

**STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER**

**IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO.: 14 CVD 2934**

**ROBERT BENSON,
Plaintiff,**

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**MOTION TO BE HEARD REGARDING
THE CUSTODY HEARING
HELD FEBURARY 17, 2015**

vs.

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)

**ERICA FESTER,
Defendant.**

NOW COMES, the Plaintiff moves this Court for Order to be heard and hereby states and alleges as follows:

1. The Plaintiff is a citizen and resident of New Hanover County, North Carolina and has been for six (6) months next preceding the filing of this action.
2. The Defendant is a citizen and resident of New Hanover County, North Carolina and has been for six (6) months next preceding the filing of this action.
3. The Plaintiff and Defendant were married on or about May 30, 2001 and remained together until August 15, 2014, and of their marriage, one child was born, to wit: Benjamin A. Benson, born April 17, 2006.
4. The Plaintiff filed a claim for Divorce from Bed and Board, Post-Separation Support, Temporary Child Custody and Child Support that was put aside temporarily by Plaintiff on October 14, 2014.
5. The Defendant filed a counterclaim for Divorce from Bed and Board, Temporary Custody and Child Support that also was withdrawn on October 14, 2014.
6. The Defendant has in the past physically assaulted the Plaintiff and has done so in the past in front of the minor child.
7. The Plaintiff as of November had no prior annual income but has attempted to work and was dismissed due to his ruptured Achilles Tendon, the plaintiff has made approximately \$2,000 over the past year to date. Much less than the court stated in October 2014.
8. To avoid controversy over the custody of the minor child, it is in the best interests of the parties that the parties obey the Judge's Temporary Custody Order. The Defendant did not and the Plaintiff filed a Emergency Custody Order in

November which has not been heard as of yet.

9. The minor child was born in North Carolina, the parties and minor child have resided in North Carolina for more than six (6) months preceding the commencement of this action, and North Carolina is the “home state” of the child. Therefore, this Court has jurisdiction over the parties and subject matter of this action.
10. The Plaintiff is proven fit and proper by his physicians letters and the recent neuropsychological evaluation to have sole legal and physical custody of the minor child.
11. The minor child has been diagnosed with Autism since the age of eighteen months and has recently been approved for Innovation Services through Coastal Care that the Defendant may have misstated the truth in order to obtain. Marlene Dancy with DSS testified in court on February 10, 2015 that she had never had a case involving Innovative Waivers prior. In October 2014 it was testified to in the hearing that Coastal Care has only administered of the Emergency Innovative Waivers program 5 cases YTD in the five county area.
12. The minor child attends school at Snipes Academy and is currently attending class for approximately one hour and a half per day.
13. The Defendant filed a Motion for Emergency Custody and received an Ex Parte Custody Order on September 26, 2014, which was dismissed.
14. The Defendant attempted to file another 50B order on November 14, 2014 that the Judge refused to sign and it was stopped. There was no allegation of Domestic Violence and the allegations that were made were extremely based on her belief issues and not supported by fact.
15. The Defendant has willfully violated the Judge’s Order on many occasions.
16. The Defendant has temporary sole physical custody of the minor child.
17. The Defendant is causing the willful violation the minor child’s wellbeing, and has not communicated to the Plaintiff since January 15th. She testified in Court that she spends on average 3 hours a day with the child. That is not true.
18. The Defendant has also on June 23, 2014 swore to several false statements causing the plaintiff undo substantial emotional distress. Initially, a 50B Order that was dismissed by Judge Robinson on August 15, 2014 as having no evidence of any violence and the Defendant had no credibility in her accusations. On July 8, 2014 the Defendant charged that the Plaintiff was in violation of the 50B order and testified in court that she did not see the Plaintiff. On March 24, 2015 the Plaintiff was found Not Guilty in District Court. The Plaintiff spent the night in

jail just after heart surgery and endure the humiliation of having his mug shot on the internet and the false words that quickly spread among his friends.

19. The Defendant and Plaintiff 's child in common is a 9 year-old (DOB 4-17-06) boy diagnosed with autism. His behavior issues are so severe sometimes he is unable to attend school for more than an hour a day. The arrangement was the Plaintiff stays home with the child and Ms. Fester works to provide income for the family. This has been the arrangement for over 3 years. In the past the Defendant threatened to remove herself from the home leaving her husband and son with no means of support. The child always attended school and was a regular therapy sessions to better encourage and modify his behaviors.
20. One of the Defendant's outbursts woke up the child and he witnessed the Defendant yelling at the Plaintiff and became extremely frightened. The Plaintiff removed the child from the home and took him for a ride to redirect him and as like in the past, allow the Defendant time to calm down. When Benson returned he and the child retreated into the bedroom. At one point the child complained that he had to go to the bathroom but was too afraid to leave the room because he was scared that the Defendant would kill him.
21. The Defendant, at times, has made comments or threats to the Plaintiff in front of the child placing the child in fear of abandonment. The child has witnessed acts of violence by the Defendant upon the Plaintiff. (hitting, pushing, verbal assaults, throwing things, slamming doors, grabbing keys, and phone from plaintiff's hands)
The child has been diagnosed with autism and because of that has issues on how to process correctly the actions of another. The child may internalize creating depressive and self-injurious statements, may externalize by resorting to violence against his classmates and teachers or anyone else near-by.
The Plaintiff has never ever hit or kicked the Defendant.
22. The Defendant willfully misstated her income at the October 2014 hearing by saying her income is approximately \$700/week and it is actually \$1,800/week.
23. The Defendant has willfully misstated to the IRS that she is Single and Head Of Household for the past three years. I have a copy of the returns for.
24. The Defendant misstates the truth frequently and has used those misstatements in court to remove the child from the Plaintiff's custody.
25. The Defendant in the past has filed legal paperwork against the Plaintiff revoking his rights as a father and legal custodian. This legal paperwork, a restraining order, an Emergency Custody Order and an Order the Judge refused to sign. All were taking away the rights to conversation and dealings with others (such as any team conversation about Innovative Wavers) dating back to June 23, 2014. This

forced absence has caused the child to tell his father that the child thought the father dead for over a month. It is feared that undo harm has befallen the child do to the Plaintiff's absence.

26. The Defendant has been diagnosed in the most recent past by her therapist and said to suffer from Chronic Depression and has an Avoidant Personality Disorder. Both of which can and do cause errors in decision making and have led to suicide. They are and can be extremely dangerous issues to suffer from. That and the proven behavior problems and emotional problems from ages 8-17 of being a segregated Special Education student in school because of severe Behavior Issues joined with the psychological hospitalization she has had as a teen, the Plaintiff is afraid for the emotional well being of the minor child as he has been for years when he witnessed the behavior towards the child by the Defendant.
27. The Plaintiff had the suggested Neuropsychological evaluation completed In March and Dr. Adams did not find any Mental Health issues other than his anxiety over his son's custody situation.
28. The Plaintiff has enclosed letters in the past from his General Practitioner and Neurologist alleging to Plaintiff's cognitive well-being and ability to care for minor child and a reports from his Cardiologist and Pulmonary doctor show extreme advancements in treatment and recovery. The Plaintiff has been in therapy for approximately 2 and a half consecutive years.
29. Minor child is used to and enjoys staying overnight with Plaintiff and views him as his protector and never acts out with behavior issues others see with his father. The Plaintiff's parenting style is hands on and has been for 9 years. The Plaintiff basically retired to spend the child's time awake for over 4 years. It is estimated that the Plaintiff has spent more than 4,000 hours alone with the child.
30. The Judge's Order of February 17, 2015 the Judge states in paragraph 6 an affidavit was filed by Dr. Rigby. The Plaintiff under review of the newly discovered circumstances at issue would like the opportunity for the Plaintiff to impeach the witness by a court ordered cross examination, and a presentation to the court of the Plaintiff's opposition.
31. The Judge's Order of February 17, 2015 the Judge states in paragraph 7 & 8 that both Department of Social Work staff testified that the Plaintiff should not contact the son is a current deterrent to the child. There is a Medicaid Fraud investigation taking place that may prejudice their testimony.
32. The Judge's Order of February 17, 2015 the Judge states in paragraph 9 that the Defendant testified that in cases where the child was in the custody of the father the behaviors became worse. No evidence was offered. This was just her opinion. It can be proven by existing records that the Defendant's opinion is a false claim.

33. The Judge's Order of February 17, 2015 the Judge states in paragraph 10 that the Plaintiff called the "providers" "unqualified, don't-know-crap babysitters" These are the summer time babysitters the Defendant hired privately at a cost of over \$700/week and not the Medicaid provided respite workers. The summertime babysitters are unqualified and the Defendant found on the internet and did not check the babysitter's criminal history. Ben made the claim that he has a romantic relationship with one of his 7 babysitters that summer and that he claimed as a reward one of them would lick his penis. This was immediately reported to his therapist, Social Services, law enforcement and the Defendant. The Plaintiff has a psychology background and has worked with children who have been sexually abused and knew better than interview the child, leaving that up to law enforcement and the professional at the Carousel Center.

Ben told his father that in the 40 minutes he was restrained by 4 adults one day at Forest Hills School, he felt as if his genitals were being forcefully grabbed and called them "Pedophiles". Restraining Ben for 40 minutes, if at all, is a violation of his Civil Rights. Ben was immediately removed from the school by the Plaintiff.

34. The Judge's Order of February 17, 2015 the Judge states in paragraph 11 that the court never heard supporting evidence supporting the claim of physical and sexual abuse. The Plaintiff never made such accusations, these accusations were made by the child.
35. The Judge's Order of February 17, 2015 the Judge states in paragraph 12 that the court finds it highly unlikely that such abuse took place. Again it is assumed that the "allegations" the court is speaking of is in regards to the Plaintiff's testimony that he reports only that those accusations were told to the Plaintiff by the minor child and not something the Plaintiff testified as witnessing.
36. The Judge's Order of February 17, 2015 the Judge states in paragraph 13 that the allegations from the Plaintiff appear to be in the nature of paranoid beliefs. The Plaintiff has undergone a complete evaluation by Dr. Kim Adams and she found no such evidence of any mental illness other than slight anxiety from the custody situation lifting Ben out of his normal and routine environment. Dr. Adams has extensive knowledge about Autism and she is also neuro-psychiatrist.
37. The Judge's Order of February 17, 2015 the Judge states in paragraph 15 that the court gives great weight to arrangement the parents made prior to getting involved with the courts. On May 15th the Defendant, in her own handwriting, gave custody to the Plaintiff as well as Child Support and Spousal Support. The Plaintiff once again reached out when Defendant recognized her errors and promised to make the necessary personal changes to make the marriage work in all of our favor.
38. The Judge's Order of February 17, 2015 the Judge states in paragraph 19 the

Plaintiff presented affidavits from the community. It was discovered recently when the clerk pulled the Benson v Fester file that only one affidavit was included in the file. The rest were missing from the file.

39. The Judge's Order of February 17, 2015 the Judge states in paragraph 20 that the Plaintiff submitted affidavits from care providers, Tina Gill was advised by the Special Education Director not to become involved in the divorce and not to submit an affidavit. Ms. Gill refused to obey the school's direct recommendation and submitted the affidavit filled with unsupported errors. The affidavit violated federal privacy laws and Ms. Gill makes as much as \$30,000/year from working with Ben lending a conflict of interest and a potential for fraud. The Plaintiff had already made preparations to remove her and hire Dr. Hogan and was in negotiation with the school about this. Erin Mairs submitted an affidavit also and she provided false Medicaid information and had hired someone that was on probation and 33 criminal citations and it is questionable that she even possesses a valid North Carolina drivers license. Ms. Mairs stood to make as much as \$73,000 a year providing services that, according to Coastal Care and Medicaid, Caring Heats did not qualify as servicing the child's needs. Given her questionable background of prior criminal behavior and making her own misstatements made directly in court as well as the Plaintiff, her worthiness is something the Plaintiff views as highly suspect.
40. The Judge's Order of February 17, 2015 the Judge states in paragraph 22 that there is a clear link to Ben's behavior and his father. The child has autism and there is a long list of doctors and therapist and teachers who have written about Ben's behaviors. The only clear link is how he is with his father and that is nearly perfect with absolutely no behavior issues between the two. Ben will do this frequently to others as is his liability and his diagnosis of Autism. But when he is with his father, the Plaintiff, he has no self injury or injury to others. This is in contrast with the experiences and aggression to the mother, the Defendant.
41. The Judge's Order of February 17, 2015 the Judge states in paragraph 24 that the condition of the custody issue was pursuant upon the Plaintiff not going about the Defendant's property. The actual Order stated the Plaintiff is not to "visit" the defendant's property. The Plaintiff never visited the property of the Plaintiff except to pick up the child for visitation prior to DSS involvement on January 15th. The Plaintiff did not speak with, have any contact with any treatment providers violating his Federally protected and basic human rights as a father. Not only has this hindered the pending federal investigation but causes undo hardship on the Plaintiff due to his lack of obtaining any information from any of Ben's treatment providers. The Plaintiff did not contact any of the treatment providers, he did speak to an answer machine of the vice-president of a parent company of Universal which the Defendant had authorize them to care for Ben. There was outstanding assault warrant against an employee that was taken out January 3rd. The Vice President does not know Ben and has never treated him.

42. The Judge's Order of February 17, 2015 the Judge states in paragraph 25 that the Plaintiff refused or failed to comply with the January 2015 order. Again see above.
43. The Judge's Order of February 17, 2015 the Judge states in paragraph 26 that the Plaintiff was unable to comply with the January order due to mental illness or defect or willfully refused to comply. There was no intent to disobey the Judge's order nor is there any evidence of mental illness or defect.
44. The Judge's Order of February 17, 2015 the Judge states in paragraph 27 that the Plaintiff is currently not fit to exercise any visitation or contact with the child until a neuro-psychological evaluation is complete. Since January the Plaintiff has been extremely patient and mindful of the February 17th order. The Plaintiff feels that his being patient even through no contact with his son on his son's birthday shows extreme obedience to the letter of the law and should be immediately viewed as him being a fit parent. The Plaintiff has completed his evaluation which was asked for and he was determined to not have any mental illness and his neurological functions meet the normal requirements, he has letters that he presented to the court regarding his fit physical health, and has submitted numerous affidavits from fellow parents with children diagnosed with autism that attest to the Plaintiff's dealings with his son and character.

**WHEREFORE, THE PLAINTIFF PRAYS THIS HONORABLE
COURT AS FOLLOWS:**

1. That the Court continue to assume jurisdiction over the minor child for purposes of the Uniform Child Custody Jurisdiction and Enforcement Act.
2. That the Court enter a Temporary Custody Order granting primary care of the minor child to the Plaintiff pending final hearings on the divorce. There is an immediate need for the child and father to reunite and secure the child's safety and gathering the important information from the schools, DSS and therapist regarding the child and the pending government actions.
3. That the Plaintiff be awarded some Child Support and Spousal Support until finalized in the final divorce in order to take care of the child in a way in which he is accustomed. .
4. For such other and further relief as the Court deems just, fit, and proper and consistent with the allegations stated in the Plaintiff's Complaint.

This the 30th day of April 2015.

Robert Benson
POB 1122
Wrightsville Beach, NC 28480
910-520-5484

CERTIFICATE OF SERVICE

Undersigned certifies that the pleading or paper to which this certificate is affixed was served upon the other party to this action by depositing a copy of the same, enclosed in a first class, postpaid wrapper properly addressed to the said party as follows:

To: Erica Fester
2333 Shirley Road
Wilmington, NC 28405
910-619-1703

This is the _____ day of _____, 2015.

Robert Benson
Plaintiff
POB 1122
Wrightsville Beach, NC 28480
Telephone: 910-520-5484