# Superior Court of Washington

**County of Snohomish**

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| **In re Marriage of:**  **JANE SMITH,**  **Petitioner,**  **and**  **JOHN SMITH,**  **Respondent.** | **No.** 55-5-55555-5  **DECLARATION OF RESPONDENT JOHN SMITH IN SUPPORT OF MOTION TO MODIFY TEMPORARY PARENTING PLAN** |

**I. INTRODUCTION**

I, John J. Smith (Respondent / Father / Husband), submit this declaration in support of my motion modify the temporary custody order in this divorce. Recent evidence demonstrates I have been telling the truth about Jane being unfit to care for our daughter, and Jane might got to jail in the near future for admitting to domestic violence. I ask that the court place our daughter in my primary care.

**II. BACKGROUND**

Jane (Petitioner / Mother / Wife) and I were married for two years, separated this summer, and have one child, our 22-month-old daughter, Maya. The safety of our daughter is the primary issue in this case. Both of us have alleged the other is an unfit parent, including polar opposite allegations of the other party being domestically violent.

The Court apparently has not been able to determine who has been telling the truth in this case; and it appears the Court has “splitting the baby”, so to speak. That is, the Court has divided our daughter’s daytime hours approximately equally between me and Jane.

In an effort to refresh the Court’s recollection, I’m supplying a courtesy copy of my declaration from the previous hearing.

**III. REQUEST FOR MODIFICATION OF TEMPORARY PARENTING PLAN**

In summary, there have been two relevant changes in circumstance since the October 2, 2014 review of the temporary parenting plan:

* **Lie in Discovery Responses**. Jane recently lied in her discovery responses in an important and easily provable respect. This should help the Court determine which of us to trust. Moreover, the circumstances of Jane’s lie corroborates my position on an issue material to the Court’s temporary parenting plan, and the Court indicated it would re-visit the issue if we obtained evidence.
* **Jane’s Likely Jail Time**. On October 22, 2014, the state arraigned Jane for the domestic violence incident that led to our divorce. Jane confessed to the police, which means she IS domestically violent and faces likely jail time. Should she be found guilty, she would be immediately unavailable to care for our daughter during her residential time. The custody order should be modified to include a provision for that potentiality.

**A. Jane Recently Lied in Discovery Responses; Lie Corroborates My Position on Material Issue That Court Said It Would Re-Visit**. At the October 2, 2014 review hearing, the Court stated it would re-visit my allegations of abusive use of conflict if I could produce more evidence of the foul comments Jane had said to our daughter at our child exchanges. More specifically, the Court anticipated I might be able to obtain Jane’s audio recordings of the exchanges. Since then, Jane has claimed in her discovery responses that she never had any audio recordings of the exchanges. Surveillance footage shows Jane’s lying about not recording the child transfers (the security videos show her making the audio recordings), and her lies about it effectively corroborate my position.

In relevant part, the Court orally stated the following at the October 2, 2014 review hearing:

I don’t have enough information to find that the mother made these [inappropriate comments to the child during the child exchanges]. If the mother is doing that . . . that is the stuff that would cause the court to think that you are not a good mother . . . . If that were happening, the court certainly would be concerned about that . . . .

*Oct. 2, 2014 Hearing Recording at 9:51.12*.

My attorney asked that the written order from the hearing including specific wording about re-visiting this issue if we obtained the audio recording(s). The Court agreed:

[**My Attorney:**] We should have proof of [what Jane said] in the future. We’d like the Court’s actual wording [written into the order], so that if we get that recording, we can come back and re-visit [this issue].

[**Court:**] Okay, fair enough. I don’t mind including that . . . .

[**Opposing Counsel:**] The mother does not have a recording. We’re denying that; she’s denying that.

[**Court:**] Alright, I don’t see this as prejudicial to your client. This would just confirm what my findings are, my concerns were.

. . . .

[**Opposing Counsel:**] . . . The mother denies that this evidence exists.

[**Court:**] Well, of course it’s disputed. Alright

. . . .

[Court reading its newly written interlineation to the order:] “The court does not have sufficient evidence at this time to confirm the father’s concerns regarding the mother’s alleged statements to the child (coaching child to refer to father as “poop”).” Do I need to say anything else?

[**My Attorney:**] [Please add] that the Court would have issues otherwise. I think that’s what you had said.

[**Court:**] Well, obviously. I’m not going to say “I would have concerns otherwise.” I do have concerns otherwise, or I wouldn’t be bothering putting this in this order.

*Oct. 2, 2014 Hearing Recording at 10:26:29*.

Two weeks later, Jane stated in her discovery responses that she had never recorded the child exchanges. This was important, because she wasn’t saying she had deleted the recordings; she was saying the recordings never existed. Her responses were as follows:

INTERROGATORY NO. 3: Please identify every recording (e.g. audio recording or video recording) you have made or caused to made of respondent since this case was filed.

ANSWER: None

REQUEST FOR PRODUCTION 2: Please provide copies of any and all recordings identified in your answer to the preceding interrogatory.

ANSWER: N/A

True and correct copies of the relevant answers are attached as **Exhibit A**.

Had she claimed she’d innocently deleted her audio recordings of me, I wouldn’t be able to disprove that. But she slipped up when she claimed she hadn’t recorded me at all, because I knew I might be able to catch her in her lie with witnesses or security footage.

I subpoenaed the surveillance videos from the Bartell’s where we performed child exchanges. In some of the security videos, you can see Jane holding her phone or putting her phone in her pocket as she approaches me for the exchange. More importantly, in every single video you can see Jane pull out her cell phone and tap the screen to stop the audio recording at the end of the child exchange. I have obtained advance permission to present video evidence and have supplied true and correct copies of the surveillance videos for the Court’s review. I can attest that the people in the videos are Jane and me, and that the videos show our child exchanges. Most of the surveillance videos are about a minute long, so I strongly encourage the Court to review several of them to confirm I am telling the truth.

Jane’s attempts to hide her audio recordings from the Court prove she does not want the Court to hear what she said at the child exchanges.

**B. State’s Decision to Prosecute Jane for DV**. The state arraigned Jane for DV on October 22, 2014. Attached as **Exhibit B** is a true and correct copy of the subpoena for me to testify in December 2014. Though Jane has entered a not guilty plea, she had previously admitted to the police that she hit me in the face. Attached as **Exhibit C** is a true and correct copy of the police declaration about her admission. From what I understand, Jane is likely to spend some time in jail as a result of her admission. In fact, she might spend a long time in jail, because what she actually did was much worse that what she admitted to.

**IV. SUMMARY OF REQUESTED RELIEF**

I would ask that the Court adopt my proposed temporary parenting plan, restricting Jane to supervised visitation. Hopefully Jane’s latest lies are the final straw, and that the Court now believes what I’ve been saying about her. Jane doesn’t just put our daughter in the middle; she’s exceptionally violent. That’s why I’ve been fighting so hard in court. I’m truly afraid for my daughter’s safety.

In the alternative, I ask that the Court place our daughter in my primary care, reducing Jane to weekend visitation. I also ask that the Court place our daughter in my exclusive care for any period of time Jane spends in jail.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at [City & State] on [Date].

Signature:

JOHN J. SMITH