

# The Family Court of the State of Delaware



ROBERT BURTON COONIN  
JUDGE

LEONARD L. WILLIAMS JUSTICE CENTER  
500 N. KING STREET, STE 9400  
WILMINGTON, DELAWARE 19801-3732

February 26, 2019

Michael S. Corrigan, Esq.  
300 Creek View Road, Suite 103  
Newark, DE 19711

## LETTER, DECISION AND ORDER

R----- T-----  
40 E. Main Street, #225  
Newark, DE 19711

RE: G----- T----- v. R----- T-----  
File No.: CN15-02688; Petition No.: 17-20430  
**Petition for Custody: A--- T----- (DOB 04/--/09) and J----- T-----**  
**(DOB 05/--/11)**

Dear Mr. Corrigan and Mr. T-----:

This is the Court's decision regarding the Petition for Custody filed by G----- T----- (hereinafter "Mother") on July 6, 2017 against R----- T----- (hereinafter "Father") in the interest of their minor children, A--- T----- born April --, 2009 and J----- T----- born May --, 2011 (collectively hereinafter "Children"). Father is self-represented and Mother is represented by Michael Corrigan, Esquire.

### **Procedural History**

In her July 6, 2017 Petition for Custody, Mother requested sole legal custody and primary residence, and supervised contact only for Father. Father did not file an Answer in response. On September 5, 2017, in response to a Motion filed by Mother, the Court ordered Father to immediately undergo a hair follicle drug test at an agency of Mother's choosing and at Mother's

cost. Pursuant to an Interim Order of Contact issued by the Court on November 15, 2017 following the parties' participation in Court-ordered mediation, the parties retained joint legal custody, primary residency to Mother and unsupervised visitation to Father every other Wednesday from 5:00 PM to 8:00 PM and every other weekend from 9:00 AM to 6:00 PM on both Saturday and Sunday. In that Interim Order, Father was directed to "not consume drugs or alcohol before or during visitation" with Children.

Additionally, on May 26, 2015, Mother filed proof that she completed a court-approved parenting education program. Father has failed to provide proof that he completed a court-approved parenting education program.

A final hearing on this matter was initially scheduled for April 9, 2018 but later was twice continued at the request of counsel until September 21, 2018. On September 19, 2018, Mother's counsel filed a Motion in Limine wherein he requested that Father be precluded from presenting any of the 3,000+ pages of discovery he did not provide to Mother until September 19<sup>th</sup>, two days before the hearing, despite Mother's counsel first requesting production in March 2018, or that the final hearing be, yet again, continued. In that Motion, Mother's counsel also requested that Father's visitation be altered from unsupervised to supervised at the Family Visitation Center.

At the time of the September 21, 2018 hearing, Father informed the Court that he had been residing at Warwick Manor Rehabilitation Center from August 14, 2018 to September 4, 2018, and that he was presently residing at an Oxford House where he planned to remain for the next six months. He stated he was planning to attend 90 Alcoholics Anonymous meetings in 90 days, and that he had been given a temporary sponsor, and was engaged in intensive outpatient treatment at a PACE recovery center. On September 26, 2018 the Court issued an Order continuing the final hearing to January 22, 2019. The Court also maintained Father's visitation schedule pursuant to the November 15, 2017 Interim Order "[c]ontingent upon Father utilizing *Soberlink* Level 1+ to monitor his sobriety" at the direction of Mother at the frequency of no more than 20 tests per month. Father was also to provide Mother with a copy of all *Soberlink* test results and the results from his regular drug screens at Oxford House. The Court also directed the parties that:

In the event that any of Father's test results, from either *Soberlink* or Oxford House, are positive for alcohol or drugs, unsupervised visits shall be immediately suspended. Father will thereafter only be allowed supervised visits with the children at the Family Visitation Center twice a week, at a time to be determined by Mother and Father jointly, subject to visitation center availability. Unsupervised visits are

to resume only after Father has provided ninety (90) consecutive days of negative results from both *Soberlink* and Oxford House.

On December 28, 2018, Father filed a Motion for Interim Relief wherein he reported that after he lost his job on October 31, 2018 he could no longer afford the cost of continuing to utilize *Soberlink* and his account was suspended on November 30, 2018. He further reported that Mother had denied him any unsupervised visits with Children since November 30th without receipt of *Soberlink* test results, and requested that the Court discontinue the *Soberlink* requirement so that he could resume seeing Children. The Court denied Father's Motion but informed the parties it would reconsider the *Soberlink* requirement at the conclusion of the final hearing.

After several continuances, the Court finally held a final hearing on Mother's Petition on January 22, 2019 attended by the parties and Mr. Corrigan. Testimony was taken from Children's therapist Dr. John Walker, maternal aunt H----- H---- (hereinafter "Maternal Aunt"), Mother, Oxford House state outreach coordinator Shawn Wister, Oxford House resident A----- H---, Oxford House resident M--- G----, and Father. At the conclusion of testimony, the Court decided that it would not be necessary to hear from Children.

### **Background Facts**

Mother and Father were married in January 2004, separated in July 2014, and divorced in June 2015. They have no other children in common. After the parties' separation, the parties co-parented three years without a court order. However, the parties disputed what percentage they split overnights with Children during that period. For example, Mother testified that in 2016 and 2017 (before the November 2017 Interim Order), she had about 65-70% of the overnights and Father had about 30-35% of the overnights. In contrast, Father said in the 365 days preceding the Court's November 2017 Interim Order that he had 168 overnights with Children, or closer to 50% of overnights. Since the entry of the November 2017 Interim Order, Father has only had visitation about six days per month but no overnights. In the months leading up to when Mother unilaterally halted Father's unsupervised visitation on November 30, 2018,<sup>1</sup> Father admits that he missed some visits. However, he only noted the visits when he was involved in substance abuse rehabilitation

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<sup>1</sup> As noted above, the September 26, 2018 Order does not expressly state that Father would lose his unsupervised visits if he stopped utilizing *Soberlink* but only if any of his tests came back positive. However, Mother testified that she did not permit Father to see Children without *Soberlink* in place even after Father asked if the Oxford House testing for alcohol would suffice.

(presumably while he was at Warwick Manor in August and September 2018 when Mother declined to transport Children to see Father), whereas Mother alleged that he has regularly missed visits for much of May 2018 through November 2018. In the two weeks prior to the final hearing, while his unsupervised visits have been halted, Father started calling nightly at 7:00 PM to speak with Children.<sup>2</sup>

Mother, 45 years old, resides in a three-bedroom home in Newark, DE with Children only, such that each boy has his own room. She has been employed at Axalta Coating Systems in Glen Mills, PA for the last 13 years. She reported that it is a 30-minute drive to and from work and that her normal schedule is Monday through Friday from 8:00 AM until about 4:00 or 5:00 PM. She added that sometimes she has to participate in conference calls in the early morning or late evening due to Axalta being a multi-national corporation, and/or work on weekends from home.

Father, 44 years old, resides in his own room on the third-floor of a seven-bedroom Oxford House residence (hereinafter, “Oxford House N-----”) in Newark, DE with seven other adult men, including Mr. H---<sup>3</sup> and Mr. G----.<sup>4</sup> Father has resided in Oxford House N----- since September 4, 2018. Prior to that, Father resided at Warwick Manor rehab/detox facility in East New Market, MD from August 14, 2018 until September 3, 2018. Prior to that, Father resided in a rental property in Newark, DE. Father testified that he plans to remain at Oxford House N----- -- until at least September 2019, in part to work toward paying off “several hundred thousand dollars” of debt while his utility bills and rent are limited to only \$125 per week. As long as they abide by the Oxford House rules,<sup>5</sup> Mr. Wister testified that residents can remain in the homes as long as they wish. However, since Father moved in in September 2018, Father testified that three men have left voluntarily and two or three men have been asked to leave.

Two of the men currently residing in Oxford House N----- have regular visits in the residence with their children, an infant and a toddler. Mr. Wister and Mr. H--- both testified that children are welcome in the home up to three overnights per week, and that if any present or future residents wanted to have their children there full-time that the residents would have to vote in

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<sup>2</sup> Father also testified that he has also had weekly lunch visits with Children at school, without providing any specifics as to if that is a practice he has continued up to present.

<sup>3</sup> Mr. H--- testified that he has resided at Oxford House N----- since June 2018, and that he has been in recovery for about one year.

<sup>4</sup> Mr. G---- testified that he has resided at Oxford House N----- since about October 2018, and that he has been in recovery for about seven months.

<sup>5</sup> That the houses (1) are democratically run, (2) have zero tolerance for substance abuse, and (3) where the residents equally share the bills for operating the home.

support of that change. Mr. G---- added that the current residents are trying to create a welcoming environment for children where the children are treated like family and they will see their fathers sober and prospering. Although five of the current residents smoke cigarettes, none are allowed to smoke inside the house.

Although Oxford House N----- is only about six miles from Mother's residence and about eight miles from Children's school, Father's driver's license has been suspended since May 2018 due to his unpaid child support. Therefore, Mother expressed concern that Father is unable to pick up Children from Mother's residence or school, or transport them anywhere. In response, Father testified both that he has continued to drive without a license and that other Oxford House residents could assist him with transportation. The Court also takes judicial notice that Father filed a Petition for Child Support Modification on December 28, 2018 (Pet. # 18-37806), which is still pending, wherein he asked to have his license reinstated.

At the time of the final hearing, Father testified that he had not been employed since October 2018. However, Mr. G----, the Oxford House N----- comptroller, testified that Father had always paid his balance in full each week. Father testified that he has been paying his bills, gas and child support by selling off his personal property on Facebook and eBay. He said he is able to afford to eat because he is currently receiving Supplemental Nutrition Assistance Program benefits. Father further testified that he has a long history of being self-employed as a software developer but that he is currently actively looking for either a full-time position or contracting opportunities. He said he was fired from his most recent position in October 2018 after only three weeks on the job because his employer thought he had relapsed when in fact he was instead sick with pneumonia.

### **Custody**

The Court has not previously entered a final custody order for Children. Therefore, in making its determination the Court must consider the best interests of Children guided by an analysis of the factors under 13 *Del. C.* § 722.<sup>6</sup> The Court has held that some factors may be given

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<sup>6</sup> 13 *Del. C.* § 722(a) provides:

The Court shall determine the legal custody and residential arrangements for a child in accordance with the best interests of the child. In determining the best interests of the child, the Court shall consider all relevant factors including:

- 1) The wishes of the child's parent or parents as to his or her custody and residential arrangements;
- 2) The wishes of the child as to his or her custodian(s) and residential arrangements;
- 3) The interaction and interrelationship of the child with his or her parents, grandparents, siblings, persons

more weight than others in the Court's analysis.<sup>7</sup> The factors are as follows:

**(1) The wishes of the children's parent or parents as to their custody and residential arrangements;**

Mother is seeking sole legal custody or at least final decision making authority on education and medical issues because of her concern about how the parties disagreed about whether to medicate A--- when he was exhibiting behavioral issues in the past, and about Father's substance abuse history. Mother is also seeking primary residency and supervised visits only for Father for the time being. Specifically, she is opposed to Father having visits with Children in Oxford House N----- because she characterized it is a transient residence for men of varying levels of sobriety who might attract visitors who are not sober, and because she does not know anything about the men who live there with Father, including their criminal histories. Mother also wants to see Father maintain his sobriety longer, address his mental health needs more fully and recover his driver's license before he can resume having unsupervised visits.

Father is seeking joint legal custody and a visitation schedule that gradually phases in overnight contact with Children from one overnight per week for six weeks, to two overnights per week for the following two months and then to shared residential placement.

As the parties have taken opposing positions on legal custody and residential placement, the Court finds this factor to be neutral.

**(2) The wishes of the children as to their custodian(s) and residential arrangements;**

Although the boys are almost ten and eight years old, neither Mother nor Father testified about their stated preferences regarding custody and visitation. In addition, neither party requested that the Court speak with Children, therefore the Court chose not to interview them in private following the conclusion of testimony. As a result, the Court finds this factor to be inapplicable.

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cohabiting in the relationship of husband and wife with a parent of the child, any other residents of the household or persons who may significantly affect the child's best interests;

4) The child's adjustment to his or her home, school and community;

5) The mental and physical health of all individuals involved;

6) Past and present compliance by both parents with their rights and responsibilities to their child under § 701 of this title;

7) Evidence of domestic violence as provided for in Chapter 7A of this title; and

8) The criminal history of any party or any other resident of the household including whether the criminal history contains pleas of guilty or no contest or a conviction of a criminal offense.

<sup>7</sup> See *Fisher v. Fisher*, 691 A.2d 619, 623 (Del. 1997) (noting that "[t]he amount of weight given to one factor or combination of factors will be different in any given proceeding. It is quite possible that the weight of one factor will counterbalance the combined weight of all other factors and be outcome determinative in some situations.")

**(3) The interaction and interrelationship of the children with their parents, grandparents, siblings, persons cohabiting in the relationship of husband and wife with a parent of the children, any other residents of the household or person who may significantly affect the children's best interests;**

Children's Relationship with Father

Neither Mother nor any of her witnesses spoke to the quality of Father's relationship with Children. Dr. Walker only noted that it was a difficult transition for Children after the parties separated in 2014 because Father provided less structure in his home than Mother and because he let Children have a lot of screen time and he slept a lot, leaving A--- in charge. However, Dr. Walker offered no assessment of Father's interactions with Children during his current extended period of sobriety. Furthermore, Mother did not speak at all about any interactions between Father and Children in 2018, only that she decided not to facilitate visits with Father while he resided at Warwick Manor in Maryland in August and September 2018. As a result, the Court can reasonably conclude that Father's present relationship with Children is healthy and his interactions of late with Children have been appropriate, now that he is actively engaged in sobriety.

Father also testified that while knows that Children like to play video games like Fortnite and watch YouTube videos when they are in his care, he now recognizes that there need to be limits on the amount of screen time they can have. He also admitted that he used to use screen time to preoccupy Children while he was "sobering up." However, now he expresses a clear desire to take Children outside to walk around downtown Newark or play baseball in the park behind Oxford House N-----, and to take them to the Delaware Children's Museum where he has an annual membership. He added that he also used to enjoy playing board games or building Legos with them. Whatever the activity, Father testified that he is "deeply in love" with Children and that he is very committed to teaching them and helping them grow up.

Children's Relationship with Mother

In contrast to the loose structure that Father provided in the past, Mother confirmed that she runs a "tight ship" at home. Dr. Walker commented that while Children might not like this and want more screen time at Mother's, that this structure is "ideal" for them and that he has no concerns about Mother's parenting.<sup>8</sup> Maternal Aunt also testified that she believes that Mother and

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<sup>8</sup> The Court did not sense in either Dr. Walker's testimony or Dr. Monica Bocanegra's report that either

Children have a warm and loving relationship, and that she also has no concerns about Mother's parenting. Mother testified that she is very involved in J-----'s soccer leagues as either a coach or parent coordinator. Aside from that, she focused her testimony under this factor on her weeknight evening routine with Children of having dinner, completing homework, getting an hour of TV time, and then getting ready for bed. She added that she permits Children to have computer time during the weekend, but that the Children do not have their own personal handheld devices or phones.

#### Children's Relationship with Maternal Relatives

Maternal Aunt testified that she lives in Rehoboth Beach, DE with her husband, thirteen-year-old son and fourteen-year-old daughter. As a result, she sees Mother and Children about once a month, or whenever Mother and Children come down to Rehoboth Beach to stay with Children's maternal grandparents. She added that during these visits, that Children like "rough hous[ing]" with her son, going outside with their cousins, or playing cards with their maternal grandparents.

The Court finds that Mother and Father both have healthy relationships and appropriate interactions Children. Although the ways they may have interacted with their children in the past differed and Dr. Walker opined that Mother's style has historically been better for Children, there is insufficient evidence at present that these interaction styles are to Children's detriment enough to weight this factor in either Mother's or Father's significantly favor. Furthermore, the Court has no doubt that both Mother and Father care greatly about Children, even if Mother did not expressly use such emotive words. Therefore, this factor supports joint legal custody and only slightly favors primary residence with Mother.

#### **(4) The children's adjustment to their home, school and community;**

A--- is in the fourth grade and J----- is in the second grade at North Star Elementary School in Hockessin, DE. Mother testified that Children also attend before and after school care programs housed in the gym and multipurpose room of the school. Due to parents' relative proximity to the school, Children could remain at that school regardless of the custodial arrangement assuming that Father can find a legal way to transport Children to and from school. Additionally, neither party expressed concern about Children attending there. Rather, Mother spoke positively about all the

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psychologist placed blame, even in part, on Mother's parenting style for A---'s outbursts of 2016 and 2017 to be described in detail under factor 5.



friends that Children have at that school and about how well they are doing academically this school year.

Children appear very involved in the community around Mother's residence of the last three years. They have many friends in the neighborhood that also attend North Star with whom they can go such places as the community pool together. Additionally, the community membership association organizes events around holidays, like Christmas, Easter and Halloween, and snow days that are widely attended. There was no testimony that Father is trying to prevent Children from continuing to be involved with these friend groups or community activities

In contrast to their familiarity with their current life with Mother, Children have had no overnights at Oxford House N----- since Father has resided there for the last almost six months, and they have only been to the residence once or twice for visits. However, Father described his third floor bedroom as adequate in size to host Children for overnights. He has a bunk bed and closet space for Children and an additional futon and closet for himself. Resp. Ex. #2. In the room, he also has a television and Nintendo Wii. There is also a 150-200 square foot open space in between the third floor bedrooms where he has two computers set up, in addition to a large number of board games and toys, where Children can play and do homework. Father added that he shares the open space with the other third floor resident (who also has a child), but that the residents who live on the lower floors are not permitted to go up to the third floor. Based on the pictures provided by Father and his testimony, the Court has no concerns about either the size or appropriateness of the space Father has created for Children in his room and third floor common area.

Therefore, the Court finds that this factor supports joint legal custody. It also supports primary residency with Mother because Children are very adjusted to Mother's community, but they have very limited exposure to Father's current residence where he plans to remain for much of the upcoming year. However, there is no evidence that Children could not adjust positively to Father's community over time or that that space would not be a safe and healthy place for Children to reside. But there is evidence that Children cannot reside in the home more than three nights per week without the consent of all the current Oxford House N----- residents. Therefore, the Court also finds that this factor supports primary residency to Mother but also gradually increasing Father's contact with Children to regular overnights at Oxford House N-----.

**(5) The mental and physical health of all individuals involved;**

The parties and Children all appear to be in good physical health. Additionally, neither Mother nor J----- present any significant mental health concerns. Mother testified that she has taken medication for generalized anxiety disorder since 2007. She added that she has benefitted from speaking with Dr. Walker about parenting in coordination with Children's sessions with the doctor. Mother also testified that she has found it beneficial to attend Alcoholics Anonymous meetings the last three years. As to J-----, Father said, without providing specifics or supporting testimony from any professionals, that he feels that J----- might be manifesting initial signs of depression and traits that will predispose him to addiction as he grows older.

In contrast to the minimal testimony about J----- under this factor, the Court heard extensive details about A---, especially related to his negative behaviors that appeared to climax at the end of 2016 and beginning of 2017. As detailed in Dr. Monica Bocanegra's report of March 3, 2017, A--- had "aggressive" incidents both in the home and in school from November 2016 up to the date the report was written. In her report, she noted that she had diagnosed A--- with ADHD – Predominantly Hyperactive/Impulsive Presentation, Severe and also Intermittent Explosive Disorder ("IED") and that she recommended "a trial of psychotropic medication." Pet. Ex. #3. Mother testified that, despite the recommendations of professionals, Father initially resisted medicating A---.

Mother provided length testimony about A---'s history of aggressive behaviors. She said that A---'s "extreme tantrums" started after the parties' separated, but they were confined to the home when A--- was in kindergarten and first grade. It was not until second grade, the 2016-2017 school year, that the behaviors began occurring in school as well as at home. During that year, A--- was so aggressive with school staff that on three occasions the classroom had to be cleared out before A--- could be calmed down. Furthermore, in February 2017, A--- stabbed his teacher in the pencil when she tried to correct his behavior. Ultimately, upon the recommendation of professionals, the parties placed A--- in the Rockford day treatment program for about a month in March and April 2017. While he was at Rockford, A--- began taking his first prescribed medication aimed at curbing his explosiveness. Thereafter, he was gradually reintroduced back to North Star Elementary School. In August 2017, A--- also began taking medication for ADHD in advance of the 2017-2018 school year. Both Mother and Father agreed that A--- is no longer having the aggressive outbursts that he had during the 2016-2017 school year. As a case in point, A--- had 23

incidents during the 2016-2017 school year when school staff had to call the principal or vice principal to intervene, and three of those times the school resource officer had to intervene. Since then, during both the 2017-2018 school year and the first half of the 2018-2019 school year, A--- had no major incidents at school or in Mother's home. However, A--- did have an explosive episode at his then after care program on February 3, 2018 that led program staff to decide that A--- could no longer participate in the program.

Dr. Walker testified that he started having sessions with A--- only in March 2017, after the issuance of Dr. Bocanegra's report, and shortly thereafter began joint sessions with A--- and J---- both. Dr. Walker further testified that he supports Dr. Bocanegra's ADHD diagnosis but not IED. Dr. Walker also added that he used to have sessions once or twice a week but now the sessions are "sporadic" because A--- has stabilized. He believes that A--- showed increased stability over things happened. First, after A--- began taking prescribed medication. Second, after A--- began spending less time with Father because Father was providing too little structure for A--- which led to A--- acting out after visits with Father.

The parties also devoted considerable time to Father's mental health and substance use history. The Court credits Father for his honest and forthright testimony. Father stated that he has used marijuana, alcohol and methamphetamines in the past, but he focused his testimony on alcohol. He stated that, after the parties separated in 2014, his drinking "spiraled out of control" such that he was drinking every day, all day, along with smoking "a little" marijuana. Dr. Walker also testified to an interaction he had with Father in person in June or July 2017 wherein Father was acting strange and the doctor confronted him about whether he had been using drugs. In an email response thereafter, Father first admitted to past drug use and present marijuana use, but denied that he had a "drinking problem" at the time. Pet. Ex. #2. Three days later, Father admitted that he is "an addict and [Dr. Walker] spotted that correctly it's just not drugs or alcohol or sex this time" but rather video games and television shows.

All while admitting his past, Father believes that he has been in recovery since he checked into Kirkwood Detoxification Center in June 2018. Thereafter, Father participated in a partial hospitalization program at a PACE recovery center for five weeks. However, he relapsed for two weeks in August 2018 which led to his decision to enter Warwick Manor from August 14, 2018 until September 4, 2018, beginning his current string of extended sobriety from both drugs and alcohol. After graduating from Warwick Manor, Father moved into his current residence at Oxford

House N------. While he has been residing at an Oxford House, Father has also completed an intensive outpatient program at PACE on January 14, 2019. Father, Mr. G---- and Mr. H--- all confirmed that Father also continues to attend at least three Alcoholics Anonymous meetings per week. At the January 22, 2019 hearing, Father testified that he is “100% committed to sobriety” because he wants to build his life back up and have Children involved in his life once again.

Father testified that he has passed all his drug screens administered since the middle of September 2018. For example, he said he passed all 39 *Soberlink* alcohol screens that he self-administered between September 28, 2018 and November 28, 2018. He testified he passed 12 urine screens administered by PACE,<sup>9</sup> and 11 urine screens administered by other residents at Oxford House N------. He admitted that he hid his addiction in 2016 and 2017 and during the parties’ marriage, but that living at the Oxford House has taught him that there is “no room for dishonesty” in recovery. Therefore, he both admitted that the screens at Oxford House N----- have not been weekly (despite the testimony of Mr. G---- and Mr. H--- that they have been at least weekly), and that there have been no screens that he failed to turn over to Mother.

Mr. G---- and Mr. H--- also testified that Father has not failed a urine screen since he has resided at Oxford House N----- and that, because of the zero tolerance policy, he would have had to leave the residence if he had tested positive. Both men further testified to how urine samples are collected in the presence of a witness in the house, that Father has created a form that the witnesses sign each time he is administered a urine screen, and that they believe the urine screen used by Oxford House N----- is the best available on the market. Pet. Ex. #5. Mr. G----, Mr. H--- and Mr. Wister all praised Father for how well he is doing in ensuring that he maintains his own recovery and in encouraging the recovery process of other residents in the home.

In response, Mother expressed concern that she is not getting urine screens from Oxford House at the frequency of once or twice a week that she expected, that there is no third party accountability for the test results at Oxford House like there would be through a vendor like Lab Corp, and that she has only received 7 or 8 tests instead of the 11 that Father reported having. The parties also disputed who was to blame if Mother only received 4 of the 12 test results that Father said he has from PACE, as Father signed authorization to release his records to Mother.

Additionally, Father testified that he is currently prescribed medication for anxiety and depression, and that he began group and individual mental health therapy sessions at Connections

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<sup>9</sup> He also admitted having three diluted screens and one with an illegible label.

in December 2018.<sup>10</sup> Furthermore, in a February 23, 2018 email to Dr. Walker, Father admitted that he was a “survivor” of “childhood sexual abuse.” Pet. Ex. #2. As to Father’s mental health, Mother expressed concern that Father has anger issues and that his alcoholism is a symptom of a “bigger problem” that could endanger Children. However, she did not provide any specifics as to the “bigger problem” about which she expressed concern.

Based on his interactions with Father in June and July 2017 and one email exchange in February 2018, Dr. Walker testified to what he would recommend that Father do to address his issues with substance use. Since the middle of 2018, Father has either completed or is in progress toward completing all of the elements that Dr. Walker recommended, including, but not limited to, participation in a 12-step program, mental health counseling, and submission to periodic drug/alcohol screening. Dr. Walker also opined that Father should wait until he has maintained six months of sobriety before having unsupervised contact with Children. According to Father’s uncontroverted testimony, Father had been sober for five months and eight days at the time of the final hearing. Therefore, based on Father’s period of sobriety and there being no evidence that the parties are currently disputing what mental health treatment is best for A--- going forward or that Father’s interactions with Children have led to Children acting out since Father has been sober, this factor supports joint legal custody. However, because Father is still in the relatively early stages of his recovery, this factor supports primary residency with Mother with the opportunity for Father to gradually increase his contact with Children to regular overnights so long as he maintains his sobriety and adequately engages in such services/programs as Alcoholics Anonymous and mental health counseling.

**(6) Past and present compliance by both parents with their rights and responsibilities to their children under § 701 of this title;**

Pursuant to 13 Del. C. § 701, parents are responsible for the support, care, nurture, welfare, and education of their children, even without the entry of a Court Order. Pursuant to a Permanent New Support Order issued by a Commissioner of the Court on July 31, 2018, Father was to pay Mother \$2,125.00 per month.<sup>11</sup> Prior to that Father was under an Interim New Support Order issued on November 6, 2017 where he was to pay Mother \$1,462.00 per month. However, Mother reported that she only received about \$6500 in total support from Father for all of 2018. The Court

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<sup>10</sup> Father consented to authorizing the release of his mental health records from Connections to Mother and to having drug screens done by Connections if requested.

<sup>11</sup> \$2,085 in current support + \$40 in arrears support.

takes judicial notice that attached to the Permanent New Support Order is a report that Father had a child support arrears amount of \$10,040.32 as of July 23, 2018. As noted previously, Father has filed a petition to decrease his monthly child support obligation which is currently pending. Mother testified to various costs that she has recently been paying without assistance from Father, including, but not limited to, Children's therapy sessions with Dr. Walker, Children's participation in soccer and football leagues, and Children's attendance at before and aftercare programs. However, she also admitted that previously Father helped pay a down payment on Mother's current home and Father bought a playset for the backyard. In response, Father testified that he recognizes, as part of his involvement with Oxford House N-----, that it is his responsibility to pay down his child support arrears and that he is trying to do so. However, because he made no income while at Warwick Manor for a month in 2018, and he was fired from his job at the end of October 2018, he has had very limited sources of funds with which to pay up to his current obligation. He stated simply that he is "doing what [he] can" by making \$50 payments in both December 2018 and January 2019.

Although Mother presented evidence from February 2018 that she requested assistance from Father with drop-off and pick-up for Children before and after school, and that Father declined, the Court declines to make any negative inference against Father because his weekday contact with Children was limited, at that time, to only one after school period every other week. Pet. Ex. #4. The Court also declines to make any negative inference against Father based on allegations that he has been engaged in sexual behavior while Children have been in his residences in the past because there is no evidence that Children have witnessed any of it. Finally, as to participation in Children's medical and mental health treatment history and educational programming, neither party alleged that the other party has not fulfilled their obligations to Children.

Therefore, the analysis under this factor must focus on Father's responsibility to financially support Children. Although the Court credits his testimony that, during his recent period of sobriety, he has been trying to live up to his obligation but has not had sufficient funds to do so, the Court also takes judicial notice that, according to the Permanent New Support Order of July 2018, he only paid \$3,212.00 from November 2017 to July 2018, far short of his obligation to pay \$13,252. The Court finds that this factor supports joint legal custody, and primary residence with Mother. However, despite Father's failure to adequately pay child support, this shortcoming should

not hinder Father from increasing his contact with Children to regular overnights over time.

**(7) Evidence of domestic violence as provided for in Chapter 7A of this title; and**

Pursuant to 13 *Del. C.* § 706A, “(a)ny evidence of a past or present act of domestic violence, whether or not committed in the presence of the child, is a relevant factor that must be considered by the court in determining the legal custody and residential arrangements in accordance with the best interests of the child.” Both Father and Mother stated that they have never been a perpetrator of domestic violence. However, Father testified that he was once put in a choke hold by a former girlfriend. Because he is no longer living with that girlfriend, he is currently living in a male only residence, and he testified that he has no plans to be in a romantic relationship with another woman in the next twelve months, the Court finds this factor to be neutral as to both legal custody and residential placement.

**(8) The criminal history of any party or any other resident of the household including whether the criminal history contains pleas of guilty or no contest or a conviction of a criminal offense.**

The Court has independently reviewed the Delaware criminal histories of the parties. Neither Mother nor Father have a no criminal record in Delaware other than for minor motor vehicle infractions. The Court also heard testimony from Mr. H--- and Mr. G----.<sup>12</sup> Mr. H--- denied having any criminal record and Mr. G---- said that he has no felony convictions or convictions for crimes of dishonesty. Furthermore, Father mentioned that he believes other residents are either clean or have drug or alcohol related charges. Mr. Wister and Mr. H--- also testified that incoming residents are interviewed thoroughly about their criminal backgrounds, and that there are no known violent offenders or sex crimes offenders in the home. Therefore, because there is no evidence of any criminal history of concern with the other residents in Oxford House N----- (and the Court will not make a negative inference about their criminal histories simply because they have substance use histories), the Court finds this factor to be neutral as to both legal custody and residential placement.

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<sup>12</sup> The Court concluded that it would not be necessary to independently review the criminal histories of the other residents of Oxford House N----- because there has been so much turnover of late that the Court is unclear who will be residing in the home with Father for the remainder of the time that Father will stay there.

## **Conclusion**

Based on the evidence presented, the Court finds that all of the factors either favor joint legal custody or are neutral. The Court also finds that all of the factors either favor primary residency for Mother and regular overnights with Father, or are neutral. Upon consideration and weighing of the above factors, and the evidence presented, the Court finds that maintaining joint legal custody, primary residency to Mother and unsupervised visitation to Father to be in Children's collective best interest. The Court reaches this conclusion because, whatever challenges the parties have faced in the past with A---'s behavior or Father's substance use, the evidence supports the Court's conclusion that those all seem to be just that: in the past. Both parties and Dr. Walker agree that A--- has stabilized, Father has been sober since August 2018, and he remains engaged with various services to assist him in maintaining his sobriety. Despite testimony about concerns about Father's past interactions with Children, the Court is not convinced that Father's increased presence in their lives, now that he is maintaining sobriety, will cause Children to revert back to their negative behaviors of the past. However, there are two remaining and related unresolved issues: Father's financial insecurity and Father's revoked driver's license. It is possible that Father's license will not be reinstated until he pays off a substantial portion if not all his child support arrears, which will be challenging for him until he can secure full-time employment. Until then, the Court is concerned about reports that Father is transporting Children without a license. That practice needs to stop. Without a license, getting Children to and from Oxford House N----- to North Star Elementary School becomes considerably more challenging, though not impossible as people utilize public transportation and/or school bus routes all the time.<sup>13</sup> Therefore, although the Court must consider the fact that Father does not have a license in determining how many overnights he should be entitled to, the Court also notes that this fact alone is not enough for the Court to determine that Father cannot have any weeknight overnights with Children. So doing would amount to an unnecessary presumption against people who use something other than personal vehicles as their primary means of transportation.

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<sup>13</sup> The Court is unaware of what public bus routes, if any, go from downtown Newark in the direction of North Star Elementary School. The Court is also unaware of what the closest options would be to downtown Newark for Children to ride a school bus, as no testimony was presented on these points.



**ACCORDINGLY, IT IS HEREBY ORDERED AS FOLLOWS:**

1. Mother, G----- T-----, and Father, R----- T-----, shall have joint legal custody of Children, A--- T----- and J----- T-----, with Mother having primary residential placement and Father having visitation as outlined below. This Order comes into effect on Monday, March 4, 2019.
2. For the first two months following the issuance of this Order, Father shall resume visitation with Children every other weekend from 9:00 AM to 7:00 PM on both Saturday and Sunday, and one weeknight each week for three hours at a time and date as mutually agreed by the parties. Father's first weekend shall be March 9, 2019 and his first weeknight shall begin the following week.
3. For the second two months following the issuance of this Order, Father shall have visitation with Children every other weekend from 9:00 AM on Saturday until 7:00 PM on Sunday evening, and one weeknight each week for three hours at a time and date as mutually agreed by the parties.
4. For the third two months following the issuance of this Order until school resumes, Father shall have visitation with Children every other weekend from after school on Friday evening until 7:00 PM on Sunday evening, and one weeknight overnight each week at a time and date as mutually agreed by the parties.
5. ***School Year Visitation:*** Starting in the 2019-2020 school year and continuing thereafter, for so long as Father's does not have a valid driver's license, Father shall have visitation with Children every other weekend from after school on Friday evening until 7:00 PM on Sunday evening, and one weeknight overnight each week from after school until school begins the next day at a time and date as mutually agreed by the parties. At such time as Father's driver's license is reinstated, Father shall have visitation with Children every other weekend from after school on Friday evening until 7:00 PM on Sunday evening, and two consecutive weeknight overnights each week from after school until school begins after the second overnight at a time and date as mutually agreed by the parties.
6. ***Summers:*** Starting in Children's summer vacation of 2020 and continuing thereafter, if Father is no longer residing in an Oxford House, the parties shall have shared residential placement on alternating weeks with exchanges occurring at 7:00 PM on Fridays.
7. Father shall not transport Children in his vehicle while his license remains revoked. Mother shall be responsible for all pick-up and drop-off at Father's residence while Father's driver's license remains revoked, except on Father's weeknight overnights. Once Father's license is reinstated, Father shall be responsible for all pick-up at the start of each visitation period and Mother shall be responsible for picking up Children at the end of each visitation period. The exchange locations shall be as mutually

agreed by the parties. Father shall remain responsible for transporting the children to and from school on his weekly weeknight overnight(s) under paragraph 5. If Father is unable to transport the children to school in the morning at the conclusion of a visitation period, his visitation for that period shall end at 7:00 PM the evening before a school day.

8. The parties may split the holidays and winter and spring school recesses, on a mutually agreed upon schedule. However, Father's visitation schedule during the 2019 spring school recess shall not vary from the visitation schedule described above.
9. **Holidays:** If the parties cannot reach agreement, regardless of whose day it is supposed to be, Father shall have Children on holidays in Column 1 in odd-numbered years and holidays in Column 2 in even-numbered years. Mother shall have Children on the holidays in Column 1 in even-numbered years and the holidays in Column 2 in odd-numbered years:

**Column 1**

Easter or other religious holidays  
Fourth of July  
Halloween  
Christmas Day

**Column 2**

Memorial Day  
Labor Day  
Thanksgiving Day  
Christmas Eve

With the exception of Christmas and Halloween, Holiday contact shall be from 9AM until 6PM the day of the holiday (unless the holiday falls on your normal residential custody, then there is no change). Halloween contact shall begin at 5 PM until 9PM. Christmas Eve contact shall begin at 6PM on December 24<sup>th</sup> and end at noon on December 25<sup>th</sup>. Christmas Day contact shall begin at noon on December 25<sup>th</sup> and end at 6PM on December 26<sup>th</sup>.

10. **Mother's Day/Father's Day:** On Mother's Day and Father's Day, regardless of whose day it is supposed to be, the parent whose holiday is being celebrated shall be entitled to spend the day with Children from 9AM until 6PM.
11. The parties may modify the above visitation schedule by mutual agreement in writing.
12. Father shall continue to abstain for drugs and alcohol at all times.
13. Father shall continue to provide Mother with a copy of all results from his regular drug screenings at Oxford House N----- for as long as he continues to remain at that residence. Father shall submit to urine drug/alcohol screens at least once weekly. The proof of the results shall be provided, as Father has been doing, as a written statement signed by two witnesses. If Father moves out of Oxford House N----- prior to August 2019, he shall begin submitting to once weekly urine drug/alcohol screens at a licensed facility of Father's choosing until August 2019 at his cost, and promptly provide Mother with the results.

14. Father shall no longer be required to utilize *Soberlink*. However, Father shall begin submitting to monthly urine screens if they are offered by Connections until August 2019. Father shall provide a copy of each result directly to Mother.
15. After August 2019, Father shall submit to random urine drug/alcohol screens at Mother's request and expense, no more than once a month, at a location as selected by Mother.
16. Father shall continue to attend Alcoholics Anonymous at least three times per week as long as he resides at Oxford House N----- and thereafter at least two times per week.
17. In the event that any of Father's test results are positive for alcohol or drugs, unsupervised visits shall be immediately suspended. Father will thereafter only be allowed supervised visits with the children at the Family Visitation Center twice a week, at a time to be determined by Mother and Father jointly, subject to visitation center availability. Unsupervised visits are to resume, under whatever of the above schedules the parties are under at that time, only after Father has provided nine weeks of consecutive negative results.
18. Father shall sign an authorization of the release of his mental health history from Connections to Mother. Father shall be required to maintain his involvement in mental health counseling until his counselor determines further therapy is no longer necessary. Father shall provide Mother with any discharge papers.
19. Father shall file a certificate of completion of a Court-approved co-parenting course within 60 days of the issuance of this Order, and provide Mother with a copy of the same.

The Court reminds the parties that each parent is entitled by statute to have reasonable access to his or her child by telephone, mail, and other means of communication and to receive all material information concerning the child.<sup>14</sup> Each party shall foster a feeling of affection and respect between the child and the other parent. Moreover, neither party shall do anything that may estrange the child from the other party, injure his or her opinion of the other party, or hamper the free and natural development of his or her love and respect for each party.

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<sup>14</sup> See 13 Del. C. § 727(a):

Whether the parents have joint legal custody or 1 parent has sole legal custody of a child, each parent has the right to receive, on request, from the other parent, whenever practicable in advance, all material information concerning the child's progress in school, medical treatment, significant developments in the child's life, and school activities and conferences, special religious events and other activities in which parents may wish to participate and each parent and child has a right to reasonable access to the other by telephone or mail. The Court shall not restrict the rights of a child or a parent under this subsection unless it finds, after a hearing, that the exercise of such rights would endanger a child's physical health or significantly impair his or her emotional development.

**IT IS SO ORDERED.**

RBC/plr  
Cc: File  
Mail Date:

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/s/ **Robert Burton Coonin, Judge**