

Exhibit 10

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

TERESSA FAUVER
fka TERESSA GARDINER,

Plaintiff,

v.

JERRY GARDINER, JR.,

Defendant.

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APR 12
Clerk of the Tri

Case No. 3AN-03-11696 CI

MEMORANDUM IN SUPPORT
OF PLAINTIFF'S MOTION TO
MODIFY CHILD CUSTODY

COMES NOW plaintiff, Teresa Fauver, and moves that the Court modify the divorce decree.

I. RELEVANT FACTS

The parties were before this Court on December 5, 2003 for a divorce and custody. On that date, the Court awarded plaintiff, Teresa Fauver, primary physical custody and legal custody of the minor child, Krystin Gardiner (DOB 2/2/02). Defendant, Jerry Gardiner, Jr., was awarded weekly, supervised visitation and ordered to complete a state-certified domestic violence intervention program and three age-appropriate parenting courses.

The parties' minor child was diagnosed with scoliosis in July 2003 and syringomyelia in October 2003. See Affidavit of Teresa Fauver in Support of Plaintiff's Motion to Modify Child Custody (hereinafter "Plaintiff Aff.") at ¶ 2. In September 2003, doctors in Anchorage referred Krystin to specialists in Seattle, Washington. *Id.* at ¶ 3. Krystin currently sees the following specialists in Seattle: a pediatric orthopedist, a neurosurgeon, and an orthotist. Plaintiff Aff. at ¶ 4; Affidavit of Russell Carlson in Support of Plaintiff's Motion to Modify Child Custody (hereinafter "Carlson Aff.") at ¶¶ 2-4. In the last five months, Krystin and Ms. Fauver have

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made three trips to Seattle to see these specialists. Plaintiff Aff. at ¶ 6. Her next appointment is scheduled for July 2004. *Id.* Krystin must receive care from these doctors indefinitely and, thus, Ms. Fauver will be required to travel to Seattle multiple times each year for several years. Plaintiff Aff. at ¶ 7; Carlson Aff. at ¶¶ 4-6. These visits require Ms. Fauver to take unpaid days off of work and, eventually, will require Krystin to miss school. Plaintiff Aff. at ¶ 9. As a result of the above, Ms. Fauver has decided to move to Seattle, Washington so that she can be closer to Krystin's health care specialists.

In the seventeen weeks since trial in this matter, Mr. Gardiner has visited with Krystin only one time. *Id.* at ¶ 10. He has failed to produce documentation verifying his enrollment in either the domestic violence intervention program or the parenting classes. See Certificate of Counsel in Support of Plaintiff's Motion to Modify Child Custody at ¶ 3. Mr. Gardiner has indicated that he will not agree to supervised visitation in Washington State. *Id.* at ¶ 4.

II. ANALYSIS

In order to modify an existing child custody order, the moving party must show that there has been a substantial change in circumstances that requires modification and that the modification is in the child's best interest. *House v. House*, 779 P.2d 1204, 1207 (Alaska 1989) (citing *Garding v. Garding*, 767 P.2d 183 (Alaska 1989)). A "custodial parent's decision to leave the state with the [child] constitutes a substantial change in circumstances." *Id.* at 1207-08. When a parent desires to relocate to another state, the parent must show that there is a legitimate reason for her move.

a. The Current Custody Arrangement is in Krystin's Best Interests and the Arrangement Should Remain Unchanged.

In determining whether the move is in Krystin's best interest, the Court consider

the statutory factors set forth in Alaska Statute 25.24.150(c). At trial, the Court found that it is in Krystin's best interest for Ms. Fauver to have primary physical custody and sole legal custody. The Court also made specific findings that it would be contrary to Krystin's best interest to have unsupervised visits with Mr. Gardiner. Moving to Seattle will not affect these findings for several reasons.

First, Krystin has special medical needs requiring frequent travel to Seattle to visit with specialists. Thus, the move improves Krystin's access to healthcare. Second, Ms. Fauver continues to provide appropriate care for Krystin and, since her birth, has been Krystin's sole care provider. Finding Mr. Gardiner unable to provide appropriate care for Krystin, the Court ordered Mr. Gardiner to participate in three parenting classes. To date, Mr. Gardiner has failed to provide proof of enrollment in these classes. Third, Krystin continues to have a strong attachment to Ms. Fauver, while Mr. Gardiner continually fails to make efforts to establish a healthy parent-child relationship. Testimony at trial showed that Mr. Gardiner visited just a few times in a matter of eight months and, since trial, Mr. Gardiner has visited only one time in seventeen weeks. Fourth, uncontradicted testimony at trial showed that Mr. Gardiner has perpetrated severe physical abuse on Ms. Fauver and also that he has jeopardized Krystin's safety. The Court found that Mr. Gardiner had failed to address his violent behavior and, thus, the Court ordered Mr. Gardiner to attend a state-certified domestic violence intervention program. Mr. Gardiner has failed to provide any documentation verifying his enrollment in this program.

For the foregoing reasons, it remains in Krystin's best interest for Ms. Fauver to retain primary physical custody and sole legal custody. It continues to be contrary to Krystin's best interests to have unsupervised visitation with Mr. Gardiner.

In determining whether to allow a custodial parent to relocate, the Court must consider whether the moving parent has legitimate reasons for moving out of state or whether the move is motivated primarily by a desire to hinder visitation between the child and the non-custodial parent. *House*, 779 P.2d at 1208; see also *Moeller-Prokosch v. Prokosch*, 27 P.3d 314, 316 (Alaska 2001). If the move is in the child's best interest and the custodial parent has valid reasons for wanting to relocate, the parent must be allowed to relocate. *Prokosch*, 27 P.3d at 317 ("No Alaska law allows a court to require a custodial parent to forego relocation if custody with that parent remains in the child's best interest and relocation is not for an illegitimate reason."). It is clear in this instance that Mr. Fauver's primary motivation for moving to Seattle is to provide Krystin with the best possible health care and to ensure that Krystin has uninterrupted access to that care.

III. CONCLUSION

For the foregoing reasons, Ms. Fauver respectfully requests that the Court modify child custody to allow for supervised visitation between Krystin and Mr. Gardiner in Seattle, Washington.

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