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IN THE CIRCUIT COURT FOR THE STATE OF OREGON  
FOR THE COUNTY OF LINN

IN THE MATTER OF:	)	
	)	
KYLA MAZHARY-CLARK,	)	CASE NO. 19DR03123
	)	
PETITIONER,	)	<b>RESPONDENT’S HEARING MEMORANDUM</b>
	)	(Modification)
and	)	
	)	
JAMIE CLARK (nka CROMPTON),	)	
	)	
RESPONDENT,	)	
	)	
and	)	
	)	
KENNETH CLARK,	)	
	)	
RESPONDENT.	)	

This matter will come before the Honorable Rafael Caso at 9:00 am on Thursday, November 26, 2023, on Respondent’s motion to enforce parenting time. Petitioner will appear in person with her attorney, Andrew Ivers. Respondent (hereafter Mother) will appear in person with her attorney, William Boaz. Respondent (hereafter Father) was served with Mother’s motion to modify on April 20, 2022, but has not entered any appearance in this matter.

Respondent requests the court make specific findings of fact.

**BACKGROUND**

Mother will testify to the following important events:

1. In February 2017, Mother moved in with her friend, April, that she knew from work when Mother was going through a divorce in Benton County Case 17DR17271. At the time, Petitioner was in a romantic relationship with April and, therefore, was also living at April’s residence. However, around the time Mother moved in, April and Petitioner began to argue more often, and Petitioner eventually moved out of the residence in April 2017.

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2. After Petitioner moved out in April 2017, Petitioner continued to date April (just had a separate residence) and would occasionally be around the children when April was watching them while Mother worked until Mother moved to Illinois in January 2018.
3. After Mother moved, she became better friends with Petitioner as they commiserated together about April. Petitioner came out to visit Mother in Illinois the summer of 2018 for the children’s birthday party. While there, Petitioner started talking about Mother moving back to Oregon into Petitioner’s residence. Those talks accelerated when Petitioner came back out in November 2018 for a visit. At that time, they agreed Petitioner would take Mother’s two (2) children back to Oregon, while Mother packed and drove her belongings back to Oregon in the next couple weeks. Petitioner, who was a law student at the time, asked Mother to sign a short-term guardianship document, which Petitioner explained allowed her to take the children on a plane and register them in daycare until Mother got out to Oregon.
4. As soon as Petitioner left with the children, Petitioner informed Mother that she didn’t want a relationship with Mother and was not going to return the children. Mother left all her belongings in Illinois and immediately took a train to Oregon. Mother went to Petitioner’s house, where Petitioner informed Mother that Petitioner had legal guardianship of the children. Mother could not afford an attorney and believed Petitioner because Petitioner was a law student. Therefore, Mother followed the parenting plan that Petitioner imposed.
5. In February 2019, Mother became frustrated with this control Petitioner was unreasonably exercising and began to do research the guardianship as best she could. After talking with the courts in Oregon and Illinois, Mother eventually learned the guardianship document was never filed and, therefore, was not valid. That same day, during Mother’s parenting time with the children, Mother informed Petitioner about what she learned and relayed to Petitioner that Mother indeed has legal custody of her children.
6. Mother broke-off all contact with Petitioner and Petitioner did not see Mother or the children until October 2019 when Mother reached out to Petitioner after hearing that Petitioner was looking for Mother. Thereafter, Mother began rebuilding her friendship with Petitioner.
7. Unbeknownst to Mother, Petitioner had filed this 3<sup>rd</sup> party custody proceeding back in February 2019. Petitioner chose to serve Mother by posting, which Mother believes Petitioner did this as a “sneaky tactic” because Petitioner told Mother that’s how Mother should have served Mother’s ex if she wanted to get a divorce with her ex finding out (Mother did NOT follow that advice and Mother and her ex stipulated to their divorce judgment). A few months later, Petitioner defaulted Mother and received a custody judgment in August 2019, all while the children were in Mother’s physical care. Petitioner did NOT advise Mother about this judgment when the parties started talking again in October 2019.

- 1 8. In December 2019, Mother asked Petitioner (who still did not inform Mother of the 3<sup>rd</sup>  
2 party custody judgment) to watch the children for a couple months while Mother worked  
3 on obtaining a restraining order involving a stalker and getting the stalker served.
- 4 9. When Mother attempted to pick-up the children in January 2020, Petitioner did not re-  
5 spond to any texts, calls, or knocks at her door. Mother contacted the police, who con-  
6 tacted Petitioner. Petitioner informed police about the 3<sup>rd</sup> party custody judgment and  
7 the police conveyed that to Mother. This was the first Mother learned about this judg-  
8 ment.
- 9 10. In June and October 2021, Mother attempted to set-aside the judgment twice on her  
10 own because she didn't have the money to hire an attorney. In January 2021, Mother  
11 was able to gather the necessary funds to hire an attorney to move to set aside the judg-  
12 ment for a 3<sup>rd</sup> time. These attempts were all rejected by the court. In the court's most  
13 recent opinion letter, the court explained that Mother was outside the one-year limita-  
14 tion to set aside a judgment after learning about it, set by ORCP 71B, for all three at-  
15 tempts.
- 16 11. The judgment awards Petitioner sole legal custody of the two (2) children. Petitioner put  
17 in the default judgment provisions requiring Mother to undergo a psychological evalu-  
18 ation and take a parenting class before having supervised parenting time as the parties  
19 mutually agree. Besides creating these incredible hurdles in the judgment, Petitioner  
20 has created additional hurdles for Mother to go through. These unreasonable hurdles  
21 created by Petitioner have kept Mother from having an adequate and meaningful par-  
22 enting time with the children.

#### 16 ARGUMENT

17 There is a fundamental right of parents to make decisions concerning the care, custody, and  
18 control of their children. See *Troxel v Granville* 530 US 57 (2000). After *Troxel*, the Oregon Legislature  
19 amended ORS 109.119 to bring the statutory scheme in line with this decision. Currently, ORS 109.119  
20 requires a party seeking to establish 3<sup>rd</sup> party custody rights to (1) rebut the presumption that the legal  
21 parent acts in the best interest of the child; (2) establish that a child-parent relationship exists, in whole  
22 or in part, within 6 months preceding the filing of an action by a person having physical custody of the  
23 child or resides in the same household as the child and has supplied food, clothing, shelter, and inci-  
24 dental necessities, and provided the child with necessary care, education, and discipline.

25 ORS 109.119 does not specifically provide a process or standard to govern modifications. How-  
26 ever, ORS 107.135 governs modifications of custody judgments after divorce, which applies in this case  
27 because the initial custody case was between Father and Mother in Benton County, Petitioner added

RESPONDENT'S TRIAL MEMORANDUM (Modification)

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PO Box 54  
Salem, OR 97308



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1 herself as a party in this Linn County proceeding, and the General Judgment (by default) that resulted  
2 in this case modified the custody provisions of the General Judgment (Dissolution of Marriage) in Benton  
3 County.

4 In custody modifications, the moving party must show that a material, unanticipated change in  
5 circumstances sufficient to modify the order has occurred since the order was entered. *See In re Mar-*  
6 *riage of Boyd*, 152 OR App 785 (1998). The moving party must also show that that modification would  
7 be in the child's best interests. *See In re Marriage of Greisamer*, 276 Or 397 (1976). The court may con-  
8 sider repeated and unreasonable denial of, or interference with, parenting time to be a substantial  
9 change of circumstances. ORS 107.135(11). The court uses the factors in ORS 107.137(1) in deciding  
10 "the best interests and welfare of the child" in custody modification cases.

11 This case presents an interesting issue to the court because Petitioner served Mother in a way  
12 she knew Mother would not get actual notice and was dishonest in her declaration filed with the court  
13 to show she met the requirements to even be granted legal custody of another person's children.

14 In this case, Mother will argue that Petitioner has been unreasonable in ensuring reasonable  
15 parenting time between Mother and the children. In assessing the best interests of the children, Mother  
16 will argue that the court should weigh the fundamental right she has to raise her children, the emotional  
17 ties Mother has with her children, the dishonest and selfish motive Petitioner has displayed in creating  
18 this novel legal situation, the questionable way Petitioner obtained and enforced the custody judgment,  
19 and the lack of willingness on Petitioner's part to facilitate and encourage a close and continuing rela-  
20 tionship between Mother and the children, against the only factor in Petitioner's favor - that she has most  
21 recently been the primary caregiver of the children based on the questionably obtained judgment.

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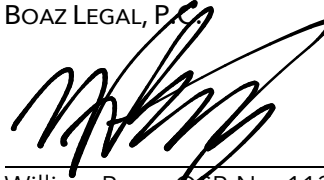
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**CONCLUSION**

For the above reasons, Mother asks the court to grant Mother’s motion for her to again have legal custody of her children.

DATED this 25<sup>th</sup> day of January, 2023.

BOAZ LEGAL, P.C.



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William Boaz, OSB No. 113313

Email: [william@boazlegal.com](mailto:william@boazlegal.com)

Attorney for Respondent

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**CERTIFICATE OF SERVICE**

I certify that I served a true and complete copy of this document on the following person in the following manner:

**Petitioner's Attorney**

Andrew Ivers  
Email: *andy@ivers.law*

- Mail
- Hand-Delivery
- Fax
- E-Service
- Email (courtesy copy)

DATED this 25<sup>th</sup> day of January, 2023.

BOAZ LEGAL, P.C.



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William Boaz, OSB No. 113313  
Email: *william@boazlegal.com*  
Attorney for Respondent