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COMMENTS:

IN THE COURT OF COMMON PLEAS OF VENANGO COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

CHAD ZACHARY HOWER,	Plaintiff :	
	:	
vs.	:	CIV. NO. 1751-2004
	:	
NANCY SUE OBERLANDER, f.k.a	:	
NANCY SUE OBERLANDER-HOWER,	:	
	Defendant :	

Type of Document:

Motion to Dismiss Petition to Modify
and Preliminary Objections

Filed on Behalf of:

CHAD HOWER, Plaintiff

Counsel of Record for this Party:

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MOTION TO DISMISS PETITION TO MODIFY CUSTODY AND PRELIMINARY OBJECTIONS TO SAID PETITION

NOW COMES the Plaintiff to this action, by and through undersigned counsel, and files this Motion to Dismiss the Petition to Modify Custody and Preliminary Objections to the Petition and would show:

1. Plaintiff objects to a petition to modify custody in this Court because this is not the Court of proper jurisdiction. Plaintiff, custodian of the child, does not live in Venango County and has not lived in Pennsylvania for at least 10 years. The current custody order was entered in the state of Tennessee in 2005, providing that Father would have primary custody of the child and that he would give the mother visitation in the summer of 2006, which he has done.

2. The case at the above caption and style was filed **only** for the purpose of enforcement of a Tennessee order allowing the father to have custodial periods with his child, when the mother did not comply. There has still not been a hearing on the merits of the custody matter in Venango County and there should not be. The child has not lived in the commonwealth of Pennsylvania for the six months preceding the filing of the petition. This Court deferred jurisdiction to Tennessee at the last hearing. Tennessee has ruled. That Order governs these parties.

3. The mother had previously been in contempt of the Tennessee order on several occasions for failure to comply with the court's Orders regarding visitation with the Father. This

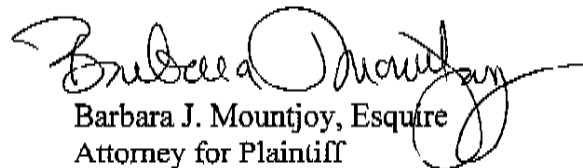
is one of the reasons as stated in the Tennessee court Order, that the Father was given primary custody. He sent the child as ordered for summer visitation, knowing in his heart that the mother would once again fail to comply when it was time to return the child. The Mother has cut off communication between the child and father, in derogation of the Court's Order this summer, and indeed, the Mother waited until the last two weeks before the child was to be returned to file an emergency petition that suddenly "must" be heard before the child can return home per the lawful order.

5. It is clear that Tennessee continues to exercise jurisdiction in this case, even though neither party lives there, because the judge there retained and exercised jurisdiction for the last hearing even though neither party lived there at that time. The Tennessee Court is very familiar with the entire case and its history, and entered the current Order on that basis.

6. It is improper at this time for the Pennsylvania Court to usurp the jurisdiction of the Tennessee Court that has entered all the orders in this case simply because the mother is unhappy with the outcome of proceedings there. She is the one who for years disobeyed court orders; the Father has obeyed each and every custody order, and now he is about to be penalized as a result by being required to attend a hearing on very short notice and groundless allegations. It is his opinion that the mother has orchestrated this situation purposely to place the Father at a disadvantage in her attempt to steal custody back by using this Court, which in the past has been sympathetic to her.

WHEREFORE, Plaintiff asks that the Defendant's Petition to Modify be dismissed for lack of jurisdiction.

Respectfully submitted,


Barbara J. Mountjoy, Esquire
Attorney for Plaintiff