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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF SAGINAW

MELISSA JAYNE CALICE,  
Plaintiff,

vs.

File No. 12-017215-DZ-1

RICHARD ANTHONY CALICE, JR.,  
Defendant.

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HEARING

BEFORE THE HONORABLE FRED L. BORCHARD, CIRCUIT JUDGE  
Saginaw, Michigan - October 8, 2012

APPEARANCES:

For Plaintiff: THOMAS D. BURKHART (P25509)  
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Reported: TRACY M. STEMLER, CSR-4023  
Official Court Reporter

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WITNESSES: PLAINTIFF

None

WITNESSES: DEFENDANT

None

EXHIBITS:

MARKED

RCVD

None

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Saginaw, Michigan

October 8, 2012

THE CLERK: All rise. Circuit Court is back in session.

THE COURT: You may be seated. Thank you. If we could have appearances, please, counsel, and be brought up-to-date.

MR. BURKHART: Good afternoon, your Honor. Thomas Burkhart and Timothy McLeod for the plaintiff.

MR. DEMETRIOU: Your Honor, Tom Demetriou on behalf of the defendant, Tony Calice.

THE COURT: Okay. You may proceed.

MR. BURKHART: Judge, this matter was on your docket this morning for the defendant's motion for summary disposition based on multiple issues with regard to the Court's jurisdiction.

During the course of the day, we've worked out a temporary custody and parenting time order that will be entered until both the state of Maryland has acted and this Court has the opportunity to both communicate with a judge from the Maryland court, and if we can work out scheduling issues, conduct an evidentiary hearing on the leftover jurisdictional issues before you.

My understanding of the agreement that's to

1 be incorporated in an order is that there will be a  
2 brief recitation of this Court's authority to enter a  
3 temporary order, that it is in fact a temporary order,  
4 reserving the jurisdictional issues here in Michigan  
5 and recognizing the procedures in the state of  
6 Maryland, that in terms of a schedule, presumably we  
7 can get everything wrapped up paperwork wise.

8 Father will have an opportunity to see the  
9 children today from after school, and we are now,  
10 unfortunately, after school but as soon as we can  
11 dismiss these proceedings, until this evening or bed  
12 time, and then tomorrow will begin a two-week parenting  
13 time, which will be October 9th to October 23rd. The  
14 condition here is that Rocco, their son, and the oldest  
15 child, he will not miss school, and his school hours  
16 run from 7:40 in the morning to 2:30 in the afternoon.

17 There will be parenting time at Thanksgiving,  
18 again presuming this matter -- the jurisdictional  
19 issues and any other supplemental orders that might be  
20 issued for Christmas parenting time -- I don't know  
21 what we ended up with in terms of time, but the  
22 Thanksgiving holiday will be with Father to return, I  
23 guess it would be, that Sunday since school resumes on  
24 Monday. You know, we're looking for in the afternoon,  
25 mid-afternoon. I wrote down 3:00 p.m. -- I don't know

1 if that's what the Court intended -- and similarly at  
2 Christmas, from Christmas Day, I think is where we  
3 were, to January 1st and, again, mid-afternoon on the  
4 exchange times with the exception of those periods that  
5 we've identified for being in the state of Maryland,  
6 which is Thanksgiving and Christmas. The children  
7 aren't to be removed from the state of Michigan for any  
8 other purposes.

9 Neither parent is to discuss the litigation,  
10 the children's role in the litigation, their particular  
11 positions in the litigation here or in Maryland, and  
12 neither parent's to make disparaging remarks about the  
13 other parent.

14 My understanding is that I will draft the  
15 order as soon as I return to the office, get it to  
16 Mr. Demetriou either by email or fax yet this  
17 afternoon. We are aware of the Court's scheduling, but  
18 we will get it to chambers at least by the end of the  
19 day today with any luck.

20 THE COURT: And for the record, if you'd  
21 state what's being done to contact the Court in  
22 Maryland and the Judge out there.

23 MR. BURKHART: Judge, there -- the  
24 proceedings in Maryland were initiated by the defendant  
25 of these proceedings. Melissa has filed a motion

1 seeking a -- the Maryland court to decline exercise  
2 jurisdiction on the basis of not -- for  
3 non-convenience. That matter has not yet been  
4 responded to by Defendant's counsel here in the  
5 Maryland court.

6 Both sets of attorneys or both sides have  
7 reported to you that their communication with  
8 corresponding Maryland counsel is that Maryland seems  
9 to have a system much different than our own. Unlike  
10 here where you are assigned the case and this is your  
11 case, Maryland doesn't have that. They have a  
12 multitude of dockets, and various judges are assigned  
13 to various dockets from day to day.

14 With communication with Maryland Counsel  
15 during the course of the day today, we're attempting on  
16 both sides to get Maryland's counsel to get a judge in  
17 the Maryland court system to kind of latch on to this  
18 case. Then the plan would be to set a date and time  
19 for the two courts to communicate with one another.  
20 Each court would advise respective counsel in each  
21 state so that we could be present and participate in  
22 the conferences with -- between the two courts, and I  
23 understand our participation is quite limited, but at  
24 least we have the opportunity to be present.

25 THE COURT: Yes. Mr. Demetriou.

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MR. DEMETRIOU: Yeah, your Honor. I think there is a few things that need to be clarified.

First of all, in case this matter is still pending before the Court, in addition to the times that we talked about, we talked about every other weekend Friday, Saturday, and Sunday overnight with the understanding Rocco would be taken to school by his dad. I'm not sure how often that can occur, this every other weekend. Hopefully Mr. Calice will be able to come, you know, in these other periods while the case is pending, so that wasn't stated. Maybe that was an oversight, but that was our request.

As far as Christmas, the vacation period --

THE COURT: Let me stop you here. The only thought I have is if he can't make it, I would ask that there be something in there that he gives reasonable notice so Mom knows whether or not --

MR. DEMETRIOU: Sure.

MR. BURKHART: Judge, in that vein, Mr. Demetriou is correct. We have agreed on alternate weekends on these gap periods. We've also agreed that the face time can continue. In the periods of extended time with Dad, we presume and assume that the same courtesy would be expended, that the kids would have some contact with Mom versus -- be it face time or one

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of the other -- I guess in our house it's Skype --  
direct communications via the internet.

MR. DEMETRIOU: That's agreed.

Just further, your Honor, the Christmas  
vacation period, it's very possible that Mr. Calice may  
want to take the kids to Maryland during his period. I  
don't know that he's going to do that, but he wants the  
luxury of deciding if that's economically or otherwise  
feasible, so that -- I thought you said that they  
weren't going to leave the state around Christmas,  
but --

MR. BURKHART: No. No, other than these two  
periods; Thanksgiving and Christmas --

MR. DEMETRIOU: Okay.

MR. BURKHART: -- they're not to leave the  
state.

MR. DEMETRIOU: Thank you. Also, your Honor,  
we didn't talk about it specifically, but I think it's  
implicit in our agreement, and that is that there be  
joint legal custody so Mr. Calice can, you know, stay  
abreast of important decisions that Mom wants to make  
on behalf of the kids.

THE COURT: I would think on a temporary  
basis.

MR. BURKHART: I guess on a temporary basis,



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I guess the only thing I have reservations about, Judge, is one of the cases earlier on your docket and the fact these folks' principle residence are quite a distance apart.

On our part, Melissa has and will continue to notify Dad of the identity of the doctors, the school schedules, the sports schedules. If there is any issue whether that's being done, we can do it through Counsel, but I don't think the issue --

MR. DEMETRIOU: We are not trying to change whatever Mom has done since she's been here in Saginaw, but the point is she's done a lot of things without even telling her husband after the fact, so I think to give us fair warning that she wants to do something, let us have our input. That's all I'm asking.

I'm not saying if we have joint legal custody, that Tony wants to revisit everything that's been done for the kids while they have been here, so I just -- going forward, if something's going to be done, we'd like to know about it.

THE COURT: I think that's reasonable.

MR. DEMETRIOU: One other thing, your Honor. I know that we are not arguing custody right now, and whatever, but I'd like it stated on the record that we do not agree that the kids being here establishes the

1 custodial environment. So, in other words, if we do  
2 have to fight here, I'm certainly going to want my  
3 prerogative to contest any claim --

4 THE COURT: I understand.

5 MR. DEMETRIOU: -- that because the kids are  
6 here, there's an established custodial environment,  
7 because that increases my burden of proof.

8 THE COURT: All right.

9 MR. DEMETRIOU: Thank you.

10 THE COURT: The only thing I would ask the  
11 parties, and I don't want to sound rude, but I don't  
12 want anybody holding up driver's licenses and I don't  
13 want Mom -- I think there was an issue that came up  
14 with Mom -- what was that -- about getting the kids  
15 involved, or whatever. It's hard enough for -- what  
16 was that we were talking about in chambers?

17 MR. BURKHART: Soccer.

18 THE COURT: No. No. There was something  
19 else that when -- we were talking about the fact Dad  
20 held up his license and said you're living here and Mom  
21 had said something to the kids, or whatever, as I  
22 understood. Do you remember what it was?

23 MR. DEMETRIOU: Well, there was -- if you're  
24 talking about the time when my client's talking to his  
25 five-year-old son and said we live in Michigan, Dad,

1 get over it, and my client just concluded that there  
2 must have been a lot of discussion in the household,  
3 yet he's being accused of, you know, trying to do the  
4 same thing, so --

5 THE COURT: Don't -- don't -- either one of  
6 you, don't read too much. All I want to say is if you  
7 want to light my fire, either one of you, then get the  
8 kids involved because that's going to really impact on  
9 what I'm going to do. I don't want these children  
10 involved in the dispute.

11 The fact that you two might not get along or  
12 hate each other's guts for all I know, I don't want  
13 those children involved in that. You two have got to  
14 work together in that regard.

15 If she needs your support, you've got to be  
16 able to support the kids, and this may come along later  
17 when the children are older when they say, well, I'm  
18 leaving you, I'm going back with Mom, and you've got to  
19 be able to stand up and say no, this is your dad's time  
20 for visitation, you've got to go with him, or vice  
21 versa. That's bad.

22 And the only thing that's probably worse than  
23 that is using the kids to spy on one another, what's  
24 Mom doing or what's Dad doing or who they going out  
25 with, or whatever. Just -- I'm telling you from all

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the experience that I've had, just don't do it. I mean this process is hard enough.

MR. DEMETRIOU: On that point, your Honor, may I make --

THE COURT: Sure.

MR. DEMETRIOU: -- just a comment? I've been led to believe --

THE COURT: And I'm not pointing at either one of you. I just want you to know where I'm coming from.

MR. DEMETRIOU: Understood, your Honor.

One other thing. I've been led to believe that when my client Skypes or talks to the children, there's an audio transcript or something made of when he's talking to them, which I think is -- sends a bad message to the kids if they even hear that that's happened or if they watch it being happened.

And if my client allows -- is aware that Melissa is Skyping with the kids, I don't want him making a transcript of what they're talking about.

THE COURT: Well, I'd ask that not be done. If it has been done, don't do it anymore.

MR. BURKHART: Judge, looking at the clock and realizing it's now after 3:30 and knowing the Court's schedule today, would the Court address the

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fact that even if we do not have the signed writing, that we turn the children over today?

THE COURT: That's fine, yes, absolutely.

MR. BURKHART: It is pursuant to the order the Court is entering and that there would be consequences if the letter or spirit of the agreement that we have placed on the record were violated.

THE COURT: Correct.

MR. DEMETRIOU: Your Honor, there will be no Calice family wagon train going to Maryland tomorrow, I can assure you of that, or today.

THE COURT: You both have very competent counsel, and I mean that sincerely. Work -- try to work these things out as best you can for your sanity and the expense on it. It will pay off better in the long run. If you can't, I'm not mad that I've got to decide something, but, again, I don't want the kids involved in this.

MR. DEMETRIOU: One more thing, your Honor. I think Counsel was gratified to hear your suggestion that when you do talk to the Court in Maryland, that you would give us a chance to be present.

THE COURT: Yes, absolutely. Yeah. I'd like to have you there so if -- if you get something set up, if you can, to the extent you're able to or the other

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judge is able to work that out with my staff, I would like them to understand that I would like the attorneys present when we -- or at least available. If the other said I don't want them in the room when he or she and I are talking, that's fine, but I would like you here in case there is questions that come up.

MR. DEMETRIOU: Thank you.

MR. BURKHART: Judge, although it's a uniform statute, there are differences between Michigan's version and Maryland's version. My reading of the Michigan version is that counsel has a right to participate.

THE COURT: Okay. All right. I think you're right. That's why I've asked that you be available to be present. All right. I think we all know where we are headed. Good luck to both of you.

MR. DEMETRIOU: Thank you, your Honor.

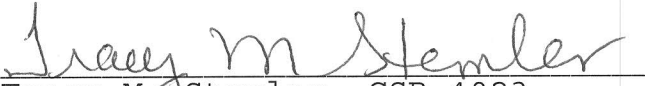
MR. BURKHART: Thank you, your Honor.

(Proceedings adjourned.)

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STATE OF MICHIGAN )  
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COUNTY OF SAGINAW )

I certify that this transcript is a complete, true and correct transcript of the proceedings and testimony taken in this case before the Honorable Fred L. Borchard, Circuit Judge, in Saginaw, Michigan.

  
Tracy M. Stemler, CSR-4023  
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