

IN THE CIRCUIT COURT OF RIPLEY COUNTY, MISSOURI

In the Marriage of:)	
)	
CHARLES M. HAYNES,)	
Petitioner)	Cause No. 13RI-CV00554
)	
v.)	
)	
CYNTHIA K. HAYNES)	
Respondent)	
)	
BERNICE HAYNES)	
Intervenor)	

PETITIONER’S RESPONSE TO CYNTHIA HAYNES’ RENEWED MOTION FOR PARTIAL SUMMARY JUDGMENT & MEMORANDUM OF LAW IN SUPPORT

COMES NOW, Petitioner, by and through Counsel, and states for his Response to Cynthia Haynes’ Renewed Motion for Partial Summary Judgment & Memorandum of Law in Support as follows:

FACTS

Petitioner incorporates in its entirety his Sworn Response to Respondent’s Statement of Material Uncontroverted Facts. Petitioner objects to Respondent/Wife’s Exhibit 5 to the extent objections were raised at the time of the deposition and based on Respondent’s violation of the Court’s Protective Order in filing the same, to Respondent/Wife’s Exhibit 11 as hearsay, and to Exhibit 12 as hearsay.

LEGAL ANALYSIS

I. The Court Must Award Sole Legal and Physical Custody of the Parties’ Minor Child to WIFE/MOTHER pursuant to Missouri law which prohibits award of custody and visitation to a felon convicted under RSMO 566.064.

A. Father is not entitled to custody as a matter of law.

Petitioner admits he cannot be awarded custody or unsupervised visitation with the minor child; however, Respondent incorrectly states that (presumably) RSMo §452.400.1(2)(a)a [Cited as RSMO §452.400(2)(a)a] prohibits Petitioner from supervised visitation. The statutory cannons of *In pari materia* and *Noscitur a sociis* are particularly instructive in this respect. Pursuant to §452.375¹, the Court may award supervised visitation to a parent who has been convicted or pled guilty to an offense under §566.064. Additionally, §452.400.2(2)(a)a also allows for supervised visitation when a parent has been convicted or pled guilty to the §566.064 in a modification proceeding. Respondent appears to argue; however, that the legislature intended to not only enter contradictory statutes in §452.375 and §452.400.1(2)(a)a, but also allow supervised visitation in a modification proceeding to the same individual who is purportedly restricted from any visitation in an initial proceeding. To resolve the potential inconsistency in these statutes, the only interpretation that does not result in an absurdity is that the prohibition of an award of visitation does not include the prohibition of an award of *supervised* visitation. Therefore, a genuine issue of fact and law exists as it relates to an award of supervised visitation to Petitioner.

B. Father's former claims to custody and visitation are moot based on Father's recent admissions and sworn testimony.

Respondent is requesting supervised phone contact with the minor child which Petitioner opposes; therefore, a genuine issue of fact exists as it relates to an award of supervised visitation to Petitioner. Petitioner further reiterates his arguments set forth in subparagraph A above.

¹ All statutory references are to Revised Statutes of Missouri (RSMo)

Additionally, Respondent seems to argue that solely by virtue of Petitioner's conviction under §566.064 he is prohibited from supervised visitation; however, Respondent made the same argument in her original Motion for Summary Judgment which was previously denied.

II. Affirmative Defense

1. Respondent continues to rely on a refusal to read RSMO §452.400 in its totality, as well as in light of RSMO §452.375. Respondent is requesting supervised phone contact with the minor child which Petitioner opposes, therefore a genuine issue of fact exists as it relates to an award of supervised visitation to Petitioner.
2. Additionally, Respondent fails to acknowledge that, absent an agreement of the parties regarding custody and visitation/supervised visitation, the Court must make its determination as to the best interests of the child "based upon the current situation of the parties" Courtney v. Courtney, 458 S.W.3d 462 (Mo. App. 2015), which must be determined at or shortly after the time of trial. Therefore, a genuine issue of fact exists as it relates to an award of supervised visitation to Petitioner.
3. Petitioner has incurred attorney's fees of \$1,500 in reviewing and responding to Respondent's lengthy and frivolous Motion, particularly in light of the Court's denial of Respondent's previous Motion for Partial Summary Judgment, and requests the Court award him his reasonable attorney's fees incurred in response thereto.

WHEREFORE, having fully Answered Cynthia Haynes' Renewed Motion for Partial Summary Judgment & Memorandum of Law in Support, Petitioner requests the Court deny Respondent's Motion and proceed with the trial set on this matter, for an order that Respondent pay Petitioner's reasonable attorney's fees incurred in reviewing and

responding to this Motion, and for such other and further orders this Court deems just and proper in the circumstances.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was sent in accordance with Rule 55.03 and Rule 103.08 of the Missouri Rules of Civil Procedure, through the electronic filing system of the State of Missouri on this 8th day of December, 2021, to all parties and counsel of record. Further, an electronic copy has been sent via Email to Counsel for Petitioner in Word format at evitatolu@outlook.com.

/s/ William J. Halaz, III