

CASE NO. FV08-03200 **TITLE: ALEXANDER M. FALCONI VS. [REDACTED] A. [REDACTED]****DATE, JUDGE
OFFICERS OF
COURT
PRESENT****APPEARANCES - HEARING**

JULY 25, 2013

**HONORABLE
CHUCK
WELLER****DEPT. 11
COURTROOM 2****J. MCKAY
Court Clerk****CD RECORD****BAILIFF
MIKE NEVILLE****Page 1 of 3****COMPLETED BY:
J. MCKAY****ORDER TO SHOW CAUSE**

Plaintiff ALEXANDER FALCONI was present without counsel, representing himself. Defendant [REDACTED] was present with counsel KATHERINE BERNING, ESQ., representing her.

The Court noted two additional motions were filed on May 28, 2013 and June 19, 2013 since the issuance of this Order to Show Cause and is not the Court's present intention to schedule subsequent hearings for those motions, therefore, all issues or evidence presented in the motions shall be heard today.

Father: stated mother has not complied with the Order filed February 8, 2013 by failing to have the homework packet travel with the minor child. More often than not, Mother failed to transmit the homework packet. Anytime Mother forgot to bring the homework packet, he would offer suggestions on how she could avoid violating the Court's order. Mother violated the Order on March 28th when she told him she would provide him with the homework packet, but did not do so. Additional violations wherein Mother failed to provide Father the homework packet occurred on May 1st, May 8th and an unidentified date. Mother left the state for four (4) days and took the child out of school, so it was possible she didn't receive the homework packet for that instance, which could be an excusable violation. There have been approximately six (6) violations over the course of 8-10 weeks.

Atty. Berning questioned Mother, on direct: Mother stated the first time she forgot the homework; she e-mailed him immediately in which she offered to scan it for him. Father suggested she drop it off at his work or home, which she is not comfortable doing. Father sent her derogatory e-mails and she was already stressed about talking to Father even before he responded. Father informed her he couldn't print the homework out if she scanned it, so she did not send it. The other times the homework was not delivered to Father were due to her friend facilitating the exchanges and her not knowing the homework was left in her friends' car. She was out of state for a family wedding and sent Father a letter in the mail with the dates as well as notified the school. The minor child did not have any homework that needed to be exchanged during the four days he was out of state with her. The child's teacher has offered to give the homework to the parties separately during their custodial days, but Father does not want to do that. The parties' minor child attended school every day with the exception of a couple of days. She had no intent in failing to provide Father with the homework as it was accidental and not her intention to deliberately forget. She e-mailed Father when she would forget the homework, but every time she contacted him, he was rude and argumentative.

Mother: she was waiting for Father to get supplemental insurance so they could afford the child's dental work. Father never got the insurance and then filed a motion stating she wasn't acting quickly enough. Father sent her an e-mail telling her to make an appointment as soon as possible, so she did, and both parties' attended the appointment.

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Her insurance informed her they would cover the cost for the child's dental work, so she scheduled a surgical date and notified Father; however, she received a call from the dentistry office two days prior to the surgery indicating she needed to have an immediate meeting with the surgeon, which was too short of notice to give to Father. The pre-opt meeting was canceled because her insurance stated they would not cover the surgery and the parties are now working with a different dentistry.

Atty. Berning presented her closing argument

Mother: she told the third party in advance that it was important to deliver the homework packet to Father and no longer utilizes them to facilitate exchanges after they repeatedly failed to deliver the homework packet.

Father: does not prefer to file motions when Mother violates the Order and is fine if Mother has to send him the homework packet in an alternative method. Denied telling Mother not to scan him the homework packet, but asked that she send it to him before 5:00 p.m. so he could print it off at work, as he doesn't have a printer at home. The Court ruled in a prior hearing that the school should not become involved unless absolutely necessary, which is why he didn't feel it was appropriate to utilize the teacher's suggestion regarding the homework packet; however, he would have complied if there had been no other alternative. Mother violated the Order by not giving him 14 days notice; however, he understands it was an emergency basis which he preferred had been scheduled immediately. Although Mother complied with the Order by notifying him via e-mail, he would have preferred she contacted him via telephone to give him immediate notice. He requests the Court modify the Order to allow telephonic communication in the event of a medical emergency going forward. He believes the parties can come to an agreeable amount regarding the dental, medical and vision expenses; however, he and the parties' minor child were recently added to his wife's insurance and he would request the matter wait until the deviations are calculated.

At the present time, the Court is inclined to deny Father's motion filed on May 28, 2013 based upon willful unemployment.

Father: stated he has provided his education transcripts as well as the number of credits he's obtained. He has attached evidence that he is enrolled in school and by earning a degree, it will improve his income and is in the best interest of the child. He is working extra hours and is trying to work thirty (30) hours a week while attending school this upcoming semester. Upon receiving his degree and obtaining a better income, he is aware it would change the child support obligation, which is fine by him. He is not looking to get out of child support by proceeding with his education. He is unable to receive a higher income without a bachelor's degree in the engineering field. Mother indicated reduction hours in her financial declaration and is unsure whether that will persist as it is a factor with his financial declaration.

The Court requested to review the e-mail correspondence between the parties. The parties were sworn and reaffirmed their prior testimony to be true and accurate. The Court read Exhibit 4 attached to the Opposition to Motion for Order to Show Cause filed on May 6, 2013 out loud in open Court.

Mother: she likely didn't read Father's last response in the e-mail correspondence and

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didn't believe he wanted her to send him the homework packet based on his responses. She apologizes for not complying with transferring the homework packet to Father and stated she attempted to fix the situation.

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The Court informed Mother she needs to comply with the Orders and her testimony explaining the reason for her violations is unacceptable.

**J. MCKAY
Court Clerk**

Atty. Berning: Father had some discrepancies in his financial declaration and would ask the Court deny his motion regarding child support.

CD RECORD

Father: requests that the Court take his request for child support modification under submission before making a ruling.

**BAILIFF
MIKE NEVILLE**

*The Court took a brief recess to assess the matter.
The Court reconvened (14:30 javs)*

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Father agrees his second motion for order to show cause covers the same issues and doesn't need to be ruled on separately other than the request for an alternative contact.

Atty. Berning made a closing argument wherein she asked the Court sanction Mother to community service or in the alternative, jail time, as Mother is unable to meet the financial wherewithal.

COURT ORDERED:

Father's Motion filed on April 22, 2013 is GRANTED. Mother is found in contempt for failure to comply with the Court's orders. Mother is sentenced to twenty four (24) hours in the Washoe County Jail. The sentence is suspended in full on the condition that Mother complies with the Court's Order going forward. Father's Motion to Modify Child Support filed on May 28, 2013 shall be taken under advisement. Father's Motion filed on June 19, 2013 is DENIED in part. In the event of an emergency regarding the minor child, Mother is to notify Father via text message only. In the event of an emergency regarding the minor child, Father is to notify Mother through third party, Robbie, only.