

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

DR 2000-090543

11/09/2005

HONORABLE ARTHUR T. ANDERSON

CLERK OF THE COURT
T. Soto
Deputy

IN RE THE MATTER OF
WALTER J BURIEN JR.

FILED: 11/11/2005

DEEAN GILLESPIE

AND

DEBBIE C WATTON

TROY L BROWN

JOHN L POPILEK
6909 E GREENWAY PKWY
STE 200
SCOTTSDALE AZ 85254
AG-CHILD SUPPORT-EAST VALLEY
OFFICE

RULING

Courtroom 404

The Court having taken this matter under advisement after a Return Hearing was held on October 24, 2005; the Court having considered the evidence presented and the arguments of the parties makes the following findings and enters the following orders:

This Court issued its Minute Entry (filed August 22, 2005) regarding custody, parenting time and child support. This Order addressed Father's request to take the children to New Jersey. On August 30, 2005, Father filed a Petition for Modification of Physical Child Custody. On September 12, 2005, Father filed an Affidavit stating his reasons for the move to New Jersey with the minor, John Joseph. Notably, Father's Petition and the Affidavit fail to mention the Court's August Order.

In his Affidavit, Father further indicated that he was scheduled to leave for New Jersey on August 15, 2005 but because of finances he could not. Father stated that he hoped to be in New Jersey by September 6, 2005 so his son could enroll in school.

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On September 14, 2005, Mother filed her Response in Opposition and requested the immediate return of the minor to Arizona. At the October 24, 2004 hearing, Father reiterated his reasons for leaving and testified that he hoped to return to Arizona in the spring of 2006.

THE COURT FINDS that

- Father is in Contempt of the Court's August 22, 2005 Orders by relocating with the minor to New Jersey.
- Father's Petition to Relocate does not comply with the Notice requirements of A.R.S. §25-408.

THE COURT FURTHER FINDS that

- In the August 22, 2005 Order, the Court Ordered that John Joseph continue with the remedial speech therapy program he attended in Father's area.
- Dr. Bast states in his records (8/22/05) that the child has a "slightly delayed [speech] may need speech therapy". Dr. Bast opines that the child "is in need of a full time aid in his classroom for speech therapy which is not available in Arizona."
- The Court is not persuaded by Dr. Bast's statement (or Father's) that appropriate services do not exist in Arizona to address John's "slightly delayed speech".
- Father's Petition to Relocate fails to establish circumstances of health or safety of the minor to justify temporary relocation under A.R.S. §25-408(G).
- Father's move to New Jersey was orchestrated to further his personal goal to go to New Jersey and merely an attempt to avoid this Court's Order.
- Father testified that he intended to return to Mesa in 2006 (and presumably placing John Joseph again in therapy here).
- Father's actions justify the immediate return of the child to Arizona, however, because John Joseph is in school (and reportedly receiving therapy) it is not in the child's best interest to Order his return before the semester ends.

IT IS ORDERED that

- John Joseph shall be returned to the State of Arizona ***no later than December 22, 2005.***
- John Joseph ***shall remain in Mother's custody until all*** of the following take place:
 - Father files with the Court a current Financial Affidavit ***and*** Father's Proposed Parenting Plan for John Joseph (living in Arizona with Father) to include: Father's Arizona address and phone number, the minor's purported school, the speech therapy (and other services) the minor will receive, the identity of a pediatrician for the child and child care arrangements (if applicable).
 - Mother has five (5) days (calculated under Rule 6) to file a Response to Father's filings.
 - Father shall pay Dr. Lanzilotta for her services (as Ordered August 3, 2005).

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- The Court reviews Father's Financial Affidavit, Father's Parenting Plan and Mother's Response and issues an Order regarding John Joseph's residence.
- Father shall pay Mother's reasonable attorney's fees associated with responding to Father's Petition. Counsel for Mother shall file a *China Doll* Affidavit within 20 days of the filing of this Order.

IT IS FURTHER ORDERED setting a Telephonic Conference on **January 26, 2006 at 1:30 p.m.** to allow counsel to address the Court's concern that the filing of the Petition by Father's counsel may constitute a Rule 11 violation. Time allotted: 30 minutes

IT IS FURTHER ORDERED that the requirements of Rule 58(d) are waived and this minute entry is signed as the formal written Order of this Court.

/ s / HONORABLE ARTHUR T. ANDERSON

JUDICIAL OFFICER OF THE SUPERIOR COURT

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/ssc/sschome.html>.