her communications, and the reported abuse and neglect of her at his unknown location (even his father, Jerry Sr., who lives in Fairbanks, has not been told where Jerry Jr. lives).

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8. Jerry Jr. has most recently kept Krystin from Alaska Children's Services. In the past 10 days, he has denied Investigator Dana H. Angelo the ability to speak with Krystin.

A. CAUSES FOR MOTION TO SET ASIDE/VACATE

1. Defendant committed fraud, misrepresentation, and/or other misconduct in order to obtain the July 18 order modifying custody.

The defendant intentionally misled the court through fraudulent misrepresentation of himself, the facts and history of this matter, and the plaintiff, using intentional manipulation of the court's assumptions regarding the matter to avoid judicial inquiry.

The defendant fraudulently misrepresented the history of this matter to the court when he failed to fully disclose the extreme restrictions placed upon him with regard to visitation and the Anchorage court's decision(s) to deny him all custody rights. Tess Aff. Ex. _____. <<2 hours professionally supervised visitation per week>>

History <<no visits with KK - total stranger to her >> - use Rick Affidavit reflecting the no-show visitations

History of violence <<Sarah text re judge would have done more if i wanted to press charges>>

<<History of substance abuse>> - use motion for interim custody

The defendant fraudulently misrepresented himself when he failed to disclose his criminal history, including multiple felonies, and multiple charges entered against him for

endangering Krystin and for perpetrating domestic violence on the plaintiff. Tess Aff. Ex. ____.

The defendant misled this court with regard to due diligence in his failure to seek out an effective service address for the Plaintiff. A court commonly assumes the responsible party in an action will perform due diligence as necessary; however, Jerry Jr. decided to shun many of his responsibilities in the context of this filing and in any consideration of the minor child Krystin in every way possible. A few weeks prior to his filing for modification, the plaintiff initiated contact with Jerry Jr. in an effort to forge an amicable relationship in Krystin's best interests. Tess Aff. Ex. _____. After the initiated contact, the defendant sent her multiple unsolicited communications. Id. However, the defendant did not communicate any notice of his motion to her. Id. Neither did he request any kind of contact information from her. Id.

The defendant misled the court and allowed it to believe the conflicting contact information he provided for Ms. Fauver was effective for service. He intentionally avoided necessary procedures requiring notice and service and allowed the court to believe he had fulfilled all due process requirements, though in fact he had declined to serve the plaintiff or provide her with notice of his motion. Tess Aff. Ex. ____.

The defendant misrepresented the validity of his unserved and unsupported motion when he allowed the court to rule and issue an order without making it known that the plaintiff had not been given notice or served.

Jerry Jr. misrepresented the certificate of service form, signed and dated June 29 and

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filed on July 3, as a complete and valid service certification, when in fact what he filed was an incomplete document. TF Aff. Ex. 17 p. 6. <Def Mo Docs> He intentionally left the area indicating the service method used incomplete as an attempt to avoid potential repercussions relating to his anticipated failed service/his failure to even attempt effecting service at all, to the plaintiff. The section requires only a simple check mark in one of two boxes (which indicate service by hand or mail, respectively). The chance of Jerry Jr.'s failure to complete that particular section of the service certification due to a mere oversight is far-fetched. The only part of this document that is not completed is located exactly in the center of the relatively small area required to be read and completed by the filing party and requires only a simple check mark in one of two boxes indicating how service was effected on the opposite party.

The defendant intentionally misrepresented the validity of his motion when he allowed the court to rule and issue an order without alerting the court to the fact that Ms. Fauver had not been given notice or served.

The defendant fraudulently misled the court when he presented it with false accusations about the plaintiff in his maliciously slanderous misrepresentation of her. The July 2017 motion he penned presented untruths about the plaintiff as fact, including but not limited to claims that the plaintiff had abandoned her child and that her child had been “taken away” from her by “Child Protective Services (CPS).” Tess Aff. Ex. .

The defendant misled the court regarding the child's residential status when he allowed it

to assume, due to the boldness of his filing a modification motion, that the State of Alaska had jurisdiction over Krystin when it did not. She arrived in Alaska at the end of May 2017 (Tess Aff. Ex. ____) after living in the Seattle area with her mother for at least four (4) consecutive years prior. Tess Aff. Ex. ____.

The defendant filed for a change in custody at the very beginning of July 2017, much less than 6 months after Krystin's arrival. During the time of his filing, the child was in the defendant's custody while he had no legal rights to even attend a supervised visitation with her for more than two (2) hours. Tess Aff. Ex. _____. While awaiting a ruling on the motion, the defendant removed Krystin's communication capabilities Tess Aff. Ex. ____ as well as her freedoms of privacy and of leaving his residence. No one heard from her until mid-October 2017, when she was able to sneak contact to her cousins. Tess Aff. Ex. _____.

The intentional misrepresentations made by the defendant to the court through the short life of his motion reflect an attitude of reckless indifference toward judiciary authority, a state of mind regularly displayed in his conduct. His perspective is also made evident in the number of legal violations and actual criminal charges (which number at least twenty (20)) currently on the docket of the Alaska Court System (Tess Aff. Ex. ____), in the conduct that was testified to by multiple parties and uncontradicted by the defendant during the divorce and custody trial held in re: the plaintiff and defendant in 2003, and his failure to even attempt to fulfill his visitation/custody-related court-ordered obligations.

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2. Defendant declined to provide notice to or effect service on plaintiff in accordance with AS

In July 2017, Jerry Jr. unilaterally filed for full legal and primary physical custody of Krystin. His discreetly-filed motion was unopposed in the weeks leading up to its judicial review, and subsequently was granted by default as there had been no objection. Jerry, though aware of basic court procedures, did not give notice to Krystin's mother of the legal change in Krystin's lifelong custody arrangements that he suddenly wanted, nor did he attempt to have her effectively served (as he led the court to believe).

However, material evidence leaves little room for doubt that the defendant knew of the procedures he had, at least for the time being, successfully avoided. During an August 2017 encounter with Fairbanks police officers at his place of employment (officers had arrived in an attempt to perform a welfare check on Krystin, and when they did not have access to defendant's residential address, they made contact with the defendant at Fred Meyer), Jerry Jr. seemed to boast during his interview about the fact that he had filed for custody without the plaintiff's knowledge, as is reflected in the reporting officers' log notes:

"...father has custody of the daughter now and the mother is not yet aware of the situation.." Tess Aff. Ex.

The defendant did not directly mention his underhanded maneuvering to Ms. Fauver until August 9, when he, again, seemed that he couldn't help but boast of his accomplishment, when he accused Krystin's mother of harassment and declared himself "*hav[ing] full legal*

custody...” of Krystin. **Tess Aff. Ex. _____**

3. Defendant Failed to File Completed Certificate(s) of Service

In his motion for modification of custody, on the very first page in the very first section, Mr. Gardiner indicated an incorrect year of birth for Plaintiff. TF Aff. Ex. 17, p. 1. Every other entry space in the section (aside from Plaintiff’s name), including areas for Plaintiff’s residential and mailing addresses, were completed with the word “unknown.”

In contrast, in defendant’s notice of motion form, a service address for Plaintiff is provided as **301 Union Street** (Seattle). *Id.* p. 7. However, Mr. Gardiner did not fill out or sign the certificate of service section found on the notice form directly below the spaces provided for his signature and address, which he did complete. *Id.*

The actual certificate of service, in additional conflict with the “unknown” responses the defendant provided in his motion document, also provides a service address for the plaintiff at “Other Parent.” However, the address alleged as the plaintiff’s service address is not the same as the one provided in the notice document, and asserts that, with reasoning that remains unexplained, the defendant attempted service at **301 Main Street** (Seattle). Both addresses provided by the defendant are non-residential and located in downtown Seattle. Additionally, within the actual certificate of service document the defendant filed, he again failed to certify service when he left the service method section of the form blank. *Id.*

According to the court-provided copy of July’s motion that the plaintiff requested from

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Fairbanks Superior Court, paid for, and received in September, the defendant did not claim to attempt or effect service on Plaintiff. *Id.* p. 1, 6-7. In the case he argues these errors and omissions are merely oversight and results of his clerical negligence, then the defendant should be required to provide evidence of his service attempt(s) to show that he has not been misleading the court in that regard. In either case, whether Jerry Jr. did actually attempt service to the plaintiff, but used one of the incorrect addresses that he provided to the court, and shortly thereafter received his attempted service documentation returned back in the mail as 'Undeliverable,' or whether he decided to not attempt service at all, his failure to make the court aware that the plaintiff had not been served and hence not given an opportunity to be heard was intentionally misleading to the court and entirely unethical and unacceptable.

The Court herein received the order signed July 18, 2017 and mailed to the plaintiff on _____ returned back in the mail as 'Undeliverable' on _____ from an address provided by the plaintiff.

4. The July 2017 Order Conflicts with AS 25.24.150

The State of Alaska custody modification topic page on the court's website puts into layman's terms the custodial requirements named in AS 25.24.150, a state statute governing child custody by a perpetrator of domestic violence:

If the Court previously made findings that you were a perpetrator of domestic violence, you will only be able to request a custody modification if you can rebut the presumption by showing:

Completion of a batterer's intervention program or equivalent;

That the custodial parent is absent, or otherwise unable to parent the children; and

That it is in the best interests of the children to be placed in your custody, despite your history. (Emphasis added.)

The actual statute AS 25.24.150 provides:

(g)... a parent who has a history of perpetrating domestic violence against the other parent...may not be awarded sole legal custody, sole physical custody, joint legal custody, or joint physical custody of a child.

(h) A parent has a history of perpetrating domestic violence under (g) of this section if the court finds...the parent caused serious physical injury or...the parent has engaged in more than one incident of domestic violence. The presumption may be overcome by a preponderance of the evidence that the perpetrating parent has successfully completed an intervention program... that the parent does not engage in substance abuse, and that the best interests of the child require that parent's participation as a custodial parent because the other parent is absent, suffers from a diagnosed mental illness that affects parenting abilities, or engages in substance abuse that affects parenting abilities, or because of other circumstances that affect the best interests of the child.

A court usually only restricts custody and visitation when a party presents reason for notable safety concerns. The defendant in this matter was given no custody and only two (2) hours per week of professionally supervised visitation. **Tess Aff. Ex. ____**. This extreme schedule was judicially ordered post-trial due to the actions admitted and/or unargued to by the defendant during trial testimony (**Tess Aff. Ex. ____**), including severe actions of physical violence toward

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the plaintiff pre- and post-partum, and of endangering the safety of Krystin less than thirty (30) days after she was born.

The original orders on Krystin's custody provided conditions to Jerry Jr.'s visitation privileges that included completion of enrollment in and completion of a state certified domestic violence program lasting at least twenty-eight (28) weeks and his enrollment in and completion of at least three (3) separate parenting courses that addressed the needs of a child in Krystin's age group. Finally, Jerry Jr. was ordered to provide proof of enrollment in and completion of each program and execute releases at the time of enrollment so that attendance could be verified. Tess

Aff. Ex. ____.

The defendant has not shown evidence of any attempt to fulfill his court-ordered obligations over the many years that have passed. Under AS 25.24.150, Jerry Jr. would have to fulfill his judicially-assigned obligations to include completing a state-certified 28+ week domestic violence intervention course, if he desired to receive any kind of custody modification in his favor. The defendant is a convicted perpetrator of serious domestic violence and family violence in the State of Alaska, and an admitted perpetrator of repeated domestic violence assaults on the plaintiff, which means that if he truly wanted a modification to Krystin's custody, he would also have to prove that his having any kind of custody would be in the child's best interests, and that the other parent (plaintiff) was suddenly unable to care for the child she had been sole and unassisted custodian of for the child's entire life. The defendant has not come

remotely near providing the evidence required of him under AS 25.24.150. Therefore, the order issued July 18, 2017 is in direct conflict with this state statute.

5. Jurisdiction: Krystin's Home State Status in Washington

Krystin has been in the full legal custody and care of her mother since the pair left the defendant due to his repeated violent actions over fifteen (15) years ago. Krystin was lured to Alaska by the defendant, though he couldn't pay for her to travel out of her home state to his, and arrived in Fairbanks on May 20, 2017 with the assistance of outside funding.

To be considered a legal resident of the State of Alaska, an individual must be present in the state at least six consecutive months. Krystin's arrival in Alaska did not immediately give her resident status. She and her mother have lived in Washington state for most of their lives; most recently since 2013 (*Supra.*), and they have planned to continue residency there indefinitely.

Jurisdiction requirements, as they relate to child custody proceedings, have been interpreted into layman's terms and made public by the State of Alaska on their court's website, making the information available to anyone who seeks it, in terminology that most adults are capable of comprehending. Information on filing for modification of custody it is clearly stated (underneath the heading: "Do the children need to be in Alaska to file for custody?") that a minor must be a resident of Alaska for at least 6 months before filing a custody or custody modification case:

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In order for the Alaska court to have jurisdiction or authority to decide about child custody, a child normally must have been a resident of the state for at least 6 months before filing the custody case. Otherwise, the court may not have jurisdiction to decide custody issues.

Sometimes there can be exceptions to the six month residency requirement for children like if the child is less than six months old or there is an emergency reason for the Alaska court to decide custody. <http://www.courts.alaska.gov/shc/family/shccustody.htm>

Under the heading: “What if the children haven’t been in Alaska for 6 months?” it is set forth that a person wishing to file a claim with regard to a custody issue prior to a child being present in Alaska six months should wait until the child has been present for at least six months:

If you file the custody case and the court finds that it does not have jurisdiction to hear the case because the children haven’t been in Alaska for six months, the case may be dismissed. If you are deciding whether to file a custody case, there are a few options depending on the situation. You can file for custody in the state where the children last lived if they were there for six months. You can wait until your children have been in Alaska for at least six months to file in Alaska.

Addressing jurisdiction issues involved in child-custody matters where more than one state has potential to hold jurisdiction, the Uniform Child Custody and Jurisdiction Enforcement Act (UCCJEA) § 202 provides that:

(a)...a court of this State which has made a child-custody determination...has exclusive, continuing jurisdiction over the determination until:

(1) a court of this State determines that neither the child, nor the child and one parent...have a significant connection with

this State and that substantial evidence is no longer available in this State concerning the child's care, protection, training, and personal relationships...

[Comment]...The continuing jurisdiction of the original decree State is exclusive. It continues until one of two events occurs:

1. If a parent...remains in the original decree State, continuing jurisdiction is lost when neither the child, [or] the child and a parent...continue to have a significant connection with the original decree State and there is no longer substantial evidence concerning the child's care, protection, training and personal relations in that State....If the relationship between the child and the person remaining in the State with exclusive, continuing jurisdiction becomes so attenuated that the court could no longer find significant connections and substantial evidence, jurisdiction would no longer exist. (Emphasis added.)

Krystin and her mother claim no present, relevant and/or significant connections to the State of Alaska. There is no substantial evidence available in Alaska relating to Krystin's care, protection, training, or personal relationships aside from the outrageous, disturbing and entirely unreasonable and unnecessary concealment of her person in the state by her Jerry Gardiner, Jr.

In consideration of the facts above and their relation to UCCJEA § 202, and pursuant to the laws of this State as they relate to the requirements for legal residency, this Court should recognize Washington as Krystin's home state and as having legal jurisdiction over this matter. The custody modification order dated July 18, 2017 should hereby be immediately vacated and the vacating order should specify that the July 18, 2017 has no authority in this matter and the defendant should be required to destroy any copies of the document he has in possession to

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prevent any potential misuse of the prior order not indicating today's ruling vacating it.

6. Defendant's Claims Lack Merit & Standing & Are Based on Hearsay

Defendant's motion to modify child custody appears to be built around a few very serious but unsubstantiated assertions about Krystin's mother, the plaintiff, which are brazenly declared under oath and penned with an obvious hostility reminiscent of that possessed by an irrational youth. TF Aff. Ex. ____ <Def Motion>. However, the defendant actually has no direct knowledge of the claims he asserted, and neither has he provided any evidence supporting them. At page 4, § b of his July 2017 motion, the defendant asserted that:

“...support should change to Teresa Fauver paying because *CPS took Krystin away, and sent her to live with me...*” (*Emphasis added.*)

The plaintiff assumes that “CPS,” is what the defendant has chosen to call the Washington Children's Administration (“C.A.”). The plaintiff was not served with or provided the opportunity to view any document removing or otherwise invalidating her own custodial rights, including any documentation drafted by or involving the C.A., OCS (or “CPS,” as named by the defendant), until, on the last day of August, 2017, she was sent a grainy picture message over Facebook's messenger application by the defendant of the first page of the order signed July 18, 2017, the same order the defendant intentionally did not provide her notice of or serve her with. Tess Aff. Ex. ____ (Bio & Pltf messages). The defendant messaged the single photograph in response to Krystin's mothers inquiries as to the location and well-being of her daughter, and

demanding communication with her, after the child had seemingly vanished without even an internet presence for over thirty (30) days.

A “Roving Unit” officer with the C.A., Cindy Cherry, an individual who, according to C.A. Policies, was not experienced enough for a Level 3 investigator title and was a Level 2 case worker at the time of her involvement, provided no small amount of assistance to Jerry Jr. in the extraction of Krystin from her home city and state. However, rational review of the document which Jerry Jr. claims is evidence enough to carry his entire motion (no affidavits or supporting declarations were provided by the defendant, in addition to the fact that his motion did not contain a single statement re: the child's best interests) (Tess Aff. Ex. ___, p. ___), it is clear that the C.A., despite the dramatic, slanderous, and unsupported statements written into its meeting notes of May 18, issued no actual findings against the plaintiff, and that at the time of the meeting, no documentation existed that could remove a person's custody rights or giving itself or Jerry Jr. any rights to custody existed. In no way was there a legal document authorizing the removal of Krystin from her mother and home state to live with a stranger; a felon with multiple convictions, a legally documented history of substance abuse and of violence toward her mother and reckless indifference towards her.

7. Detrimental Effects of Non-Binding Order

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II. LEGAL ARGUMENT

Judicial Authority Provided in AS 25.20.120

*In the child's best interests, a **court may vacate an order in a custody matter at any time.***

State statute provides a court with broad authority to decide matters involving child custody, allowing that it may vacate an order entered into such a matter at any time, as long as the best interests of the child(ren) involved remains priority:

AS 25.20.120 – Closure of custody proceedings and records

At any stage of a proceeding involving custody of a child the court may, if it is in the best interests of the child...modify or vacate an order under this section at any time.

Therefore, this Court has discretion to grant plaintiff's motions if there is reasonable evidence indicating that doing so is in Krystin's best interests.

A. STANDARDS OF PROOF REQUIRED FOR ORDER VACATING DECISION

Legal definition of standard of proof; what it is, when it is called upon, why it is called upon.

What is legal standard of proof in custody cases in Washington and in Alaska?

What is legal standard of proof when considering vacating an order? Vacating a custody order/decision?

Name statutes (are statutes RCWs?? I forget), civil rules (CRs), cite case law, anything, everything legal backup argument stuff

1. Legal standard of proof re: fraud, misrepresentation, and/or other misconduct committed by Jerry Jr. in order to obtain the 2017 order modifying custody

CR 60(b)(4) indicates one of the specific reasons a court decision or order may be

vacated is due to “fraud, misrepresentation or other misconduct of an adverse party.” The plaintiff herein offers, alongside her motions, the following evidence as proof upon preponderance of such the accuracy of her assertions that the defendant and adverse party in this matter did commit fraud, misrepresentation and/or other misconduct in order to obtain the 2017 order to modify custody:

<What is legal definition of fraud in this context as opposed to misrepresentation?>

<What is legal definition of “other” misconduct in this context?>

a. Misrepresentation to the Court and other intentional misconduct:

Defendant's intentional failure to perform due diligence, provide notice to or effect service on plaintiff in accordance with AS _____ <Statute & Court Rules re provision of notice and re service, due diligence> and the misrepresentation of his intentional actions to the Court.

A preponderance of the evidence gives credible weight to the plaintiff's conclusion and the assertions she confidently and reasonably makes in her motions regarding the defendant's due diligence, notice and service failures just prior to the filing of his motion on July 3, 2017, about 4-5 days prior to Krystin's abrupt and total disappearance from the physical world and digital realms.

*FAIRBANKS POLICE REPORT where Bio indicates that I wasn't aware that he had filed for custody modification and that an order had been granted July 18

*Bio's lack of response to my assertion of his knowing I wasn't served

*Bio's lack of service when I requested to be served and continued failure to inform the court

*Bio's message informing me that he had full custody

*Order mailed to the address Bio gave the court as my service address was returned

*All areas of filed documentation completed aside from sections Bio purposefully did not want to complete to avoid false information on the documents, such as certificate of service document, service certification on notice document, and question re CSED currently enforcing order

*No proof of service filed

*Address information provided differently each of the 3 times requested in the motion

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documentation, as follows:

1. Unknown (p. 1 of motion)
2. 301 Union Street (p. 7, Id.)
3. 301 Main Street (Certificate of Service)

3. Legal Standard of Proof re: Defendant's Failure to File Completed Certificate(s) of Service

This standard does not need proof from the plaintiff. A brief review of the defendant's motion on record reflect a complete lack of any certification of service.

4. Legal Standard of Proof

Defendant's Non-Compliance with Judicial Procedure: Failure to Perform Due Diligence, Provide Notice & Effect Service

1. *The effect of **an order is non-binding when a party in a child custody case has not been***

served, notified and given an opportunity to be heard.

Section 106 of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), which has been adopted by this State as AS 25.24.150, provides that: **[ALSO USE IN JURISDICTION]**

A child-custody determination made by a court of this State that had jurisdiction under this [Act] binds all persons *who have been served* in accordance with the laws of this State *or notified* in accordance with Section 108...and who have been *given an opportunity to be heard.* (*Emphasis added.*)

This statute plainly states that a decision made in a child custody case is binding to all persons legally served of notified as specified in the Act, AND given opportunity to be heard. **None of the parties in this matter are bound to the terms of the order signed July 18, 2017 because the effect of the order is non-binding.** The motion it originated from was not served in accordance with the laws of the State of Alaska, notice of it was not provided to all entitled persons and in accordance with UCCJEA §108, and all parties were not given an opportunity to be heard. If Plaintiff is not bound to the court's July 18 determination, as is what has been made plain by reviewing the above statute and Act, Ms. Fauver remains Krystin's sole legal and physical custodian.

Section 205 of the UCCJEA provides simple language about notice required in a child-custody matter:

(a) Before a child-custody determination is made under this [Act], notice and an opportunity to be heard in accordance with the

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standards of Section 108 must be given to all persons entitled to notice...as in child-custody proceedings between residents of this State, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child...

(b) [T]his section simply indicates that persons entitled to seek custody should receive notice...Parents whose parental rights have not been previously terminated and persons having physical custody of the child are specifically mentioned as persons who must be given notice. ..

Additionally, the Parental Kidnapping Prevention Act (“PKPA”) also holds that a custody decision is not entitled to full faith and credit if notice has not been provided:

The Parental Kidnapping Prevention Act (PKPA)...[at Section 1738A(e)] requires that they [persons entitled to seek custody] be given notice in order for the custody determination to be entitled to full faith and credit under the Act...

Because Ms. Fauver was not served as required by CR 5(a), CR 5.2(d)(2)(B), CR 77(a), AS 25.24.150 or UCCJEA§ 106 or given notice as required in UCCJEA § 205(a), PKPA § 1738(A), the child-custody determination issued July 18, 2017 is not binding and therefore the ineffective, falsely-obtained order should be immediately vacated, as well as the pleadings thereto stricken from the record. Further, this Court should issue a custody warrant for Krystin and demand that the defendant immediately reveal the location of the minor child, who he has kept concealed from her family and restricted from any type of communication with her routine friends, family, social network, counselors, and other human resources since at least July 7, 2017. Krystin should be provided immediate departure from her location and allowed to

travel home unrestricted and without any further interaction with defendant or those in his household unless so desired.

2. Non-Compliance As Controlling Behavior

Abusive parents generally have carefully manufactured a situation that facilitates and, in their minds, justifies their behavior. When the justice system fails to hold abusive parents accountable, especially when their behavior has been revealed to the court, it reinforces their belief that there are no real consequences for their actions. Because the abusive parent now sees the court as a collusive partner, he or she may have no reason to think that the court will hold him or her accountable to obey any of its order. This result puts both the child and the at-risk parent in an extremely dangerous position.

In order to prevent and/or mitigate potential issues related to a convicted family abuser's perceived lack of legal accountability, any violations of the custody order must go hand-in-hand with real and perceivable consequences. In matters where good faith

*Require that the abusive parent prove any defenses to the contempt or other action with independent evidence.

Custody Cases 2008 National Council of Juvenile and Family Court Judges

Hon. Jerry Bowles, Hon. Kaye Christian, Margaret Drew, J.D., Katheryn Yetter, J.D.

Family Violence Department

Defendant's intentional misrepresentations to the court through the short life of his

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motion reflect an attitude of reckless indifference toward judiciary authority, one habitually displayed in his conduct. This perspective is also made evident in the number of legal infractions/violations and criminal charges (At least 20, TF Aff. Ex. 12.) currently on docket in the Alaska Court System, in the conduct testified to during the divorce/custody trial in 2002 that went undenied (TF Aff. Ex. 1, 2), and his failure to fulfill his legal obligations to the court.

C. Washington Has Legal Jurisdiction as the Minor's Home State

At the time this motion was filed, Krystin had not been present in Alaska for six months, and therefore was not an Alaskan resident. Her arrival in the state took place approximately May 20, 2017. Almost all of Krystin's belongings remain in Washington (Plaintiff Dec., Ex. ____). She has expressed the desire to continue her high school career at the arts and college preparatory high school she attended last year as a freshman, The Center School, on the grounds of the Seattle Center and Space Needle. Prior to her arrival in Alaska, Ms. Fauver and Krystin maintained residency in Washington State since summer, 2013. Both the Fairbanks and Anchorage, Alaska judicial venues lack jurisdiction due to the minor's lack of residency and of any ties to the State.

Section 202 of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) provides that:

(a)...a court of this State which has made a child-custody determination...has exclusive, continuing jurisdiction over the determination until:

(1) a court of this State determines that neither the child, nor the child and one parent...have a significant connection with this State and that substantial evidence is no longer available in this State concerning the child's care, protection, training, and personal relationships...

...[Comment]...This section provides the rules of continuing jurisdiction and borrows from UIFSA as well as UCCJEA case law. The continuing jurisdiction of the original decree State is exclusive. It continues until one of two events occurs:

1. If a parent...remains in the original decree State, continuing jurisdiction is lost when neither the child, [or] the child and a parent...continue to have a significant connection with the original decree State and there is no longer substantial evidence concerning the child's care, protection, training and personal relations in that State....If the relationship between the child and the person remaining in the State with exclusive, continuing jurisdiction becomes so attenuated that the court could no longer find significant connections and substantial evidence, jurisdiction would no longer exist.

Id. at p. _

Ms. Fauver and Krystin have lived in Washington State for the majority of their lives. Krystin has expressed that she would like to focus on obtaining a career in the music and/or entertainment industry and desires to attend a music-focused college in the lower-48 after graduation. Neither Krystin or Plaintiff have significant remaining connections to the State of Alaska. There is no substantial evidence available in Alaska relating to Krystin's care, protection, training, or personal relationships.

Therefore, in consideration of the facts above, this Court should recognize Washington

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as Krystin's home state and as having legal jurisdiction over this child-custody matter per UCCJEA § 202. The custody modification order filed in Alaska and dated July 18, 2017 should therefore be immediately vacated, and the pleadings thereto stricken from the record. Additionally, sole legal and primary physical custody should be restored to Ms. Fauver.

C(a). Inconvenient Forum

Section 207 of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) provides the following regarding the determination of a potentially inconvenient jurisdictional forum and the factors which the Court may consider when deciding the appropriate venue:

(a) A court of this State which has jurisdiction under this [Act] to make a child-custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another State is a more appropriate forum...

(b) Before determining whether it is an inconvenient forum, a court of this State shall consider whether it is appropriate for a court of another State to exercise jurisdiction. For this purpose, the court shall...consider all relevant factors, including:

(1) whether domestic violence has occurred...and which State could best protect the parties and the child;

(2) the length of time the child has resided outside this State;

(3) the distance between the court in this State and the court in the State that would assume jurisdiction....

(7) [and] the ability of the court of each State to decide the issue expeditiously...

(c) If a court of this State determines that it is an inconvenient forum and that a court of another State is a more appropriate forum; it shall stay the proceedings upon condition that a child-custody proceeding be promptly commenced in another designated State and may impose any other condition the court considers just and proper.

[Comment]...*Subparagraph (1) is concerned specifically with domestic violence and other matters affecting the health and safety of the parties.* For this purpose, the court should determine whether the parties are located in different States because one party is a victim of domestic violence or child abuse. *If domestic violence or child abuse has occurred, this factor authorizes the court to consider which State can best protect the victim from further violence or abuse...*

...The court is also authorized to impose any other conditions it considers appropriate...

Plaintiff Dec., Ex. 16.

A judicial venue located in Washington State presents as the most appropriate forum in this matter when considering the UCCJA section above and applying it to the facts of this matter. Krystin has been a Washington resident for the majority of her life. She has participated in the public education system in the City of Seattle for all but two of her ten years (she is now a sophomore and should be enrolled for 10th grade in a public school, as she expressed was definite preference when any alternative was suggested.

Adding to the conditions the UCCJA indicates as contributory to an inconvenient forum are the repeated acts of domestic violence perpetrated upon Krystin's underage mother (only 16

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and 17 years old at the time) while she was with child and post-partum, and even against the near-term but unborn baby Krystin, by Mr. Gardiner (19 and 20 years old at the time), which were surprisingly absent any mention in the custody modification documentation he submitted in July.

Washington state is the most convenient, comfortable and safe forum for Ms. Fauver and child, especially when Mr. Gardiner's undisputed violent history and lack of accountability are taken into consideration, added to his current manipulation and abuse of any parental rights he possibly held when Krystin came to stay with him in late May 2017. Alaska is an inconvenient forum for the Krystin and mother due to the defendant's criminal and violent history.

In consideration of the facts stated above, and Section 207 of the UCCJA (relevant parts summarized above) regarding child-custody proceedings and related potential inconvenient forums, the custody modification order granted by this Court and dated July 18, 2017 should immediately be vacated and the pleadings thereto stricken, and hereinafter, any motion the defendant/petitioner brings should be presented in King County, Washington.

The Court erred in its decision to modify custody with primary physical and full legal authority over Krystin's life handed to the defendant. He has not fulfilled his obligations to the court, which were put into place to protect his child's best interests. The court issuing the original and legitimately-earned custody orders in this matter recognized the troubling

emotional and mental issues Jerry Jr. had admitted to, and in response demanded that the defendant address those issues prior to being entrusted with the care of a child, a responsibility he had shown himself incapable of at the time of trial. Leading up to the time the July 18, 2017 order modifying custody was granted, the defendant neither submitted nor exhibited evidence to the contrary.

Jerry Jr.'s obligations to the court should not be and should not have been overlooked. Doing so allowed the defendant's concealment of the child for over one (1) year, which has since been continued, an inexcusable undertaking which has been incredibly detrimental in a variety of manners to the child and her family and friends, and an unfortunate addition to the many other long-reaching effects the situation he created unavoidably generates. Allowing the defendant to completely shun his previous obligations has allowed him to live in a daily delusion of power, despite his complete disregard for court rules and procedure. No authority has held him accountable for his treatment of the minor child, even with the previous judicial determination reflecting the conclusion that Jerry Jr. was unfit to care for a child, and the options given to the defendant to remedy the situation went ignored.

IV. CONCLUSION

The plaintiff has

When presented with a motion to stay or motion to vacate, Alaska Court Rules indicate that the presiding judge must consider:

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The plaintiff has provided over ____ legitimate, applicable reasons that give cause to grant the motion to vacate brought before the Court today.

In consideration of the facts above and their relation to UCCJEA § 202, and pursuant to the laws of this State as they relate to the requirements for legal residency, this Court should recognize Washington as Krystin's home state and as having legal jurisdiction over this matter. The custody modification order dated July 18, 2017 should hereby be immediately vacated and the pleadings thereto stricken from the record. Additionally, sole legal and primary physical custody should be immediately declared as continued to be held by Ms. Fauver. The vacating order should specify that the July 18, 2017 has no authority in this matter and the defendant should be required to destroy any copies of the document he has in possession to prevent any potential misuse of the prior order not indicating today's ruling vacating it.

DATED this ____ day of November, 2017 at _____, Washington.

Teressa Fauver-Hernandez, Plaintiff
27606 Pacific Highway South, #A203
Federal Way, WA 9800

CERTIFICATE OF SERVICE

I, Teressa Fauver-Hernandez, certify under penalty of perjury under the laws of the State

of Washington that on November ____, 2017, I coordinated legal process service of the foregoing documents in the manner described below as follows:

I mailed a copy of the foregoing document(s) to defendant at the following mailing address currently on file with the Clerk of Court:

Jerry A. Gardiner, Jr.
P.O. Box 81498

Fairbanks, AK 99708

DATED this ____ of November, 2017 at Seattle, Washington.

/s/Teresa Fauver-Hernandez
Teresa Fauver-Hernandez

Did he intentionally avoid notice or service of any kind to plaintiff?

- Was in communication w/plaintiff & made no indication of what he was doing
 - Was hostile/uncooperative in all other aspects toward plaintiff
 - Was misleading in motion document – failure to disclose history, failure to disclose lack of service
 - Why wasn't notice or any certificate of service filled out in their entirety?
- why didnt he respond to plaintiffs request for service?

IRREPERABLE HARM
IMMEDIATE HARM/RISK

SEND TO CRIMINAL COURT

B. [1.2] The Best Interest of the Child Standard

Generally speaking, it is considered detrimental to a child and not in his or her best interests to

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be placed in the sole custody, joint legal custody, joint legal custody, or joint physical custody with the abusive parent. The most important protective resource to enable a child to cope with exposure to abuse is a strong relationship with a competent, nurturing, positive adult - most often, that adult will be the non-abusing parent...**You should award visitation to an abusive parent only if you find that adequate provisions for the child's and the abused parent's safety can be made, assuming that contact with the abusive parent is advised at all.**

What are the court's obligations when it knows it was given an inaccurate/"bad" service address by the filing party?

Particularly in the circumstance when the court learns of the bad service address when the order granted by the court as default due to the non-filing party's non-appearance is returned as "Undeliverable?"

Is the court or a court employee obligated to any follow-up to ensure due process was performed and justice served for all involved in the matter, and that all parties had an opportunity to appear and be heard?

What does a person have to prove for a judge to change or vacate an order?

What legal standards were met?

Judge's do not change orders lightly. There are legal standards they must follow before changing an order & the legal standard is different depending on what issues are being raised. It is up to the person asking for the change to prove the legal standard before the judge can change the order.

Legal standard to prove beyond reasonable doubt that Bio intentionally didn't serve me, give me notice, and misled the court re my service address:

- *FAIRBANKS POLICE REPORT where Bio indicates that I wasn't aware that he had filed for custody modification and that an order had been granted July 18

- *Bio's lack of response to my assertion of his knowing I wasn't served

- *Bio's lack of service when I requested to be served and continued failure to inform the court

- *Bio's message informing me that he had full custody

- *Order mailed to the address Bio gave the court as my service address was returned

- *All areas of filed documentation completed aside from sections Bio purposefully did not

want to complete to avoid false information on the documents, such as certificate of service document, service certification on notice document, and question re CSED currently enforcing order

- *No proof of service filed

- *Address information provided differently each of the 3 times requested in the motion documentation, as follows:

1. Unknown (p. 1 of motion)
2. 301 Union Street (p. 7, Id.)
3. 301 Main Street (Certificate of Service)

Legal standard to prove custodial interference:

- *Previous custody orders

- *Shared planning meeting minutes from May 2017:

 - lack of official administrative order removing kk from my custody and “sending [kk] away” to Bio

 - lack of official court or administrative order giving custody to Bio

 - Messages from Bio to KK prior to meeting about Cindy Cherry getting KK an ID for plane ticket & luggage for plane trip (luggage that was never purchased for k kk) - the meeting outcome was predetermined

- *Fairbanks police report

Legal standard to prove Bio has kept KK concealed:

- *KK MESSAGES

- *MY MESSAGES TO PPL WHERE THEY INDICATE NO WORD FROM HER

- *wouldn't give KK the address

- *BIO'S OWN SISTER & FATHER (WHO LIVES IN THE SAME CITY) DO NOT KNOW BIO'S ADDRESS.

- *TOLD EME “GROUNED FROM THE INTERNET *TOLD MY MOM THE SAME THING

- *TOLD HIS DAD TOOK PHONE AWAY FOR TALKING TO HER MOM

Legal standard to prove Washington State home state & Alaska didn't have authority to issue order due to jurisdiction:

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- *4 years of leases in Washington state in my name & kk name
- *Ticket from DSHS for KK to Fairbanks on May 20
- *Messages from KK saying she is leaving
- *Bio's motion to change custody

Bio: "that'd be abandoning you in the eyes of the court"
 "try to remember everything bad"
 To Eme: "her [Krystin] mother did her no favors," "trying to get her life together"
 Didn't allow her to finish last weeks of high school
 Left her alone without telling her he was leaving on her 3rd day at his residence
 Hostile messages to me
 Hostile messages to my mom

KK: To Eme: "he blames my mom for everything that happened. I try to explain but he doesn't listen," "I feel used" "I low key think the main reason he wants me here is to get out of paying child support and to get revenge on my mom"

In doing so, he has also intentionally and fraudulently misled the State Department of Health & Social Services, as well as the IRS. Criminal charges with maximum penalties, including punitive damages, must be brought against the defendant. His actions have been outrageously unregulated and requests for intervention ignored. allowed for too long. He must be made an example of for his outrageous and unconscionable conduct. The minor child has had a year of their childhood taken from them, and this can never be returned. A year at the high school at the Space Needle she planned to continue attending, a year of learning experiences in music, art and social networking, of potential boyfriends and girlfriends, and of education that she will have to take additional time out of her life to make up - something she won't be able to do alongside her peers. The emotional and mental damage this has done to the child and her

mother, as well as close family members and friends, is indescribable, and the true extent cannot even yet be known, as both mother and child will be in a continued “survival mode” frame of mind until Krystin's safety is attained, a routine established, and the pair is allowed to begin life once again and truly assess the long-term damages and syndromes incurred in such inexplicable trauma, rendered helplessness, and entire isolation.

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