# Superior Court of Washington

**County of Snohomish**

|  |  |
| --- | --- |
| In re:  JOHN D. SMITH,  Petitioner,  and  JANE D. SMITH,  Respondent. | **No.** 55-5-55555-5  **RESPONDENT’S DECLARATION IN OPPOSITION TO MOTION FOR TEMPORARY ORDERS** |

**I. INTRODUCTION**

I, Jane Smith (Respondent/Mother/Ex-Wife), write in opposition to John Smith’s (Petitioner/Father/Ex-Husband) motions for adequate cause and a temporary modified parenting plan. John lacks even a prima facie basis for modification. Firstly, he’s only petitioned for a minor modification of the parenting plan, but he’s requesting a change of more than 24 days and overnights per year. He would need to petition for major modification to make such as large change.

More frustratingly, he makes no credible allegation of any qualifying change in circumstance since entry of our most recent parenting plan. He claims various changes have occurred after “the original parenting plan was filed . . . on 09/20/2012.” But that is not when the most recent parenting plan was filed. We finalized our divorce on August 22, 2013, and his claimed changes occurred before that or are otherwise irrelevant.

The requested modification also isn’t in our son’s best interest. He has intense abandonment issues and needs frequent, short visitations; not infrequent, long ones like John proposes.

Lastly, John’s materials include a number of blatant falsities. I can prove most of those statements are false, and I ask for an award of attorney fees as punishment.

**II. BACKGROUND**.

John and I finalized our divorce by agreement approximately a year ago—on August 22, 2013. I am providing a true and correct copy of the final orders from our divorce as **Exhibit A**. He repeatedly states in his declaration that the date was September 20, 2012; but that is incorrect.

We entered our agreed divorce documents through California, where I had been living at the inception of the case. We have one child, our five-year-old son, Eli. Eli has lived with me in Washington for the last two years. John lives in Virginia and has visitation under our agreed long-distance custody order / parenting plan.

**III. REQUESTING CHANGE OF MORE THAN 24 OVERNIGHTS**.

Even if John could point to a relevant change in circumstances (which there is not) and prove his modification would be in our son’s best interest (which it is not), the minor modification should be denied on the basis that it would increase John’s visitation by more than 24 nights per year. I’ve calculated the numbers in each of the scenarios listed in his proposed parenting plan. By my count:

* John’s requested modification would increase visitation by 53-68 overnights if the parties continue to live in separate states.
* If John moved to Washington, his modification would increase visitation by 35-41 nights in even years.
* If John moved to Washington, his modification would increase visitation by 45-49 nights in odd years.

**IV. NO QUALIFYING CHANGE IN CIRCUMSTANCES**

**A. No Relevant Change in Locations**. John cannot claim he needs a modification on the basis of a change in his address. He has lived in Virginia since 2012—approximately a year before we finalized our divorce. Attached as **Exhibit B** is a recent print-off of John’s LinkedIn online resume. It shows he has worked in “Virginia” since “2012”. Moreover, the August 22, 2013 final orders list John’s Virginia address.

There has been no relevant change in my address either. I have lived in Washington for approximately the last two years. Our final orders from California confirm I moved to Washington with John’s written permission. Page 4 of the Marital Settlement Agreement reads: “The parties acknowledge that Mother was previously given Father’s written consent to relocate Eli to the State of Washington.”

Finally, I want to head off any counterargument about John expecting me to move to Virginia in the future. It’s not a change in circumstances if it hasn’t occurred, and he’s not telling the court the truth about me supposedly saying I’ll eventually move there. Attached as **Exhibit C** is a true and correct copy of a 2013 IM conversation in which I clearly state I’m not ever going to move to Virginia. It reads in part:

[**John:**] . . . so you would move here.

[**Me:**] I’m never moving to Virginia. I’ve always made that clear.

**B. No Relevant Change in Income**. John cannot say his ability to afford long-distance transportation has changed. He has had the same fulltime job in Virginia since 2012, as his above-mentioned LinkedIn resume confirms (see **Exhibit B**).

**C. No Relevant Change Regarding Schooling**. The fact that our son recently started kindergarten cannot be a relevant change in circumstances. To be relevant under Washington law, a change must be one that was not reasonably anticipated at the time the order was entered. We obviously knew Eli was going to attend kindergarten when we entered our final orders a year ago.

Not that kindergarten had made any difference—John did not exercise his school year visitation in the year prior to kindergarten.

**D. No Relevant Arguments Regarding Denial of Contact**. Please consider:

* 2013 Spring Break Allegation Irrelevant. John claims I denied him contact with our son during the 2013 spring break. This is both irrelevant and untrue. His complaint is irrelevant because the 2013 spring break pre-dated our August 22, 2013 agreed final orders (which we signed in June 2013). His complaint is provably untrue in that John had written to me saying I should not bring Eli to Jersey for that spring break. Attached as **Exhibit D** is a true and correct copy of the email in which John said he was going to come to Washington for spring break instead. It reads:

Hi Jane, I will come out to visit Eli for a week or so in the spring so you don’t have to bring him here.

* 2014 Summer Break Allegation Irrelevant. John says I only gave him two weeks of summer vacation instead of three weeks. This, again, is irrelevant and untrue. It’s irrelevant because the final orders only allotted John two weeks for the summer. It’s untrue, because I did offer John three weeks. I told him he could have our son for an extra (third) week in Virginia if John would provide the parental accompaniment on the return flight. John elected not to perform the parental accompaniment, which is why the Virginia trip only ended up being the required two weeks. Attached as **Exhibit D** are our text messages about this. They read in pertinent part:

[**John:**] [You didn’t give me three weeks of summer vacation]. Meanwhile you are taking him to gay parades . . . when you got back . . .

. . . .

You told me three weeks[.]

. . . .

It’s fucked up that your period dictates my time with my son[.]

[**Me:**] . . . I just couldn’t fly during that time solo with him[.] Which is why I said if you could fly it was fine[.]

. . . .

And you still got your time[;] I just couldn’t accommodate extra without your help . . . .

. . . .

[**John:**] . . . U told me three weeks was ok . . . My time with him was dictated by your menstrual cycle.

**IV. CHANGE IN PARENTING PLAN NOT IN SON’S BEST INTEREST**.

Even if there were a relevant change in circumstances (which there is not), John’s proposed changes would not be in our son’s best interest. As I’ve told John, our son needs more frequent interactions with him, not longer ones. Our son is only five years old. He’s terrified of being away from me for more than a few days. Our son was literally vomiting out of nervousness during the two-week summer visit. Our son loves his dad, but long stretches without his mom just don’t go over well. You have to understand: a) our son hasn’t had much contact with John in about three years, b) I’ve been with him almost every day of his life, and c) our son is afraid of being abandoned.

John’s proposed parenting plan would give John much longer blocks of time in the summer and winter. That’s not good for our son at this point. John’s proposed plan would also mean that John and our son would sometimes go 10 months without seeing each other (aside from the possibility of John coming to Washington, which John doesn’t do). That’s not good either.

We agreed on the 2013 final orders because they were in our son’s best interest; John’s proposed changes are not.

**V. UNFAIR ALLEGATIONS**

John tries to gain sympathy by making it seem I have tried to cut him out of our son’s life. The truth is I have always tried to get John to have more frequent contact with our son. Attached as **Exhibit E** are a week’s worth of text messages from me to John proving this. They show I constantly set up the phone calls and skype calls between John and our son. John gets depressed and does not want to interact with Eli, so I have to prod and cajole John to get him on the phone.

I have also done everything I can to encourage John to exercise his in-person visitation with our son. John says the travel costs are too high, so I have tried to help him do it more inexpensively. I have explained that the cost is two-thirds less if he visits in Washington, because it eliminates two extra round-trip tickets for the parental accompaniment to and from Virginia. I have also allowed him to stay in my house and thereby avoid the cost of hotels. I even offered to leave my house during the entire trip, so John could stay there alone with our son for free. Attached as **Exhibit F** is a recent text chain documenting some of this. It reads:

[**Me:**] So do you want to plan visits[?] Halloween is on a Friday[.] Can you come for it/that wkend[?]

[**John:**] Maybe

[**Me:**] He would be super happy

[**John:**] I am not going to stay at your place

[**Me:**] Where are you going to stay[?]

[**John:**] Hotel

[**Me:**] Okay[,] I didn’t think you had money

[**John:**] I don’t

As usual, he did not come.

**VII. REQUESTED RELIEF**.

**A. Deny Adequate Cause**. I ask that the Court determine there is not adequate cause to continue with this parenting plan modification proceeding.

**B. Deny Request for Temporary Parenting Plan**. I ask that the Court deny John’s request for a temporary parenting plan.

**C. Award Attorney Fees**. I ask that the Court award me attorney fees on the basis of intransigence or under CR 11.

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:

JANE SMITH