Assigned Judge: Croom

**Response to Plaintiff's Motion to Dismiss, Motion to Strike, Response to Plaintiff's Motion for Custody**

**Defendant's Response to Plaintiff's Motion to Dismiss and Motion to Strike**

            NOW COMES the Defendant, \_\_\_\_\_\_\_\_, by and through her counsel, \_\_\_\_\_\_\_\_of Rosen Divorce, and moves the Court pursuant to Rule 12(f) to strike the following statements from the Plaintiff's motion to dismiss filed on \_\_\_\_\_\_, 20\_\_\_\_\_  and to deny Plaintiff's Motion to Dismiss.  Specifically, Plaintiff responds to Defendant's motion to dismiss as follows:

1.      Admitted.

2.      Admitted.

3.      Defendant admits that the Honorable Judge Paul Gessner placed primary physical custody of the minor child with the Plaintiff on \_\_\_\_\_, 20\_\_\_\_\_ based on an affidavit filed by the estranged wife of  the Defendant's  then boyfriend.

                  a.  The witness \_\_\_\_\_\_\_had spoken to the Defendant on several occasions and never told her that \_\_\_\_\_\_\_\_posed a danger to the child nor that she believed it was possible that Christopher Wilson would physically or sexually abuse the Defendant's minor child.

                  b.   On one occasion \_\_\_\_\_\_even told the Defendant that she (Mary Kay) believed that Chris would never hurt her daughter.

                  c.  On information and belief, \_\_\_\_\_\_\_-never pressed any charges against Christopher Wilson for the alleged sexual abuse of her daughter.

                  d.  \_\_\_\_\_\_\_- never expressed any concerns to the Defendant about the daycare that the minor child (Skylee) was attending.

                  e.  \_\_\_\_\_\_\_ stated that an individual Frank Wi\_\_\_\_son placed the minor child (Skylee) at risk of sexual abuse while she was in daycare.

                  f.  The individual \_\_\_\_\_\_-accused was not living in the daycare residence during the time that the minor child \_\_\_\_\_\_\_\_\_attended said daycare.  To the best of the Defendant's knowledge he was not present in the daycare when the minor child \_\_\_\_\_\_\_\_\_was attending said daycare.

                  g.  The affidavit did not present any evidence that the minor child \_\_\_\_\_\_\_\_had been physically or sexually abused or that the Defendant had ever been made aware that there was any risk posed to the minor child.

                  h.  There was never any allegation that the Defendant was a danger to the minor child.

4.      It is admitted that the parties reached an agreement on \_\_\_\_\_\_\_, 20\_\_\_\_\_.  It is admitted that the Plaintiff was granted primary physical custody of the minor child.  It is admitted that the Defendant had supervised custodial time with the minor child which later became unsupervised.  Except as admitted, the allegations are denied.

5.      It is admitted that the consent order entered into on \_\_\_\_\_\_\_, 20\_\_\_\_ has not been modified.  It is admitted that the Plaintiff has exercised custodial time with the minor child.  Except as admitted, the allegations are denied.

                  a.)        The temporary custody entered into by consent of the parties on \_\_\_\_\_\_\_, 20\_\_\_\_\_ granted Defendant secondary physical custody not visitation.

6.      Denied.

                                    i.)         Plaintiff has used the consent order as a means to alienate the minor child from her mother.  Plaintiff has failed to list the Defendant as the                                          child's mother on the minor child's school records.  Plaintiff has listed  the minor child's stepmother as her mother on school records.

                                    ii.)        On information and belief, based on statements made by the minor child, the Plaintiff has told the minor child that he is working on getting                                        the minor child more time with Defendant, but has led the minor child to believe that Defendant is not being cooperative on this issue.

                                    iii.)        Plaintiff and his family have lied to the minor child about the terms of  the Consent Order using it to confuse and manipulate the minor child                                          into believing that her mother does not want to spend time with her.

                                    iv.)       \_\_\_\_\_\_\_, who supervised the Defendant's custodial time with the minor child, has given her unconditional recommendation that                                                    Defendant be allowed to spend more time with the minor child and that    it was in the minor child's best interests to spend more time with her                                                     mother.

                                    v.)      Plaintiff stated in his deposition that he agreed with the                                                                 recommendations of\_\_\_\_\_\_\_.

                        a.)        This is an issue to be determined by the trier of fact.

                        b.)        The consent order states by its terms that if both parties comply with the terms                           the order, that it would be in the best interests of the minor child of the parties                                  returned to a 50/50 split of custody.

                                    i.)         Defendant has substantially complied with the terms of the consent                                                         order.

                        d.)        Other incidents and actions which will be offered at trial.

7.      Denied.

      a.)        By its own terms the consent order deems that it is in the child's best interests if the                          parties were to return to a shared custody schedule.

      b.)        The circumstances justifying the entry of the consent order no longer exist.  Defendant                has attended counseling.   She has participated in parenting classes and has                                              successfully completed a supervised visitation schedule with\_\_\_\_\_\_\_, a social                              worker chosen by both parties.  Defendant has been successfully exercising                                           unsupervised visitation with the minor child since \_\_\_\_\_\_\_ 20\_\_\_\_.  Defendant has had               no contact with \_\_\_\_\_\_\_\_\_the individual that allegedly posed a danger to the              minor child since \_\_\_\_\_ 20\_\_\_\_\_.  The defendant obtained a domestic violence protective                  order with regards to \_\_\_\_\_and has maintained it.  \_\_\_\_\_\_\_\_\_               called Defendant once since \_\_\_\_\_ 20\_\_\_\_ and the Defendant contacted the police and                            reported that \_\_\_\_\_\_\_\_\_on had violated the restraining order.

      c.)        The minor child has suffered injuries due to neglect while in Plaintiff's care including a                  chipped tooth, a urinary tract infection that went untreated for quite some time because                     Plaintiff did not take the minor child to the doctor.  Plaintiff ignored doctor's advice on                      the treatment of the urinary tract infection and continued to give the minor child bubble                        baths, acidic juices and sodas which led to a recurrence of the same problem.

      d.)        Based on statements made by the minor child she has been punished for asking to                            spend time with her mother.

      e.)        Plaintiff has allowed his mother to state to defendant in front of minor child, "you are                   welcome to come to our house anytime," even though the statement was not true.  This               has caused confusion for the minor child.

      f.)         The Plaintiff has been obsessive about not allowing the minor child to share clothing or               toys between his residence and the Defendant's residence.  Plaintiff has gone so far as                 to send the child for visitation with Defendant in her Halloween costume and clothing                   that is inappropriate for the weather.  The minor child has become paranoid about                               leaving her toys behind at Defendant's residence.

            g.)        The minor child has stated the Plaintiff and his Wife administer corporal punishment to                their minor son who is fourteen months old.

            h.)        Defendant believes that the minor child suffers from severe anxiety as a result of this                   situation.  The minor child has been told that her mother is not allowed to leave her                                    alone.  While the minor child is in her mother's custody and the child becomes                                   extremely distraught when her mother is not in the same room that she is.

            i.)         Upon information and belief, the Plaintiff has questioned the minor child to gather                                   information he believes will be useful to his claim for custody.

            j.)         Other information and actions to be presented at trial.

8.      Deny.  Defendant moves to strike the allegation in this paragraph regarding a finding by the court that the court issued an Emergency Custody Order due to a substantial risk of physical injury or sexual abuse to the minor child while in the Defendant's custody on the grounds that it is scandalous.  The court never made any findings of fact with regards to this issue.

9.      Deny.  Defendant provided two payments to Plaintiff in the amount of $\_\_\_ on \_\_\_\_\_ 20\_\_\_\_ and November 20\_\_\_\_.  The Defendant has provided all financial support for the minor child while she was in the Defendant's care including food, clothing, housing and living expenses and entertainment expenses.

10.  Defendant admits that the Plaintiff provided financially for the minor child's daycare, food, clothing, medical, housing and living expenses.  Defendant denies Plaintiff has provided financially for the minor child's daycare, food, clothing, medical, housing and living expenses with no contribution from the Defendant.

11.  Deny.  This court entered this order on \_\_\_\_, 20\_\_\_\_, Defendant paid child support in the amount of $606.45 to Plaintiff in \_\_\_\_\_, 20\_\_\_\_\_. Defendant made two child support payments to Plaintiff in the amount of $\_\_\_\_\_\_ on\_\_\_\_\_\_\_, 20\_\_\_\_\_.

12.  Deny.  Defendant moves to strike the allegation that she is withholding child support because of her emotional feelings about the Consent Order on the grounds that it is irrelevant, immaterial and scandalous.  Defendant is not withholding child support, Defendant has paid child support as the funds have become available to her and late payments are indicative of her inability to pay.

13.  Deny.  Defendant moves to strike the allegations in this paragraph on the grounds that they are redundant, irrelevant, immaterial, impertinent and scandalous.

14.  Defendant admits the minor child has been residing primarily with Plaintiff.  Defendant admits she had a supervised custodial time with the minor child which later became unsupervised custodial time with the minor child.

15.  Admit.

16.  Admit.

17.  Defendant denies that the familial relationship in the Plaintiff's house is in the best interests of the minor child.  Defendant denies the minor child has a caring and loving relationship with Plaintiff's wife Emily.  Defendant has insufficient knowledge to admit or deny whether the minor child is provided a stable and loving environment while in the custody of the Plaintiff.  Defendant has some concerns that the minor child is constantly manipulated while in the custody of the Plaintiff and his family.  All other allegations in this paragraph to the extent that they may require a response are denied.

18.  Denied.  The minor child is suffering from severe anxiety.

19.  Defendant admits the minor child was placed with Plaintiff eighteen months ago but denies that the minor child's health, welfare, wellbeing and stability have increased dramatically.  The minor child has suffered from chronic urinary tract infections and Plaintiff has ignored the doctor's recommendations on how to prevent them.  The minor child has developed severe anxiety.   The Plaintiff has moved several times, the birth Plaintiff's son has caused a change in the minor child's home situation and the minor child has missed well baby check up appointments.

20.  Denied.

21.  Denied.

22.  Denied.  Defendant moves to strike this paragraph on the grounds that it is scandalous.  In support of her motion Defendant shows the court the following; Plaintiff has admitted in his own deposition that the allegations in this paragraph are not true.

23.  Denied.  Defendant believes a joint custody arrangement would best meet the needs of the minor child.

24.  Denied.

25.  Denied.  In response to this allegations defendant incorporates her responses to paragraphs one through twenty four.

26.  Denied.

            Under the North Carolina Rule of Civil Procedure Rule 12 (f) a party may move to strike statements in pleadings no more than thirty days after service of the pleading.  A judge may order stricken for any pleading any statement that is redundant, irrelevant, immaterial, impertinent, or scandalous.

            **Whereby the Defendant prays the court for the following relief:**

            1.  Deny Plaintiff's motions to dismiss Defendant's motion to review.

            2.  Grant Defendant's motion to strike the requested paragraphs.

            3.  Grant Defendant attorney's associated with the cost and preparation of this motion.

            4.  Such other relief as the court shall deem just and proper.

**Defendant's Motion to Strike Plaintiff's Response to Defendant's Motion for Review**

**NOW COMES** the Defendant, by and through counsel responding to Plaintiff's Response to Defendant's Motion for review and hereby moves the court to strike the Plaintiff's response to the Defendant's Motion to Review on the grounds that it was not timely filed

            1.  Defendant's Motion for Review was served on Counsel for the Plaintiff on August 3, 2004 and was filed with the court on \_\_\_\_\_\_\_, 20\_\_\_\_ a copy of which is labeled Exhibit A and is hereby attached and incorporated by reference.

            2.  This matter was originally set for hearing on \_\_\_\_\_\_, 20\_\_\_\_.  This hearing was properly noticed to counsel for the Defendant on \_\_\_\_\_\_, 20\_\_\_\_\_. Counsel for Defendant and Counsel for Plaintiff were present in court on this hearing date and the case was not reached.  A copy of the Notice of Hearing and Calendar Request which are labels Exhibits D and E are hereby attached and incorporated by reference.

            3.  Counsel for the Plaintiff filed his response to Defendant's Motion for Review on January 5, 2005.

            4.  North Carolina Rule of Civil Procedure 12 (a)(1)(a) requires that a responsive pleading be served within twenty days after notice of the court's action in ruling on the motion or postponing its deposition until a trial on the merits.

            5.  The case of North American Acceptance Corporation v. Samuels  11 N.C. App. 504, held that the rules which require responsive pleadings within a limited time serve important social goals, and a party should not be permitted to flout them with impunity.

            Whereby the Defendant prays the court for the following relief:

            1.  Strike the Plaintiff's response to Defendant's motion for review.

            2.  Deem all allegations in the Defendant's motion for review admitted.

            3.  Award Defendant attorney's fees associated with the response to this motion.

            4.  Grant the Defendant such other relief as the court shall deem just and proper.

**Defendant's Response to Plaintiff's Motion to Maintain the Status Quo**

            1.  Defendant hereby incorporates by reference her responses to Plaintiff's Motion to Dismiss and her original motion for review.

            2.  Deny.  Emergency custody was placed with the Plaintiff on the basis of an alleged risk of substantial risk of bodily injury or sexual abuse to the minor child.  The court made no findings of fact on this issue.

            3.  Defendant admits the parties entered into a separation agreement and Plaintiff was primary physical custody.  Defendant was granted secondary physical custody.

            4.  Deny.  Defendant was not adequately informed by her previous counsel as to the effects of said consent order.

            5.  Admit.

            6.  Deny.  Defendant denies the provisions in the consent order are currently in the child's best interests.

            7.  Deny.  Defendant admits it is in the minor child's best interest not to have any contact with Christopher Wilson, the defendant is without sufficient knowledge to admit or deny this allegation as to the other members of Christopher Wilson's family.

            8.  Deny.

            9.  Deny.  The current custody schedule has caused a great deal of confusion and anxiety for the minor child.  The Defendant believes Plaintiff and his family have used the current custodial situation to alienate the minor child from them.

            10.  Deny.

            11.    Deny.  The current custody schedule has caused a great deal of confusion and anxiety for the minor child.   Defendant moves to strike the last sentence in paragraph 11 on the grounds that it is scandalous.

            12.  Deny.

            13.  Deny.

            14.  Deny.  The Defendant resides in her parent's home with her parents and her sister.  The minor child has her own room.

            15.  Deny.

            16.  This allegations contains no statements of facts and therefore Defendant cannot admit or deny these allegations, to the extent they may require a response they are denied.

            17.  Deny.

**WHEREFORE** the Defendant prays the court for the following relief,

      1.  Deny Plaintiff's motion to maintain the status quo.

      2.  Grant the Defendant custody of the minor child.

      3.  Grant such other relief as the court shall deem just and proper.

This is \_\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Rosen Divorce

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_

Attorney for the Defendant

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(919) 787-6668

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this document has been served by depositing a copy in the US Mail in a properly addressed, postpaid envelope to:

            \_\_\_\_\_\_\_\_\_

            Haas & Parker

            801 Oberlin Road

            Suite 250

            Raleigh, NC  27605

This is the \_\_\_\_\_  day of \_\_\_\_\_\_ 20\_\_\_\_\_.

Rosen Divorce

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_

Attorney for the Defendant

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