IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF SNOHOMISH

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| In re:  JANE D. SMITH,  Petitioner,  and  JOHN D. SMITH,  Respondent. | No. 11-3-02524-3  DECLARATION OF FATHER/RESPONDENT IN RESPONSE TO MOTION FOR MODIFICATION OF TEMPORARY PARENTING PLAN |

**I. INTRODUCTION**

I, John Smith (Respondent/Father), make this declaration in response to the motion for modification of our temporary parenting plan in this divorce. I also submit this declaration in support of my motion to adopt my proposed temporary parenting plan and other relief.

Despite the Guardian ad Litem’s recommendation, it makes little sense to increase Jane’s (Petitioner/Mother) residential time at the expense of mine. Recent evidence shows her chemical dependence problem is more a concern than ever.

At our initial hearing on temporary orders, she told the Court she had been “taking and passing CPS UAs for 3 months”. Recently released CPS records show Jane misled the Court about her drug testing. Jane refused to take a CPS UA on advice of her attorney, did not show up for 9 random CPS UAs, and tested positive for meth. Since then she has taken only 4 UAs while failing 1 of them. I had no admissible proof of this until receiving un-redacted copies of her CPS records a few days ago.

**II. BACKGROUND**

Jane and I were married for just over a year before we each filed for divorce in 2011. We have 1 child in common—our 3-year old son, Eli, who splits time between our homes. We had a hearing on temporary orders on November 29, 2011. The Court did not enter a full temporary parenting plan, but instead entered a short handwritten custody order. The handwritten custody order says Eli lives with me 2 ½ to 3 days a week, and with Jane the other 4 to 4 ½ days. The Court then appointed a GAL to report back in 60 days.

The primary issue concerning the Court was meth use. Both Jane and I admitted using meth during our marriage, but each of also indicated we had been clean since our separation in late August 2011. The Court ordered us to undergo drug and alcohol assessments with each other as collateral contacts. We were also required to undergo any testing or treatment recommended in the assessments. In the meantime the Court restricted us from interacting with our former drug dealers, Maya Greene and James Henry.

**III. CONCERNS ARISING SINCE NOVEMBER 29, 2011 HEARING**.

Four main concerns have arisen since the November 29 hearing: a) Jane’s dishonesty about her drug testing for the period before the November 29 hearing, b) Jane’s drug testing after the November 29 hearing, c) Jane’s continued interaction with Maya Greene, her drug dealer, and d) Jane’s unacceptable drug and alcohol assessment.

A. **Newly Disclosed Information on Drug Testing for Period Immediately Before November 29, 2011 Hearing**.

The recently released CPS records show the following new information about Jane’s drug testing for the period immediately before the November 29, 2011 hearing:

Upon advice of her attorney, Jane did not submit to a UA when CPS requested it on August 30, 2011.  A copy of a relevant CPS document is attached as Exhibit A. It says Jane “changed her mind about the UA today after she spoke to her attorney . . . . [S]he will do one tomorrow.”

Jane took numerous UAs in the roughly three months that followed, but she also failed to submit to 9 more randomly scheduled tests during that time.  Copies of the “no show” records are attached as Exhibit B. Attached as Exhibit C is a CPS document stating that missed UAs “come back as no-shows and have the potential to be considered as dirty.”

My understanding is that missed UAs are often considered dirty because of the short detection window. Attached as Exhibit D is a document on drug detection windows for UAs.  It shows the detection window for meth is only 1-2 days.  That is why I am troubled by Jane missing her UAs and then taking UAs a few days later.  It suggests she refused to take drug tests on the days she knew her UAs would return dirty.

More importantly, Jane’s October 27, 2011 UA was positive for meth. A copy of the test result is attached as Exhibit E. The test result is labeled with Jane’s name and reads “Methamphetamine POSITIVE.” The test result shows her urine contained more than 14.5 times the test’s threshold for the drug.

Jane absolutely misled the Court when she and her attorney indicated she was taking and passing CPS’s UAs. Granted, she took and passed some CPS UAs. But she also had serious issues with her other CPS UAs. It is almost certain the Court would not have placed our son in Jane’s hands if the Court had known the truth.

B. **Newly Disclosed Information on Drug Testing for Period After November 29, 2011 Hearing**.

The recently released CPS records also raise concerns about Jane’s drug testing for the period after the November 29 hearing.

The CPS records only show 4 UA results for Jane since the November 29, 2011 hearing. She failed one of those. The UA results are filed under seal as Exhibit F; the failed result is the second of the 4.

She failed the second UA because her creatinine level was exceptionally low. Filed under seal as Exhibit G is a record discussing Jane’s low creatinine reading.  Its explains “that low creatinine indicates a person is trying to ‘flush’ system by drinking a lot of water . . . . [CPS] considers low creatinine UAs positive.” Apparently Jane artificially induced a false negative UA result.

B. **Jane’s Continued Interaction with Drug Dealer** **Maya Greene**.

Jane’s continued interaction with Maya Greene—our drug dealer—is especially dangerous. By way of background, I left our marriage and reported Jane to CPS precisely because of Jane’s contact with Maya Greene. I described this on page 3 of my original declaration to the Court, dated November 20, 2011 (Court Docket No. 52). I wrote:

The situation got worse when Jane started spending time with our dealer, Maya Greene. That scared me beyond what I can express in words. Maya admittedly wasn't very careful to keep kids away from drugs. . . . I didn't want Jane or the kids having any contact with Maya. I told Jane not to go to Maya's house.

I left Jane on August 25, 2011 when I found out she and Eli had been hanging out at Maya Greene's house during the day. I took Eli to my mom's house in Montana and called CPS to intervene.

Accordingly, the Court restricted our interaction with Maya Greene. The temporary order read: “Jane is to have no contact with Maya Greene.” Similarly, the minute order read: “Maya Green . . . shall not be around the child.” (See Court Docket No. 62-63).

After the hearing on temporary orders, our son, Eli, indicated Jane was still interacting regularly with Maya. Eli would mention Maya and ask whether we were going to play at Maya’s house.

I started occasionally driving by Maya’s house to see if Jane was there, which she was. Attached as Exhibit H is an email I wrote to the GAL about Jane’s interaction with Maya. The email has pictures of Jane’s car at Maya’s house. The body of the email reads: “This is Jane’s vehicle at Maya’s home. The living room window above Jane’s car is the one that I saw [Jane’s older son] walk by. I also was there when Jane and [her older son] left the house.”

The newly released CPS records show I am not the only one worried about Jane spending time with Maya. A relevant CPS document is filed under seal as Exhibit I. The document relates a conversation with Jane’s sister Jodi. In it, Jodi is worried about Jane going to Maya’s house, because “that is the friend/place where she used before and that Jane said she was not using before when she was[. S]o for her to say she is not using now—leaves [Jane’s sister] skeptical.” Jane’s sister did not get her information about Maya from me—she got this information about Jane independently.

C. **Jane’s Unacceptable Drug & Alcohol Assessment**.

No one contacted me as a collateral contact for Jane’s drug and alcohol assessment. The Court specifically ordered that Jane list me as a collateral contact. Attached as Exhibit J is the minute order stating as much. The minute order reads: “Both parties shall complete an evaluation and attempt to coordinate . . . so that the evaluations are done at the same place with each other as collateral contacts.” (Emphasis added).

The person giving the assessment was apparently not made aware that Jane had 2 failed drug tests and 9 UA “no shows” since our separation in late August 2011. I am submitting a copy of Jane’s assessment under seal. Page 3 of the assessment says “The patient reported her last use of methamphetamine as 08/21/11.” The recently released CPS records show Jane absolutely did use meth after August 21, 2011. See above.

**IV. GAL’S REPORT**

Ms. Gandolf issued her GAL report on approximately June 4, 2012; and the report is in the Court file. (See Court Docket No. 81). The report recommended that our son remain primarily in Jane’s care, though the report does not seem to lean strongly one way or the other. At the bottom of page 32 of the report, the GAL wrote:

In terms of allegations about each other, it is likely that the mother has used methamphetamine on at least once occasion since the parties’ date of separation. The mother needs to remain clean and sober. She needs to realize that it is her responsibility to protect her children from harm. This includes not allowing contact between her children and those who she knows are consuming and/or selling illegal substances.

I very much respect Ms. Gandolf, but this paragraph of warning is unlikely to do much good. The records show Jane has probably lapsed several times since separation, not just once. Jane has 9 UA no shows, 2 failed UAs, and very few recent drug test results. Jane’s also continuing to spend time with Maya Greene in violation of the Court’s order, and Jane lied about drugs during her recent drug and alcohol assessment.

**V. UNFAIR ACCUSATIONS**

Contrary to what Jane says, I have been clean. I had difficulty going to the bathroom in front of the monitor the first time I tried. I also missed a UA in September 2011 when I was leaving Washington and didn’t receive the on-demand UA notification in time. Since then my UA’s have been uneventful. Evergreen Manor filed my UA results with the Court each week as they became available. I tested positive for hydrocodone on one week’s test, but I had a hydrocodone prescription for a herniated disk. The prescription is being filed under seal as Exhibit K.

My drug and alcohol assessment is also filed under seal, as Exhibit L. Jane was one of my collateral contacts for the assessment.

I have stopped using meth, stopped drinking, and even quit smoking (unlike Jane). I am doing everything I can think of to make sure Eli is safe. That is why I left the marriage and contacted CPS. It is also why I am contesting this motion. Eli is my number 1 priority.

**VI. REQUESTED RELIEF**.

A. **Parenting Plan**. I request that the court deny Jane’s requested parenting plan and instead adopt my proposed temporary parenting plan, making me the primary residential parent, at least for the time being.

B. **Drug & Alcohol Assessment**. I ask that Jane be required to submit to a drug and alcohol assessment at Evergreen Manor, this time with me as a collateral contact.

C. **Weekly UAs**. I ask that Jane undergo weekly random UAs at Evergreen Manor.

D. **Disclosure of UA Results**. I ask that Jane immediately provide my attorney with a copy of her UA results as each result becomes available. She should not be allowed to brush her UA results under the rug again.

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

JOHN D. SMITH Date