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Filed MAR 08 2012  
ROSA JINQUEIRO, CLERK

By Sharon H. Stewart  
DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN  
STOCKTON JUDICIAL BRANCH

In re the Marriage of:

Case No. FL 373350

TONY DORSEY  
Petitioner,

ORDER AFTER HEARING

And

TAWNEE DORSEY  
Respondent

This matter came on regularly for hearing on the Respondent's request to move to Florida with the minor child of the parties on March 7, 2012, at 9:00 a.m., in Department F3, the Honorable Stephen G. Demetras, Assigned Judge of the Superior Court, presiding. The Petitioner was present and represented by Steven A. Clair, Esq., and Respondent was present and was represent by Randy D. Roxson, Esq.

INTRODUCTION

The parties were married on July 23, 2010. There is one minor child of the marriage, Isaiah, born June 14, 2011. The parties previously resided together in Florida and moved to Stockton, California in February of 2011. The parties separated on January 7, 2012. Petitioner filed for Dissolution on January 10, 2012. Respondent filed a competing petition on January 12, 2012. Respondent then moved back to Florida, taking the minor child with her. Petitioner secured an order returning the child to California and he has had primary physical custody since February 7, 2012.

1 At mediation Respondent noticed her request to move back to Florida with the minor  
2 child. Her stated reasons are that she has no family in California and all of her extended family  
3 resides in Florida. She has no income or means of support in California and has received  
4 minimal financial assistance from Petitioner since separation. In Florida, she would live with  
5 her parents and her two children, go back to work at her old minimum wage job, and save to get  
6 an apartment and car of her own. Petitioner objects to the move and proposes that the child  
7 remain with him in Stockton, where the child was born, where he is employed, and where all of  
8 his extended family resides.

#### 9 DISCUSSION

10 The parties have only been separated for two months. No permanent custody order  
11 exists, there is no sole physical custodial parent, and so Respondent has no presumptive right to  
12 change the minor's residence to Florida. There is also no evidence that Respondent's motives  
13 to relocate are driven by bad faith. It is natural and reasonable for her to want to return to her  
14 family where she has emotional and financial support during this unsettling time of transition.

15 The issue then becomes what is in the best interests of the child. In an initial custody  
16 determination, the court has the widest discretion to choose a parenting plan that is in child's  
17 the best interest. The relevant factors in this case for the court to consider are: a primary  
18 concern for the child's health, safety, and welfare; frequent and continuing contact with both  
19 parents; stability and continuity of the child's environment; separation of siblings; and risk of  
20 denial of visitation by one parent to the other.

#### 21 Health, Safety, and Welfare

22 There are no issues of domestic violence or substance abuse in this case that would put  
23 the minor at risk with either parent. Both parents love the minor, have adequate living facilities  
24 for the minor, and the support of an extended family. The main question would be to whom the  
25 child is most bonded. Both parties testified to their respective contact and interaction with the  
26 minor during the first six months of his life. Just by nature of the time spent alone with the  
27 minor, he is more likely to be bonded more strongly to his mother, Respondent. By the  
28 agreement of the parties, she was able to stay at home to care for him while Petitioner worked

1 during the week. The relative strength of the bond with the minor is borne out by Petitioner's  
2 testimony that after only a few weeks in Florida, the minor was indifferent to him and took  
3 some time to warm up. That demonstrates that Petitioner's bond with the child is not as strong  
4 as Respondent's. The difficulty is that a move away of the minor to Florida will further lessen  
5 the strength of Petitioner's bond and make it more difficult to maintain. However, this factor,  
6 on balance, favors Respondent.

#### 7 Frequent and Continuing Contact

8 This is a policy of the state that inevitably suffers when one parent relocates across the  
9 country. No matter which parent is awarded custody, the other will unavoidably have less  
10 frequent contact with the minor. This is especially impactful on an infant, like the minor.  
11 Respondent has indicated an intent to move back to Florida regardless of the custody  
12 determination here, so this factor will suffer no matter the outcome. The only thing the court  
13 can do is to impose terms that will seek to minimize the negative effects, such as transportation,  
14 communication, and visitation conditions. If the conditions are not met, they can become a  
15 changed circumstance warranting a review of the custodial arrangement. This factor favors  
16 both parties.

#### 17 Stability and Continuity

18 This factor weighs heavily in maintaining ongoing custody arrangements. Though here,  
19 there has been no post-separation stability and continuity in the minor's life because only two  
20 months have passed. Awarding custody to either parent will finally bring some stability and  
21 continuity into the child's life, but the court must look to whom the primary caretaker has been  
22 for most of the minor's life to evaluate the harm that may result from a disruption of that  
23 established pattern of care. There is no dispute that Respondent has been that primary caretaker.  
24 This factor favors custody for Respondent.

#### 25 Separation of Siblings

26 The sibling bond should be preserved wherever possible. Generally, that involves  
27 separating two siblings among the two parental households, which is not the case here. Maliah  
28 is not Petitioner's child, and Respondent had already made the determination to separate her

1 from Isaiah and return her to Florida before the parties separated. Yet, there is still a need to  
2 accommodate siblings in the same household to meet their best interests. This factor favors  
3 custody for Respondent.

4 Denial of Visitation

5 The court needs to give considerable weight to circumstances which indicate that one  
6 parent has attempted to frustrate the visitation or custody of the other parent. That type of  
7 conduct in the past may predict similar conduct in the future, which would clearly **not** be in the  
8 best interest of the child. The evidence was conflicting on this point. Petitioner claimed he did  
9 not know Respondent was going to Florida with the minor until he noted that she had cleared  
10 out the bank account. He was never notified, nor did he give his consent, before the event. He  
11 sought a court order to get the Respondent ordered to return with the child to California.

12 Petitioner is further concerned that if granted custody, Respondent will be able to  
13 transfer the custody case to Florida after six months and that will be the end of his visitation.  
14 The court is confident that the Florida courts would not act in such a fashion. That is not how  
15 this court would act if the roles were reversed.

16 Respondent testified that she had no food, no place to stay, no car, and no job, so she  
17 took the child with her to her parents home in Florida. She claimed Petitioner knew where she  
18 and the child were and that he was in agreement.

19 It is difficult to reconcile these disparate views, but it is clear that Respondent, whether  
20 she actually read it or not, should have known she was in violation of the standard restraining  
21 orders not to remove that child from the state contained in the petition that she herself filed. Her  
22 current testimony is that she desires that Petitioner remain in the child's life and that she will do  
23 whatever is necessary to accomplish that. Nevertheless, this factor favors custody for  
24 Respondent.

25 **CONCLUSION**

26 The court is not required to give greater weight to any of these factors over any others.  
27 No one factor constitutes a bright line rule requiring a certain finding, and as is often the case,  
28 the factors point in different directions. After consideration of all of these factors, the court

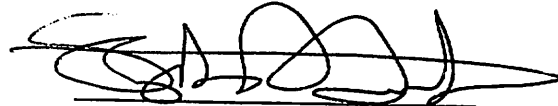
1 concludes that the best interest of the minor would be to grant Respondent's request to move  
2 with the minor to Florida. However, the court will place the following conditions upon this  
3 custody award. Respondent testified extensively about the support she will receive from her  
4 family in Florida. These conditions will significantly test that relationship.

- 5 1. Custody will be joint legal custody and shared physical custody with primary  
6 physical custody to Respondent.
- 7 2. Petitioner may visit the minor in Florida at his own expense anytime he  
8 chooses with ten days advance notice to Respondent. Such visits with the  
9 minor shall be for no more that three days duration.
- 10 3. Respondent shall be responsible to provide and pay for transportation for the  
11 minor to Petitioner's residence on one weekend per month in alternate  
12 months. The first month will be May 2012 and then alternate months  
13 thereafter. The parties shall meet and confer on the dates and times of the  
14 alternate monthly visits in advance in order to minimize the cost of travel as  
15 far as possible.
- 16 4. Petitioner shall be entitled to contact the minor by video-conferencing one  
17 time per week for fifteen minutes, at a time and a date the parties agree upon.  
18 Both parties shall be responsible for providing the technology at their  
19 respective location to accomplish this, such as Skype, Google Chat, or another  
20 reasonable method. Each party will bear any expense connected with the  
21 technology located at their own location.
- 22 5. Other standard orders as contained in Form FL-341(D) and Form FL-341(E),  
23 dated February 21, 2012, are continued with full force and effect.

24 This hearing did not resolve any support issues between the parties. Respondent will be  
25 entitled to child support and possibly temporary spousal support from Petitioner. The  
26 court reserves on all financial issues, particularly support, in order to judge the financial  
27 impact on the parties from the expense of cross-country air fare.

1 Counsel for Respondent shall prepare the order consistent with the findings of the court  
2 and submit it to Counsel for Petitioner for review and then to the court for signature and filing.  
3

4 Dated: March 8, 2012



Hon. Stephen G. Demetras  
Assigned Judge of the Superior Court