

STATE OF MINNESOTA

COUNTY OF DAKOTA

DISTRICT COURT

FIRST JUDICIAL DISTRICT

CASE TYPE 4: DISSOLUTION
WITH CHILDREN

COURT FILE NO.: FX-05-14164

In Re the Marriage of:

Eman El-Dean Hassan Ahmed,

Petitioner,

and

Eman Bakry Haroun,

Respondent.

TEMPORARY RELIEF ORDER

The above-entitled matter came on for a Temporary Relief Hearing before the Michael V. Sovis, Judge of District Court, on August 9, 2005, at the Dakota County Western Service Center, 14955 Galaxie Avenue West, City of Apple Valley, State of Minnesota.

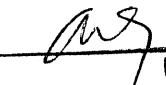
Further, on September 1, 2005, Petitioner served and filed a Motion for an Emergency Order restraining Respondent from moving the children to Lakeville, enrolling the parties' son, Nour, in a Lakeville school, and removing the parties' personal property from the homestead. The Court orally advised the parties that the children's status shall remain status quo pending this Order.

Petitioner appeared personally and with his attorney, Sharon K. Hills, Esq. and Respondent appeared personally and with her attorney, Patricia M. Buss.

For purposes of clarity, Petitioner shall hereinafter be referred to as "Husband" and Respondent shall hereinafter be referred to as "Wife."

FILED DAKOTA COUNTY
VAN A PROSTROM, Court Administrator

SEP 7 2005

BY  DEPUTY

The parties reached an agreement on some of the issues raised in the parties' respective temporary relief motion pleadings. The parties did not reach an agreement regarding the issue of temporary custody and support.

Based upon the parties' partial stipulation, and all the files, records, and proceedings herein, including the parties' respective affidavits and pleadings, the Court makes the following:

FINDINGS OF FACT

1. The parties stipulated that the homestead property shall be listed and placed on the market for sale pursuant to the terms and conditions set forth herein.

2. The issue of custody was not resolved, but the parties stipulated that a custody evaluator, to be selected by the parties, shall be appointed for the purpose of investigating and issuing a Report and Recommendations regarding permanent legal and physical custody.

3. Husband requests joint legal custody and Wife requests sole legal custody. Because Husband requests joint legal custody, joint legal custody is presumed to be in the best interests of the minor children pursuant to Minn. Stat. §518.17, subd. 2. Wife presented no evidence to rebut the presumption; there is no evidence in the record that the parties are unable to cooperate in raising their children or are unable to resolve disputes regarding major decisions concerning their children. Additionally, in consideration of Wife's extreme Muslim beliefs and conduct based on such beliefs, as alleged by Husband, it would be detrimental to the children if Wife were to have sole authority over the children's upbringing, even if only on a temporary basis.

4. The Court considered and evaluated the statutory best interest factors (§518.17) in determining physical custody of the minor children:

- a. Each party requests sole physical custody of the minor children. The preference of the children was not addressed by either party.

- b. Wife asserts that she was the primary caretaker of the children throughout the parties' marriage. Husband disagrees and asserts that he undertook significant day-to-day caretaking responsibilities for the parties' children. This factor is not dispositive of the issue of custody.
- c. Neither party alleges domestic abuse by the other party. Assuming Husband's assertions regarding Wife's conduct in practicing her Muslim religion, this Court has grave concern that she would not be an appropriate parent or role model for the children. In the same light, the Court has concerns about Wife's volatile behaviors not just towards Husband, but towards the minor children and in front of the minor children.
- d. In considering that Husband has lived almost his entire life in the Twin Cities area and has become a U.S. citizen, while Wife has not acclimated well to her relocation to the United States or American culture, has not sought US citizenship until after these proceedings commenced, voiced her anti-American sentiments, it is in the best interests of the parties' minor children to be under Husband's temporary physical custody.

5. To provide stability and maintain continuity for the minor children, Husband should be awarded the temporary use and possession of the parties' homestead property.

6. Wife is currently unemployed, but has the ability to obtain and maintain employment for her own support.

7. Husband is a licensed real estate agent and is employed by ReMax Advisors. As of June 30, 2005, Husband's net monthly income is \$2,665.85, based upon an S-4 tax withholding and a monthly health and dental insurance coverage of \$1,199.00 and federal, state, and social security taxes.

8. Based upon the parties' homestead monthly expenses, Husband's necessary monthly expenses will be approximately \$4,243.93. The parties have additional mortgage obligations on the two investment properties, totaling over \$2,400.00 per month for the mortgage and utility expenses. The parties also have over \$65,000.00 in credit card debt. Because Wife is currently unemployed and has no income, it will be Husband who will find himself financially

responsible to pay the mortgages, health insurance, and utilities, as well as the parties' credit card liabilities.

Based upon the foregoing Findings of Fact, the Court makes the following:

ORDER

1. Joyce Grannis shall be appointed as the custody evaluator regarding permanent custody/parenting time pursuant to a separate Order.

2. **CUSTODY.** The parties shall have temporary joint legal custody of the minor children, namely:

Nour Essam Ahmed, born June 22, 2000, age 5;
Omar Essam Ahmed, born January 18, 2002, age 3; and
Abdallah Essam Ahmed, born November 9, 2004, age 9 months.

Husband shall have temporary physical custody of the minor children, subject to Wife's reasonable parenting time which shall include, but not be limited to the following parenting schedule:

- a. Alternating weekends from Friday at 5:00 p.m. until Monday morning at 8:00 a.m.;
- b. Two (2) evenings per week from after school until 7:30 p.m., unless the parties agree otherwise.

The parties' minor child, Nour, shall be enrolled in and attend school at Highland Elementary in Apple Valley, Minnesota.

3. **SUPPORT.** The issue of Wife's temporary child support and statutory contribution for childcare expenses shall be RESERVED.

4. **HOMESTEAD.**

- a. The parties shall list the homestead property for sale and keep it on the market for sale at a price and upon terms to be mutually agreed upon by

the parties on or before September 1, 2005. The parties shall cooperate in getting the home in sale condition, including allowing contractors into the home for painting, carpet cleaning, and unfinished trim work. Both parties shall cooperate and use diligence in listing and making the necessary repairs to the homestead in preparation for its sale, and cooperating in showing the house to prospective buyers, keeping the house in a clean and presentable condition for showings, and in completing and executing all documents necessary for the sale of the homestead property.

- b. Any and all sale proceeds from the sale of the homestead property, less the expenses of the sale and the payoff of the existing mortgages, shall be deposited with the law firm of Severson, Sheldon, Dougherty & Molenda, P.A. and placed into Husband's attorney's trust account pending written agreement by the parties or further order of the Court.
- c. Pending the sale of the homestead property, Husband shall have the temporary and exclusive use and possession of the homestead property, subject to the payment of the monthly mortgages, insurance, taxes, and utilities and awarding the household goods and furnishings contained therein.
- d. Wife shall vacate the homestead property on or before September 10, 2005, at 11:59 p.m.
- e. Wife shall not remove any household goods, furnishings, or other personal property from the parties' homestead property unless and as mutually agreed upon by the parties, or further Order of the Court. If the parties are not able to reach a mutual agreement regarding the division of the personal property, then the parties shall participate in mediation to resolve that issue.

5. **SPOUSAL MAINTENANCE.** The issue of temporary spousal maintenance is RESERVED.

6. **HEALTH INSURANCE AND MEDICAL-RELATED EXPENSES.** Husband shall maintain and pay the monthly obligation for the existing health insurance for the benefit of the parties and the minor children. Husband shall also maintain and pay the obligation for any life and auto insurance for the benefit of the parties.

The parties shall equally share and each pay one-half (1/2) of any single uninsured medical, hospitalization, dental, ophthalmologic, orthodontic or counseling expense and the party

not incurring the expense to pay to the other party one-half (1/2) share of the expense within ten (10) days of receipt of verification of the uninsured expense.

7. **VEHICLES.** Husband shall have the temporary and exclusive use of the 2003 GMAC Suburban automobile, subject to payment of all obligations therefor.

Wife shall have the temporary and exclusive use of the 1997 Nissan Pathfinder automobile, subject to payment of all obligations therefor.

8. **DEBTS.** Each party shall assume and pay the debts which he or she has incurred since February 1, 2005, or on which the party is the named obligor.

9. **RESTRAINING ORDER.** Both parties shall refrain from selling, transferring, encumbering and otherwise disposing of any assets of the marriage except for current income, unless they mutually agree in writing or as ordered by the Court. Neither party shall seek credit in the name of the other party, without written agreement of the other party or further order of this Court. Neither party shall annoy, molest, or interfere with each other in any manner whatsoever during the pendency of this proceeding.

Dated: September 6, 2005

BY THE COURT:

Michael V. Jones
Judge of District Court

NOTICE IS HEREBY GIVEN TO THE PARTIES:**I. PAYMENTS TO PUBLIC AGENCY.**

According to Minnesota Statutes, section 518.551, subdivision 1, payments ordered for maintenance and support must be paid to the Minnesota child support payment center as long as the person entitled to receive the payments is receiving or has applied for public assistance or has applied for support and maintenance collection services. Parents mail payments to: P.O. Box 64326, St. Paul, MN 55164-0326. Employers mail payments to: P.O. Box 64306, St. Paul, MN 55164.

II. DEPRIVING ANOTHER OF CUSTODIAL OR PARENTAL RIGHTS – A FELONY.

A person may be charged with a felony who conceals a minor child or takes, obtains, retains, or fails to return a minor child from or to the child's parent (or person with custodial or parenting time rights), according to Minnesota Statutes, section 609.26. A copy of that section is available from any court administrator.

III. NONSUPPORT OF A SPOUSE OR CHILD – CRIMINAL PENALTIES.

A person who fails to pay court-ordered child support or maintenance may be charged with a crime, which may include misdemeanor, gross misdemeanor, or felony charges, according to Minnesota Statutes, section 609.375. A copy of that section is available from any district court clerk.

IV. RULES OF SUPPORT, MAINTENANCE, PARENTING TIME.

- A. Payment of support or spousal maintenance is to be as ordered, and the giving of gifts or making purchases of food, clothing, and the like will not fulfill the obligation.
- B. Payment of support must be made as it becomes due, and failure to secure or denial of parenting time is NOT an excuse for nonpayment, but the aggrieved party must seek relief through a proper motion filed with the court.
- C. Nonpayment of support is not grounds to deny parenting time. The party entitled to receive support may apply for support and collection services, file a contempt motion, or obtain a judgment as provided in Minnesota Statutes, section 548.091.
- D. The payment of support or spousal maintenance takes priority over payment of debts and other obligations.
- E. A party who accepts additional obligations of support does so with the full knowledge of the party's prior obligation under this proceeding.
- F. Child support or maintenance is based on annual income, and it is the responsibility of a person with seasonal employment to budget income so that payments are made throughout the year as ordered.
- G. If the obligor is laid off from employment or receives a pay reduction, support may be reduced, but only if a motion to reduce the support is served and filed with the court. Any reduction will take effect only if ordered by the court and may only relate back to the time that the motion is filed. If a motion is not filed, the support obligation will continue at the current level. The court is not permitted to reduce support retroactively, except as provided in Minnesota Statutes, section 518.64, subdivision 2, paragraph (d).
- H. *A Parental Guide to Making Child-Focused Visitation Decisions* is available from any court administrator.
- I. The nonpayment of support may be enforced through the denial of student grants; interception of state and federal tax refunds; suspension of driver's, recreational, and occupational licenses; referral to the department of revenue or private collection agencies; seizure of assets, including bank accounts and other assets held by financial institutions; reporting to credit bureaus; interest charging, income withholding, and contempt proceedings; and other enforcement methods allowed by law.

V. PARENTAL RIGHTS FROM MINNESOTA STATUTES, SECTION 518.17, SUBDIVISION 3. UNLESS OTHERWISE PROVIDED BY THE COURT:

- A. Each party has the right of access to, and to receive copies of, school, medical, dental, religious training, and other important records and information about the minor children. Each party has the right of access to information regarding health or dental insurance available to the minor children. Presentation of a copy of this order to the custodian of a record or other information about the minor children constitutes sufficient authorization for the release of the record or information to the requesting party.
- B. Each party shall keep the other informed as to the name and address of the school of attendance of the minor children. Each party has the right to be informed by school officials about the children's welfare, educational