

Appendices

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Appendix A:
Custody Petition

VIRGINIA:

IN THE JUVENILE AND DOMESTIC RELATIONS
DISTRICT COURT OF [COUNTY]

IN RE: [child]

A Minor Child Under 18 Years of Age

HEARING DATE

DOB: [date]

DOCKET NO. JJ

PETITION FOR SOLE LEGAL AND PHYSICAL CUSTODY

COMES NOW the Petitioner, [mother], by Counsel and moves this Court for an entry of an Order granting her sole legal and physical custody, and in support thereof states to the Court as follows:

1. That [child] (hereinafter referred to as “the minor child”) was born on [date] in [location].
2. That the minor child’s parents are [mother] (hereinafter referred to as “mother” or “Petitioner”) and [father] (hereinafter referred to as “father”).
3. That the minor child is a child whose custody needs determination pursuant to Virginia Code [cite relevant sections from § 16.1-241[A] [1][2] and/or [3]] 1950 Edition, as amended. He has been residing within the venue of this Court in [county] since [date]. He currently resides with the Petitioner at [address].
4. That the Petitioner, of [address], in [county], Virginia, and the jurisdiction and venue of this court, has had the child in her home since [date]. The child has been in her care since that time. She is a person having a legitimate interest in this proceeding and is the [mother or other term descriptive of the relationship] of the child.
5. [summary of facts of the abuse, abandonment, or neglect- with references to affidavits or other submitted evidence]

6. [references to the best interest factors applicable to the facts of abuse, abandonment, or neglect]

7. That the Petitioner is willing to assume sole legal and physical custody of the minor child and provide a home for him. She has the ability to provide a stable life for the minor child. [description of equities in favor of a grant of custody]

8. That in the care of the Petitioner, the minor child has been thriving and is being well-cared for. [any positive facts which support this assertion- such as performance in school]

9. That reunification with the minor child's father is not viable due to his [abuse/abandonment/neglect] and demonstrated unwillingness to care for the minor child.

10. That legal notice has been given to all proper and necessary parties; and that all provisions of the Juvenile and Domestic Relations District Court law have been duly complied with in assuming jurisdiction over the child; and that the child is within the jurisdiction of this Court; and all determinations have been made in accordance with the standards set forth in Virginia Code § 16.1-278.4, § 16.1-278-5, § 16.1-278.6 or 278.8 or 278.15 and §§ 20-124.1 through 20-124.6.

11. That this court has the authority to make factual findings required by state or federal law to enable a child to apply for or receive a state or federal benefit, pursuant to Virginia Code § 16.1-241(A1).

12. That in consideration of the best interest factors contained in Virginia Code § 20-124.3 it is in the best interests of the minor child that the Petitioner be granted sole legal and physical custody of the minor child.

WHEREFORE, the Petitioner prays that the Court award her the following relief:

a. Award her sole legal and physical custody of the minor child; and

- b. Award such other relief as the nature of this cause requires and the court deems necessary and proper.

A Proposed Order is attached as Exhibit 3.

Respectfully submitted,

[Signature Block]

Exhibit List

Exhibit 1: Birth Certificate of Minor Child with certified English translation

Exhibit 2: Affidavit of Petitioner

Exhibit 3: Proposed Order for Custody

Appendix B:
Proposed Custody Order

VIRGINIA:

IN THE JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT
IN [COUNTY]

IN RE: [child]
A Minor Child Under 18 Years of Age

HEARING DATE

DOB: [date]

DOCKET NO.

ORDER

This matter came before the Court upon the Petition for Sole Legal and Physical Custody of the above-named minor child filed by [Petitioner] by Counsel. Upon consideration of the pleadings and such other evidence as may be before this Court and the best interests of the child, the Court doth therefore FIND

1. That [child] (hereinafter referred to as “the minor child”) was born on [date] in [country]. The minor child’s parents are [mother] (hereinafter referred to as “mother” or “Petitioner”) and [father] (hereinafter referred to as “father”).

2. That the minor child is a child whose custody needs determination pursuant to Virginia Code §16.1-241[A][2] and [3], 1950 Edition, as amended. This court has jurisdiction to make an initial custody determination pursuant to Virginia Code § 20-146.12[A][1], 1950 Edition as amended, because the child has been residing in Virginia continuously since May 2018, a period of more than six months prior to the commencement of this proceeding. Further, this court has jurisdiction to make specific findings of fact required by state or federal law to enable a child to apply for or receive a state or federal benefit pursuant to Virginia Code § 16.1-241(A1).

3. That the minor child currently resides with the Petitioner, his mother, at [address].

4. That reunification with the minor child's father is not viable due to his [abuse/abandonment/neglect] of the minor child. [insert recitation of facts regarding abuse, abandonment and/or neglect] There has been no "relationship existing between" the father and the child, the father has not played a role in the child's upbringing and care, and has demonstrated his lack of desire "to maintain a close and continuing relationship with the child." Virginia Code § 20-124.3(3), (5), and (7). [cite to relevant best interest factors found in Virginia Code relevant to your case]

5. In consideration of Virginia Code § 20-124.3, that it is in the minor child's best interest to be placed in the custody of the Petitioner, in Virginia. That it would not be in the minor child's best interest to return to [country], as he does not have a suitable caretaker in that country. [insert facts to support this assertion, such as inadequate services to meet health or educational needs of child or risk factors faced by child in home country] Rather, it is in the minor child's best interests to remain with the Petitioner in Virginia.

6. That legal notice has been given to all proper and necessary parties; and that all provisions of the Juvenile and Domestic Relations District Court law have been duly complied with in assuming jurisdiction over the child; and that the child is within the jurisdiction of this Court; and all determinations have been made in accordance with the standards set forth in Virginia Code § 16.1-241(A1), § 16.1-278.4, § 16.1-278.5, § 16.1-278.6, § 16.1-278.8, or § 16.1-278.15, and §§ 20-124.1 through 20-124.6. The father was served via [insert description of service accomplished].

7. The basis for the decision determining custody or visitation has been communicated to the parties orally or in writing. It is therefore

ADJUDGED, ORDERED and DECREED that the Petitioner, [mother], shall be appointed as the sole legal and physical custodian of [child] with full authority to act on behalf of and make decisions concerning the minor child. It is further

ORDERED that each party intending a change of address shall give 30 days' advance written notice of such change of address to the Court and other parties, pursuant to Virginia Code § 20-124.5. Unless otherwise provided in this Order, this notice shall contain the child's full name, the case number of this case, the party's new telephone number and new street address and if different, the party's new mailing address. Unless otherwise provided in this Order, the notice shall be mailed by first class or delivered to this Court and to the other party. Further, the Clerk of this Court shall forward three attested copies of this Order to Counsel of Record.

ENTERED this _____ day of _____ 2019.

JUDGE

I ASK FOR THIS:

[Signature block]
Attorney for Petitioner

Appendix C:
Motion for an Amended Order

COMMONWEALTH OF VIRGINIA

IN THE JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT
FOR THE COUNTY OF ALBEMARLE

In Re:)
)
) Case No.
DOB:)
)
)
)

MOTION FOR AN AMENDED ORDER

The Petitioner, NAME, by undersigned counsel, respectfully moves this Court for an amended order, a copy of which is attached hereto, and in support of this motion states as follows:

1. On DATE, Petitioner, appeared before the Court for a hearing on his petitions for custody of, CHILD, who was present as well. Also present was the CHILD’S guardian *ad litem*, (“GAL”).

2. Ancillary to the petitions for custody and visitation, Petitioner, requested that the Court make a set of factual findings in furtherance of CHILD’S best interests pursuant to Virginia Code § 20-124.3.

3. Under of the Immigration and Nationality Act, a minor child may petition the federal immigration authorities for “Special Immigrant Juvenile” Status,” or “SIJ Status,” if a state court with jurisdiction over the custody and care of children enters factual findings holding that, among other things, the child has been abused, abandoned, or neglected by at least one parent. *See* 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11 (as amended by the Trafficking Victims Protection Reauthorization Act (“TVPRA”) of 2008, Public Law 110-457).

4. While the Court ordered that CHILD be placed in the sole legal and physical custody of the Petitioner, the Court declined to make any of the requested factual findings finding that it lacked jurisdiction to make the requested findings citing *Canales v. Torres Orellana*. No. 1073-16-4, 2017 Va. App. LEXIS 153, at *22 (Va. Ct. App. June 20, 2017) (citing 8 U.S.C. 1101(a)(27)(J)(ii)). **OR** While the Court ordered that CHILD be placed in the sole legal and physical custody of the Petitioner, and the Court made most of the requested factual findings, the Court declined find that it is not in the CHILD's best interest to return to COUNTRY. factual basis for the requested findings and does not specifically cite to the Virginia laws under which the factual findings were made.

5. In Virginia, when determining whether a custody order should be modified, the court must apply the two-pronged *Keel v. Keel* test: "(1) whether there has been a material change in circumstances since the most recent custody award; and (2) whether a change in custody would be in the best interests of the child." 303 S.E.2d 917, 921 (Va. Ct. App. 2005)

6. In the 2019 session, the Virginia General Assembly passed S.B. 1758 signed by the Governor that specifically establishes Virginia J&DR District Courts' jurisdiction to "over all cases, matters and proceedings involving...making specific findings of fact required by state or federal law to enable a child to apply for or receive a state or federal benefit." Va. Code § 16.1-241(1) (A1) (effective July 1, 2019).

7. This legislative amendment overrules the *Canales* decision and thus represents a substantive and significant change and provides a sufficient justification for an amended order. *See Slonka v. Pennline*, 440 S.E.2d 423, 424 (Va. App. 1994) (holding that a substantive change to the statutory support guideline scheme, when combined with an earlier child support award

which varies significantly from the presumptively correct guideline amount, provides sufficient justification for a modification hearing).

8. Therefore, Petitioner, respectfully moves this court to amend the order dated DATE to include the following findings of fact: [LIST]. Amending the order to include these specific findings of fact will enable CHILD to apply for SIJ status and in turn further CHILD's best interests. [ADD FACTS AND CONNECT TO § 20-124.3 FACTORS] WHEREFORE, Petitioner, NAME, through undersigned counsel, respectfully requests that this Court amend the orders entered on DATE to include the specified findings of fact because it will enable CHILD to apply for a significant federal benefit and further CHILD's best interest. A proposed order is attached.

Petitioner, NAME

By Counsel

[SIGNATURE BLOCK]

CERTIFICATE OF SERVICE

I certify that on this DATE, I mailed by regular mail a copy of the foregoing MOTION
FOR AN AMENDED ORDER to:

GAL & RESPONDENT

[SIGNATURE BLOCK]