

*SR*  
*J.C. Stephenson*

IN THE SUPERIOR COURT OF COBB COUNTY

Jay C. Stephenson  
Clerk of Superior Court Cobb County

STATE OF GEORGIA

RAYMOND VIRGIN,

Plaintiff,

v.

GAIL VIRGIN,

Defendant,

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CIVIL ACTION  
FILE NO. 05-1-4796-99

**ORDER FOR CHANGE OF CUSTODY**

The above styled matter having come before this Court on a regularly scheduled calendar, having been reset from the July 21, 2005 calendar per the Court having granted Defendant's request for a continence in order for her to hire counsel. The parties appeared, and the case was tried. Plaintiff was represented by his counsel and Defendant appeared pro se.

The parties were divorced on May 29, 2002 in Fulton County , Georgia where a Final Judgment and Degree was entered by Judge Melvin Westmoreland. Defendant received primary physical custody of the parties minor children; to wit: Desirey Virgin born May 8, 1989 and Julien Virgin born, July 27, 1994. Since October 26, 2004, Plaintiff has had temporary custody of the minor children pursuant to a Family Violence Twelve Month Protective Order entered by Judge Joan Vaughan Bloom sitting by designation on the Cobb County Superior Court pursuant to O.C.G.A. §15-1-9.1.

On June 6, 2005 Plaintiff filed for a permanent change of custody. In his Complaint For Change of Custody, Plaintiff included the Affidavit of his daughter Desirey Virgin in

accordance with O.C.G.A. § 19-9-1 (a)(3) stating that she wished to live with her father on a permanent basis.

The issue before this Court was whether to grant the relief requested by Plaintiff, and if so how much child support to award for the care and maintenance of the minor children.

After a brief opening statement Plaintiff testified that he had temporary custody of his two minor children; to wit:, Desirey Virgin born May 8, 1989 and Julien Virgin born, July 27, 1994 since October 20, 2004 and wanted permanent custody of the minor children. He testified that he was fully capable of taking care of the children and would provide a proper home for them. The Court spoke with Desirey Virgin in chambers and was convinced that she wanted to live with her father. The Court explained to the Defendant that absent a showing that Plaintiff was an unfit parent he must grant Plaintiff custody of both minor children, as he would not separate the children from each other and that the desires of a child age 14 or older were controlling with regard to where the child wanted to live and the Court must follow the child's wishes.

Defendant was then called to the witness stand and testified that she was employed in the mortgage industry and that her income was approximately \$35,000.00 per year.

Therefore the Court finds as follows:

That Plaintiff will be awarded permanent primary physical custody as defined by O.C.G.A. § 19-9-6 (4), of the minor children of the parties; Desirey Virgin age 16 and Julien Virgin age 11,. The parties shall have joint legal custody of the minor children as defined by O.C.G.A. § 19-9-6(2).

Defendant shall pay to Plaintiff the sum of \$642.00 per month as child support

for the support and maintenance of the minor children, commencing on the **first day of August 2005** and payable on the first day of each month thereafter. Notwithstanding the foregoing, said child support obligation for the minor children shall continue each month thereafter until such time as the last of the parties' two children attains the age of eighteen (18), graduates high school, dies or becomes emancipated, whichever event shall first occur, except that if said child should attain the age of eighteen (18) prior to completion of high school, said obligation shall continue until said child completes high school or attains the age of Twenty (20), whichever shall first occur.

Child support payments are based upon the Child Support Guidelines, as defined in O.C.G.A. §19-6-15(B)(5) as follows:

Defendant's gross monthly income is \$2,917.00 per month. Child support is being determined for two (2) children. The applicable percentage of gross income to be considered is:

<u>Number of Child</u>	<u>Percentage Range of Gross Income</u>
1	17 percent to 23 percent
2	23 percent to 28 percent
3	25 percent to 32 percent
4	29 percent to 35 percent
5 or more	31 percent to 37 percent

Thus twenty percent (22%) of \$2,917.00 is \$642.00.

There are special circumstances existing that warrant a deviation from the Child Support Guidelines and are marked with an "X" as indicated below:

- 1. Ages of the children.
- 2. A. child's extraordinary medical costs or needs in addition to the accident

and sickness insurance, provided that all such costs or needs shall be considered if no insurance is available.

- 3. Educational costs.
- 4. Day-care costs.
- 5. Shared physical custody arrangements, including extended visitation.
- 6. A party's other support obligations to another household.
- 7. Income that should be imputed to a party because of suppression of income.
- 8. In-kind income for the self-employed, such as reimbursed meals or a company car.
- 9. Other support a party is provide or will be providing, such as payment of a mortgage.
- 10. A party's own extraordinary needs, such as medical expenses.
- 11. Extreme economic circumstances including but not limited to:
  - (A) Unusually high debt structured; or
  - (B) Unusually high income of the custodial parent which shall be construed as individual gross income of over \$75,000.00 per annum.
- 12. Historical spending in the family for children which varies significantly from the percentage table.
- 13. Consideration of economic cost-of-living factors of the community of each party, as determined by the trier of fact.
- 14. In-kind contributions of either parent.
- 15. The income of the custodial parent.
- 16. The cost of accident and sickness insurance coverage for dependent

children included in the order.

- \_\_\_ 17. Extraordinary travel expense to exercise visitation or shared physical custody.
- \_\_\_ 18. Any other factor that the trier of fact deems to be required by the ends of justice, as described below.

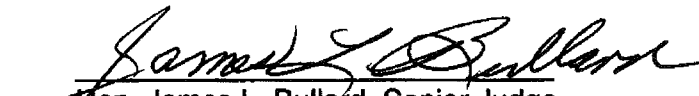
Plaintiff does hereby waive his right to the immediate withholding of support from Defendant's wages pursuant to O.C.G.A. § 19-6-32 (a), as Defendant shall make child support payments directly to Plaintiff.

The Court finds that Plaintiff has an arrearage in child support in the amount of \$15,712.48. Plaintiff shall receive credit for child support for the months of October, November and December 2004 and January, February, March, April, May, June and July 2005 in the amount of \$500.00 per month for a total credit of \$5,000.00. Therefore Plaintiff's child support arrearage is \$10,712.48. Plaintiff shall pay his arrearage to Defendant in the amount of \$300.00 per month commencing on August 1, 2005.

The Court further finds that Defendant will continue to provide and maintain in full force and effect for the benefit of the minor children, medical and hospitalization insurance whether provided through her employer or on her own, and that the parties will each pay one-half (½) of any and all uncovered expenses or co-payments for medical, dental, orthodontic, psychological, optical or therapeutic expenses for the Children.

Defendant shall have visitation with the minor children upon the desires of their daughter, so long as it does not interfere with any plans or activities that Plaintiff has planned for the minor children.

So Ordered this 3<sup>rd</sup> day of August 2005.

  
Hon. James L. Bullard, Senior Judge  
Cobb Judicial Circuit

Prepared by:



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