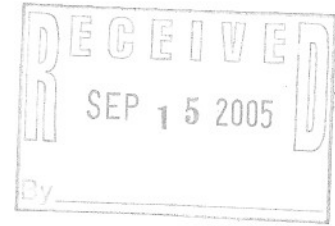


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8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
9 **IN AND FOR THE COUNTY OF MARICOPA**

10	In re the Matter of:	)	DR 2000-090543
11	WALTER J. BURIEN, JR.,	)	RESPONDENT'S RESPONSE TO OSC
12	and	)	PETITION AND AFFIDAVIT,
13	Petitioner,	)	OBJECTION TO RELOCATION
14	DEBBIE C. WATTON,	)	OF MINOR CHILD FROM STATE BY
	Respondent.	)	PETITIONER, and
		)	PETITION FOR EMERGENCY ORDER
		)	COMPELLING IMMEDIATE RETURN
		)	OF CHILD
		)	(Assigned to the Honorable
		)	Arthur Anderson)

15 Respondent, DEBBIE C. (BURIEN) WATTON, by and through undersigned counsel,
16 respectfully submits this verified Response to the Petition for Order to Show Cause Petitioner and
17 Affidavit, her Objection to Relocation of Minor Child from State by Petitioner, and Petition for
18 Emergency Order Compelling immediate Return of Child as follows and respectfully requests that
19 the Court grant the relief requested herein:
20

21 I. RESPONSE TO PETITIONER'S PETITION FOR ORDER TO SHOW CAUSE and
22 OBJECTION TO RELOCATION OF MINOR CHILD FROM STATE

23 1. As the caption suggests, Respondent-Mother objects to any request to relocate
24 and remove the minor child, JJ, from the State of Arizona. Mother requests that the Court deny
25 Father's request to relocate JJ to New Jersey, that the child, JJ, be returned to the State of Arizona
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1 **immediately** with Father if Father returns to Arizona or JJ should be placed in the custody of
2 Mother should Father remain in New Jersey.

3 2. The requested relocation is not in the best interests of the child. The request by
4 Father to relocate is contrary to A.R.S. §25-408 and this Court's specific orders entered in August
5 of 2005. As the Court is well aware, the Court recently entered "final" custody orders in this case
6 via signed minute entry Order dated August 3, 2005 and filed on August 22, 2005, (hereafter,
7 "Order of August 22, 2005"). A simple review of the minute entry makes it clear that the Court
8 intended to make final orders to replace the temporary orders of Judge Udall. The final orders
9 awarded, among many things, that both parents continue to enjoy joint legal custody of both
10 children where Father is the primary residential parent for JJ, Mother is the primary residential
11 parent for Gloria, and each parent with have continuing access with the child in the primary care of
12 the other parent. At the time of that order, Mother was still residing in Prescott, Arizona and Father
13 was still residing in St. Johns, Arizona. Thus, the Court affirmed upon Mother a continuing right
14 to have access and visitation with JJ. Further, on page 3 of the August 22, 2005 Order, the Court
15 specifically addressed Father's request for a "Visit to East Coast." The Court ruled that:
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19 "Father has requested that he be allowed to take both children to New Jersey
20 to visit his family for four or five months. **The Court believes that such an**
21 **extended trip is not in the best interests of the children. However, Father can**
22 **take the children to New Jersey during his summer vacation time (or other**
23 **parenting time) and he must comply with the "Notice Requirements" stated**
24 **below.**" (emphasis added)

25 On page 4 of the Order of August 22, 2005 the Court states the Notice Requirement:

26 "The Notice Requirement: The vacationing parent will give the other parent
27 at least 30 days advance notice of any upcoming vacation with the children. Prior to
28 leaving with the children, the vacationing parent will inform the other parent of
travel arrangements, location(s), and an emergency telephone number where the
vacationing parent may be reached in an emergency.

1 Below the order which sets forth Father having two weeks of summer vacation and alternating
2 holiday also reads on page 5:

3
4 "Father can take the children to New Jersey during his summer vacation
5 time (or other parenting time) and he must comply with the "Notice Requirements"
6 stated above.

7 Therefore, since the Court clearly indicates that Father's vacation to New Jersey was limited, the
8 Court would obviously not find the permanent removal of JJ from Arizona as being in his best
9 interests. Father has not appealed the order, sought reconsideration, nor filed a Motion for New
10 Trial (although it appears that Father is requesting reconsideration of the New Jersey vacation
11 issue). Thus, the Order should not be modified just days after it was entered and less than the one
12 year provision of A.R.S. §25-403(T) (which requires "serious endangerment" to the child, not the
13 case here)

14
15 Mother notes that Father's Petition for Order Cause was dated August 26, 2005 by the
16 Petitioner's counsel. This is just four (4) days after the Court's order was filed by the Clerk.
17 Mother also notes that A.R.S. §25-408(I) states that: "the court shall not deviate from a provision of
18 any parenting plan or other written agreement by which the parents specifically have agreed to
19 allow or prohibit relocation of the child unless the court finds that the provision is no longer in the
20 child's best interest." In this case, this Court just ordered that JJ not leave Arizona for New Jersey,
21 other than for specific holidays. Therefore, this Court's order should not be modified, especially
22 since the provision against extended time in New Jersey does not remain in the child's best interest.

23
24 3. The Petitioner-Father failed to follow the notice requirements and time requirements
25 of A.R.S. §25-408(C)(D) regarding relocation. That statute provides for sixty day notice prior
26 to the relocation and gives the objecting party a chance to object prior to the relocation. Father filed a
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1 Petition with the Court which his attorney copied to Counsel for the Respondent which was
2 received on August 31, 2005 permitted under A.R.S. §25-408(E). However, This request indicates
3 that Father intends to move to New Jersey and seeks the Court's approval to move. Thus, Mother
4 would have time to be served with a hearing date and object to the possible relocation of the child.
5 However, Father filed a Affidavit (pro per), dated September 1, 2005 with a New Jersey address in
6 which Father states that he has already moved the child to New Jersey or would be leaving in the
7 next few days, the child is enrolled in school and that he will be taking the child to New Jersey
8 permanently! Father did not give Mother sixty days prior notice of his relocation. Mother had
9 notice via her attorney on August 31, 2005 and then received Father's Affidavit on September 3,
10 2005 after Father had left the state! Father did not give Mother time to object prior to leaving.
11 Father is not following this Court's orders regarding New Jersey and will be in direct violation of
12 this Court's current orders for Mother's visitation once Mother's visitation is denied because Father
13 took the child out of State.

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16
17 A.R.S. §25-408(D) provides that a parent who does not comply with the notification
18 requirement of this subsection is subject to Court sanction. The Court may impose a sanction that
19 will affect custody of parenting time only in accordance with the best interests of the child. Mother
20 requests that JJ be returned to live in Arizona with Father as ordered by the Court, or in the event
21 that Father will not return to Arizona, then JJ should be placed in Mother's custody.

22
23 4. Counsel for Mother immediately called Counsel for Father on Tuesday, September
24 6, 2005 (day after Labor Day) and communicated the fact that Mother objected to the relocation
25 and that JJ should either be returned to the state immediately with Father or returned to the State to
26 live with Mother should Father not return. Although Counsel for Father has not yet read Father's
27 pro per Affidavit, Counsel for Mother stated that Father was indicating his intention to remove the
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1 child from Arizona immediately and that she should stop him, if possible, since this was contrary to
2 the Court's orders. Counsel for Father did not seem eager to stop Father from leaving and, indeed,
3 continued to argue in support of Father moving the child to New Jersey. Thus, Mother is very
4 concerned that Father's request to relocate is being brought contrary to existing court orders,
5 existing Arizona law, and without merit. Mother should be awarded her reasonable attorney's fees
6 and costs for responding to Father's frivolous request to relocate. Further, A.R.S. §25-408(K)
7 provides that the court shall assess attorney fees and court costs against either parent if the court
8 finds that the parent has unreasonably denied, restricted or interfered with court-ordered parenting
9 time.
10

11
12 5. Despite the deficiencies of notice, Mother has filed this Response and Objection
13 within thirty day's notice of Father's intention to relocate. Thus, the presumption under A.R.S. §25-
14 408(H) Father continues to bare the burden of proving that a relocation is in the best interests of the
15 child, assuming that the Court would even entertain a hearing on the Petition since the request to
16 relocate is contrary to the one year provision of A.R.S. §25-403(T) (which requires "serious
17 endangerment" to the child, not the case here)
18

19 6. Assuming the Court considers this relocation issue, A.R.S. §25-408 provides the
20 criteria that the Court should consider when making. Mother has considered the factors in that
21 statute and none of the factors set forth in the statute support Father's relocation request. Father has
22 stated that he is relocating due to concerns of his Father, the Paternal Grandfather's, ill health.
23 Mother notes that this issue was addressed at the evidentiary hearing, Father requested to have
24 extended time in New Jersey due to family and the Court denied the request as not being the child's
25 best interest. Therefore, Father's renewal of this issue just days after the Court's order denying the
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1 extended travel to New Jersey is disingenuous. Further, this reason is not a legitimate reason to
2 remove JJ from the State of Arizona, his Mother and his sister Gloria.

3 Father is capable of working in Arizona as he testified at the last hearing, both from his
4 home and via an employer in the finance business. Father owns property in St. Johns, Arizona.
5 Father testified at the last hearing that he had obtained the proper speech therapy for the child in
6 Show Low and that JJ was doing well in his care in St. Johns. Thus, there is no reason related to JJ
7 or Father's economics that necessitate Father to move from Arizona. Certainly, Father has not
8 provided any evidence of intended employment in New Jersey or how that employment would
9 better the child's life or be worth the costs of living and travel to and from the East coast to the
10 West Coast of the United States.
11
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13 7. Father states that he is having trouble financing the current travel expenses to and
14 from Prescott to St. Johns. Thus, there is every indication that Mother will receive less access than
15 currently enjoyed with JJ. Mother cannot afford the increased travel costs to send JJ and Gloria
16 back and forth across the country several times per year! Father has already stated in his Affidavit
17 that he will not come back to Arizona for court hearings and will be appearing telephonically!
18

19 8. Mother and her counsel submits that the Court should consider the wisdom of
20 Solomon as told in the Bible and apply it to this situation. In the Bible Solomon was going to cut
21 the child in half with a sword to satisfy two woman both claiming to be the child's mother. The
22 woman who offered to let the child live with other woman rather than see the child die was
23 determined to be the mother by Solomon. In this case, Mr. Burien would rather remove JJ from the
24 State, his mother and his sister than honor this Court's order for continued access in Arizona.
25 Therefore, Ms. Watton should be awarded custody of JJ since Father has placed his own selfish
26 desires above and beyond the needs of the children. If Father wants to be close to the Paternal
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1 Grandfather due to his health or for Father's own personal reasons, that is fine as long as JJ remains
2 in Arizona.

3 9. Lastly, if Father has left the State with the child temporarily pending the hearing that
4 he has requested, he is not permitted to do so under A.R.S. §25-408(G)((1) requires that the
5 temporary relocation pending a hearing be made only for reasons of health, safety, or employment,
6 none of which apply in this case
7

8
9 II. PETITION FOR EMERGENCY ORDER COMPELLING RETURN OF CHILD

10 10. Mother incorporates by reference the allegations set forth above in paragraphs 1
11 through 8.
12

13 11. Mother has informed Father that she does not consent to the removal of JJ from the
14 State and such removal is contrary to the current Court's orders. Based upon the current orders of
15 the Court, the Court should issue an emergency order prohibiting Father from removing JJ from
16 Arizona and/or returning JJ to Arizona if JJ is outside Arizona currently.
17

18 12. Father's removal of the child from the state is not only a direct violation of this
19 Court's order, such removal permanently will result in immediate and irreparable harm. The child
20 would be missing school that has already started in Arizona, the child will be missing visitation and
21 access with Mother and Gloria and the Maternal Grandparents. Further, given Father's claimed
22 limited finances, Mother is concerned that Father is a flight risk and that once out of the State
23 Father will not comply with this court's orders to return the child. Further, Father is also a flight
24 risk since he stated in Affidavit his blatant disregard for the Court's orders and the Court's
25 authority. Also, Mother cannot afford to travel to New Jersey to bring JJ back to Arizona. Thus,
26 Father should be ordered to keep JJ in Arizona. Thus, an order is necessary to protect the child.
27
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1 13. Mother attempted to resolve this issue without a Petition by telephone and to
2 reach an agreement that Father would not be leaving Arizona, however, no agreement was
3 reached to keep the child in Arizona. Without cooperation from Father's counsel and Father's
4 stated intention to take JJ from Arizona, there is no doubt that an order is necessary to protect JJ.
5

6 14. In addition to the verified allegations above, attached is Mother's notarized
7 statement requesting that JJ remain in Arizona.

8 WHEREFORE, Mother respectfully requests that the court:

- 9
- 10 1. Deny Father's request to relocate;
 - 11 2. In the alternative should Father leave Arizona, award custody of JJ to Mother;
 - 12 3. Order Father to pay Mother's fees and costs and any other appropriate sanction for
13 denial of parenting time.
 - 14 4. For any other relief deemed just and appropriate by the Court.

15 RESPECTFULLY SUBMITTED this 14 day of September, 2005.
16

17
18 TROY L. BROWN, P.C.

19
20 

21 Troy L. Brown
22 Attorney for Petitioner
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In response to Walter Burien's (AKA.Bubien)Affidavit Addendum to:Petition for Order to show cause Re: Modification of Physical Child Custody and exhibits.

In reference to;
PAGE 2 of 4
LINES 11 thru 17

There is not any medical documentation of damage to my son's head while he was in my care. During a routine doctor,s visit my son was given medication for a cold & that was the only time he required any medical care.

PETITIONER'S EXHIBIT (C)
PAGE 1, FIRST PARAGRAPH:

I NEVER agreed to miss any of my parenting time with my son so Walter could take him to New Jersey.

PAGE 2 of 2
#8

My mother Darlene Fuller is NOT terminally ill. She does not have cancer & is not taking any medication except for a Thyroid condition.

My daughter is NOT at risk of sexual exploitation by my dad or my boyfriend Hank, of five year's.

My daughter has NEVER been raped much less out of my sight while visiting our friend, Dan Giles.

EXHIBIT (D)
PAGE 2, PARAGRAPH #7

I introduced Hank, to my parents, October 2000. I was working at Taco Bell when I met him. He is NOT 65 years old.

Hank served in the U.S. Air Force when he learned his trade as a diesel mechanic.

Hank, has worked on & repaired Walter's motor home & van several times when Walter was broke down with the children, stranded along side of the road. The most recent, being August 28, 2005. He has never charged Walter anything for his work, infact he loaned Walter \$35.00(not paid back,as promised) so he could return to St.Johns. Hank did the work on Walter's vehicles solely out of concern for my children's safety.

Your Honor,
Walter was given temporary custody after he had kicked me out of our trailer(3 months pregnant with my daughter) & I was hideing out in a women's shelter because I was to proud to phone my parents. After I gave up my son, I returned home, which has been my primary residence ever since.

My parents have owned & lived in our home since 1982. My daughter Gloria, has the same bedroom I had while attending the same school I went too. We live on four acres, where my son J.J. & Gloria have a lot of fun with each other, ridding

their bicycles or scooter's. Playing on the swing set & slide, in the sand & lots of big trees. I have four married sister's of which I am the youngest. We are a close family. My children have, aunts, uncles, and 12 cousins within a couple of hour's from our home.

Please allow my son to continue to share the loving, healthy environment my daughter has. They should be together.

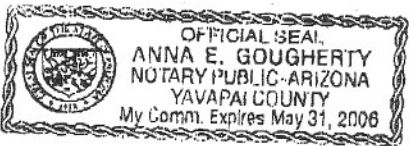
Sincerely,

Debra Walker

State of Arizona
County of Maricopa

Subscribed and sworn before me this 14 day
of September, 2005, by

Anna E. Gougherty
NOTARY PUBLIC



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VERIFICATION

STATE OF ARIZONA)
YAVAPAI) ss.
County of Maricopa)

[Handwritten signature]

Debbie C. Watton being duly sworn, deposes and says that she is a party to the above entitled and numbered cause; that she has read the foregoing documents and to the best of her knowledge, that same is true and correct, except as to those matters stated upon information and belief, and as to those, she believes them to be true.

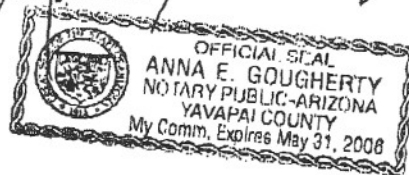
[Handwritten signature of Debbie C. Watton]

SUBSCRIBED AND SWORN to me before this 14th day of September 2005.

[Handwritten signature of Notary Public]
Notary Public

My Commission Expires:

5/31/2006



1 Original filed and copies
2 of the foregoing mailed,
3 unless otherwise indicated,
4 this 14th day of September
5 2005, to:

6 The Honorable Arthur Anderson
7 222 E. Javelina
8 Mesa, AZ 85210

DELIVERED

9 DeeAn Gillespie
10 GILLESPIE & ASSOCIATES, P.C.
11 7319 North 16th Street
12 Suite 100
13 Phoenix, AZ 85020-5262
14 Attorney for Petitioner

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