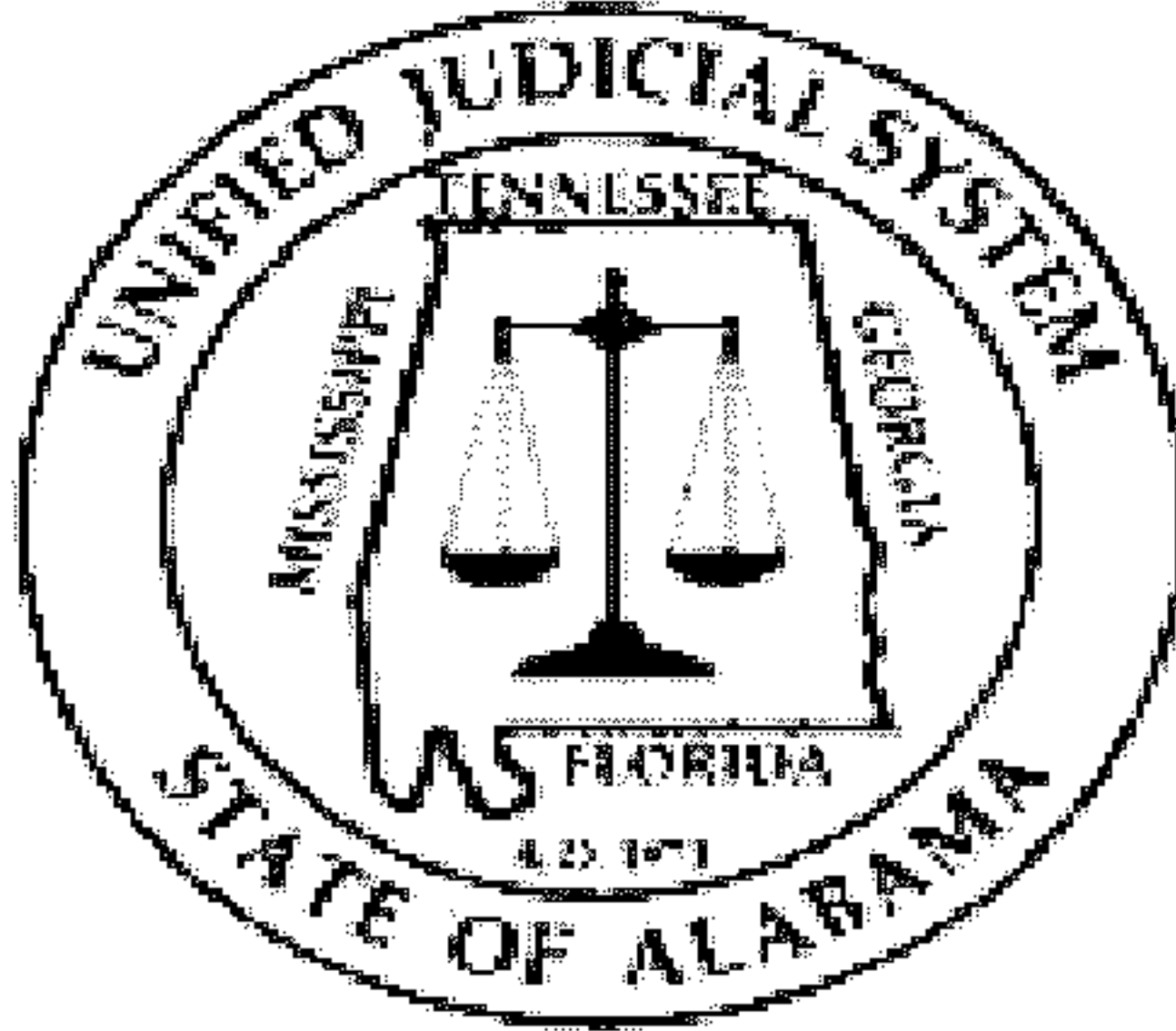


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AlaFile E-Notice

01-DR-2020-900114.01
Judge: BRIAN HUFF

To: RILEY CLYDE EDWARD
clyde@rileylawfirm.net

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

KATHERINE TRIPPE V. BRIAN TRIPPE
01-DR-2020-900114.01

The following matter was FILED on 7/17/2024 3:16:01 PM

Notice Date: 7/17/2024 3:16:01 PM

JACQUELINE ANDERSON SMITH
CIRCUIT COURT CLERK
JEFFERSON COUNTY, ALABAMA
2124 7TH AVENUE NORTH, SUITE 100
BIRMINGHAM, AL, 35203

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jackie.smith@alacourt.gov



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01-DR-2020-900114.01
CIRCUIT COURT OF
JEFFERSON COUNTY, ALABAMA
JACQUELINE ANDERSON SMITH, CLERK

**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA
BIRMINGHAM DIVISION**

TRIPPE KATHERINE,)
Plaintiff,)
)
V.) Case No.: DR-2020-900114.01
)
TRIPPE BRIAN,)
Defendant.)

AMENDED FINAL ORDER ON MODIFICATION AND RULE NISI

THIS MATTER came before the Court on the “Verified Petition for *Rule Nisi*” filed by KATHERINE TRIPPE (“the Plaintiff”) in DR-2020-900114.01-JBH [“the Plaintiff’s Petition”] and the “Response to Verified Petition for Rule Nisi” filed by BRIAN TRIPPE (“the Defendant”) [“the Defendant’s Answer”]; and the Defendant’s “Verified Petition for *Rule Nisi* and Motion to Modify Final Judgment of Divorce” filed in DR-2020-900114.02-JBH [“the Defendant’s Petition”] and the Plaintiff’s Answer to the Defendant’s Petition. These cases were consolidated by Amended Orders to Consolidate entered August 15, 2023 in each of the cases.

The Petitions were tried on December 5, 6, 7, 2023 and on January 10 and 11, 2024. The Plaintiff’s attorney was given an opportunity following the conclusion of the trial to submit an affidavit in support of the Plaintiff’s request for an attorney fee. Present at trial were the Plaintiff represented by Clyde E. Riley and the *pro se* Defendant.

Both parties testified extensively and each party offered numerous exhibits. The Court Entered its “Final Order on Modification and Rule Nisi” on March 20, 2024.

Since the entry of the Final Order on Modification and Rule Nisi, the plaintiff filed a “Motion for Compliance Hearing” on April 4, 2024. The Defendant subsequently retained counsel, Daniel H. Chambers, and filed a “Motion to Alter, Amend or Vacate” on April 19, 2024 and an “Amended Motion to Alter, Amend or Vacate” on April 30, 2024. The Court conducted a hearing on the pending motions on May 1, 2024 with the parties and their counsel present. The Court having considered the arguments of counsel finds that the Final Order on Modification and Rule Nisi entered March 20, 2024 is hereby amended or altered as noted herein.

Based upon the evidence and the *ore temis* testimony of the parties, and the arguments of counsel, it is

ORDERED, ADJUDGED and DECREED by the Court as follows:

1. The Amended Final Judgment of Divorce entered in this case on September 28, 2021 lawfully provides at Paragraph 12 with reasonable specificity that the Defendant is to pay to the Plaintiff child support of NINE HUNDRED SIXTY-FIVE and No/100 DOLLARS (\$965.00) per month beginning October 1, 2021 and continuing each month thereafter until each child reaches the age of nineteen, marries, becomes self-supporting, dies or as otherwise provided by law.

2. The evidence at trial was that, since October 1, 2021, the Defendant had paid a total of One Thousand Dollars (\$1,000.00) on November 10, 2023 directly to the Plaintiff for the child support obligation of the Amended Final Judgement of Divorce. The Defendant offered evidence and testimony at trial, and argued at the Rule 59 hearing, that instead of directly paying the child support, he had paid other expenses related to the minor children such as private school tuition, extracurricular activities, birthday parties, school lunches and the like. Plaintiff's Exhibits 5 and 7 reflect that during August 2022 the Defendant reimbursed the Plaintiff Eleven Hundred Eleven Dollars (\$1,111.00) labeled for "School" through a Venmo transaction for the minor children's Fall 2022 school registration fees. The Court determines that the Defendant is entitled to a credit against the civil contempt child support arrearage (as well as criminal contempt for the month of August 2022) as this payment, though not made directly to the Defendant for "child support", did provide basic support of the minor children by reimbursing the Plaintiff for an expense she had incurred for the minor children's education. All other claims by the Defendant for child support "credit" are DENIED.

3. The Plaintiff offered evidence that the Defendant had the ability to pay the support, but instead chose to spend in excess of Forty Thousand Dollars (\$40,000.00) on travel, events and merchandise related to hiking, running, biking, swimming and various related competitions during the time that the Defendant was not paying child support directly to the Plaintiff.

4. The Court finds the Defendant has on twenty-five (25) separate occasions willfully disregarded the lawful Order of the Court by failing to pay child support to the Plaintiff as Ordered by the Amended Final Judgment of Divorce, having paid nothing during the periods of October 2021 through July 2022 (10), September 2022 through October 2023 (14) and for the month of December 2023 (1).

5. The Court found the Defendant to be in CRIMINAL CONTEMPT for failure to pay the December 2023 child support. The Court entered a Criminal Contempt Order on January 11, 2024 and ordered that the Defendant serve five (5) days in the Jefferson County Jail for the month of December. On January 12, 2024 the Court entered its Order of Release suspending the balance of the five days and setting a compliance hearing for January 22, 2024 at 8:30 a.m. At the January 22, 2024 compliance hearing the Defendant paid the balance due for the December 2023 child support purging himself of civil contempt for the month of December 2023. The Court reserved the issues of additional civil and criminal contempt.

6. The Defendant is in CIVIL CONTEMPT for his continuing willful failure or refusal to comply with the Court's child support order of the Amended Final Judgment of Divorce which by its nature is still capable of being complied with. The Court determines that for the child support due through December 31, 2023, after applying all payments and credits, and applying seven and one-half percent simple interest (7.5%) to the unpaid monthly payments, the Defendant is in arrears the sum of TWENTY-TWO THOUSAND NINE HUNDRED SEVENTY-NINE DOLLARS (\$22,979.00) of delinquent child support plus an additional TWO THOUSAND ONE HUNDRED THIRTY-SIX and 99/100 DOLLARS (\$2,136.00) of interest through December 31, 2023 for a total of TWENTY FIVE THOUSAND ONE HUNDRED FIFTEEN and 99/100 DOLLARS (\$25,115.99).

7. The Defendant is in CRIMINAL CONTEMPT as this Court finds he willfully disregarded this Court's lawful Order by failing to pay child support to the Plaintiff as Ordered by the Amended Final Judgment of Divorce having paid nothing during the periods of October 2021 through July 2022 (10), September 2022 through October 2023 (14) and as of the conclusion of the trial, the month of December 2023 (1) thereby committing twenty-five (25) Counts of CRIMINAL CONTEMPT for which BRIAN TRIPPE is sentenced to five (5) days in jail for each count (less the one (1) day served on January 11, 2024 for December 2023) for a total of one hundred twenty-nine (129) days.

8. The Court entered a separate Order dated May 1, 2024 setting the issues surrounding the Defendant's criminal and civil contempt for compliance review at 1:30 p.m. on June 6, 2024.

9. In the Petition to Modify portion of the Defendant's Petition, the Defendant alleges that since the Amended Final Judgment of Divorce was entered on September 28, 2021,

a material change in circumstances has occurred and requests that the Court award him "sole physical custody" and make numerous other changes to the custodial provisions of the Final Amended Final Judgment of Divorce. The Defendant failed to meet the burden of proof required to warrant any of the Defendant's requested changes to the physical custody provisions in the Amended Final Judgment of Divorce nor is it in the best interests of the minor children to modify the Father's custodial times as provided for in Paragraph 2 of the Amended Final Judgment of Divorce except for the clarifications provided hereinbelow. The requests of the Defendant to change the physical custody and otherwise modify the custodial times are accordingly DENIED.

10. The Defendant's Petition also requests that the Court modify the joint legal custody provisions of the Amended Final Judgment of Divorce such that the Defendant has "final decision-making authority". The Court having considered the *ore tenus* testimony of the parties and evidence presented at trial, finds the Defendant failed to meet the burden that it would be in the best interests of the minor children to modify the decision-making authority, tie breakers or any other provision of the Amended Final Judgment of Divorce related to the legal custody of the minor children and those requests by the Defendant are accordingly DENIED.

11. The Court finds that the following custodial provisions are sufficiently vague to warrant clarification to assist the parties with the implementation of these provisions without any material changes to any of the custodial provisions of the Amended Final Judgment of Divorce:

2.d. The custodial periods specified in the preceding paragraphs (a), (b), and (c) shall be superseded by the specific custodial periods set forth in the following paragraphs (e) through (n). **A party losing custodial time due to a superseding holiday provision is not entitled to make up any lost day(s) unless specifically agreed to by the other party and confirmed via email.**

2.g The Father shall have the Thanksgiving Holidays in even numbered years during the week of Thanksgiving from Wednesday afternoon **at 6:00 p.m.** until 6:00 p.m. the following Sunday.

In the odd years, the Mother shall have the children during the week of Thanksgiving from **6:00 p.m.** on Wednesday afternoon until 6:00 p.m. the following Sunday.

o. If a pick up or a drop off is to occur at a time when school is in session, it is to occur at the school the children are attending. Otherwise, the party surrendering custody shall deliver the children to the residence of the parent initiating his or

her custodial time. **Each parent shall timely surrender custody of the children to any adult present to receive custody/visitation at the time of drop off/pick up and having been designated by the other party via email or text message.**

12. **RELOCATION**

Alabama law requires each party in this action who has either custody of or the right of visitation with a child to notify other parties who have custody of or the right of visitation with the child of any change in his or her address or telephone number, or both, and of any change or proposed change of principal residence and telephone number or numbers of the child. This is a continuing duty and remains in effect as to the child subject to the custody or visitation provisions of this Decree until the child reaches the age of majority or becomes emancipated and for so long as you are entitled to custody of or visitation with the child covered by this Order. If there is to be a change of principal residence by you or by either child subject to the custody or visitation provisions of this Order, you must provide the following information to each other person who has custody or visitation rights under this Decree as follows:

1. The intended new residence, including the specific street address, if known.
2. The mailing address, if not the same as the street address.
3. The telephone number or numbers at such residence, if known.
4. If applicable, the name, address, and telephone number of the school to be attended by the child, if known.
5. The date of the intended change of principal residence of the child.
6. A statement of the specific reasons for the proposed change of principal residence of the child, if applicable.
7. A proposal for a revised schedule of custody of or visitation with the child, if any.
8. Unless you are a member of the Armed Forces of the United States of America and are being transferred or relocated pursuant to a non-voluntary order of the government, a warning to the non-relocating person that an objection to the relocation must be made within thirty (30) days of receipt of the notice or the relocation will be permitted.

The relocating party must give notice by certified mail of the proposed change of principal residence on or before the 45th day before a proposed change of principal residence. If you do not know and cannot reasonably become aware of such information in sufficient time to

provide a 45-day notice, you must give such notice by certified mail not later than the 10th day after the date that you obtain such information. Failure to notify other parties entitled to notice of your intent to change the principal residence of a child may be taken into account in a modification of the custody of or visitation with the child.

If the non-relocating party does not commence an action seeking a temporary or permanent order to prevent the change of principal residence of the child within thirty (30) days after receipt of notice of the intent to change the principal residence of the child, the change of principal residence is authorized.

13. In addition to the relocation provisions of the Alabama Parent-Child Relationship Protection Act cited hereinabove, the parties are reminded of their obligation contained in Paragraph 7 of the Amended Final Judgment of Divorce to provide the other party with the address and telephone number where the minor children may be located during their respective custodial periods, if they are away from their normal residence.

14. The Defendant alleges at Paragraph 7 of his Petition to Modify that there has been a material change in his financial circumstances since the entry of the Amended Final Judgment of Divorce such that his child support is due to be modified so that neither party be required to pay child support. The Plaintiff has raised the defense of “unclean hands” in response to the Defendant’s requests to modify his child support obligation.

15. The Alabama Court of Civil Appeals has explained the purpose of the unclean hands doctrine is to prevent a party from asserting his or her rights under the law when the party's own wrongful conduct renders the assertion of such legal rights “contrary to equity and good conscience”. See *Burkett v. Gresham*, 888 So.2d 505, 509 (Ala. Civ. App. 2004). The Court finds that the evidence and the *ore temus* testimony of the Defendant established that the Defendant has unclean hands with respect to the child support ordered in the Amended Final Judgment of Divorce and that the Defendant’s request to modify his child support obligation to the Plaintiff is DENIED in all respects.

16. Beginning with the current child support due for February 1, 2024, the Defendant shall make all non-arrearage child support payments directly to the ALABAMA CHILD SUPPORT PAYMENT CENTER (ACSPC) at P.O. Box 244015, Montgomery, AL 36124-4015.

17. The Court having received an “Attorney Fee Affidavit” from the Plaintiff’s counsel of record, Clyde E. Riley, finds that with respect to the Plaintiff’s “Verified Petition for

Rule Nisi” only, the Defendant is ordered to pay to the Plaintiff litigation expenses of THREE THOUSAND SEVEN HUNDRED THIRTY-EIGHT AND 64/100 DOLLARS (\$3,738.26); and an attorney fee of THIRTY-THREE THOUSAND SEVEN HUNDRED FORTY AND 11/100 DOLLARS (\$33,740.00). The Defendant shall pay to the Plaintiff the total sum of THIRTY-SEVEN THOUSAND FOUR HUNDRED SEVENTY-EIGHT AND 26/100 DOLLARS (\$37,478.26) for the Plaintiff’s fees and expenses she incurred pursuing the Plaintiff’s “Verified Petition for *Rule Nisi*”.

18. The Defendant failed to make the twenty-six months of One Thousand Dollars (\$1,000.00) per month of alimony in gross payments as Ordered by Paragraph 18 of the Amended Final Judgment of Divorce. The Court determines that the Defendant is in arrears the sum of TWENTY-SIX THOUSAND AND 00/100s DOLLARS (\$26,000.00) of delinquent alimony in gross payments plus an additional TWENTY-ONE HUNDRED NINETY-THREE AND 75/100s DOLLARS (\$2,193.75) of interest through November 30, 2023 for a total of TWENTY-EIGHT THOUSAND ONE HUNDRED NINETY-THREE AND 75/100s DOLLARS (\$28,193.75) through November 30, 2023.

The Court hereby enters a judgment of \$28,193.75 for the Plaintiff and against the Defendant for which let execution issue.

19. The Defendant failed to pay the FIVE THOUSAND DOLLARS (\$5,000.00) of attorney fees as Ordered by Paragraph 25 of the Amended Final Judgment of Divorce. Counsel for the Plaintiff having assigned his right to collect the attorney fees to the Plaintiff, the Court determines that the Defendant is in arrears to the Plaintiff the sum of FIVE THOUSAND DOLLARS (\$5,000.00) plus an additional SEVEN HUNDRED EIGHTY-ONE AND 25/100s DOLLARS (\$781.25) of interest for a total of FIVE THOUSAND SEVEN HUNDRED EIGHTY-ONE AND 25/100s DOLLARS (\$5,781.25) through November 30, 2023.

The Court hereby enters a judgment of \$5,781.25 for the Plaintiff and against the Defendant for which let execution issue.

20. The Court DENIES all other requests for civil or criminal contempt by the Plaintiff in her Verified Petition for *Rule Nisi*.

21. The Court DENIES all requests for civil or criminal contempt by the Defendant in his Verified Petition for *Rule Nisi* and Motion to Modify Final Judgment of Divorce.

22. Any other relief requested in the Plaintiff’s “Verified Petition for *Rule Nisi*”, the

Defendant's "Verified Petition for *Rule Nisi* and Motion to Modify Final Judgment of Divorce", the Defendant's "Motion to Alter, Amend or Vacate" or the Defendant's "Amended Motion to Alter, Amend or Vacate" and not granted herein is deemed DENIED.

23. All other provisions of the Amended Final Judgment of Divorce and not amended herein shall remain in full force and effect.

24. Any relief requested by either party not herein granted is hereby deemed DENIED.

25. The Costs of court are hereby taxed as paid.

DONE this 17th day of July, 2024.

/s/ BRIAN HUFF
CIRCUIT JUDGE



Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County
Clerk
Shelby County, AL
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Allie S. Bayl