

IN THE CIRCUIT COURT FOR ROBERTSON COUNTY,
TENNESSEE, AT SPRINGFIELD

GEORGIA ELISE DUNN CONE,)
)
 Respondent)
)
 vs.)
)
 WILLIAM CAMERON CONE,)
)
 Petitioner)

DOCKET NO. 10443

FILED
LISA M. CAVENDER, CLERK
SEP 9 2008
AT _____ O'CLOCK _____ M
BY S Englander

MEMORANDUM OPINION AND ORDER

INTRODUCTION & APPLICABLE LEGAL STANDARD

Pending before the Court is a Petition to Modify Parenting Plan filed July 13, 2007, by Will Cone ("Father") and Georgia Elise Dunn Cone's ("Mother") Counter-Petition & Response to Father's Petition.

A Permanent Parenting Plan Order ("Parenting Plan") was announced by this court on June 13, 2005, and subsequently entered by the Court on October 27, 2005 (Exhibit 33). That plan designates Mother as the primary residential parent and Father as the alternative residential parent. The father was awarded standard visitation in the summer, winter, and every other weekend. Since the entry of the Parenting Plan Order and throughout the current proceedings, the Father has resided in Missouri and the Mother has resided in Tennessee. Father now seeks to modify that plan and to become the primary residential parent and to have the minor child, Cameron Forest Cone, live with him in Missouri.

The threshold issue for the Court to consider in a modification proceeding is whether a material change of circumstances has occurred after the initial custody determination, which makes a change of custody in the child's best interests. Kendrick v. Shoemaker, 90 S.W. 3d 566, 570 (Tenn. 2002).

A material change of circumstances does not require a showing of a substantial risk of harm to the child. A material change of circumstances for purposes of modification of a residential parenting schedule may include, but is not limited to, significant change of circumstances in the needs of the child over time. If a material change of circumstances has occurred, it must then be determined whether the modification is in the child's best interests, which should be made according to the



factors enumerated in T.C.A. § 36-6-106. *Morman v. Morman*, 2006 WL 2068757 (Tenn. Ct. App.).

This matter was heard on the following dates: July 15, 16, 17, 18, 23, and 24, 2008.

During the six days of trial, the Court heard live testimony from the following witnesses: William Bernet, MD, James Walker, PhD, Marc Ackerman, PhD, David McMillan, PhD, Victoria Rundus, MD, Gordon Heseman, DVM, Sarah Lynch, Angela Looney, Mary Jo Cone, Georgia Dunn Cone, William Hovenden, PhD, Cathy Clanton-Reeves, PhD, and Will Cone. Mother also presented the transcripts of the evidentiary deposition testimony of Paul Yim, MD and Gordon Kastner, MD. Father presented the evidentiary deposition testimony of Elizabeth Kenny. There were sixty-six (66) exhibits introduced as evidence and two additional exhibits marked for identification.

FACTS AND FINDINGS

In the Summer of 2007, Father was to exercise four weeks of visitation with his child in 2 two-week intervals. He had exercised the first of those two week periods and had returned the child to the mother on or about June 24, 2007. On July 6, 2007, Father arrived at the McDonalds in Springfield, Tennessee, to pick up his son for scheduled weekend parenting time.

When Will Cone arrived, he was met by Robertson County Sheriff's Deputy Angela Looney and Department of Children's Services Case Worker, Sarah Lynch. They advised Dr. Cone that he would not be picking up his son because they were investigating a referral of alleged sexual abuse supposedly perpetrated on the child by Will Cone and his wife, Mary Jo Cone.

When Will Cone was confronted by Detective Looney and Ms. Lynch on July 6, 2007, he consented to a thorough search of his vehicle which revealed no incriminating evidence. He was asked by Detective Looney to come to the Robertson County Sheriff's Department to take a polygraph test. He was also presented with a Safety Plan. Will Cone did not want to sign the Safety Plan or consent to a polygraph test without first talking to his attorney.

On June 26, 2007, a referral had been made to the Tennessee Department of Children's Services ("DCS") by Dr. Victoria Rundus, alleging sexual and/or physical abuse of the minor child, Cameron Forest Cone, due to the presence of bruises on the child's buttocks. Dr. Rundus did not take a history from the child during her examination regarding the cause of the bruises.

Following the referral to DCS, Ms. Lynch and Detective Looney attempted to set up an interview with the child through the mother. The interview took place on July 5, 2007, the day before Will Cone's scheduled visit, and some 9 days after the initial referral. The interview took place in the child's home in Cross Plains, Tennessee, and

not at the Child Advocacy Center, where alleged sexual abuse interviews are usually completed and could be videotaped. An audiotape (Exhibit 48) of the interview and transcripts of the interview (Exhibits 15 & 16) are part of the record. The audiotape was placed into evidence during Ms. Lynch's testimony and the court listened while viewing Exhibits 15 & 16. The court finds the transcript, Exhibit 16, to be a more accurate and complete reflection of the contents of the audiotape. No photographs were taken of the alleged injuries and Ms. Lynch testified that it was not her responsibility to look at the child's buttocks to see if there were indeed bruises.

Based on her interview with the child, DCS worker Lynch and the DCS child protective investigative team determined that the child had "made disclosure" of sexual abuse perpetrated by the Father and that the allegations and the perpetrator were both "indicated". Ms. Lynch testified that during the interview Cameron Forest Cone would be attentive when he was called Forest (the name preferred by his mother) and would become disruptive and inattentive when called Cameron (the name preferred by his father). She stated that the child "disclosed" sexual abuse by his father and his step-mother and that he was "very consistent" with his statements.

The court finds the assessments and conclusions reached by Ms. Lynch and the child protective investigative team to be clearly erroneous. The court noted no difference in the child's attentiveness based on the name by which he was addressed. On the contrary he was inattentive and disruptive throughout. The interview itself was conducted in a manner which violated DCS protocol. It was not scheduled in a timely manner; it took place at the alleged victim's home; it was conducted by an inexperienced interviewer; Det. Looney was allowed to participate in the interview; Ms. Lynch failed to establish any rapport with the child; Ms. Lynch did not follow up on the one clear statement made by the child regarding abuse, a statement which implicated the Mother; and the interview was conducted in an incompetent manner. The interviewer clearly lost control of the interview; became impatient; offered repetitive, leading and suggestive questions; and relied upon information gained only from the Mother or Mother's counsel, which in and of itself made an impartial evaluation of the interview by Ms. Lynch unlikely if not impossible.

The court finds that nothing in the interview provides any evidence that any disclosures were actually made by the child. In addition to its own assessment of the interview made while listening to the audiotape and reviewing the transcript, the court also relies on the testimony of Dr. William Bernet in making this finding. Dr. Bernet described the interview as disorganized and indicated that no conclusions could be drawn from it whatsoever because the child was "all over the map"; the interviewer offered suggestive questions; the interview was audiotaped rather than videotaped; the location was wrong; and the child "confabulates" by saying what adults want him to.

On July 13, 2007, Father filed a Petition to Modify the Parenting Plan. In that Petition Father alleged that since the inception of the divorce proceedings in Missouri and the custody proceedings in Tennessee, Mother had fought to deny or restrict Father's contact with the child making many false and outlandish allegations against Father at that time and was now making similar allegations of sexual abuse in order to

deny or restrict Father's contact with the child. Father alleged that on July 17, 2005, only four days following the previous hearing and Parenting Plan ruling by this court, the Mother started to campaign against Father by repeatedly seeking medical attention for the child and making various false statements against the Father.

On July 12, 2007, Mother took the child to Our Kids Center in Nashville, a facility for sexually abused children. She provided a lengthy history to the clinic. Due to his age, no medical history was obtained from the child. The scrotal sac was unremarkable. The anogenital portion of the exam was within normal limits. There were no tags, tears, fissures, or other lesions noted (Exhibit 25). No indication of sexual abuse was found.

On July 17, 2007, Mother called the offices of Victoria Rundus, MD and asked that Dr. Rundus write a letter. Mother said that the child had told DCS that his Dad and stepmom were having him put his legs over his head and Dad and stepmom were sticking items in his bottom. (Exhibit 42).

On July 17 and 18, 2007, DCS case worker Lynch and counsel for Father exchanged correspondence in which counsel for Father indicated Father's willingness to cooperate with the DCS investigation and DCS acknowledged its appreciation for that cooperation.

On July 30, 2007, Mother filed her response to Father's Petition to Modify the Parenting Plan and a Counter-Petition. Mother denied any pattern of attempting to restrict or deny Father visitation and while admitting that she provided adverse information to certain medical providers, she stated she was merely repeating what Father had told her or that she had learned from other sources and that she believed the Father "still poses a threat or danger to himself or others". Mother's response ignores the fact that she repeated these allegations to health care providers without telling them that she had been unable to prove them and/or that they had been found to be untrue by this court. Mother sought suspension of all visitation privileges by Father until conclusion of the DCS investigation.

On January 31, 2008, the transcript of the July 5, 2007 DCS interview was sent by Mother's attorney to the prosecuting attorney in Missouri along with multiple other documents in an attempt by Mother to have Father prosecuted in Missouri (Exhibit 26).

The Taney County Sheriff's Office reviewed the transcript and concluded that it appeared that DCS Case Worker Lynch had set a goal for herself when talking to the child. The conversation was led by her in the direction she wished, and the interview was suggestive in nature (Exhibit 68). Previously, the Missouri Department of Social Services had determined that the claim was unsubstantiated (Exhibit 18).

Earlier in July of 2007, Ms. Lynch and counsel for Dr. Cone agreed that Dr. Cone would come to Springfield, Tennessee on July 23, 2007 to be interviewed. DCS also requested that Mary Jo Cone appear and also be interviewed. When Dr. and Mrs. Cone arrived at the Robertson County Sheriff's Office on July 23, 2007, Detective

Angela Looney met them and ushered Dr. Cone's attorney to an office in the Sheriff's Department where he met with Detective Looney and a Detective Bennett. Detective Bennett advised that it would be a waste of time if Will Cone was simply going to come in and deny the allegations and provide a self-serving statement. Detective Bennett asked, instead, if Will Cone would consent to a polygraph test. Will Cone was willing to take a polygraph test, but the Detective who administers polygraphs was not available that day. Neither Will nor Mary Jo Cone refused to be interviewed. Rather, DCS and the Sheriff's Department chose not to interview them.

Will Cone agreed to take a polygraph test, and it was scheduled for July 31, 2007. At 7:45 a.m. on July 31, 2007, Mother faxed to Detective Looney approximately 211 questions she wanted asked of Will Cone. Her cover letter to Detective Looney asks that the polygraph test be video and audio recorded so as to be used in an "Abel Screening" test which "may be necessary if he manages to pass the polygraph test." (Exhibit 46).

Will Cone and his attorney returned to Springfield on July 31, 2007 for the polygraph test. Even though he was not under arrest, the polygraph examiner advised that Will Cone would be asked to sign a waiver of his Miranda rights and a consent to take a polygraph test. The examiner also presented Will Cone's counsel with 3 control questions which counsel found objectionable. The questions were: (1) Before 2005, did you ever lie to someone who trusted you? (2) Prior to 2005, did you ever tell a lie to a family member? (3) Before 2005, did you ever lie to anyone in authority? (Exhibit 47).

Because the examiner and counsel for Will Cone could not agree on the control questions, the polygraph examination did not take place. Will Cone did not refuse to take the polygraph test. (Testimony of Angela Looney, July 18, 2008, Vol IV, p. 55-63).

The parties and counsel appeared in Court on July 31, 2007 on Will Cone's Motion for Guardian Ad Litem and Georgia Dunn Cone's Motion to Suspend Visitation Pending Child Sexual Abuse Investigation Against William Cameron Cone. The parties reached an agreement that Clarksville Attorney Sharon Massey be appointed Guardian Ad Litem. (GAL). By agreement, Father's parenting time was modified to allow him only supervised time at the Exchange Club Family Center in two hour increments pending the investigation (Exhibit 34). The two hour increments were later extended to three hour increments (Exhibit 36).

Thereafter, on September 25, 2007, the GAL filed a Motion for Psychological Evaluations and Independent Evaluation of the Child (Exhibit 35). The GAL's Motion was granted, and William Bernet, M. D. was selected as the independent examiner for psychological testing and evaluation. The parties had five days to provide to the GAL those materials the parties wanted the GAL to share with the independent examiner prior to his evaluation (Exhibit 36).

Dr. Bernet is on the faculty of Vanderbilt University School of Medicine. He is a full time faculty member and a professor in the Department of Psychiatry. He specializes in child analysis and psychiatry, and in forensic psychiatry. He graduated

from Holy Cross College and Harvard Medical School. He finished his training in 1972. He is board certified in three areas: general psychiatry, child and adolescent psychiatry, and in forensic psychiatry. He has written two books and numerous articles. He has been qualified as an expert approximately thirty times in custody evaluations. He has also testified with regard to psychiatric issues. (Exhibit 1). Dr. Bernet was offered as an expert to testify as to the issues presented to the Court, and counsel for Mother raised no objection to his qualifications or competency to testify in this case. (Id., p. 33).

James Walker, PhD is an assistant professor at Vanderbilt University School of Medicine in the departments of psychiatry, neurology, and psychology. His CV is Exhibit 3. He has testified as an expert in Tennessee Courts with regard to custody cases. There was no objection to his being offered as an expert. It is not uncommon for Drs. Bernet and Walker to work together on forensic evaluations. Dr. Bernet conducted personal interviews of the Father, the Mother and the child. He spent approximately 5½ hrs. with the Father; 8 hrs. with the Mother and 3-4 hrs. with the child (Exhibit 2).

Dr. Bernet and Dr. Walker were requested by the GAL to determine the psychological strengths and weaknesses of each parent with regard to parenting skills; determine which parent, if any, required counseling; who should be the primary parent; and whether the child had been sexually abused by the Father. Further, the GAL requested specific testing for the Father to determine if the Father was sexually aroused by children (Pedophilic Tendencies). Initially Drs. Bernet and Walker met with the Mother and Father at the beginning of the evaluations to delineate the scope of the evaluation. The parties also agreed that the evaluation should address the issues suggested by the Guardian-ad-Litem. In addition, Ms. Dunn Cone asked the evaluators to address tests for pathological lying since she alleged that Will Cone repeatedly lied; and tests for sexual preference, since she suspected Will Cone had pedophilic tendencies. (Exhibit 2, p. 2).

After testing both parents and the child, interviewing multiple third parties and reviewing voluminous materials submitted by Mother, Father, and the GAL, Drs. Bernet and Walker concluded that the child was not sexually abused by his Father. They recommend that (1) Will Cone should be the primary residential parent of the child; (2) The transition should take place as soon as possible; (3) Dr. Cone should have counseling available to him to deal with anger, relationships with other people, and to address issues that may arise regarding the child; (4) Ms. Dunn Cone should have scheduled time with the child as long as she does not suggest to him through questioning or any other way that his Father is mistreating him; (5) Ms. Dunn Cone should have counseling to help her deal with her strong feelings regarding Will Cone and her suspicions of him; (6) The child does not presently need counseling. (Exhibit 2, p. 46-49). Dr. Bernet and Dr. Walker each signed the report on February 12, 2008. (Exhibit 2, p. 56).

With regard to psychological weaknesses, the Bernet-Walker evaluation found that "Dr. Cone's MMPI-2 profile reflected notable clinical elevations on two scales. Individuals with this profile tend to be angry, resentful, argumentative persons who are difficult to interact with personally or socially. They are usually able to control their

acting out, but from time to time may have outbursts. They tend to externalize blame for their anger. Individuals with this profile tend to try and suppress their angry feelings, raising the possibility that those feelings may be emerged inappropriately or at unpredictable times". As a result, Drs. Bernet and Walker believe that the father should have therapy to deal with his anger issues.

With regard to Ms. Cone, the Bernet-Walker report notes that since 2003, Mother has been criticizing Dr. Cone. She had a style of looking to find fault with him even to the point of distorting or misrepresenting his actual behaviors. She has greatly exaggerated the significance of Dr. Cone's father's criminal activities. Since 2003 Mother has been looking for opportunities to show that Will Cone has done something harmful to the child. She repeatedly took the child to the pediatric office when he returned from having parenting time and repeatedly told physicians that they should be watchful because of Dr. Cone's father's sexual misconduct. She had a style of identifying very minor behaviors in the child and attaching great significance to them. Basically, she has a mental preoccupation with the idea that Dr. Cone was sexually abused as a child and he became a sexual abuser of their child. She is convinced of the notion, and she has repeatedly explained it to pediatricians, emergency room personnel, a pediatric urologist, mental health professionals, police, and child protection personnel. She has consistently searched for proof of her firmly held belief, and she encouraged the child when he made statements consistent with her belief. (Exhibit 2, p. 42-43). She is quite opinionated and has a style of trying to impose her opinion on others. She has actively campaigned to convince family members, friends, DCS personnel, police investigators, physicians, and mental health professionals that Dr. Cone is an evil person and has abused his son. It is easy to see how the child, who is eager to please adults, would be influenced to try to figure out what his Mother wants him to say, and to say it. (Exhibit 2, p. 43).

Drs. Bernet and Walker conclude that it is in the child's best interest to be with his Father because Mother is preoccupied with the mistaken idea that Father abused the child. She has expressed her concerns to many people and has questioned the child about his activities at his Father's household. If she continues this way, she will induce the child to share this false belief. If Father is the primary residential parent, it is likely that the end result will be that the child will continue to have a healthy, satisfying relationship with both parents. If Mother is the primary residential parent, it is likely that she will find ways to limit the child's contact with his Father, and that will undermine his relationship with Father. (Exhibit 2, p. 46).

Based on the court's familiarity with the Mother and the lengthy history the court has with her and this litigation, the court accepts in full the Bernet/Walker

psychological assessment of the Mother. On January 23, 2004, Mother filed her original action for divorce in this court.¹ In that Complaint, she alleged among other things that the Father was a "pathological liar"; showed "destructive behavior patterns"; suffered from "sexual addiction"; had "suicidal tendencies"; was on the computer visiting "pornography sites for hours"; was "with prostitutes"; was "both physically and verbally abusive"; and "threatened to kill her". Based on those allegations, a Restraining Order was again issued against Father at the inception of the divorce litigation.

On March 15, 2004, an Agreed Order was entered regarding child support and payment of various bills. Subsequent thereto, the Mother's first attorney withdrew. On May 14, 2004, Mother's new attorney filed on her behalf a Motion for Psychological Evaluation, Polygraph Test and Sexual Preference Test. In that motion Mother alleged that Father said "Satan speaks to him"; that he is "depressed"; "threatened suicide"; is a "admitted pathological liar"; that Father engaged in "sexual misconduct with clients"; and "allowed female employees to walk in on him while bathing". She also alleged that Father had a "family history of mental problems"; was an "admitted sexual addict and sadist" and that he "becomes sexually aroused by pain and discomfort of wife and others". On June 1, 2004, Mother obtained an Order of Protection² based on allegations that Father had threatened her and had actually hit another individual "in the chest with a book". In a response to a subsequent motion, Mother amplified on that statement by saying that Father had hit Earl Crowder in the chest with a Bible. Shortly thereafter Mother's second attorney withdrew.

After a lengthy hearing on July 26, 2004, this court denied Mother's Motion for Psychological Testing etc. and ruled on the pending Order of Protection and Mother's Motion for Extension on the Restraining Order. This court found that while Father's conduct leading to the issuance of the Order of Protection was questionable, Mother had failed to prove her allegations and that there was no need for an extension of the Restraining Order and that the Order of Protection should be dissolved. In making its ruling, the court noted that Dr. Cone should have unsupervised visitation working up ultimately to overnight visitation and that Ms. Cone needed to make the "attitude" adjustments necessary to accept that kind of visitation schedule. Six hour periods of visitation were ordered on both Saturday and Sunday in alternating weeks. A further review of the matter was scheduled for December, 2004. After entry of the order from the July 26th hearing on September 16, 2004, Mother's second attorney withdrew and Mother's third attorney appeared for her. On December 7, 2004, Mother's new attorney filed on her behalf a Motion asking the court to reconsider its previous ruling denying Mother's Motion for Psychological Testing, etc. Relying on statements allegedly made by Father to two individuals regarding Father's concern that he had a "sexual addiction".

¹Father had filed for divorce in Missouri on January 15, 2004, and after consultation between this court and the court in Missouri, Father proceeded to obtain the divorce in Missouri and the Missouri court divided property and assets of the parties located in Missouri. This court retained jurisdiction to determine parenting issues and issues regarding the parties' property in Tennessee. The parties subsequently mediated a property agreement with respect to their Tennessee property.

² The Ex Parte Order of Protection was issued by another judge.

On December 10, 2004, the court held a review in which Father's parenting time was increased and he was allowed visits outside the State of Tennessee. In April of 2005, Mother's third attorney withdrew and a final hearing with regard to the parenting was held on June 13, 2005, at a time when Mother was represented by her fourth attorney, Gary Williams, Esquire.

In the hearing on June 13, 2005, Mother abandoned her attempts to prove most of the allegations that she had made against Father in the earlier pleadings. Mother proposed supervised visitation time with the Father with such visits to occur in the State of Tennessee. After hearing all the proof, this court concluded that Mother's allegations against Father were without merit but after consideration of all the parenting factors, determined that Mother was in the best position at that time to serve as primary residential parent. However, the court again cautioned Mother in the most uncertain terms that the Parenting Plan would have to be modified with some regularity, "certainly not later than when the child starts to school - Pre-K". The court cautioned Mother that it was time to move on and that it was the intention of the court that Father's parenting/visitation was going to continually increase and that "you need to start preparing yourself for that" and that at the latest the plan would need to be modified to a 50/50 type of arrangement by the time the child was four.

The evidence now before the court indicates that despite the court having found the allegations against the Father to be untrue, and despite the court's admonitions to her, Ms. Dunn Cone waited only four days after the court's ruling before initiating new efforts to deny or restrict Father's visitation by making statements about Father to others which this court had found to be false and/or misleading. That conduct ultimately culminated with the sexual abuse investigation in 2007.

On March 11, 2008, approximately one month after the Bernet/Walker report was provided to the parties and the GAL, Mother's attorney wrote the prosecuting attorney in Will Cone's home county and enclosed portions of Tennessee DCS records. He did not provide the Missouri prosecutor a copy of the Bernet/Walker report and stated "[o]n behalf of Forest Cone and his mother ... please accept our appreciation and thanks for your review of this case and hopefully we will be able to put Mr. Cone in a position where this does not happen to his son again or to any other young person with whom he may come in contact." Mother was copied on his letter. (Exhibit 44).

The only experts in the case who conducted a psychological evaluation of Georgia Dunn Cone were Dr. Bernet and Dr. Walker. Dr. Walker administered various tests to Ms. Dune Cone. Her validity scales on the MMPI-2 reflect defensiveness, or minimizing problems. Her profile was of questionable validity for interpretation (Exhibit 2, p. 19). Dr. Walker testified that she scored well outside of normal limits and "tried to make herself look very, very, very, good on this test." He believed she wasn't quite candid with regard to the scoring or taking the test.

On the Parenting Stress Index, she did not present herself with having any weaknesses whatsoever in her ability to parent. She described herself as never having

any depression or stress and of being a superlative parent. Dr. Walker's opinion was: "my thought is that probably these results are not quite valid."

On the Achenbach Child Behavior Check List and the Personal Inventory for Children Test, she denied the presence of any problems or behavior difficulties on the part of the child. She described him as a totally well adjusted child. This is in stark contrast to her testimony regarding the child's behavior, particularly with regard to the child's behavior after visits with his father.

Dr. Walker's opinion of Mother's personality testing reflects the presence of an excessive degree of defensiveness and denial. She described herself as an extremely healthy individual and an extremely competent parent, though the style of her responses suggests that to a larger degree her responses were based on denial or minimization of potential problems. Her personality testing is not believed to be valid. She rated her son as being exceptionally well adapted in all areas, denying the presence of even innocuous behavioral symptoms. However, she rated her son as having a great degree of unusual sexual behaviors as compared to the average 4 year old. The Bernet-Walker report states: "This is an unusual combination, and may reflect reporting irregularities." (Exhibit 2, p. 20).

Dr. Walker testified that "she presented herself in a very positive way that was, frankly, a bit unbelievable. She described herself as a person who really never has any kind of psychological distress or doesn't even experience the common faults or shortcomings that most people would have."

Dr. Walker further testified that she described the child as having "essentially no psychological difficulties" but at the same time "expressing all of these very unusual sexual behaviors that are very inappropriate for a four year old child. These things did not seem to go together for me. If a child has been sexually abused ... one would expect them to also have some psychological maladjustment with that. So these two sets of data did not really go together too well, in my opinion."

The Bernet-Walker report documents the several psychological weakness that have a negative impact on her ability to serve as an effective parent for her son. She is very defensive. She portrays her behaviors and motivations in a very positive light. She appears to lack insight into the strong feelings and motivations that are driving her behavior in casting Will Cone as a child abuser and unfit parent. She has become obsessed and fixated upon her negative campaign to denigrate Dr. Cone, regardless of the negative impact her behavior is having upon her son and her son's relationship with his father. She evidences narcissistic personality traits, with a strong sense of entitlement, a willingness to exploit others to achieve her own ends, and a lack of empathy or ability to recognize or identify the feelings and needs of others with whom she is in a relationship. Her defensive style is marked by projection, that is, rather than correctly understanding the feelings and motivations of others, she inaccurately perceives others to be acting out the negative feelings that she in fact possesses, including anger, hatred, and entitlement. (Exhibit 2, p. 45).

David McMillan, PhD, was qualified as an expert for the Mother. He is a licensed clinical psychologist who has practiced for 30 years. He is a general practitioner and sees a lot of families, couples and individuals. He is on the Adjunct Faculty at Vanderbilt. His CV is Exhibit 6. He has been in 30 to 40 cases of custody evaluations with 10 of those having been done in the past 2-3 years. His usual role in such cases is to assist the judge as a custody evaluator. He does exactly as Dr. Walker and Dr. Bernet did in this case, i.e. looks at what he can look at, reviews all the things he can and makes some recommendation based on his findings. In this case, while Dr. McMillan reviewed materials submitted him by the Mother, including the Bernet/Walker report, he **did not** interview the parties or the child.

Dr. McMillan testified that he has a great deal of respect for Drs. Bernet and Walker, that they are honest men and he did not believe that Drs. Bernet and Walker would skew test data to reach a result. Dr. McMillan testified that the Mother can get something in her head when she really doesn't know the impact that it has on other people. She can push and push and not really be aware of what other people are feeling, thinking and doing. Dr. McMillan believes that when the child gets older there's going to be a clash of wills between the child and his mother and it's going to be difficult for the child and that Mrs. Dunn Cone is going to have trouble as a result.

Dr. McMillan testified that regardless if Mother's actions are intentional or if she is oblivious, there are consequences to her actions on the child. He testified that the consequences become difficult when the child becomes older : "It's when the child gets a little older that this clash of will is going to come and its going to be difficult for the child. And I think Ms. Dunn Cone is going to have trouble." He testified that the longer the minor child is in an environment with a person that has Mother's personality traits, as time wears on, it's only going to get worse with the child.

Dr. McMillan thinks Drs. Bernet and Walker minimized the Father's psychological deficiency, i.e. anger issues, but he also believes they correctly identified the Mother's psychological issues and overreached in suggesting that the Father should be named the primary residential parent. He recommends that everyone should cooperate with one another. He wants the parents to work together, however, he did no testing and did not meet with any of the parties to see if this is realistic.

He doesn't believe that the Mother has engaged in a campaign to vilify the Father, but on cross examination agreed that the multiple reports and medical consultations engaged in by the Mother concerning alleged sexual abuse of the child by the Father could be interpreted as an effort on her part to vilify the Father. He also agrees that if the Mother has engaged in such a campaign of vilification, this would make working with the Father impossible.

Dr. McMillan stated that the court, because of its familiarity with the past allegations made by Mother against the Father, would be in the best position to determine these issues and using the analogy of hitting someone in the head with a 2 by 4, indicated that it would probably be necessary for the court to use a 2 by 4 with the Mother in grabbing her attention and directing her away from her falsely held beliefs

regarding Father's sexual abuse of the child. He further agreed that it would be logical and reasonable for the court to view the past conduct of the Mother (i.e. multiple referrals for medical evaluations, repeated statements suggesting that Father was a child abuser, etc.) as a pattern of deception and doctor shopping.

Indeed, because of the court's history with this case, this is exactly how the court views her conduct. With the filing of her divorce complaint in 2003, Ms. Dunn Cone made numerous allegations against Father which she would be unable to prove and which were found untrue by the court. Nonetheless Mother has persisted and persists even today in her falsely held beliefs. This court has on multiple occasions attempted to dissuade the Mother from this course of conduct, all without success. To use the analogy suggested by Dr. McMillan, the court's two x fours simply have not been effective.

Marc J. Ackerman, PhD, was qualified as the Mother's second expert. He is a licensed clinical psychologist practicing in Milwaukee, Wisconsin. His CV is Exhibit 4. Dr. Ackerman was requested by Mother's counsel to review the Bernet/Walker report and determine if he had any concerns with regard to their report. He generated a report outlining some of his concerns dated June 30, 2008. (Exhibit 5). **Dr. Ackerman did not interview any of the parties or the child.** He did not criticize the Bernet/Walker report as it relates to the Mother. However, he testified that he believed the Bernet/Walker report understates the results of Will Cone's MMPI-II evaluation.

Dr. Ackerman testified that it is extraordinarily important in this case that interviews were conducted with the child in close proximity to the time the alleged abuse of the child occurred. (See Exhibit 5, p. 7). Dr. Ackerman gives credence to the reported results of the interviews but never listened to the audio recording of the DCS interview with the child or the Mother's recording of the child.

Dr. Ackerman takes issue with the Bernet/Walker report and believes that the significance of Dr. Cone's anger issue has been overlooked and that Georgia Dunn Cone has not alienated the child from the Father. He believes Dr. Bernet is wrong about a change of custody. Dr. Akerman acknowledges that the American Psychological Association guidelines suggest that psychologists should not make custody determinations without having interviewed all of the parties. Dr. Ackerman did not interview any of the parties in this case yet he is critical of Drs. Bernet and Walker - the only experts in this case who have conducted interviews with both parties and the child.

Dr. Ackerman admits that reasonable minds can differ and different experts may reach different results. Dr. Ackerman has no explanation why Mother started the child in therapy with a psychologist three weeks before any allegation was made.

The Ackerman report further states: "The research demonstrates that abuse allegations are more likely to have occurred when substantiated by trained professionals such as pediatricians, therapists, CPS workers and police officers trained

in interviewing young children. If all of these above stated independent individuals opined that the abuse had occurred, this is a lot for Drs. Bernet and Walker to ignore in making their recommendation about placement." (Exhibit 5, p. 7). During testimony Dr. Ackerman stated "...we have four mandated professionals contemporaneous with the sexual abuse allegations, who said the abuse occurred." Two of the "professionals" were Sarah Lynch and Angela Looney with whom Dr. Ackerman has never spoken. Dr. Ackerman's source of information with respect to what Angela Looney said comes from the Bernet-Walker report and his source of information for Sarah Lynch comes from the DCS case file. On page four of his report, Dr. Ackerman writes that Detective Looney told Dr. Bernet that she believes "every bit of what the child says" and the disclosure was convincing because of the "graphic descriptions." (Exhibit 5, p. 4).

Dr. Ackerman testified that he has never listened to the tape of the July 5, 2007 interview to learn for himself whether "graphic" disclosures were made. Dr. Ackerman agreed that if the proof turned out that the child did not make graphic descriptions in the initial interview and those came later, in October, after having been in play therapy for a period of time, that would alter his testimony. Dr. Ackerman testified that in this case the child has been abused either by sexual abuse actually perpetrated by the Father or a false accusation of abuse made by the Mother.

The third professional relied upon by Dr. Ackerman was pediatrician, Dr. Rundus. Her report described physical symptoms (bruises) but her report contained no statements made by the child. She testified that when she made the DCS referral it was because abuse was "suspected." Dr. Rundus never questioned the child because from her training "it would not be appropriate" to do so. She testified that all history taken about this child was from the Mother and that she regarded the history related to her by the Mother as significant. The history and the bruising in combination caused concern. Dr. Rundus does not know what caused the bruises and acknowledges the possibility that they could have occurred at the Mother's house.

The fourth professional relied upon by Dr. McMillan was Dr. Cathy Clanton-Reeves. Dr. Ackerman testified that the "initial disclosure" made to Dr. Clanton-Reeves was July 31, 2007. Dr. Clanton-Reeves' July 31, 2007 letter to Sarah Lynch is Exhibit 54. In that letter, Dr. Clanton-Reeves' documents play therapy sessions with the child that occurred on June 6, 29, July 10, 16, 19 and 24, 2007. The child made no disclosures in any of those sessions. (Exhibit 54).

However, the child supposedly did make a disclosure to Dr. Clanton-Reeves on October 24, 2007, the day after he was tape recorded by his Mother (Exhibit 55). According to Dr. Clanton-Reeves, Mother carried the child into the therapy session. This was the child's sixteenth visit to the play therapist (Exhibit 49) and the first time that Mother carried him into the room.

The tape recorded interview made by Mother on October 23, 2007 (Exhibit 2, Appendix A) was described by Dr. Bernet as notable because she tries to elicit information through repetitive and suggestive questions, (Exhibit 2, p. 6). The interview was in violation of the CPS Safety Plan signed by Mother on July 6, 2007 which states

"No one will speak with Cameron Forest about these allegations except his therapist, Dr. Reeves and DCS." (Exhibit 22). Mother did not disclose to DCS or the GAL that she had made this recording.

Dr. Clanton-Reeves testified that she told Mother that it was not a good idea for her to have recorded the child. She only listened to approximately three minutes of the tape recorded conversation between Mother and chose not to listen to the rest. Dr. Bernet considers this important because by not listening to the audio tape made by Mother the day before, Dr. Clanton-Reeves did not realize how these statements came about and were reinforced by Mother (Exhibit 2, p. 7).

Dr. Ackerman testified that if Mother went to multiple health care providers reporting suspected abuse "with the hope that the health care provider will report" then he would definitely be concerned about it. "If ... she's going with the motivation of, I'm going to tell these people that I'm in a divorce, and hope that they'll report then that's another issue." "Does it happen? Absolutely, it does in some cases."

Section 9.01 of the American Psychological Association Code of Ethics states that it is not ethical for a psychologist to render an opinion as to a custody arrangement when the psychologist has not done personal evaluations of the parties involved. Dr. Ackerman wrote an article addressing the American Psychological Association's guidelines which state that a psychologist should not make a custody determination without having interviewed all of the parties.

Mother's attorney asked Dr. Ackerman if he has "reached an opinion as to whether the ultimate recommendation of custody in this case, is consistent with the testimony and other evaluations and findings in the Bernet-Walker report?" Dr. Ackerman answered: "... it just does not make professional sense to me ... I would be very concerned about stripping him away from his mother and sending him to live with his father, especially in the slam dunk kind of way that is recommended ... There are certainly ways, when people live in different cities, to maximize the amount of time that children can have with each of their parents, than – than doing something as drastic as has been recommended in the Bernet-Walker report.

The testimony of expert witnesses is advisory only. In evaluating expert testimony, the court must consider, among other things, the facts relied upon by the expert to arrive at the opinion and the reasoning used by the expert. In this case, Dr. Ackerman did not listen to the interview tapes of the child, does not know who conducted the interviews or how they were conducted, and did not himself interview the parties or the child. Therefore, his opinions concerning the substantiation of sexual abuse allegations in this case are unfounded and are not accepted by the court. Further, any opinion expressed by Dr. Ackerman with regard to parental custody are rejected because his forming such an opinion is not in accordance with his professional standards as he conducted no interviews with the parties or the child.

Dr. David Kastner of the VIP Clinic, a partner with Dr. Rundus, testified by deposition on July 10, 2008. The transcript of his deposition is Exhibit 58. He stated

that Mother never discussed Will Cone's sexual history with him and that all visits were for medical and legitimate purpose for Forest's health and well-being. The visits were to treat a specific illness or complaint and Mother never campaigned against Will Cone during visits with him.

Dr. Paul Yim testified also by deposition taken on July 11, 2008, and the transcript of same is Exhibit 59. He testified that the Mother brought the child to see him on several occasions, all relating to legitimate medical issues and that the Mother never discussed sexual issues involving Will Cone during those visits. Dr. Yim is a general practitioner and does not administer vaccinations and he believes the Mother went to the VIP clinic to obtain vaccinations from the pediatricians.

However, the record reflects that between March 15, 2004 and June 13, 2005, Georgia Dunn Cone brought the child to approximately six different health care providers on fourteen different occasions (Exhibit 49). Between June 13, 2005 and June 25, 2007, Georgia Dunn Cone brought the child to at least three different health care providers on approximately twenty-four occasions. (Exhibits 42,49). From June 25, 2007 through June 30, 2008, she has brought the child to the doctor approximately eleven times (Exhibit 49).

Prior to June 25, 2007, she has repeatedly told health care providers that she is concerned about possible sexual abuse:

September 7, 2004 – Hermitage Family Practice: "Mother worried about possible abusive behavior by father. Parental worry about physical/sexual abuse." (Exhibit 42, p. 1).

September 18, 2004 – NorthCrest Medical Center; Chief complaint: possible abuse per mother, states foreign substance in rectum; black hair in anal opening (Exhibit 44, p. 4).

October 18, 2004 – Hermitage Family Practice – "Mom continues to be extremely worried about sexual abuse on child by Father." (Exhibit 44, p. 10).

November 2, 2004 – Vanderbilt – "Apparently, according to the Mother, there is a divorce in progress here, and there are concerns about the father possibly molesting this boy sexually." (Exhibit 44, p. 11).

June 9, 2005 – Hermitage Family Practice "child showing aggression and starting to hit mom and daycare provider." (Exhibit 44, p. 16).

June 17, 2005 – Axis Medical- "behavior change noted by Mom at 10 months; now tantrums x 2-3m; self abusive – head banging; mom considering Our Kids in Nashville." (Exhibit 44, p. 18).

July 8, 2005 – Vanderbilt – “Mother is still very, very focused on things.” “I have again at great length assured mother that things are proceeding normally.” (Exhibit 44, p. 20).

August 24, 2005 – Axis – “Also Mother is concerned about patient saying he hurts in his anal area.” (Exhibit 44, p. 31).

October 14, 2005 – White House Children’s Clinic – “not sleeping well suspecting sexual abuse by father.” (Exhibit 44, p. 38).

October 26, 2005 – White House Children’s Clinic – “c/o bottom hurts-patch of redness; Mom concerned just returned from Dad’s; incest runs in family (Exhibit 44, p. 42).

On January 31, 2008, Mother’s attorney sent a three page letter to Mr. Jeff Merrell, the prosecuting attorney in Missouri. Enclosed with that letter were voluminous materials sent to urge prosecution of “this sex crime against this innocent child.” (Ex. 26). Enclosed in that packet was a lengthy letter that Mother wrote to the Missouri prosecutor which contained several inaccurate statements.

On May 13, 2008, Mr. Merrell wrote the attorneys for the parties and the GAL and stated that he had declined to prosecute any criminal charges against Will Cone. “The reason for my decision is that there is a lack of evidence that any crime has been committed against this child.” (Exhibit 27).

In Mother’s original Complaint for Divorce and her original Proposed Parenting Plan, she sought supervised parenting time for Will Cone. (Exhibit 28). In her Proposed Amended Parenting Plan, she sought supervised parenting time for Will Cone for a period of two hours in her home. (Exhibit 29). As reflected by exhibits 28-33, Will Cone has had to have the Court order all of his parenting time and Mother has consistently tried to have his parenting time supervised.

Mother’s concerns of Will Cone’s alleged sexual addictions persist as of July 24, 2008, the day she last testified in court. She acknowledges that she does not know whether it has happened or not, but states that she will know what to do if it happens again.

Mother’s answer to Interrogatory number 1 states that that Will Cone has perpetrated sexual abuse upon the child and caused the child to live in a sexually explicit environment. She acknowledges she has no proof that the child lives in a sexually explicit environment and she can offer no expert proof that the child was abused. Despite this lack of proof, Mother continues to assert her position that Father abused this child. The end result is that this child has been subjected to numerous invasive tests and her continued insistence that this child has been abused is a harmful disservice to the child. This, as Dr. Ackerman, Mother’s expert stated, is itself abuse.

Mother testified that she began sexual abuse counseling for her son at the advice of her attorney. This therapy began June 6, 2005 – three weeks before the abuse allegedly occurred.

She admitted that multiple individuals have spent the night at her residence when her son was present and have taken trips with her and her son. The Mother testified that the child continues to act out sexually with his peers in her presence. However, she continues to allow children to spend the night insisting that they are never allowed to be left alone with the child. This despite the Mother's earlier testimony and reports to various experts in this case that the child is well adjusted and doing well.

At the original Parenting Plan hearing on June 13, 2005, Mother produced as one of her witnesses an accountant to testify concerning Mother's income for purposes of calculating the parties' child support obligations. At that time, Mother had not filed tax returns for the year 2000, 2001 or 2002. At this hearing, Mother testified she has not completed tax returns for years 2005 and 2006 and that she has no idea of her income for 2007 or 2008 year to date. She indicated that she has been so busy dealing with this litigation that she has been unable to tend to other details. The court simply finds this testimony incredulous and is further indication of her obsession with the idea that Dr. Cone is a sexual abuser.

Mother enrolled the child in pre-kindergarten in the fall of 2007 at Sumner Academy. When Mother enrolled him in school on September 12, 2007 she did not provide the school any information regarding Will Cone, not even his name. The school's May 30, 2008 progress report was introduced as Exhibit 41. The headmaster of the school testified that the child is on schedule but reports issued by the school indicate that the child is actually behind in pre-reading skills, language, art skills, math and science skills. One such report indicated that the child cannot identify any letter except the letter "c" and that he could not count to twenty. The headmaster indicated that children of 4½ usually can count to twenty. The child has not been enrolled in Sumner Academy for the 2008-2009 school year but rather has been enrolled in a pre-K class in a different private school. Sumner Academy's cumulative attendance record shows that he was present 156 days, absent 23 days and tardy 50 days (Exhibit 67).

When asked by the GAL what she would do differently after this past year to facilitate a positive relationship between Will Cone and his son, Mother said: "I don't know that I'll do anything different than what I've always done, because I have always facilitated a very harmonious and, you know very loving relationship."

On July 24, 2008, when asked her desire for a visitation schedule for Will Cone, Mother testified "... I would have to say my most comfortable place would be supervised visitation until Forest was a credible, older child who could speak for himself." She reiterated that she would be comfortable with Will Cone having unsupervised visitation "when Forest is a little older ... because, you know, he would be older. He would not be as vulnerable."

She still cannot say that anyone can rule out abuse "entirely." When testifying on July 24, 2008 Mother stated that she suspected abuse sometime in 2005. She waited until 2007 to get him into therapy. She stated that she believes her child is still at risk.

Elizabeth Kenny is Mary Jo Cone's twenty-five year old daughter from an earlier marriage. She was in the sixth grade when Will Cone married Mary Jo for the first time (Deposition of Elizabeth Kenny, July 9, 2008, Exhibit 60). Will Cone was her caretaker, her fatherly role model. He participated in her life. When asked about his maturity level, she testified that Will Cone is a man who takes care of his family; hardworking and reliable. She believes that she could depend on him for anything and as a man who cares for people around him. Elizabeth Kenny has seen Cameron interact with his father and can tell that he loves his Dad and likes spending time with his Dad.

Elizabeth Kenny has never seen Will Cone abuse alcohol, or drugs of any kind. He does not act in any way obnoxious or hostile or aggressive. She has never seen violence perpetrated by Will Cone upon Mary Jo, or upon her sister (i.e. Will Cone's other step-daughter). Elizabeth was never slammed into a wall and never witnessed arguments between Mary Jo and Will where Mary Jo supposedly said that Will Cone had a violent and abusive nature, nor was she ever told that.

Will Cone never showed any rage or aggression towards Elizabeth. Elizabeth testified that during her teenage years there was no discussion about pornography allegedly used on the TV, or computer, or that Will Cone allegedly had sexual addictions or other sexual problems. Ms. Kenny also testified that she had never observed anything that would show that the Mother had attempted to alienate Forest from his father.

Gordon Heseman is sixty-nine years old. He has been married for forty-four years and has eight children and six grandchildren ranging from eight months to ten years of age. He has known Will Cone since 1994 when Will Cone contacted him about purchasing Dr. Heseman's veterinary practice. The practice was sold to Will Cone and Dr. Heseman has continued to help Will Cone with the practice. They have been friends and professional colleagues since 1994. The Will Cone that Dr. Heseman knows is a conscientious man, dedicated to his work and family. He is levelheaded and Dr. Heseman has seen Will Cone remain calm and cool in situations when he would have lost his temper. He has seen Will Cone interact with his son and observes that he is a very attentive father who gets along well with his son. Will Cone sets boundaries for the child and enforces them. Dr. Heseman has never seen Will Cone lose his temper around his son.

Will Cone has and can provide for the educational needs of the minor child. Will Cone has found a suitable pre-K school in Branson, Missouri and has made efforts to find a suitable elementary school for him after pre-K. He is self employed. He runs a successful veterinary practice. The fact that he is self employed allows Will Cone

flexibility to spend time with his son and to be designated primary residential parent. He is fully capable of providing a suitable home environment for the minor child.

Since the Parenting Plan was entered Will Cone has consistently exercised his parenting time. He has driven approximately 7 ½ to 8 hours each way for his visits; traveling approximately 44,000 miles driving to and from his home in Missouri to Springfield, Tennessee.

CONCLUSIONS OF LAW

After a careful consideration the testimony of the parties, witnesses and review of the exhibits and the record, the Court does find the following:

1. The Petitioner has met the burden of showing that there has been a material and significant change of circumstances that have occurred since the entry of the Order on October 27, 2005.

2. The factors set forth in T.C.A. §36-6-106, to determine what is in the best interest of this child are as follows:

a. Both parents love this child and have appropriate affection (factor 1).

b. Both parents have provided food, however, the child's educational needs are not being met and the medical care has been neglected as evidenced by the failure of the Mother to have the child immunized. Further, the Mother's actions with regards to her continued medical visits and complaints of sexual abuse and her continued exposure of the child to examinations for sexual abuse is not in the best interest of the child and weighs in favor of the Father (factor 2).

c. The child has primarily resided with the Mother (factor 3).

d. The Mother has allowed other people, including men she has only known for a week, to stay at her home overnight, which is a concern (factor 4).

e. Both parents are physically healthy, however, the Father has anger issues, and the mother is preoccupied with the alleged sexual abuse of the child by the father, and this will have a negative impact on the child in the future according to Drs. McMillan, Bernet and Walker (factor 5). There is no evidence that Father's anger issues have had any negative impact on the child, however, there is overwhelming evidence that Mother's falsely founded obsession has had and will harm the child.

f. The home, school, and community record of the child shows that he is not progressing in school as he should and this weighs heavily in favor of the father. Further, the child continues to act out sexually in the mother's home and around other children (factor 6).

g. There is no evidence of physical or emotional abuse of the child by Father. However, Mother is convinced that the father has sexually abused the child. This falsely held belief on her part and her false accusations against Father is in and of itself

abuse of the child according to Dr. Ackerman. This weights heavily in Father's favor (factor 8).

h. The most significant factor is that the Mother has not been willing to facilitate and encourage a close and continuing parent child relationship between the child and the other parent. This is evidenced by her continued attempts to convince health care professionals that the Father is a sexual victim and abuser and that this child has been abused. She continues to insist that there should be supervised visitation between the child and the father. This heavily weighs in favor of the father (factor 10).

From the beginning of these proceedings in 2004, the Mother has repeatedly attempted to restrict Father's contact with his son. Substantially all of the allegations made by Ms. Cone Dunn in the current proceeding were made to this court through various pleadings, motions and evidentiary hearings in 2004 and at the hearing in 2005. The court finds the latest allegations, specifically those of sexual abuse on the part of the Father to be untrue.

4. The court agrees with and accepts the Bernet/Walker report.

5. Based on the statutory factors discussed in paragraph 3 hereof, the court finds that the child's best interests are served by transferring the designation of primary residential parent from Mother to Father. The Proposed Parenting Plan submitted by the Father is approved effective immediately. Additionally, while the child is in her care, Mother is specifically prohibited from suggesting to the child through questioning or any other way that his Father has or is mistreating him. This and all other suggestions made in the Bernet/Walker report in recommendation #4 on pg. 48 of the report are to be included in the Parenting Plan. Mother is to be imputed income at the highest level allowed under the child support guidelines for purposes of child support calculations.

6. Mother and Father will participate in counseling as suggested in the Bernet/Walker report. The child shall not attend counseling unless in a family setting as recommended by a therapist. Mother is specifically prohibited from arranging any counseling for the child without Father's permission or the permission of this court.

7. The Father's request for attorney's fees is granted and counsel for Father shall submit an Affidavit for fees within 30 days. Father shall also file a motion for any discretionary costs sought by Father within 30 days.

8. The cost of the Guardian-ad-Litem shall be paid equally by the parties; the parties shall be jointly and severally liable for the GAL's fees and judgment is granted to the GAL for which execution may issue in the amount of \$8,336.35.

9. The costs of these proceedings are adjudged against Mother.

IT IS SO ORDERED.

ENTERED this the 9th day of September, 2008.



ROSS H. HICKS
Circuit Judge

cc: Grant C. Glassford
Stacy Turner-Olson
Roger Maness
Fred Greene
Sharon T. Massey