



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

Rafael A. Caso
Circuit Court Judge

Polk County Courthouse, Room 301
850 Main Street, Dallas, OR 97338-3178

PHONE – (503) 623-3154
FAX – (503) 623-6614

January 31, 2023

Andrew Ivers
Law Office of Ivers, Miller & Mazhary-Clark
317 W 1st Ave Ste 302
PO Box 1033
Albany, OR 97321

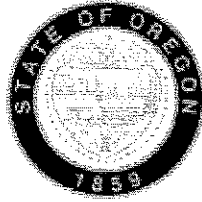
William Boaz
PO Box 54
Salem, OR 97308

RE: Mazhary-Clark v. Clark: Linn County Circuit Court Case No. 19DR03123

Messrs. Ivers and Boaz:

There is no legal presumption that the biological parents are acting in the child's best interests in a modification hearing based on custody under ORS 109.119. *In re Marriage of Epler*, 356 Or 624 (2014). For a change of custody, the moving party must establish substantial change in circumstances unanticipated at the time of the prior judgment. In this case, if the court looks at what knowledge of circumstances the court had at the time of entry of judgment, the court will look at the declaration of Petitioner filed for entry of judgment without a hearing.¹ Specifically, Petitioner alleged: 1) Respondent Jamie Clark has mental health issues which are not currently being treated which limit her ability to safely care for [the children]; 2) Prior to obtaining guardianship, the children were previously placed in foster care in Illinois based on [Respondent]'s mental health issues, abuse and neglect from her romantic partners; 3) Open DHS investigations regarding [Respondent]'s ability to safely parent [the children]; and 4) [Respondent] has failed to remedy factors which placed the children in danger.

¹ Ex 102.



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At the hearing, Respondent asserted that she has mental health issues; however, they are being treated by professionals.² Respondent also denies the children were in foster care in Illinois. When Respondent was at a “mental institution” the children were staying with the Waters – the individuals Respondent alleges lied and had her sent to the hospital for suicidal ideation and later stalked Respondent. The DHS investigation referenced in Petitioner’s declaration was initiated by Petitioner and allegations were unfounded. Finally, Respondent claims she remedied any and all the allegations.

FINDINGS:

CUSTODY

1. Mental Health Concerns – If a person has mental health concerns, it is not unanticipated they would get treatment or supervision for the mental health concerns.
2. Foster Care – this allegation, whether true or false, is not able to be changed. The court notes there is no evidence in the record that the children were placed in a state or government run foster care system – the children were however in substitute care with individuals Respondent affirms are/were not appropriate.
3. DHS Investigation – it is not unanticipated that DHS would conclude an investigation with the passage of months or even years. To the contrary, it would be unanticipated that DHS could not conclude an investigation into allegations within 3 years.
4. Remedied Allegations – Respondent asserts that if any allegation were true, she has remedied those allegations. Concerning to this court is Respondent’s contact, through social media, of one of the individuals she asserted stalked her. This is one of the individuals Respondent

² Respondent is currently between insurances but will reengage with mental health professionals.



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alleged falsely claimed she was suicidal, was abusive to her, and moved to Medford, Oregon (from Illinois) to stalk her. This situation of placing her children in risky situations has not changed. Even if Respondent had changed this behavior, this court believes and would anticipate a parent would learn from past behavior and not continue to engage in behaviors placing children at risk.

5. If the court looks at Respondent's behavior and the situation outside the four corners of the declaration as proposed by Petitioner, the court reaches the same conclusion: There has not been a substantial change in circumstances unanticipated between now and the time of judgment in 2019.
6. Respondent's belief that taking the children directly from Petitioner without transition is in the best interest of the children is misplaced.
7. This court believes Petitioner retaining custody of the children is in the children's best interests.

Therefore, Petitioner will retain custody of the children.



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PARENTING TIME

1. Having parenting time with Respondent is in the children's best interests.
2. The court adopts the Model Parenting Plan for Linn County, Long Distance Plan, 2018 Revision as proposed, except for the following: Phases 1 – 6 are not adopted. Instead, the parties will begin at Phase 3 and move through the phases 4, 5, and 6.
3. This court believes the "phase in approach" or transitional approach to parenting time is in the children's best interest.

Mr. Ivers, please prepare the judgment and circulate for objections to form.

Sincerely,

A handwritten signature in black ink, appearing to read "Rafael A. Caso". The signature is written in a cursive style with a large, looping initial "R".

Rafael A. Caso
Circuit Court Judge