

**PARENTING PLAN MODIFICATION**

\_\_\_\_\_ v. \_\_\_\_\_

Docket No. \_\_\_\_\_ Date of Trial \_\_\_\_\_

Mother's Attorney \_\_\_\_\_ Father's Attorney \_\_\_\_\_

Procedural Posture:

This case came on to be heard upon the bill of the \_\_\_\_\_ for modification of the parenting plan upon the grounds of \_\_\_\_\_; and the answer thereto; the counterclaim of the \_\_\_\_\_ upon \_\_\_\_\_; and the answer thereto.

Evidence Proffered and Received:

The case was heard upon the testimony of the parties and other witnesses:

For the Plaintiff

- 1.
- 2.
- 3.
- 4.
- 5.

For the Court

- 1.
- 2.

For the Defendant

- 1.
- 2.
- 3.

4.

5.

The case was additionally heard upon the exhibits received into evidence:

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FINDINGS OF FACT:

Date of last parenting plan: \_\_\_\_\_

Amount of previously ordered child support: \_\_\_\_\_

Number of children: \_\_\_\_\_

Names and present ages:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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Employment information only if issue of child support or other parenting issue relevant to employment:

Employment history and income of Mother:

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Employment history and income of Father:

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MODIFICATION OF PARENTING PLAN § 36-6-101(a)(2)(C)

Petition and Response must include:

- a. A proposed parenting plan: Mother \_\_\_\_\_ Father \_\_\_\_\_
- b. The parent paying child support must include a verified statement of that party's income pursuant to child support guidelines and related provisions contained in chapter 5 of this title. Once a permanent parenting plan has been incorporated in a final divorce decree, the parties are required to comply with it unless and until it is modified as permitted by law. See Tenn. Code Ann. § 36-6-405 (2010). *Armbrister v. Armbrister*, 414 S.W.3d 685, 697-98 (Tenn. 2013). \_\_\_\_\_

[*Temporary Modification*: The existing residential schedule shall not be modified prior to a final hearing unless the parents agree to the modification or the court finds that the child will be subject to a likelihood of substantial harm absent the temporary modification. If a temporary modification of the existing residential schedule is granted ex parte, the respondent shall be entitled to an expedited hearing within fifteen (15) days of the entry of the temporary modification order. §36-6-405(b)] \_\_\_\_\_

[*State Child Support case*: Title IV-D child support cases involving the department of human services or any of its public or private contractors shall be bifurcated from the remaining parental responsibility issues. Separate orders shall be issued concerning Title IV-D issues, which shall not be contained in, or in part of, temporary, permanent or modified parenting plans. The department and its public or private contractors shall not be required to participate in mediation or dispute resolution pursuant to this part.]

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I. Request for Modification of Primary Residential Parent/Custody:

T.C.A. § 36-6-101(a)(2)(B)

1) The petitioner must prove by a preponderance of the evidence a *material change in circumstance*.

a. DOES NOT:

- require a showing of substantial risk of harm to the child

- interfere with the requirement that parties to an action for divorce incorporate a parenting plan into the final decree or decree modifying an existing custody order.

- imply a mandatory modification to the child support order

b. Includes but is not limited to:

- failures to adhere to the parenting plan or an order of custody and visitation or circumstances that make the parenting plan no longer in the best interest of the child(ren).

c. In each contested case, the determination of whether a material change in circumstances occurred must be made *with specific findings as to the reason and the facts constituting the basis for the custody determination*: \_\_\_\_\_

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II. Request for Modification of Residential Parenting Time/Parenting Schedule:

T.C.A. § 36-6-101(a)(2)(C)

- 1) The petitioner must prove by a preponderance of the evidence a material change in circumstance affecting the child’s best interest. The court must first determine if a material change has occurred.
  - a. DOES NOT: require a showing of a substantial risk of harm to the child.
  - b. Includes but is not limited to:
    - Significant changes in the needs of the child over time;
    - Changes relating to the child’s age;
    - Significant changes in the parents’ living or working conditions that significantly affects parenting;
    - Failure to adhere to the parenting plan;
    - Other circumstances making a change in the residential parenting time in the best interest of the child. *Armbrister v. Armbrister*, 414 S.W.3d 685, 702-04 (Tenn. 2013).
- 2) T.C.A. § 36-6-101(a)(2)(C) sets “a very low threshold for establishing a material change in circumstances” when a party seeks to modify a residential parenting schedule. Boyer, 238 S.W.3d at 257 (quoting *Rose v. Lashlee*, No. M2005-00361-COA-R3-CV, 2006 WL 2390980, at \*2 n. 3 (Tenn. Ct. App. Aug. 18, 2006)); see also Marlene Eskind Moses, *Modification of Permanent Parenting Plans in Tennessee*, 49 Tenn. B.J., May 2013, at 27, 28.
- 3) Determination of whether a material change in circumstances occurred:

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- 4) If a material change in circumstances has occurred, you must also determine whether a change of the parenting plan is in the *best interest of the child* using the best interest factors:
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III. Determination of Change in Parenting Plan:

Finally, pursuant to the modification procedures described in § 36-6-405(a), the court must apply the fifteen (15) factors of § 36-6-404(b), so as to determine how, if at all, to modify the residential parenting schedule. Just as the court's processes for determining the child's best interests and residential schedule when making its initial custody decisions overlap substantially, here again the two analyses are likely to be quite similar. *Compare* T.C.A. § 36-6-106(a) *with* § 36-6-404(b). *Armbrister v. Armbrister*, 414 S.W.3d 685, 697-98 (Tenn. 2013).

The court shall make residential provisions for each child, consistent with the child's developmental level and the family's social and economic circumstances, which encourage each parent to maintain a loving, stable, and nurturing relationship with the child. The child's residential schedule shall be consistent with this part. If the limitations of § 36-6-406 are not dispositive of the child's residential schedule, the court shall consider the factors found in § 36-6-106(a)(1)-(15):

<b>Factor</b>	<b>Mother</b>	<b>Father</b>
(1) The strength, nature, and stability of the child's relationship with each parent, including whether one (1) parent has performed the majority of parenting responsibilities relating to the daily needs of the child;		
(2) Each parent's or caregiver's past and potential for future performance of parenting responsibilities, including the willingness and ability of each of the parents and caregivers to		

<p>facilitate and encourage a close and continuing parent-child relationship between the child and both of the child's parents, consistent with the best interest of the child. In determining the willingness of each of the parents and caregivers to facilitate and encourage a close and continuing parent-child relationship between the child and both of the child's parents, the court shall consider the likelihood of each parent and caregiver to honor and facilitate court ordered parenting arrangements and rights, and the court shall further consider any history of either parent or any caregiver denying parenting time to either parent in violation of a court order;</p>		
<p>(3) Refusal to attend a court ordered parent education seminar may be considered by the court as a lack of good faith effort in these proceedings;</p>		
<p>(4) The disposition of each parent to provide the child with food, clothing, medical care, education and other necessary care;</p>		
<p>(5) The degree to which a parent has been the primary caregiver, defined as the parent who has taken the greater responsibility for performing parental responsibilities;</p>		
<p>(6) The love, affection, and emotional ties existing between each parent and the child;</p>		
<p>(7) The emotional needs and developmental level of the child;</p>		
<p>(8) The moral, physical, mental and emotional fitness of each parent as it relates to their ability to parent the child. The court may order an examination of a party under Rule 35 of the Tennessee Rules of Civil Procedure and, if necessary for the conduct of the proceedings, order the disclosure of confidential mental health information of a party under § 33-3-105(3). The court order required by § 33-3-105(3) must contain a qualified protective order that limits the dissemination of confidential protected mental health information to the purpose of the litigation pending before the court and provides for the return or destruction of the confidential protected mental health information at the conclusion of the proceedings;</p>		
<p>(9) The child's interaction and interrelationships with siblings, other relatives and step-relatives, and</p>		

mentors, as well as the child's involvement with the child's physical surroundings, school, or other significant activities;		
(10) The importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment;		
(11) Evidence of physical or emotional abuse to the child, to the other parent or to any other person. The court shall, where appropriate, refer any issues of abuse to juvenile court for further proceedings;		
(12) The character and behavior of any other person who resides in or frequents the home of a parent and such person's interactions with the child;		
(13) The reasonable preference of the child if twelve (12) years of age or older. The court may hear the preference of a younger child upon request. The preference of older children should normally be given greater weight than those of younger children;		
(14) Each parent's employment schedule, and the court may make accommodations consistent with those schedules; and		
(15) Any other factors deemed relevant by the court.		

Totals: \_\_\_\_\_

1) This Court finds the parenting plan will be modified, such that the primary residential parent of the child(ren) is now: \_\_\_\_\_

2) Determination as to how to change the parenting plan: See attached blank parenting plan

IV. Determination of Child Support

Mother's income: \$ \_\_\_\_\_/month      Father's income: \$ \_\_\_\_\_/month

Proposed Child Support Worksheet reviewed by Judge: \_\_\_\_\_



V. Other issues to consider:

- 1) The \_\_\_\_\_ shall maintain *medical/hospital insurance* on the minor child(ren) and he/she shall provide proof of continuing coverage upon demand, but in any event, annually.
- 2) *Uncovered medicals*, including deductibles (if any), will be borne by: \_\_\_\_\_
- 3) *Life insurance* shall be maintained by: \_\_\_\_\_ in the amount of \$\_\_\_\_\_.  
\_\_\_\_\_.
- 4) Any *child support arrearages* to be calculated in:  
\_\_\_\_\_.
- 5) A *wage assignment* shall issue (by separate order to be presented by counsel) to \_\_\_\_\_, the employer of the \_\_\_\_\_, for the ongoing child support.
- 6) The *dependency exemption(s)* shall belong to the \_\_\_\_\_ in each and every year in which payment of child support is made fully, without delay, and without any returns for insufficient funds. In years in which those conditions are not met, the \_\_\_\_\_ shall have the dependency exemption.
- 7) A lien is imposed upon the following items of marital real property to be awarded to the \_\_\_\_\_ as security for the payment of all child support incidents: \_\_\_\_\_  
\_\_\_\_\_