

DISPUTE PREVENTION & RESOLUTION, INC.

Domestic Arbitration Tribunal

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| In The Matter of the Arbitration between: |) | |
| |) | |
| ABC |) | |
| Plaintiff (“MOTHER”) |) | |
| |) | |
| -and- |) | FC-D No. xx-x-xxxx |
| |) | |
| XYZ |) | REDACTED INTERIM |
| Defendant (“FATHER”) |) | ORDER OF |
| |) | ARBITRATOR |
| DPR Case Number xx-xxxx-A |) | |

REDACTED INTERIM ORDER OF ARBITRATOR

A. PROCEDURAL BACKGROUND

1. The undersigned was duly appointed by the parties as Arbitrator pursuant to the Agreement to Participate in Binding Divorce Arbitration signed ____ by FATHER and ____ by MOTHER (EXHIBIT A hereto). By agreement of the parties, DPR Rule 24 “Provisional and Interim Remedies” (EXHIBIT B hereto) was invoked to deal with pressing issues relating to temporary child support and private education expense for the parties’ two minor children, GIRL (a xx-year-old xxx at SCHOOL ONE) and BOY (a xx-year-old xx grade student at SCHOOL TWO). By agreement of the parties, an arbitration hearing was conducted on _____, from ___ p.m. to ___ p.m., at the office of DPR. The parties were represented by counsel, Attorney, Esq. for MOTHER, and Attorney, Esq. for FATHER. At the hearing, both parties testified (no other witnesses were called by either party), and evidence and argument was presented.

2. At the conclusion of the hearing, the parties stated that they had no further evidence to present, and the evidentiary portion of the hearing was closed. Counsel made oral closing arguments, and no written post-hearing submissions were required.

B. FACTUAL BACKGROUND

1. The parties were married _____, in Hawaii. They filed for divorce in Hawaii _____. Two Orders for Pre-Decree Relief in this matter issued by the Family Court of the First Circuit are presently in effect. (EXHIBITS C and D hereto). The Order of _____, provides for arbitration. The Order of _____ provides, *inter alia*, (a) temporary joint legal and physical custody of both children with equal time sharing “in light of” the parties’ respective work schedules, (b) temporary alimony of \$____/month to MOTHER, (c) FATHER to pay temporary child support for both children of \$____ per month (based on

FATHER's income of \$____/month, MOTHER's income of \$____/month, and joint custody), (d) FATHER to pay for the children's extracurricular activities, (e) FATHER to pay the tuition for both children at SCHOOL TWO School for the 2003-04 school year [GIRL started at SCHOOL ONE in August/September of 2004], and (f) MOTHER "shall make efforts to rent the downstairs" [of the ____ house, of which she received exclusive occupancy].

2. The parties both agreed that time sharing has changed significantly, and that GIRL now spends virtually all of her time with MOTHER. The parties further agreed that MOTHER should now have temporary sole physical custody of GIRL.

3. It was that change (and its impact on child support) and the need to pay tuition for the new school year at SCHOOL TWO and SCHOOL ONE that were the primary reasons for the parties requesting the Rule 24 hearing and Interim Order.

C. DISCUSSION OF EVIDENCE PRESENTED AND ARGUMENT MADE

1. Custody: The parties stipulated to temporary sole physical custody of GIRL for MOTHER.

2. Private school tuition: The prior Court Order referred to above covered only the 2003-04 school year. Tuition for the new school year will be as follows: GIRL (SCHOOL ONE): \$1,xxx/month payable over 11 months; BOY (SCHOOL TWO): \$1,xxx/month payable over 9 months. One month was paid for GIRL (by MOTHER), and one month was paid for BOY (by FATHER). FATHER argued that tuition for both children should be paid 50/50. MOTHER argued that FATHER should continue to pay all tuition or, alternately, that she should pay "her" percentage as determined by line 13 of the Child Support Guidelines Worksheet (CSGW), which would be xx% based on her CSGW or xx% based on FATHER's CSGW. The arguments in support of each position are basically the same as covered in section (4) below.

3. Child Support: Each submitted a CSGW. There was a relatively minor difference in FATHER's income (his CSGW showed \$____/month; MOTHER's showed \$____/month for FATHER). The more significant difference was in MOTHER's income: \$2,xxx/month on her CSGW and \$4,xxx/month on FATHER's CSGW. Both parties agreed that the appropriate amount of child support payable by FATHER to MOTHER for GIRL is \$1,xxx/month, based on the change to temporary sole physical custody to MOTHER. The difference in the amount of child support payable for BOY (\$4xx/month on MOTHER's CSGW and \$3xx/month on FATHER's) seems to result primarily from the difference in income attributed to MOTHER.

4. Appropriate amount of MOTHER's income for support purposes: MOTHER's income shown on her CSGW is \$2,xxx/month, made up of zero earned income, \$xxx alimony, and \$2,xxx net rental income. MOTHER asserted that she has been engaged virtually full-time in "winding down" the couple's failed xxxxx business (as claimed in

Court documents over a year ago) and so has been unable to produce earned income. FATHER asserted that it is difficult to believe the “winding down” process has been ongoing for over a year now and that MOTHER should have been and could be working. He did not suggest a specific amount that should be imputed to her due to her voluntary un(der)employment. FATHER further asserted that MOTHER’s net rental income was understated, primarily because the expenses for the xxx house are overstated by allocating to the rental of the downstairs portion of that house about one-half of expenses like mortgage, tax, insurance, etc. which would be the same even if the downstairs were not rented (and, in fact, were the same during the time that the downstairs was not rented out). He asserted that net rental income should be \$4,xxx/month, not \$2,xxx/month. FATHER further asserted that MOTHER had failed to disclose various assets on her Asset and Debt statement -- (specific examples included xxx MOTHER admitted was worth approximately \$1,000 and xxx MOTHER admitted to be worth “several hundred dollars”¹ which MOTHER said she omitted because she “didn’t think about it.”) – which would make MOTHER better able to bear a share of the private education expense. Finally, FATHER argued that he simply cannot afford to continue to pay the \$xxx/month alimony and pay child support at the new level (\$1,xxx/month for GIRL plus either \$4xx/month or \$3xx/month for BOY) *and* pay 100% of the private school tuition, at least not without incurring debt to the detriment of the marital estate.

D. INTERIM AWARD OF ARBITRATOR

Based upon a careful review and consideration of all of the testimony, evidence, and argument presented and the applicable statutory requirements and case law, the undersigned Arbitrator hereby issues the following Interim Order.

1. This is an Interim Order pursuant to DPR Rule 24 and therefore is “without prejudice to the rights of the parties or to the final determination of the dispute.” All of the following is therefore temporary, subject to the Final Award of Arbitrator or further Order of the Court.
2. All Pre-Decree Orders of the Family Court in this matter shall remain in full force and effect except as specifically modified hereby.
3. This Interim Order *may* be presented by the parties or either of them to the Family Court of the First Circuit for incorporation into an appropriate Pre-Decree Order issued by said Court, and, thereafter, all enforcement of such pre-decree Order shall be for the exclusive jurisdiction of said Court.
4. MOTHER shall have temporary sole physical custody of GIRL, with time-sharing as the parties shall agree.

¹ FATHER asserted it was worth far more.

5. Effective as of _____, the amount of child support payable by FATHER to MOTHER shall be \$1,xxx/month for GIRL and \$____/month for BOY.

6. Effective with the first payment due for the 2004-05 school year, tuition for GIRL at SCHOOL ONE and for BOY at SCHOOL TWO shall be paid ____% by FATHER and ____% by MOTHER. The parties are encouraged to work out a practical method to adjust the payments already made and those yet to be made to that percentage. If they are unable to do so promptly, then it shall be handled as set forth in section 7 below.

7. If, by _____, the parties are unable to agree upon a method to adjust the tuition payments already made and make future payments in accordance with the xx/yy% split, then they shall do the following: FATHER will make the future tuition payments to SCHOOL ONE and SCHOOL TWO. MOTHER will immediately provide him with any paperwork she has for that purpose. Starting with _____, and on the first of each month for the next eight months thereafter (so, nine months total), MOTHER shall pay to FATHER the sum of \$____² on the first day of the month.

8. The other reimbursements requested by MOTHER do not require the immediate attention of an Interim Order. They can wait for the Final Award of Arbitrator.

Signed at Honolulu, Hawaii, this _____ day of xxxxx 2004

SIGNED: _____
James K. Hoenig, J.D., Ph.D., Arbitrator

(Notarial)

² Calculation: SCHOOL ONE tuition of \$1,xxx/month for 11 months (\$12,xxx) plus SCHOOL TWO tuition of \$1,xxx/month for 9 months (\$12,xxx) = \$24,xxx. MOTHER's ____% share of that total = \$xxxx, less the \$1,xxx payment she already made to SCHOOL ONE = \$xxxx, divided by nine = \$xxx.