

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE  
COUNTY, FLORIDA

IN RE: MATTER OF:

MARIO JIMENEZ  
Petitioner/Father,

and

KAREN WIZEL  
Respondent/Mother.

FAMILY DIVISION

Case No.: 11-21207-FC-04

JUVENILE DIVISION

Case No.: D13-15193A-B (D003)  
(closed)

DOMESTIC VIOLENCE DIVISION

Case No.: 12-17840-FC-04 (closed)

Case No.: 12-17838-FC-04 (closed)

Case No.: 11-10881-FC-04 (closed)

PREPARED WITH THE  
ASSISTANCE OF COUNSEL

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EMERGENCY PETITION FOR IMMEDIATE UNSUPERVISED VISITATION

COMES NOW, the Petitioner/Father, MARIO JIMENEZ, *pro se*, and files this *Emergency Petition for Immediate Unsupervised Visitation*, pursuant to Fla. Stat. § 61.13(2)(c) and (3), and petitions this court to permit the father to have unsupervised time sharing with his minor children, MARIO SIMON JIMENEZ-WIZEL (M.J.W.) and KAREN NICOLE JIMENEZ-WIZEL (K.J.W.). As grounds therefore, Petitioner/Father alleges the following:

1. This Court has jurisdiction over the minor children:

Name	DOB	Gender	Person who has custody
M.J.W. (8042)	08/20/2002	Male	Mother
K.J.W. (9490)	09/06/2005	Female	Mother

2. The natural mother of the minor children is KAREN WIZEL, whose address is 12817 SW 252 Street, Apt. 304, Homestead, FL 33032.

3. The legal father of the minor children is MARIO JIMENEZ, who was married to the Mother at the time of birth and conception of the children and whose address is 12901 SW 66 Terr. Drive, Miami, FL 33183.
4. The parties to this action were granted a final judgment of dissolution of marriage on March 26, 2010.
5. Paragraphs 2-7 of the *Order On Temporary Relief Relation To Timesharing And Parental Responsibility* dated on January 22<sup>nd</sup>, 2013, set forth the present parental responsibilities, visitation, and Parenting/Time-Sharing Plan.
6. A completed *Uniform Child Custody Jurisdiction and Enforcement Act* (UCCJEA) Affidavit, Florida Supreme Court Approved Family Law Form 12.902(d), was filed with the Court on April 14<sup>th</sup>, 2009.
7. The Petitioner/Father has not visited or had any contact with his children since October 26<sup>th</sup>, 2013.
8. On January 22<sup>nd</sup>, 2013 the Court ordered supervised visitation between the minor children and the Petitioner/Father.
9. The Petitioner/Father complied with the Court's order from December 12<sup>th</sup>, 2012 through October 26<sup>th</sup>, 2013.
10. There is an independent psychological evaluation performed by Dr. Michael J. DiTomasso by request of DCF in relation to this case that cleared Petitioner of "suffering from major psychiatric disease" (Exhibit A), and DCF has not found any reasons to deprive Father from contact with minor children in five different occasions that he has been falsely accused. DCF case # 2012-13013, the one that originated this case, was the 4th false DCF accusation against Father (others DCF accusations of which Father has been cleared included cases #2011-078791-01, 2011-1907766-01, and 2012-223661-01).
11. Petitioner is a fit parent and well respected family physician in the community who deals with children on a regular basis professionally and personally as a Sunday school teacher, and as a father

to two other minor children, has no criminal record, and poses no danger to his children or anyone else for that matter, or he would not be able to practice as a medical doctor.

12. Unsubstantiated concerns of Father posing a danger to his children due his religious practices are unconstitutional, scandalous and inappropriate, and have unnecessarily deprived Father/Children of a relationship since July 20, 2012.
13. Father tried for over a year to coordinate a mediation ordered by this court since October of last year, which only occurred on November 17<sup>th</sup> 2014, after a second order was issued by this court. However, no agreement was reached between parties at that time.

#### **FUNDAMENTAL RIGHTS TO PARENTING**

14. In *Lassiter v. Department of Social Services*, 452 U.S. 18, 27, 68 L. Ed. 2d 640, 120 S.Ct. 2153, 2159-60 (1981), the Court stressed that the parent-child relationship "is an important interest that 'undeniably warrants deference and absent a powerful countervailing interest protection.'" quoting *Stanley v. Illinois*, 405 U.S. 645, 651, 31 L. Ed 2d 551, 92 S. Ct. 1208 (1972).
15. A parent's right to raise a child is a constitutionally protected liberty interest. This is well-established constitutional law. The U.S. Supreme Court long ago noted that a parent's right to "the companionship, care, custody, and management of his or her children" is an interest "far more precious" than any property right. *May v. Anderson*, 345 U.S. 528, 533, 97 L. Ed. 1221, 73 S.Ct. 840, 843 (1952). In *Lassiter v. Department of Social Services*, 452 U.S. 18, 27, 68 L. Ed. 2d 640, 120 S.Ct. 2153, 2159-60 (1981), the Court stressed that the parent-child relationship "is an important interest that 'undeniably warrants deference and absent a powerful countervailing interest protection.'" quoting *Stanley v. Illinois*, 405 U.S. 645, 651, 31 L. Ed 2d 551, 92 S.Ct. 1208 (1972).
16. A parent whose time with a child has been limited to only supervised visitations clearly has had his or her rights to raise that child severely restricted. In *Troxel v. Granville*, 527 U.S. 1069 (1999), Justice O'Connor, speaking for the Court stated, "The Fourteenth Amendment provides that no State shall 'deprive any person of life, liberty, or property, without due process of the law.' We have long recognized that the Amendment's Due

Process Clause, like its Fifth Amendment counterpart, 'guarantees more than fair process.' The Clause includes a substantive component that 'provides heightened protection against governmental interference with certain fundamental rights and liberty interest' and "the liberty interest of parents in the care, custody, and control of their children is perhaps the oldest of the fundamental liberty interest recognized by this Court." Logically, these forms of fundamental violations are inherently a federal question.

17. The compelling state interest in the best interest of the child can be achieved by less restrictive means than supervised visitations or sole custody for that matter. A quarter-century of research has demonstrated that joint physical custody is as good or better than sole custody in assuring the best interest of the child. As the Supreme Court found in Reno v. Flores, 507 U.S. 292, 301 (1993): "'The best interest of the child,' a venerable phrase familiar from divorce proceedings, is a proper and feasible criterion for making the decision as to which of two parents will be accorded custody. But it is not traditionally the sole criterion -- much less the sole constitutional criterion -- for other, less narrowly channeled judgments involving children, where their interest conflicts in varying degrees with the interest of others. Narrow tailoring is required when fundamental rights are involved. Thus, the state must show adverse impact upon the child before restricting a parent from the family dynamic or physical custody.
18. The Supreme Court has held that a fit parent may not be denied equal legal and physical custody of a minor child without a finding by clear and convincing evidence of parental unfitness and substantial harm to the child, when it ruled in Santosky v. Kramer, 455 U.S. 745, 753 (1982), that "[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child is protected by the Fourteenth Amendment." In the instant state proceedings, Petitioner has been continually deprived of the full right to equal care, custody, control, and management of the minor children, and the same approaching close to three years, without any requisite showing of past or potential harm -- of any kind -- upon the minor children.
19. A curtailment upon a parent's right to free exercise of religion constitutes an impermissible infringement on religious freedom. Rogers v. Rogers, 490 So. 2d 1017, 1019 (Fla. 1<sup>st</sup> DCA 1986). Although a trial court may consider religion as a factor in a custody determination, it may not condition award of custody upon the curtailment of the parent's religious activities or beliefs, as such a restriction would interfere with the parent's free exercise rights. Briskin v. Briskin, 660 So. 2d 1157, 1159 (4<sup>th</sup> DCA 1995).

20. It is imperative for the wellbeing of the children that the Petitioner/Father be allowed time with children as intended by the law and natural law.

#### **MODIFICATION OF PARENTING PLAN AND TIMESHARING SCHEDULE**

21. As per Florida Statute § 61.13(2)(c) and (3), the modification of a parenting plan and timesharing schedule requires a showing of a "substantial, material, and unanticipated change of circumstances."

22. The substantial change test applies to modification of all custody agreements or decrees. Under the Wade 2-part test, the moving party must show both that (1) the circumstances have substantially and materially changed since the custody determination and (2) the child's best interests justify the change. *Wade v. Hirschman*, 903 So.2d 928 (Fla. Sup. 2005).

23. The Petitioner/Father believes that the emotional problem in the two minor children is a substantial change in circumstances.

24. The Mother's behavior is of concern and it is damaging to the children. The Petitioner/Father believes that the Mother has been alienating her children from him and has influenced the minor children to become distant towards their father.

25. The Petitioner/Father would provide better access to the children, and believes that it is in the best interests of the children that he be allowed unsupervised visitation. Thus, the children will no longer feel uncomfortable with supervised visits as they can freely see and contact their father when they desire.

26. The Petitioner/Father wishes to seek immediate medical attention for the minor son, M.J.W., who has recently gone through psychological and medical conditions such as matters dealing with the nervous system.

27. M.J.W. has gone through physical, behavioral, and psychological conditions that have required and will continue to require medical and professional attention in recent days.

28. M.I.W.'s psychological therapist, Dr. Gregorio Brown, cell: 305-968-5338, agrees that it is imperative that Father returns to be fully involved with minor children as soon as possible to prevent further psychological deterioration of the minor children. This court and GAL should consult with Dr. Brown to confirm his professional opinion on this matter.
29. The minor daughter, K.J.W., is also experiencing substantial emotional difficulties.
30. This modification is in the best interests of the children because they are in immediate need of the father's involvement in their daily lives. Both children require their father's daily input such as no other person is able to provide.
31. Due to the children's estrangement from their father it will be necessary that time lost be redeemed by encouraging and fostering a healthy parent and child relationship.

#### **UNSUPERVISED VISITATION**

32. The Petitioner/Father asks the Court to modify the supervised visitation to an unsupervised timesharing plan with the minor children.
33. On October 6, 2011 the Honorable Judge Robert N. Scola restored the Father's 50/50 timesharing with the minor children in accordance with the divorce decree of the Nicaraguan Court. Father requests that Judge Scola's October 6<sup>th</sup>, 2011 order be given its due weight and effect permitting the Father to have unsupervised timesharing with minor children every other weekend from Friday afternoon to Sunday nights until the end of the present school year as a way to facilitate the reconnection of the minor children with the Father.
34. The son's psychological therapist, Dr. Gregorio Brown, has agreed to come on a regular basis to visit the children at the Father's home every other weekend to supervise children's reunification process with Father. So, there is no need to further alienate Father from minor children by the unending imposition of supervised visitations.

35. At the end of the school year period, the Father should be permitted to make up the time he has lost with his minor children by having the children under his care for summer and the rest of the new school year, with the Mother switching to having timesharing with minor children every other weekend from Friday afternoon to Sunday nights.
  36. For the following school year, a school located midway between both parents should be identified, allowing the parties to have equal time sharing from end of school day on Friday until the beginning of the school day on the following Friday, as previously ordered by Judge Scola.
  37. Modifying to an unsupervised time sharing plan is to the best interest of the children.
  38. Both parties shall be listed as authorized persons to pick up the children from school and each shall be authorized to obtain information about the children about the children from their school.
  39. Both parties should be permitted to freely contact their children by phone and not be subject to unreasonable or arbitrary restrictions.
  40. Petitioner/Father is not requesting a modification of child support at this time, consistent with the modification of the Parenting Plan/Time-Sharing schedule.
  41. If not previously filed in this case, a completed Notice of Social Security Number, Florida Supreme Court Approved Family Law Form 12.902(j), will be filed with this petition.
- I understand that I am swearing or affirming under oath to the truthfulness of the claims made in this petition and that the punishment for knowingly making a false statement includes fines and/or imprisonment.

Certificate of Service

I hereby certify that a true and correct copy of the foregoing was mailed electronically to the Respondent, KAREN WIZEL, at MARIOSNICOLEK@HOTMAIL.COM, this 19 day November, 2014.



MARIO JIMENEZ, M.D.  
Pro Se Petitioner  
12901 SW 66 TERRACE DRIVE  
Miami, FL 33183. Ph: 786-253-858

Dr. Mario Jimenez, page 6

**SUMMARY AND RECOMMENDATIONS:**

Mario does not appear to be suffering from major psychiatric disease. He is angry and there likely is underlying depression in reaction to the very difficult situation he finds himself in. Further psychopathology was not identified, but unfortunately cannot be ruled out either because Mario's approach to the MMPI was defensive and rendered his results invalid.

I am troubled by the children's statements that the paternal grandparents hit them and speak bad about their mother and their mother's baby. Mario is in a process of integrating his children back into his life. He does not need, and the children do not need, interference from the grandparents. If and when the children's relationships with Mario and his partner are resolved and progressing well, then it may be time to bring the grandparent's in, if they can keep their hands to themselves and refrain from commenting on the children's mother and the mother's family. For now, let's not complicate matters further than they need be.

I am troubled that both Mario and his ex-wife are making accusations in the present about domestic violence that purportedly occurred when they lived together, years ago, and in another country. For their children's sake, they need to put this behind them. Divorce is supposed to be the end of a relationship, but it seems that for Mario and Karen, the emotional relationship is still intense, the difference being that the valence of the emotion has changed from love to anger.

I cannot say whether or not Mario has been hitting his son. I see in the CPT report where the boy is reported to have said this has been happening. The court will weigh that as it sees fit. But I will not adopt that information at this point and accept it as substantiated fact. I would want to speak to the children myself before venturing an opinion on this matter.

Frankly, Mario and his ex-wife Karen are in a horrible child custody battle. It is no revelation to say that these kinds of battles bring out the worst in people. The war of the Roses is raging between Mario and Karen, and their children are the victims of the collateral damage. If the children are not going to muck through the rubble of their parent's war for the rest of their childhoods, a cease-fire will have to be called - and wanted and honored by both sides. Selfish yearnings for individual vindication by either of the parents, even by only one of them, will be sufficient to keep the children in a childhood purgatory of their parents making. It's time for the adults to start acting like adults.

Mario would probably benefit from psychotherapy to help him put what is happening in his live into perspective. He is embedded in the situation now, and he cannot see the way out from his position deep within it. An objective professional can help him. I recommend that Mario be given the liberty to choose a qualified Christian/pastoral counselor rather than a secular professional if he feels he might make better progress working with such a person.

The present evaluation is insufficient to fully answer safety and custody questions. (By saying that Mario needs a counselor I am certainly not implying that he has mental health problems and his ex-wife does not. I am in fact implying neither that Mario has mental health problems, nor

Exhibit A

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Dr. Mario Jimenez, page 7

that I know anything about his ex-wife's mental health strengths or possible weaknesses. I am recommending therapy for Mario because he is embedded in a bad situation and he needs professional help to find his way to the best decisions and actions for himself and his children. No comparison of Mario mental health functioning versus that of his ex-wife can be made on the bases of the present one-sided data.

There are a lot of cross accusations on the table that serve more to cloud issues than to inform them. Further information could be derived from psychological evaluations of the mother, the stepmother, and of the two children. With the rest of these pieces of psychological data in place, a more comprehensive formulation of the case and recommendation for future directions could be offered.

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I, Michael J. DiTomasso, Ph.D., hereby certify that I personally conducted this evaluation and prepared this report, and that all conclusions herein are my own and not those of any third party. I further certify that the preparation of this evaluation was performed consistent with Chapter 490, Florida Statutes, as well as with rules and regulations promulgated pursuant thereto.

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*Michael J. DiTomasso Ph.D.*

Michael J. DiTomasso, Ph.D.  
Licensed Psychologist  
Florida License # PY-5449

Exhibit A

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