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IN THE CIRCUIT COURT OF BOONE COUNTY, MISSOURI

In re the Marriage of:
Sheena E. Greitens and
Eric R. Greitens

SHEENA E. GREITENS,
Petitioner,

v.

ERIC. R. GREITENS,
Respondent.

Case No. 20BA-FC00579

RESPONDENT'S SUGGESTIONS IN SUPPORT OF MOTION FOR ENTRY OF APPROPRIATE ORDER(S)

Respondent, Eric R. Greitens (hereinafter "Father"), by counsel, submits the following suggestions in support of the Motion for Entry of Appropriate Order filed March 24, 2022. At the outset, Father declines the invitation to engage in character assignation by affidavit. Considerable experience suggests that in handling matters involving children, the parties, their attorneys, and the court must be guided by the objective situation of the children and parties as it now exists, as opposed to subjective considerations or salacious allegations deriving from one party's perception of the other's relative "fault" in their present disagreement or one party's perception of his/her own relative strengths as a parent. Judge Elwood Thomas said it best when he tendered the following:

> "The conclusion we reach today demonstrates once again that the law is very inadequate when it comes to solving the personal problems of an embattled family. We tender the warning that the very best remedy this Court could hope to provide is feeble indeed in comparison to the solution the parties would reach if they were successful in solving this problem by mutual agreement." *Herndon v. Tuhey*, 857 S.W.2d 203, 205 (Mo. Banc 1993).

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Having acknowledged the inadequacy of the remedy the parties seek, Father moves on to consider the issues presented by Petitioner's, Sheena E. Greitens (hereinafter "Mother"), extraneous[1] filing of her Amended Motion for Entry of Appropriate Order filed March 21, 2022.

First, Father seeks a court order mandating compliance with the Joint Parenting Plan ordered by the Court on May 15, 2020. The Joint Parenting Plan, adopted by the Court, at page 22, paragraph 5, provides as follows:

> "Neither parent shall say or do anything in the presence/hearing of the children to diminish the child's love or affection for the other parent; neither parent will speak negatively about the other. Each parent will encourage family members and friends to refrain from making negative comments about the other parent in front of or in the hearing of the children."

Based upon the extraneous supplemental filing by Mother on Monday, March 21, 2022, Father states on information and belief that a dispute has arisen regarding interpretation/implementation of the terms of the Court Ordered Parenting Plan. Paragraph C 6 of this Court's Judgment provides as follows:

> Dispute Resolution: Since the parties may sometimes disagree on matters concerning the children or interpreting/implementing the terms of this Parenting Plan, they should first confer with each other as necessary and consider the other's opinions. If they cannot resolve a dispute, the parties agree that they will submit their dispute to mediation at the earliest opportunity with an agreed upon mediator. If the parties are unable to agree upon a mediator, then they shall mediate with Lynne Harris. Each party will pay one-half (½) of the costs of mediation. In the event that one party refuses to participate in mediation prior to instituting litigation, the parties agree that the court shall be entitled to consider such refusal in the allocation of the court-costs and attorney's fees incurred in the filed proceeding.

[1] The word "extraneous" as used herein refers to the lack of substantive differences between the original motion filed November 18, 2021, and the poison pill, marked Exhibit 2, included in the subsequent filing on March 21, 2022.

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Because the parties have been unable to resolve their dispute, they should be ordered to mediate with Lynne Harris, as previously agreed. Ms. Harris has a long history of close association with Mother and Father, and return to her services would be of substantial assistance to the family.

Second, Missouri court rules governing divorced parties' conduct toward one another provide strong incentive for spouses to timely disclose to the court any fact-based and genuine concern regarding issues such as the allegations contained in Mother's Exhibit 2 at the earliest opportunity before a divorce decree is entered. For example, on May 15, 2020, Mother submitted an affidavit in support of the entry of judgment which confirmed there were "no genuine issues as to any material fact between the parties" and that their Joint Parenting Plan was "in the best interests of the minor children."[2] While Mother suggests she is now cognizant of the mandate set forth in §452.375(6) RSMo requiring disclosure of any allegations of abuse or neglect, she was apparently unfamiliar with the law applicable to her cause when she filed her Motion to Modify in a Texas court on July 9, 2021.[3]

In Texas, the general rule is that a parent's pre-divorce conduct is not admissible in a child custody modification, except to show a continuing course of conduct. *Blackwell v. Humble*, 241 S.W.3d 707, 716 (Tex. App.—Austin 2007, no pet.) ("[E]vidence of pre-divorce conduct is not by itself relevant or admissible to obtain a modification, but such evidence may be offered to corroborate allegations and evidence of similar conduct since the decree."). This rule is almost 120 years old in Texas and is based on principles of res judicata and avoiding re-litigation of child custody issues that have already been heard or which could have been heard when the first order

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[2] Respondent's Exhibit A.
[3] Respondent's Exhibit B.

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was entered. *See Wilson v. Elliott*, 96 Tex. 472, 73 S.W. 946 (Tex. 1903) (finding that a decree of another state determining the custody of a child in a divorce suit is res judicata of all questions as to the right of custody which could have been before the court at the time the decree was entered); *Knowles v. Grimes*, 437 S.W.2d 816, 817 (Tex. 1969) ("A final judgment in a custody proceeding is res judicata of the best interests of a minor child as to conditions then existing.")

The Texas Supreme Court further explained the rationale for this rule in *Ogletree v. Crates*, 363 S.W.2d 431, 436 (Tex. 1963):

> "As a matter of public policy there should be a high degree of stability in the home and surroundings of a young child, and, in the absence of materially changed conditions, the disturbing influence of constant re-litigation should be discouraged. Once a final judgment of custody is rendered, a subsequent suit to modify or to avoid the judgment should be res judicata of all causes of action which, with diligence, could have been asserted in the suit as a basis for obtaining custody and possession of the child."

Additionally, evidence of domestic abused alleged to have occurred prior to divorce is admissible only to corroborate evidence of similar conduct since the decree. In post-divorce suits involving allegations of domestic abuse that occurred prior to the parties' divorce, Texas courts have allowed the admission of such evidence only to corroborate evidence of similar conduct since the prior decree. *See Colvin v. Colvin*, No. 03-03-00234-CV, 2004 WL 852266 (Tex. App.—Austin Apr. 22, 2004, no pet.) (holding that the trial court was not barred by doctrine of res judicata from hearing evidence of pre-divorce conduct when ruling on former wife's petition for a protective order, where former wife did not rely on pre-divorce conduct and the petition was based in part on former husband's spiraling behavior since divorce).

A neutral observer might conclude Mother's admitted silence through both the Missouri and Texas proceedings while simultaneously concocting an advantageous strategy to circumvent a previously agreed upon court order suggests her motivations might be less than honorable.

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Significantly, Mother's Exhibit No. 2 was notarized in the District of Columbia on Tuesday, March 15, 2022. During the same timeframe, Father was enjoying his Spring Break with the children. Common sense suggests no parent would agree to share joint legal and physical custody with the fictional parent described in the filing leaked to the press *before* it was accepted by the circuit clerk and available to the court or inquiring public.

Mother's Exhibit No. 2 stands in direct contradiction to her sworn affidavit of May 15, 2020, and subsequent filing in Texas which omits any such history. They cannot both be true. If Father were capable of the conduct alleged in Exhibit No. 2, it would mean that Mother knowingly and willfully put the children in "jeopardy" the entire week she pursued her act of perfidy. None of these claims were reported to medical professionals, the mediator, the Court, any law enforcement official, teacher, or school official, (all mandatory reporters) over the course of several years. It is axiomatic there is a strong presumption the trial court will decide custody matters in the best interests of the children, especially after recognizing the trial court's ability to assess witnesses and determine credibility. Ultimately, it will be up to this Court to decide what sanction, if any, Mother may face for submitting these claims to the press before filing of said claims was accepted by the clerk of the court.

Third, Mother argues that Texas is a better forum than Missouri within which to litigate the issues present in this case, "because the reach of [Father's] power and influence is significantly less in that state." In support of that proposition, Mother cites Father's exercise of the 200-year-old gubernatorial power to fill judicial vacancies. It appears that Mother is suggesting she cannot receive impartial rulings from any of Missouri's judges because Father appointed some of them. This suggestion is nonsense. Missouri's judicial selection system is widely known to produce

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jurists of the highest ethical and professional caliber. Any suggestion that this Court is unable to dispense fair and impartial justice should be dismissed.

Fourth, Mother's Exhibit No. 2, advances, for the first time, facts prejudicial to the honor and reputation of a party and potential witnesses. Inadvertently, but firmly, the allegations in Exhibit No. 2 fix the forum where "the nature and location of the evidence required to resolve the pending litigation" is located. Given that *all* of the accusations contained in Exhibit No. 2, purportedly occurred in Missouri prior to the original judgment, the evidence required for Father to defend the salacious claims would be located in this state, not in Austin, Texas.

Finally, the children have come into this world because of the two parties. Perhaps they made lousy choices as to whom they decided to be the other parent. If so, that problem or fault rests most heavily on two adults. The children are one-half of each of their parents. Parents should think twice before exposing the children to "what their father is," or "how bad the mother is," because such discourse informs the children half of them is bad. Counsel for Father submits that Mother's Exhibit No. 2 is a disgraceful thing to do to a child. As a seasoned Minnesota Judge advised divorced parents in 2001: "If you do that to your children, you will destroy them as surely as if you had cut them into pieces, because that is what you are doing to their emotions.[4]" The private and therapeutic nature of mediation affords the parties the only path to a better family future.

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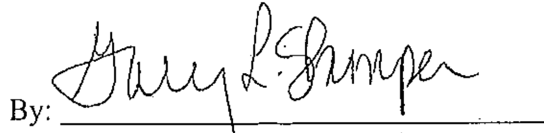
[4] Judge Michael Haas, "200 Blunt Words for Divorcing Parents."

Respectfully submitted,

Walther, Antel & Stamper, P.C.

By: 

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