



ROBERT BURTON COONIN
JUDGE

LEONARD L. WILLIAMS JUSTICE CENTER
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WILMINGTON, DELAWARE 19801-3732

May 13, 2019

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**LETTER, DECISION
AND ORDER**

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RE: K---- W----- v. S---- W-----
File No.: CN12-03289; Petition No.: 18-12481
Petition for Modification of Custody Order: B----- W----- (D.O.B. 12/--/06)

K---- W----- v. S---- W-----
File No.: CN12-03289; Petition No.: 18-14655
Petition – Rule to Show Cause: B----- W----- (D.O.B. 12/--/06)

K---- W----- v. H---- M. W----- & S---- W-----
File No.: CN14-05744; Petition No.: 18-12670
Petition for Modification of Third Party Visitation Order: B----- W----- (D.O.B. 12/--/06)

Dear Mr. Boyer and Ms. Dybowski:

This is the Court’s decision regarding the Petition for Modification of Custody filed by K---- W----- (“Mother”) on May 1, 2018 against S---- W----- (“Father”), the Petition – Rule to Show Cause filed by Mother on May 16, 2018 against Father, and the Petition for Modification of Third Party Visitation filed by Mother on May 2, 2018 against H---- W----- (“Paternal Grandmother”) and Father, all in the interest of the minor child, B----- W----- born December --, 2006 (“Child”). Mother is represented by Patrick Boyer, Esquire. Father is represented by Marta Dybowski, Esquire. Paternal Grandmother is self-represented.

Procedural History

In a Custody Stipulation issued by the Court on April 12, 2013, the parties received joint legal custody and shared residential placement of Child with Father having every Monday and Tuesday overnight, Mother having every Wednesday and Thursday overnight and the parties alternating weekends (Friday through Sunday). The parties also agreed to an alternating week contact schedule during Child's summer vacation periods from school. Relevant to this proceeding, the parties also agreed to a provision regarding alcohol consumption. It reads as follows:

6) Alcohol: Father shall not have any alcohol in his home; shall not consume alcohol 24 hours prior to any parenting time and/or during parenting time.

(a) Should Father or Mother be arrested for a DUI, visitation for that parent shall become supervised at the discretion of the other parent pending a modification of the Court Order.

On July 26, 2014, Father was arrested in Maryland for operating his vehicle with Child present while allegedly intoxicated. Father and Child were then taken into custody until Paternal Grandmother retrieved Child from the police station in the middle of the night. Although he was initially charged with eight offenses, he was ultimately only found guilty of Reckless Driving and Driving While Impaired by Alcohol. Following the incident, the parties began a prolonged dispute over the appropriate application of the above provision in paragraph 6(a) as to Father's contact with Child,¹ until the Court issued an Interim Visitation Order on July 7, 2015 that permitted Father to have supervised visitation at the Family Visitation Center one time per week for a period not to exceed 90 minutes.

Several months after Father's July 2014 arrest, Mother filed a Petition to Modify Custody on October 30, 2014 wherein she requested sole legal custody, primary residence and visitation for Father at times established by the agreement of the parties. On October 27, 2015, the Court issued a final Letter, Decision and Order on Mother's Petition, continuing the joint legal custody and shared residential placement arrangement set out in the April 2013 Custody Stipulation but "with conditions." First, Father was ordered for eight weeks to 1) only have unsupervised visits once a week for three hours and 2) be available for up to four random alcohol/drug screenings at

¹ On this point, the Court, in its Order of October 20, 2015, ultimately did not find Mother in contempt of Court for interpreting the provision to temporarily allow her to suspend Father's visitation at her discretion.

Mother's request. After Father successfully completed that provisional period without any positive alcohol/drug tests, the parties resumed having shared residential placement, this time with Mother having every Monday and Tuesday overnight, Father having every Wednesday and Thursday overnight and the parties alternating weekends (Friday through Sunday).² Paragraph 6 of the Order also set out that:

Father is required to continue attending Alcoholics Anonymous three (3) times a week, with documentation of each visit to be given to Mother's attorney every four (4) weeks until further order of the Court. Father is also required to prohibit alcohol in his home.

In support of the requirements that the Court placed on Father with regard to alcohol testing and Father's ongoing engagement with Alcoholics Anonymous, the Court provided a detailed recitation of Father's alcohol abuse and treatment history. The Court also noted that while Father admitted that he had abused alcohol in the past, he testified that he had not been under the influence while speaking to Child in the year prior to the hearing, that he did not let himself or friends drink around Child, that he did not have any alcohol in his home, and that he had not had a drink of alcohol since November 2014. Father's long-time housemate, H----- B----, also testified that there was no alcohol in the home and she had not seen Father consume an alcoholic beverage in a couple of years. Based on Father's and Ms. B----'s testimony, the Court found at that time that "Father does appear to have an addiction to alcohol that he is actively treating" and that "Father is attempting to remain alcohol free."

On December 2, 2016, Mother filed a Petition – Rule to Show ("RTSC") against Father wherein she alleged that "Father has relapsed and is consuming alcohol while [Child] is in his care" in violation of the Order of October 27, 2015. During a June 7, 2017 final hearing on that petition, Father stipulated, after hearing that Mother was prepared to present testimony from a private investigator to support her allegations, that he was in contempt of the Court's requirement that he attend Alcoholics Anonymous meeting three times per week. Father's stipulation was memorialized in the Court's Contempt of Court Order of June 8, 2017.

In the current Petition to Modify Custody of May 1, 2018 that is before the Court, Mother requested a change from joint legal custody and shared residential placement to joint legal custody

² If Father had tested positive on any of the screenings or if he was arrested for charges related to alcohol and/or drug use, then Father's contact with Child would have reverted back to the supervised visitation schedule of up to 90 minutes one time per week for a 90-day provisional period.

with final decision making to Mother, primary residency to Mother, and liberal visitation for Father. In the Petition – RTSC of May 16, 2018 at issue here Mother alleged, as part of a thirty-one-point Addendum, that Father was keeping alcohol in his home in violation of the Order of October 27, 2015.

Additionally, on October 20, 2015, the Court issued an Order granting Paternal Grandmother third party visitation with Child “every Wednesday from 5 PM to 8 PM with any extension of time to be agreed upon by [Mother] and [Father] on a case-by-case basis.” At this time, Father was only having supervised contact with Child once a week at a visitation center for up to 90 minutes. Since then, Father’s visitation schedule has returned to shared residential placement. On May 1, 2018, Mother filed a Petition to Modify and/or Terminate Third-Party Visitation and requested that Paternal Grandmother simply exercise visitation when Child is in Father’s care.

The Court held days one and two of the consolidated three-day hearing regarding Mother’s Petition - RTSC and her Petitions to Modify Custody and Third Party Visitation on October 10 and October 11, 2018. Testimony on those dates was taken from: Mother’s custodial evaluator, Dr. Samuel Romirowsky; Mother; and Father’s custodial evaluator, Dr. Harris Finkelstein.³ Day three of the hearing was continued from November 26, 2018 to February 8, 2019 at Father’s request. On that February date, testimony was taken from: Father’s housemate, H----- B----; Father; Paternal Grandmother; Mother’s paramour, M----- B-----. At the conclusion of the hearing, Mother and Father both provided brief rebuttal testimony. The parties were present along with their counsel Mr. Boyer and Ms. Dybowski for all three days. After hearing all the evidence, the Court conducted a separate interview with Child on February 18, 2019.

Background Facts

Mother and Father were married in February 2008, separated in May 2012, and divorced in December 2012. They have no other children in common or by other partners.

Mother splits time between two residences. On school days when Child is in her care, Mother and Child reside in Wilmington, DE in the home of Child’s maternal grandparents, D---- G----- (DOB 10/27/53) and D----- G----- (DOB 07/15/55) (hereinafter “Maternal Grandparents”). During the weekends when Child is in her care (and weekdays when Child is off from school and

³ Dr. Romirowsky and Dr. Finkelstein both completed custody evaluation reports. Jt. Ex. #1 and 2.

in Mother's care) as well as when Child is not in her care, Mother resides in Pottstown, PA in the three-bedroom home of her paramour, Mr. B----- (DOB 08/29/79). Mother is employed at State Farm in Chadds Ford, PA. Her current work schedule is 9:00 AM to 5:30 PM on weekdays. But she testified that she could adjust her shift to 7:00 AM to 3:30 PM on weekdays in order to be home around the time Child gets back from school. Mr. B----- is employed with Crown Castle, a telecommunications company, and he works from home on most days. However, he sometimes has to travel up to two hours for meetings in the field.⁴ Mother and Mr. B----- have been together since about 2012 and are currently in a "committed relationship" according to Mr. B-----. Mother testified that she has been alternating between living with Maternal Grandparents and Mr. B----- for over five years.

Father continues to reside in the former marital home in Wilmington, DE which he has owned for about the last ten years. In addition to Child, Father's housemate Ms. B---- (DOB 12/24/90) and her five-year-old son T---- also live in the home.⁵ Ms. B---- has resided in the home since about 2014. Father is employed at Tommy's Automotive in West Chester, PA from 7:00 AM to 5:00 PM on weekdays. When Child is not in his care, Father sometimes also works on weekends.

Paternal Grandmother also lives in Wilmington, DE about five miles from Father's residence.

Rule to Show Cause

The purpose of a Petition RTSC seeking to hold someone in civil Contempt of Court is to enforce compliance with the court's order. The standard for a Petition RTSC is well-established in this Court. "In order to find someone in civil contempt of the Court's Order the Court must first find by clear and convincing evidence that a violation of its Order has taken place."⁶ Specifically, the Court must find that 1) a valid mandate, judgment or order exists; 2) the alleged violator had the ability to abide by the valid mandate, judgment or order; and 3) the alleged violator disobeyed the valid mandate, judgment or order.⁷ The failure to obey the Court's Order must not be a mere technicality but must be done in a "meaningful way."⁸ Because the purpose of levying a civil contempt fine is to coerce compliance with a Court Order, subsequent compliance with the Order

⁴ Dr. Finkelstein reported that Mr. B----- told him that he sometimes works 80-100 hours per week.

⁵ Except for two nights per month when he is elsewhere, T---- resides exclusively with Ms. B----.

⁶ *J.T.D. v. B.N.D.*, No. CN07-04006, 2010 WL 2708610, at *4 (Del. Fam. Ct. May 5, 2010) (citing *Feliciano v. Colon*, 697 F. Supp. 26, 34 (D.P.R. 1987)).

⁷ See *Watson v. Givens*, 758 A.2d 510, 512 (Del. Fam. Ct. 1999).

⁸ *J.T.D. v. B.N.D.*, 2010 WL 2708610 at *4.

may purge the finding of civil contempt.⁹

The only issue before the Court on the RTSC Petition is whether, since June 7, 2017, Father has violated the provision of the Court's Order of October 27, 2015 directing him "to prohibit alcohol in his home." The Court has so narrowed the temporal scope of the issue because on June 7, 2017 the Court had a final hearing scheduled on Mother's prior Petition – RTSC based on allegations that Father had been in violation of the alcohol-related provisions of the same Order between the issuance of the Order and the June 7th hearing date. However, the Court noted on the record that it would permit evidence of Father's alleged violation of this provision from any time after October 27, 2015 in considering the best interests of Child below under the pending Petition to Modify Custody. Additionally, as a preliminary matter, the Court wishes to establish the intended meaning of "in his home." It was not the intent of the Court in October 2015 to include Father's trailer in Cecil County, Maryland within this provision and neither of the parties testified that they understood differently, notwithstanding that previously Father was prohibited from consuming alcohol prior to contact with Child without regard to the location.¹⁰ However, it *was* the Court's intent to include the entire property of Father's Wilmington, DE home as part of "his home." Additionally, by testifying at this hearing that he believes his driveway is part of the "home,"¹¹ Father demonstrated to the Court that it was his general understanding that "in his home" covers all parts of his property including any vehicles on his property.

The Court finds that a valid mandate, judgment and order exists as the Court found in its October 2015 Order that Father was not to have alcohol "in his home." There is no dispute over the plain language of this provision as to the meaning of "home" or over the Court's intent that this provision covers both his possession and consumption on his Wilmington, DE property and the possession and consumption by others such as Ms. B---- at Father's home.

The Court also finds that Father had the ability to abide by the valid mandate, judgment or order. There was no evidence that Father could not physically prohibit himself or others from possessing or consuming alcohol on his property.

Finally, the Court finds that there is substantial evidence that Father has disobeyed the valid

⁹ *DiSabatino v. Salicete*, 671 A.2d 1344, 1350 (Del. 1996) (citing *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 829 (1994)).

¹⁰ Custody Stipulation issued as an Order of the Court on April 12, 2013.

¹¹ At 10:09:24 on February 8, 2019, the Court asked "what do you do stand in the driveway [of your home] and drink [alcohol]?" To which Father responded, "no, that would be at the home. Why would I stand in the driveway? That doesn't sound very smart."

mandate, judgment or order by failing to “prohibit alcohol in his home” between the dates of June 7, 2017 and February 8, 2019. Mother testified that she came in possession of Ms. B----’s phone in May 2018 after the phone had been temporarily loaned to Child and that she scanned the content on the phone to make sure there was nothing inappropriate for Child to access. In the process, Mother discovered a number of pictures and text messages between Ms. B---- and Father that Mother believes demonstrate that there was alcohol on Father’s property in violation of the Court’s Order.

In a picture dated July 23, 2017, Father is reclining on the couch in his living room with two open Guinness bottles next to his feet. Mother’s Ex. #5.¹² On Saturday, June 17, 2017, Father and Ms. B---- exchanged text messages wherein Father wrote “wood [sic] like beer” to which Ms. B---- responded “[g]ot a bunch still in the garage. I think they don’t sell beer here. I don’t have any money for beer anyway. I just spent \$20 for 2 bottles of stuff.” Mother’s Ex. #28. On or about Monday, July 17, 2017, Father and Ms. B---- exchanged text messages wherein Father wrote “I would like it if you cleaned up all beer cans and [s---] before [J---] comes over” to which Ms. B--- responded “I started to this morning. I’m gonna do the floors and stuff when I get home. I’m working til 3.” Mother’s Ex. #29. On Thursday, August 10, 2017 (on one of Father’s scheduled overnights with Child), Ms. B---- wrote a text message to Father that “I’ll put beer in the fridge for you.” Mother’s Ex. #30. On Thursday, August 31, 2017 (on one of Father’s scheduled overnights with Child), Father and Ms. B---- exchanged text messages wherein Father wrote “[g]et my beer first” and Ms. B---- responded “[a]lready got it it’s at the house. I put 5 or 6 in the fridge.” Mother’s Ex. #31. On Sunday, September 17, 2017, Ms. B---- wrote a text message to Father that “[a]ll your beer is in the trunk of the car just got to work call me if your brother doesn’t pick u up.” Then on Tuesday, September 19, 2017, Ms. B---- wrote a text message to Father that “I’m bringing home subs I made at work. There should be some cold beers in the fridge.” Mother’s Ex. #32. On Friday, October 27, 2017, Father wrote a text message to Ms. B---- that he “[p]ut beer in fridge.” Mother’s Ex. #33.

Despite the many text messages and the picture addressed above, Father testified that he has no knowledge of there being any alcohol in his home since 2015 because he understands that

¹² Mother testified that she knew the picture was taken in Father’s living room because Father still resides in the former marital home wherein Mother previously resided for three years. She further testified that she believes that the picture was taken on July 23, 2017 and not downloaded on that date because she found the picture in the camera roll of Ms. B----’s phone.

he would “get in trouble” if there was. However, Father testified that he typically consumes a six-pack of beer over the course of a weekend while socializing with friends at or around his trailer in Cecil County, Maryland. Ms. B---- testified that she and Father have consumed alcohol since October 2015 but just not “inside the home.” She also testified that they have not stored alcohol in the home since that time but she then testified that “occasionally [Father and Ms. B----] keep [alcohol] in the trunk of my car” without specifying where the car was parked at those times, and also that they keep alcohol at their friends’ house for consumption when they go there. She further echoed Father’s later testimony that he typically consumes two or three beers per day on Saturdays when they are at his trailer in Cecil County, MD but not in the presence of her son or Child.

Despite the denials of both Father and Ms. B---- that they consume alcohol on his Wilmington, DE property and their testimony that they possess alcohol in Ms. B----’s trunk (at an unknown location) or elsewhere, the Court finds the documentary evidence overcomes their testimonies to the point of being clear and convincing that Father has intentionally violated the Court’s Order on multiple occasions. First, Mother’s testimony that the July 23, 2017 picture was taken in Father’s home is credible, and neither Father nor Ms. B---- presented testimony that the picture was taken somewhere else or on any date other than July 23, 2017. Furthermore, although some of the text messages are admittedly silent as to the specific location, several of them refer to the “house” or “home.” The context of messages indicates that they are referring to the fridge or garage at Father’s Wilmington, DE property and not the trailer in Maryland or at a friend’s home.

As a result, the Court finds Father in contempt of Court for failing to “prohibit alcohol in his home” pursuant to the Order of October 27, 2015. Mother requests an award of attorney’s fees, random alcohol testing at Mother’s selection, and a reversion to supervised visitation between Father and Child in the community if Father ever tests positive and until Father has demonstrated a prolonged period of sobriety. Mother also requests that she cover the initial cost of testing but that Father reimburse her the full cost if he tests positive and for all subsequent testing during the supervised visitation provisional period. The relief requested by Mother will be granted.

Modification of Prior Custody and Third Party Visitation Orders

The custody Order in effect in this matter was issued by the Court on October 27, 2015. Mother did not file her Petition to Modify Custody Order until May 2018. Therefore, pursuant to 13 *Del. C.* § 729(c)(2), the Court may modify its prior order after considering the following:

- a. Whether any harm is likely to be caused to the child by a modification of its prior order, and, if so, whether that harm is likely to be outweighed by the advantages, if any, to the child of such a modification;
- b. The compliance of each parent with prior orders of the Court concerning custody and visitation and compliance with his or her duties and responsibilities under § 727 of this title including whether either parent has been subjected to sanctions by the Court under § 728(b) of this title since the prior order was entered; and
- c. The factors set forth in § 722 of this title.

A. Any Harm Likely to Child by Modification

As discussed in detail in the best interests analysis below, the potential “harm” to Child would be the necessity of changing schools between sixth and seventh grade as well as a loss of some time with Father during the school year. Although Child appears to have done very well adjusting to her new middle school and it can be assumed she would be resilient and adjust to another school change, to do so would be speculative. This potential harm is outweighed by the benefit to the child of the stability of living in one home during the school week with one established routine.

B. History of Compliance of Parents with Court Orders

As noted above, Father has twice been found in violation of the alcohol provisions in the Court’s Order of October 27, 2015. First, in June 2017, the Court issued an Order noting that he had failed to attend Alcoholics Anonymous meetings three times per week as directed. Second, in the present Order, Father has failed to prohibit alcohol in his home as directed. Recognizing Father’s history of alcohol abuse, his current continuing alcohol usage runs contrary to the spirit of the April 12, 2013 stipulated Order, although no violation currently exists because that Order was replaced by the one of October 27, 2015.

C. Best Interest Factors

Pursuant to 13 *Del C.* § 2413, regardless of when the Court last issued an Order on third party visitation, the Court may modify a prior third party visitation order “at any time if the best interests of any child subject to the order would be served by modification.” Therefore, in examining the below factors, the Court will consider the best interests of Child with regard to both the Petition to Modify Custody and Petition to Modify Third Party Visitation. The Court has held

that some best interest factors may be given more weight than others in the Court's analysis.¹³

(1) The wishes of the child's parent or parents as to her custody and residential arrangements;

As to custody, Mother is seeking joint legal custody with final decision making, primary residency, and permission to relocate with Child to Pottstown, PA. As to Father having visitation during the school year, Mother is seeking every other weekend from Friday after school to Sunday night, with the possibility of a weeknight dinner visit (if it can be arranged so as not to interfere with Child's schoolwork), and shared winter and spring recesses. During the summer, Mother is seeking shared placement on an alternating week schedule and a two-week vacation option for Father. Mother is also requesting that in light of Father's history of alcohol abuse and violation of past provisions regarding alcohol use, that Father be prohibited from drinking alcohol 48 hours prior to any visitation period and during any visitation period with Child. In further support of her requests, Mother believes that Child's performance in school would improve if she had a consistent home during the school week, and that Father's and Mother's struggles in communicating about medical decisions would be alleviated by giving her final decision making authority.

If Child is permitted to relocate with Mother to Pottstown, Mother suggested that Father pick-up Child from Pennsylvania after he gets off work at the start of his weekends and that Mother pick-up Child from Delaware from Father's home on Sundays. Mother also testified that she would encourage regular phone contact between Child and Father, and that she would be open to granting Father extended weekends if Child has a Monday or Friday off from school during one of Father's weekends.

As to third-party visitation, Mother is seeking to terminate Paternal Grandmother's weekly Wednesday night visits from 5:00 to 8:00 PM because Paternal Grandmother is now able to visit with Child throughout Child's residential periods with Father and because Mother welcomes Paternal Grandmother contacting her directly to arrange additional visitation on a case by case basis. Mother further testified that if Father's contact with Child is again restricted going forward due to alcohol use that Mother and Paternal Grandmother can work out a contact schedule between themselves without the need for a Court Order, including the possibility of Mother transporting

¹³ 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.")

Child to see Paternal Grandmother for these visits.¹⁴

Father is seeking a continuation of the current arrangement of joint custody and shared residential placement because he believes it provides Child with “the best of both worlds.” However, Father requests that the Court require Mother and Father to communicate through a neutral third-party like a parent coordinator rather than directly with each other. Father also supports Paternal Grandmother having continued Court-ordered visitation with Child, independent of his own time with Child.

Therefore, due to Mother’s and Father’s disagreement over legal custody, primary residency, and third-party visitation, the Court finds this factor to be neutral as to both the Petition to Modify Custody and the Petition to Modify Third-Party Visitation.

(2) The wishes of the child as to her custodian(s) and residential arrangements;

The Court spoke with Child, 12 years old, in private about one week after the conclusion of day three of the consolidated hearing. Child stated that she does not think she would change the shared residential schedule at this point even if she could because she likes it at each place that she resides. However, immediately thereafter she recognized that she did not know whether she would benefit from having the schedule change. Child also stated the following about whether she wants to relocate to Pottstown:

“I know when my mom first told me – I did want to. But I don’t because of how many – like – I don’t know – like – this is where my whole life is down here.”

She provided an additional reason for why she does not want to relocate now as because she and a current friend have already decided they are going to attend the same college and be “dorm room sisters.” Whereas Dr. Romirowsky testified that he believes that Child is not trying to take a position on whether she wants to move or not in order to avoid hurting anyone’s feelings and because she feels she is getting pressure from Father to stay in Wilmington, Dr. Finkelstein testified that he believes that Child does not want to relocate. Although the Court also received an undated letter purportedly written by Child as an admitted exhibit during the consolidated hearings

¹⁴ Although Paternal Grandmother’s wishes do not hold the same weight as the parents in this matter, the Court notes that Paternal Grandmother testified that if Father’s visits are reduced to every other weekend during the school year, that she might not see Child every one of those weekends because Father often spends weekends at his trailer in Maryland but Paternal Grandmother does not join them for those getaways. However, she also testified that Father has never prevented her from having contact with Child.

and counsel committed considerable testimony to the letter, the Court declines to give any weight to the opinions reflected in the letter at least in part because the Court always prefers to hear directly from the children when they are of similar age as Child and because two custodial evaluators also testified based on their interviews with Child. Therefore, Child's express preference slightly favors denying Mother's request to modify the custodial arrangement. This factor is inapplicable as to Mother's request to modify the third party visitation arrangement because the Court found it unnecessary to broach that topic with Child.

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

Child's Relationship with Mother

Mother and Child appear to have a typical mother-preteen daughter relationship. On the one hand, Child talked about how they go horseback riding and shopping together. On the other hand, Child called Mother "more strict" than Father, and child noted that sometimes she and Mother "get mad" at each other when Mother is trying to help Child with her homework. For her part, Mother testified that she and Child are "very close" and that they have a lot of shared interests, such as horseback riding, walking dogs in the park, going to movies and getting manicures. Mother also described the typical weekday and weekend routines. On weekdays, Mother helps Child with her homework, they have dinner together and then they might play a game or watch a movie before Child gets ready for bed. On weekends together, they do chores in addition to the aforementioned activities. Mr. B----- added that he believes Mother and Child have a "very strong loving relationship."

Child's Relationship with Father

Although Child gave the Court no indication that she has a negative relationship with Father, the parties disagreed over the quality of that relationship and the extent to which Father and Child interact. Child noted that she likes to go fishing with Father and go to his "beach house" in Maryland together, and that she finds that it is easier for her to talk to Father than Mother. On weekdays, she noted that after Father gets home from work and he is finished exercising, he will sometimes help her with her homework and they will sometimes watch television together. Father described himself as Child's "caring" and "loving" protector, and testified he would be

“completely heart-broken” if his contact with Child was reduced to every other weekend during the school year. Like Child, Father also highlighted fishing and going to the beach as their favorite activities together. In contrast, Mother’s testimony focused on her perception, informed by what Child has told her, that Father only has “minimal” contact with Child on weeknights and that he spends “much less” quality time with Child than Mother does. For example, Mother said that Child often talks about spending time with her friends or T---- or being in her room alone when she is in Father’s care. Dr. Romirowsky also shared Mother’s concern about the limited time Father sets aside on weeknights to spend with Child between when he gets home from work and when Child goes to bed.

Finally, although these are only isolated incidents, Mother’s concern about Father not giving Child sufficient attention is supported by several of the text messages that Father and Ms. B---- have exchanged since the issuance of the Court’s October 2015 Order. For example, in January, February and March 2016, Father exchanged several messages with Ms. B---- that suggest that he at times has made a habit of stealing away to drink alcohol alone and forsake spending quality time with Child. Mother’s Ex. #12, 15 and 16.¹⁵

Child’s Relationship with Mr. B-----

According to Mr. B-----, he and Child first met in 2012 and Child has been spending regular weekends with him since 2015. Both Mother and Mr. B----- feel that the relationship is strong. Mother went so far as to call them “two peas in a pod” and noted that sometimes Child and Mr. B----- even go on various outings without Mother. Mr. B----- testified that he believes that Child enjoys spending time in his home and that together they enjoy such activities as hitting golf balls, and going out for ice cream. Child also stated that she likes spending time with Mr. B----- such as working on building a barn for her toy Breyer horses.

Child’s Relationship with Maternal Grandparents

Although neither Maternal Grandmother nor Maternal Grandfather were called to testify, Mother reported that she believes that Child and Maternal Grandparents have a “very close”

¹⁵ On January 15, 2016, Father wrote “I am going to drink one keep her up there.” On February 18, 2016, Father wrote “Hey I am going to have one or two ok” to which Ms. B---- responded “Okay that’s fine she is reading him books.” On March 2, 2016, Father wrote “Down in basement drinking. Is B----- hear [sic]” to which Ms. B---- responded “No lol. Just me and T-----.” The Court believes the context of the first two emails make it clear that “she” and “her” is in reference to B----- and “him” is T-----.

relationship. Maternal Grandparents take Child out to dinner, go shopping with her or to the movies, and help her with her homework, among others. Mother reported that Child has no other maternal relatives because Mother is an only child.

Child's Relationship with Ms. B---- and her son T----

Child referred to Ms. B---- and T---- as “nice” and mentioned that Ms. B---- sometimes helps Child with her math homework. Ms. B---- added that she feels like T---- and Child have a “sibling relationship,” due to the number of years they have lived together, such that they will sometimes play together around the house or outside despite the large age gap that separates them. Father echoed Ms. B----’s sentiment of the relationship the children share, and described Ms. B---- being a cross between a “big sister” and “another mom” for Child. For example, Ms. B---- cares for Child by picking her up from school at times, helping Child with her homework, making dinner and caring for Child when she is sick. Child and T---- are currently involved in a gymnastics program together in Claymont, DE. Mother and Dr. Romirowsky both testified that they believe that Ms. B---- assumes a large share of the parenting role as to Child when Child is in Father’s care, whether it be cooking meals for the household or being Child’s primary help with her homework.

Child's Relationship with Paternal Grandmother and other Paternal Relatives

Child testified that she sees Paternal Grandmother almost every day after school when she is in Father’s care because Paternal Grandmother will often be the one to transport Child to Father’s home and then stay to help Child with her homework. Father described Paternal Grandmother’s relationship with Child as “very strong” and confirmed that Paternal Grandmother sees Child almost every time that Child is in Father’s care.

Paternal Grandmother was initially Child’s primary caregiver when Child was pre-school age and her parents both worked. The relationship has appeared to stay close since then, such that Paternal Grandmother testified that she feels closer to Child than her other three grandchildren who also live nearby. For example, Paternal Grandmother believes that Child can talk to her about topics that Child does not ask other people. Paternal Grandmother admitted that she is seeing Child more than for the Court-ordered three hours every Wednesday night but also testified that she wants her visitation schedule in Wilmington to stay in place because her night driving ability is limited and would restrict her from going back and forth to see Child in Pottstown on weekday

evenings after school.

Father also testified that Child is similar in age with her three paternal cousins, some or all of whom ride the same bus as Child and go to the same school as Child. Paternal Grandmother added that it would be a “heartbreak” to her cousins if Child moved to Pottstown.

Although the Court is concerned about allegations that Father does not engage much with Child on weeknights, this is insufficient alone under this factor to support Mother’s request to relocate to Pottstown, PA and become Child’s primary caregiver. Child has a very close-knit family network here in Delaware on both her paternal and maternal side. Moving to Pottstown will significantly reduce her contact especially with her cousins and Paternal Grandmother. Dr. Finkelstein also testified generally under this factor that he believes Child reaps a great benefit from having her extended family on both sides in close proximity in Wilmington and that she looks forward to visits in each respective home. Therefore, this factor supports maintaining the existing custodial and residential arrangement between Mother and Father. However, because Father and Paternal Grandmother both agree that Paternal Grandmother is already seeing Child very frequently when Child is in Father’s care which effectively renders the fixed schedule in the existing third party visitation Order moot, this factor supports granting Mother’s request to modify the Order.

(4) The child’s adjustment to her home, school and community;

Child is nearing the conclusion of her sixth grade year at Springer Middle School in Wilmington, DE. Previously, she attended Maple Lane Elementary School, in Claymont, DE. Child stated that she likes her current school not because she likes school but primarily because she has met “so many friends” and because her cousins also attend Springer. However, she did admit that she feels good about being on honor roll. Child also enjoyed participating in the drama club and being in the cast of a spring musical at school. During the course of the school year, Child has met her new best friend, who also attends Springer but previously attended a different elementary school from Child.

Although Child acknowledged that she has friends in Pennsylvania (including the children of the woman who owns the barn where her horse is kept), she feels that she has “way more” friends in Delaware because this is where she has primarily lived her “whole life.” Child also expressed concern that she is not certain if any of her Pennsylvania friends would go to the same

school and/or be in the same grade as her. As a result, Child stated typical feelings for a child her age that she “would feel really lonely” if she had to change schools next year because she might not know anyone at her new school.

Mother testified that if Child relocated with Mother to Pottstown that Child would attend seventh grade at Owen J. Roberts Middle School which Mother feels is a better funded school than Springer.¹⁶ Mother also feels that Child will transition well because she has friends in the Pottstown district, if not in her grade or school. Mother also testified that if she is not able to be home when Child gets home from school, that Mr. B----- or some of Mother’s friends can help supervise Child or assist her with her homework until Mother arrives.

In support of her belief that Child’s academic performance will improve if she resides fully with Mother during the school week, Mother provided lengthy testimony about Child’s school performance year-by-year from second grade to present. For example, Mother testified that Child’s decline in her progress reports to “Needs Improvement” began during third grade when Father resumed having shared residential placement with Child and maintained at that level through fourth and fifth grade. Mother’s Ex. #4. For example, in fifth grade, she was primarily at “Needs Improvement” or “Below Standard” in both Language Arts and Math. Furthermore, Child did not meet the standard for being promoted to sixth grade but was not held back so as not to discourage her. Mother partially blamed Child’s results on what Mother believes to be Father’s lack of involvement in Child’s homework and/or supervision to make sure it gets done. As an example, Mother cited to a March 2018 email wherein she and Father argued about whether Child had an opportunity to redo an assignment in order to secure a higher grade. Mother’s Ex. #39.

However, Mother’s concern about the alternating weekday schedule and its impact on Child’s school performance does not account for Child’s positive marks in sixth grade. Child received all A’s and B’s in her academic courses during the first two marking periods. Mother attributed Child’s success to the fact that Child has had an Individualized Education Plan (“IEP”) in place for ADHD for the entire sixth grade year, whereas it was newly in place toward the end of Child’s fifth grade year, and because Child gets to switch between classes every 90 minutes this year.

Mother also believes that Child’s transition to Pottstown will be smooth because Child’s

¹⁶ No evidence was presented as to the issue of school funding or comparative quality of educational programs and the Court draws no conclusion on this issue.

horse is there and she will be able to see her horse on weekdays and not just every other weekend. Child also spent Mondays and Tuesdays during the summer of 2018 there in addition to every other weekend, and she was able to develop stronger friendships with children in the area. Furthermore, Mother has no plans to change Child's medical providers if Child is allowed to relocate. Dr. Romirowsky also relied on these facts, and that Mr. B----- can be home to help with Child's homework before Mother gets off work, to support his conclusion that Child would do fine adjusting to life in Pottstown.

Dr. Romirowsky added under this factor that he believes Child will adjust well to living in Pottstown because Mr. B-----'s home is the least cluttered of the three homes and a child with distractibility issues arising from ADHD benefits from living in an organized environment. Additionally, of the three homes, Dr. Romirowsky testified that he believes that Father's home is the "least suitable" of the three to meet Child's emotional and academic needs. Dr. Finkelstein acknowledged that Father's house was cluttered but did not consider that as a factor that influenced his overall decision. Instead, Dr. Finkelstein considered that Mother has more support in place for caring for Child in Wilmington than in Pottstown and he also questioned how much help Mr. B----- could actually be to Mother on weekdays because he reportedly works long hours, albeit from home.

In contrast to Mother's belief that Child would adjust well to a move to Pottstown, Father expressed concern that Child's paternal relatives all live here as well as Child's maternal grandparents, and that Child's primary residence has always been North Wilmington. Father echoed Child's sentiments that it would be hard for Child to move because she has made friends at Springer Middle School, her cousins are there, and she is happy there.

Dr. Romirowsky and Dr. Finkelstein also disagreed over whether Child could adjust to having one weekday overnight per week with Father such that he could maintain his involvement in Child's school if Child moved. Dr. Romirowsky felt that the logistical burden of getting Child to and from school would be too much for a child who has historically struggled in her academic performance. On the other hand, Dr. Finkelstein focused his testimony on the negative impact it would have on Child's relationship with Father if Father no longer had any weekday involvement in her school.

Therefore, based on this evidence, the Court believes that Child is doing well academically and relationally at her current school. However, the Court cannot conclude one way or the other

that she would do just as well at Owen J. Roberts Middle School. Child has been moving between three different homes for the last several years. Permitting her to relocate with Mother to Pottstown will provide her with the residential stability during the school week that she has long been lacking. This residential stability combined with the facts that she has a positive relationship with Mr. B---, a housing environment in Pottstown conducive for her success, and established friends and her horse in the Pottstown area all serve to balance out the positive aspects of keeping Child in her current school and in closer proximity to her extended family in Delaware. As a result, the Court finds that this factor is neutral as to the custodial and residential arrangement, and is neutral as to Mother's request to modify the third party visitation order.

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

There was no evidence presented to suggest that Mother has significant issues with either her physical or mental health. Likewise, Paternal Grandmother testified that she does not drink, smoke, or "do pot" and that she lives "a pretty clean life."

As to Child, Mother testified that she has been diagnosed with both epilepsy and ADHD. Child has medication prescribed to address both diagnoses. She began taking medication for epilepsy in 2011 or 2012. Although she was prescribed medication for ADHD in March 2018, she has not started that medication due to a disagreement between Mother and Father that will be addressed in detail under factor six (6) below.

In addition to raising her concerns about Child's health under this factor, Mother devoted considerable testimony to allegations that Father continues to consume alcohol in his home in violation of the Court's Order. The Court will not repeat the testimony above related to allegations of Father's use since June 2017. However, the Court will address Mother's allegations of instances that occurred between October 2015 and June 2017. Whether Father deceived the Court or not when he led the Court to believe in October 2015 that he was "attempting to remain alcohol free" remains unclear. However, what is undeniable is that since that time Father has not attempted to remain alcohol free but rather attempted to keep his alcohol consumption free of detection from Mother, Child and this Court. Both before and after June 2017, picture and text evidence reveal that Father continues to drink in his home both at times when Child is in his care and at other times. When Child is in his care, Father appears to store his beer in his basement, garage or in a trunk of a car and then consume the beer in the basement or some other place outside of Child's view. The text messages also indicate that Ms. B---- has been actively assisting Father in hiding his alcohol

consumption primarily from Child, but also from Mother and the Court. It is also undisputed that Father regularly drinks alcohol during the times that he is staying at his trailer in Cecil County, Maryland, without regard to whether Child is in his care.

The Court will not refer to each and every one of the voluminous text messages and pictures that Mother placed into evidence on this issue. However, the following will focus on some messages that are representative of the whole that have lead the Court to conclude as it does. On November 9, 2015, Father texted Ms. B---- that he is averse to submitting to blood alcohol tests because “they can tell up to a year with people that drink like me” to which Ms. B---- indicated that she would support Father in trying to avoid getting blood alcohol tests in whatever way she could. Mother’s Ex. #8. On Thursday, December 31, 2015, when Child was in Father’s care, Father texted Ms. B---- that she “should sneak that hard stuff into the basement just go out with a bag and teller [sic] her that your [sic] checking the cars.” Mother’s Ex. #10.¹⁷ On Thursday, January 14, 2016, when Child was in Father’s care, Ms. B---- texted Father, “[w]hile I’m upstairs reading with her can u go out to the garage and get me like 2-3 shots.” Mother’s Ex. #11. On Thursday, February 18, 2016, Father texted Ms. B---- the following” “I am going to have one or two ok” to which she responded “that’s fine she is reading him books.” On Wednesday, March 2, 2016, when Child was in Father’s care, Father texted Ms. B---- that he was “[d]own in basement drinking” and then asked “Is B----- hear [sic]?” Ms. B---- responded “[n]o lol. Just me and T----.” Mother’s Ex. #16. On March 12, 2016, Ms. B---- and Father had the following text exchange:

Ms. B----: Beer and what else?

Father: I don’t know smokes.

Ms. B----: Fireball?¹⁸

Father: Shure [sic].

Ms. B----: K. That stuff is still in my trunk so leave room in the driveway ill [sic] bring it in when I get home.

Mother’s Ex. #17. On May 9, 2016, Ms. B---- wrote to Father “[h]urry uppp [sic] I wanna go to Maryland!!!! I also would like to show you the 6pack of Guinness in the fridge. [three emojis] lol.” Mother’s Ex. #20. On Thursday, June 30, 2016 at 3:31 pm, when Child was to be in Father’s overnight care, Ms. B---- and Father had the following text exchange, presumably before Ms. B-- -- went to pick up Child:

¹⁷ The Court is reasonably certain that this and the following references between Father and Ms. B---- to “her” and “she” are Child and “him” is T----.

¹⁸ The Court takes judicial notice that Fireball is a brand of whiskey.

Ms. B----: Your beer is still in my trunk.

Father: Get it out make it cold.

Ms. B----: Uh sure I guess. Heading to your moms make sure you take the beer [sic] out of the fridge in the house before we get home.

Mother's Ex. #20. On September 21, 2016, Ms. B---- wrote the following two messages to Father over the span of three hours. First she wrote, "I'm gonna go home [...] and clean up the alcohol so when B----- gets home tonight it's not there in sight for her to see. I'll put it in the basement for you." Then, she wrote, "I moved all the alcohol out of the fridge to downstairs above the washer."

Mother's Ex. #25. Lastly, on December 6, 2016, Ms. B---- wrote the following two messages to Father over the span of two hours. First she wrote, "[a]lso gonna get all the beer out of the house today to [sic]." Then she wrote that she "got the beer in the cooler loaded up in Erin's car she is gonna take it and keep it there for us." Mother's Ex. #27.

Despite overwhelming documentary evidence to the contrary, Father still maintained the position that he has no knowledge of there being any alcohol in his home since 2015. While Father was not specifically cross examined on how he could reconcile that position with the express language in the text messages, rather than counter Mother's testimony as to whether he has had alcohol in his home in violation of the Order of October 2015, Father sought to deflect focus on this issue by testifying at length about his participation in Alcoholics Anonymous ("AA") meetings in apparent compliance with the Order and overlooking the Court's prior finding of Contempt of Court for his lying about this issue. For example, he said that overall he is attending the amount of meetings he is supposed to attend per month but the number of meetings he attends per week might vary if he is sick or has other commitments.¹⁹ Father further admitted that he has reaped some benefit from attending but also that he "would feel better if [he] could go because [he] wanted to go" suggesting that he is going at his current frequency only because he is under a Court obligation to so attend and not because he feels that needs to participate. Father concluded his testimony under this factor by stating that he is trying to not let the potential stress of dealing with this custody matter (and the corresponding strain it has on his finances) negatively impact him and that "I really don't think that as much as the alcohol would be a problem I feel like the stress issue would be more of a problem than alcohol." Clearly, Father fails to accept his dependence on alcohol as

¹⁹ Although Father alluded to the fact during his direct examination that he is trying to go to two AA meetings per week, Mother did not raise the argument (as she did at the June 7, 2017 hearing on a prior Petition – RTSC) again that Father was still not in compliance with the Court's Order that he attend three times per week.

having any negative impact on his relationship with his daughter, or posing any risk to himself or others.

Dr. Romirowsky expressed concern for both Father's ongoing alcohol use and his anger issues. For example, Dr. Romirowsky concluded, in part based on the way Father has responded to the prior contempt finding for his failure to attend AA meetings at the required regularity, that Father is not taking his issue with alcohol seriously. Although Dr. Romirowsky made clear that he was not certain that Father is an alcoholic, Dr. Romirowsky also found the fact that Father did not self-identify as an alcoholic to be "stunning" based on Father's history. Dr. Romirowsky also testified that Child described Father as being unresponsive to her and in a stupor when he drinks beer on the weekends. According to Dr. Romirowsky, father admitted to him that he has a problem controlling his anger which sometimes leads to outbursts but also that he was not seeking any anger management counseling. In response, Dr. Romirowsky testified that it is not beneficial for Child's mental health and overall well-being to be exposed to Father's outbursts such as occurred over Easter weekend in March 2016 when Father blew up at Mother over the phone and Child could be heard in the background. Also noting Father's issues with anger and drinking alcohol around Child, Dr. Finkelstein testified that Father would benefit from long-term counseling to work through both issues.

Based on this evidence, the Court finds that, after all his time attending AA meetings, Father does not appear to believe that he has an issue with alcohol abuse that would necessitate his attendance at AA meetings nor that there would be any benefit to his curtailing alcohol consumption. Therefore, the Court can no longer conclude that Father is "actively treating" his alcohol addiction as it found in October 2015. Rather, Father is largely only going through the motions of "treating" his alcohol use without really having his heart in it. The Court further finds it illuminating that Father feels that the threat of encroaching stress is a bigger issue in his life right now than his alcohol consumption. The Court also finds that Father is no longer attempting to "remain alcohol free" as it found in October 2015. Rather, Father and Ms. B---- are actively trying to both keep the alcohol consumption free from detection and find ways to get around the Court's Order. Although Child is now twelve years old, if Father continues to consume alcohol, the specter of his 2014 DUI while Child was in the car remains. For that reason and because the Court is troubled by Father's blatant disregard for the governing Order, the Court finds that this factor strongly favors giving Mother primary residency with Child and reducing the amount of time that

Child is in Father's care. As to Paternal Grandmother's visitation, this factor supports her ongoing contact with Child whether by a set schedule or by the agreement of the parties.

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

Pursuant to 13 Del. C. § 701, even without a Court Order, parents are responsible for the support, care, nurture, welfare, and education of their children. At the time of the issuance of the Court's October 2015 Order, Father was under an obligation to pay Mother \$262 per month in child support. However, due to a change of financial circumstances of the parties, since October 23, 2018, Mother has been under a Permanent Modification Support Order whereby she is to pay Father \$170 per month. There was no evidence to suggest that Mother is in arrears as to this Order. However, Mother testified that she is concerned, after reviewing Father's bank statements, that he is spending \$280 per month on average at liquor stores and other establishments where he can purchase alcohol, all while maintaining at times that he has insufficient funds to contribute to Child's extracurricular activities and medical bills. For example, in November 2016 and again in October 2017, Father responded to Mother's requests that he pay \$75 for dance recital costumes, because she was paying for the monthly lessons, by writing that he did not have "sufficient funds" and he did not have "any extra money." Mother's Ex. #36 and 37.

As to their relative involvement in Child's school, Mother testified that Father has not been as involved in such things as Child's 504 plan and IEP as Mother has, but she also did not testify that he has ever opposed any plans in place to assist Child in school due to her ADHD. Instead, she admitted that Father has wanted to see how Child would do in school with the IEP in place before making a decision on whether Child should start receiving prescribed medication to address her ADHD.

As to their relative involvement in Child's issues related to her epilepsy and ADHD, Mother testified that Father does not attend all of Child's medical appointments but he maintains a high level of involvement in the decision making related to Child's care as seen by various email strings that were admitted into evidence. For example, contrary to the advice of Child's doctor, Father is still resistant to Child taking medication for ADHD because, according to Mother, he is concerned that doctors are sometimes too quick to prescribe medication and that he is sensitive to starting Child on such medication in light of the current opioid epidemic. As a result, although Child's doctor continues to recommend Child begin medication and Mother supports that

recommendation, Child is not taking any prescription medication to address her ADHD.

Furthermore, at the time of Mother's October 2018 testimony, she stated that Father was in support of Child getting braces based on the recommendation of an orthodontist but that he did not want to have to pay 50% of the out of pocket medical expenses pursuant to the child support order that governed at that time because the costs were prohibitive for him. Mother's Ex. #43. Mother disputed Father's position based on her examination of his bank statements from the middle of 2018. At present, the parties are now under a child support order whereby Father is only responsible for 41% of the out of pocket medical expenses. So it is possible that this issue of how to pay for the braces is now moot.

Finally, Mother and Father have historically disagreed over whether Child should begin receiving counseling. Mother testified that medical professionals recommended that Child begin counseling in July 2016, a recommendation which Mother supported and still supports. Mother's Ex. #44. However, Father opposed letting Child begin counseling until he relented in the fall of 2018.

Providing his overall assessment of the parents' compliance with their rights and responsibilities, Dr. Romirowsky testified that he believes Mother has done the "heavy lifting" as to the day-to-day responsibilities of monitoring Child's academic progress and overseeing her medical appointments, whereas Father has focused his attention on simply providing a roof over Child's head. Furthermore, Dr. Romirowsky believes that Father has delegated some parenting responsibilities such as monitoring Child's homework and generally caring for Child on weekday evening to Ms. B----. Dr. Romirowsky also disagrees with Father's attitude toward medicating Child that if he turned out okay without medicating his ADHD that therefore Child would not benefit from medication to address her ADHD. On the other hand, Dr. Finklestein also supported some interventions for Child such as counseling, but attributed Father's opposition not as his failure under this factor but rather as an indication of the very poor and antagonistic communication environment that Mother and Father have created between themselves.

Therefore, the parties clearly disagree about what treatment Child should receive and whether they can afford to provide Child with the treatment that they agree Child should receive. Although the Court understands that Mother is frustrated, the Court also believes that Father's opposition to some of the services seems reasonable and thought through. That said, as previously stated, the Court has real concerns about Father's consumption of alcohol and is troubled by the

fact that he might be spending almost \$300 per month on it rather than prioritizing his responsibility to care for Child. The Court also agrees with Dr. Romirowsky that Mother appears to be assuming the leading role in making sure Child's academic and medical needs are met. As to the matter of custody modification, this factor favors granting Mother's petition. This factor is inapplicable as to Paternal Grandmother's visitation schedule.

(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." Mother stated that there have been no incidents of domestic violence between either Mother and Father or Mother and Mr. B----- since October 2015. Father did not testify as to this issue. Therefore, the Court finds this factor to be neutral as to legal custody and residential placement and inapplicable as to Paternal Grandmother's visitation schedule.

(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 all the parties' Delaware criminal histories as well as that of Mr. B-----, Ms. B----- and Maternal Grandparents. The Court was not able to locate either Mr. B----- or Ms. B----- in the DELJIS online system. Furthermore, Mother and Maternal Grandparents have no criminal records in Delaware other than for speeding tickets. In addition to the convictions in Maryland from 2014 that were a focus of the Court's prior decision on custody in 2015, Father also has an underage possession/consumption of alcohol charge terminated in his favor from 2005 when he was 20 years old. Therefore, the Court finds this factor neutral as to legal custody and residential placement as well as to Paternal Grandmother's visitation.

Other considerations

In addition to the above express factors listed under 13 *Del. C.* § 722, the Court may consider other relevant factors in determining the legal custody and residential arrangements for Child. As a result, the Court also notes that Mother and Father have demonstrated a very poor communication record since the issuance of the governing Order of October 2015. First, in an

undated card from Father to Mother after Father was sanctioned with the cost of Mother's attorney's fees in 2017, Father wrote a very sarcastic note to Mother. Mother's Ex. #2. Dr. Romirowsky found it to be significant that Father not only had ill feelings about the sanctions but that he took the initiative to purchase a card, write the note to Mother and then actually send it. Second, Mother and Father have a demonstrated ability to send long and argumentative emails about Child's school and medical care that easily devolve into personal attacks lobbed by one or both parties. Mother's Ex. #38 and 39. Third, as discussed under factor six (6), they also apparently find it very difficult to agree on important matters regarding Child's medical care. Fourth, they have a demonstrated inflexibility to permit the other party to have additional time with Child outside the set visitation schedule. For example, Mother testified that Father has historically not let her take Child to dance lessons or help Child get ready for a dance recital if either occurs on Father's time. Mother also refused to let Father see Child on his birthday in 2016 which led Father to respond that he would not let Child see Mother on her birthday. Mother's Ex. #41. Fifth, the parties find it necessary to amplify the significance of relatively minor matters such as evidenced by their decision to litigate the issue of Child getting acrylic nails without Mother's permission. Finally, and chief among the Court's concern under this analysis of their communication history, the expletive-laden monologue that Father launched into during a phone call with Mother over Easter weekend in March 2016 is especially troubling because Mother said she initially made the call in order to simply talk to Child which suggests that Child may have been within earshot during the call. If the above examples are indicative of the overall health of their co-parenting efforts, then the Court has a real concern that Mother and Father cannot effectively share custodial responsibility of Child without the assistance of a neutral third-party parent coordinator. Whereas Dr. Finkelstein testified that he believes Mother and Father would benefit from a non-relative neutral parent coordinator to defuse any disagreements before they escalate and that Father would respond more positively to receiving communication about Child from someone other than Mother, Dr. Romirowsky testified that he does not believe such an arrangement would work. He thinks that not only could they not likely agree on selecting a parent coordinator but they would fire the coordinator if they disagreed with the coordinator's decision on an issue. As a result, Dr. Romirowsky believes that giving Mother final decision making is the better remedy to this ongoing conflict than appointing a neutral decision maker.

Finally, the Court summarizes the recommendations of Dr. Romirowsky and Dr.

Finkelstein as to how to resolve this matter. Dr. Romirowsky believes Mother should be permitted to relocate to Pottstown, PA with Child and receive primary residency, and Father should have every other weekend visitation from Friday to Sunday during the school year and a majority of the residential time with Child during the summer. Dr. Romirowsky also believes that the parties should have joint legal custody with Mother receiving final decision making on medical and academic decisions, all while encouraging the parties to make good faith efforts to reach agreements between them. In support of his recommendations, Dr. Romirowsky stated that he believes Mother provides Child with the structure that she needs and better oversight. He further testified that he does not believe that Child's relationship with Father will suffer if she moves because she has a healthy, established attachment. Dr. Finkelstein believes that it would be best for Child if her parents maintained joint legal custody and Mother did not move. However, if Mother does relocate to Pottstown, PA then he supports Mother having primary residency during the school year, and Father having every other weekend from Friday to Sunday plus every Thursday overnight to encourage Father to remain involved in Child's weekday school routine. In support of his recommendations, Dr. Finkelstein acknowledged Mother's central role in monitoring Child's academic progress but also that it is important that Child not feel that Mother is taking her away from Father and that Child continue to have easy access to her relatives in Delaware. Additionally, Dr. Finkelstein believes that keeping Father involved in Child's school week will help to make Father more aware and agreeable to decisions about Child's education. Dr. Finkelstein also recommended a parent coordinator, counseling for Child if she moves to Pennsylvania, counseling for Father to address his alcohol use and relations with Mother, continued attendance by Father at AA meetings but not alcohol testing, and that Mother shoulder a larger portion of the transportation burden related to exchanges between Father and Mother.

Conclusion

Based on the evidence presented, the Court will grant the parties joint legal custody with Mother receiving primary residence and final decision making on educational and medical matters for a number of reasons. First, the benefit of this custodial change outweighs the potential harm. Second, Father has twice been found in contempt of the prior custodial Orders of the Court. Third, this custodial change is in the best interest of Child at this time. In support of final decision making to Mother, the Court gives the most weight to factors five (5) and six (6) of 13 *Del. C.* § 722 and the clear difficulty the parties have in reaching an agreement on anything with regard to Child.

Mother has assumed the leading role in making sure Child's academic and medical needs are met. Furthermore, the Court has significant concerns about Father's poor decision making history. He has chosen to lie in the past about how often he has attended AA meetings only to be uncovered by a private investigator. He has also chosen to lie about his consumption and storage of alcohol in his home only to be uncovered by a large volume of text messages. Finally, he has chosen to engage his housemate, Ms. B----, in fostering his subterfuge. In support of primary residence to Mother, the Court gives the most weight to factor five (5). The Court has serious concerns about Father's ongoing consumption of alcohol in his home in blatant violation of the governing Order in this case and Father's failure to recognize the impact it is having on Child. Aside from factor five, which is clearly in Mother's favor, the rest of the factors largely balance themselves out. Although the Court will continue to impose various other restrictions on Father with regard to his alcohol consumption, the Court finds it pointless to continue to require Father to attend AA meetings. Despite previously being found in Contempt of Court regarding his failure to attend sufficient AA meetings and the length of time with which Father has been attending the meetings, Father maintains the belief that attending the meetings is of little value to him. Therefore, the Court believes that the AA meetings will only become valuable for Father when he chooses to admit his dependence on alcohol, and that requiring Father to abstain from consuming alcohol whenever Child is in his care, and from storing or consuming alcohol on his property are adequate safeguards to protect Child when she is in Father's care.

The Court also finds that it is in the best interest of Child that she continue to have visitation with Paternal Grandmother but that it is no longer necessary for Paternal Grandmother and Child to have a fixed visitation schedule every Wednesday from 5:00 PM to 8:00 PM. In support of this conclusion, the Court gives the most weight to factor three (3) of 13 *Del. C. § 722*. The Court previously gave Paternal Grandmother the fixed schedule during a time when Father was only permitted supervised visitation at the Family Visitation Center. Father has since regained his unsupervised contact and he is giving Paternal Grandmother more frequent contact than one night per week for three hours.

ACCORDINGLY, IT IS HEREBY ORDERED AS FOLLOWS:

1. ***Third Party Visitation:*** Mother's Petition for Modification of Third Party Visitation is ***GRANTED***, and the Court's Order of October 20, 2015 granting Paternal Grandmother a set third party visitation schedule with Child is ***MODIFIED***. Going forward, Paternal Grandmother shall have visitation with Child at such times as Father has scheduled contact and at such other times as mutually agreed between Mother and Paternal Grandmother.
2. ***Contempt of Court:*** Father is found to be in Contempt of Court for violation of this Court's Order of October 27, 2015 regarding the prohibition of alcohol in his home.
3. Mother's counsel shall, within 20 days, submit an affidavit and supporting documentation regarding the request for attorney's fees. The request shall set out the cost and legal fees incurred for these three consolidated proceedings, a breakdown of that portion counsel believes relates solely to the Rule to Show Cause and counsel's rationale for the breakdown. Father's counsel shall respond within 20 days thereafter. The response shall include a breakdown of the costs and legal fees incurred by Father in these consolidated proceedings. The Court will thereafter consider what amount if any shall be an appropriate award of counsel fees to Mother.
4. Father may not allow alcohol to be brought onto or stored in any manner on the property which is his primary residence.
5. Father shall not consume alcohol when Child is in his care or within 24 hours prior thereto, regardless of the location.
6. Mother may require Father to submit to random screens for alcohol consumption within 24 hours prior to any initiation of Father's visitation with Child. The manner of testing shall be determined by Mother and the cost of the testing advanced by her. Father shall sign all authorizations necessary for release of his test results to Mother. If the results of any alcohol test of Father are positive, Father shall within 10 days of receipt of the test results reimburse Mother for the cost advanced by her for such test. Father shall thereafter be responsible for the cost of any future alcohol test until such time as Father's test results show three consecutive negative screens. These screenings will be random and the manner of testing at Mother's request at a frequency of no less than one screen every two weeks. If Mother fails to request Father to submit to a screening within two weeks from the prior screen, that missed screen will be treated as a negative screen. Following any screens in which Father tests positive for alcohol, any screens requested by Mother but for which Father fails to timely submit, or if Father is arrested for charges related to alcohol use, including public intoxication and any motor vehicle infractions alleging Father was under the influence, Father's regular visitation with Child shall be suspended and all contact shall thereafter be supervised, by a person of Mother's choosing, one time every other week for up to three hours. At such time as Father shows three consecutive negative screens, he will return to the regular unsupervised visitation schedule as described in the below paragraphs.

7. Mother and Father shall have joint legal custody of Child, B----- W-----, and share all material information regarding any issue of medical care of Child and provide each other with an opportunity to discuss treatment options. If parents are not able to agree on treatment, Mother shall have final decision-making authority with regard to such medical care. In the case of a medical emergency the parent in whose care Child is at that time shall immediately notify the other parent of the necessity for emergency medical care, the nature of the emergency, and where and by whom treatment is to be provided so that both parents may be present during the Child's medical care. Mother shall also have final decision-making authority with regard to Child's education.
8. Until the conclusion of the current 2018-2019 school year, the parents shall continue to exercise shared residential placement of Child based on the schedule currently in place with Mother having every Monday and Tuesday overnight, Father having every Wednesday and Thursday overnight and the parties alternating weekends (Friday through Sunday).
9. Effective beginning the Friday after the last week of the current school term, and continuing throughout this summer and each summer thereafter, parents shall alternate on a weekly basis residential placement of Child with exchanges occurring 6:00 PM each Friday. Child shall reside with Father the first week of each summer following the end of the school term, alternating weekly thereafter and ending the last full week prior to the week in which the new school term begins.
10. Throughout the 2019-2020 school year and every school year going forward, Mother shall exercise primary residential placement of Child, which she may do following her relocation to Pottstown, Pennsylvania. Beginning the first weekend after the first full week of the Fall school term, Father shall exercise visitation with Child every other weekend from 6:00 PM Friday until 6:00 PM Sunday, or 6:00 PM Monday if there is a school holiday on the Monday of Father's weekend. Father may also exercise a weeknight dinner visit with Child from 5:00 PM to 8:00 PM once every other week on either the Tuesday following the weekends when Father does not have visitation with Child. If either Father or Child is not available for that Tuesday contact, Father shall be entitled to reschedule that contact for the day before, a Monday, provided that he gives Mother at least one week's notice that he is unavailable on his scheduled Tuesday.
11. Spring and Winter school vacations shall each be shared between the parents on a mutually agreed upon schedule.
12. **Holidays:** Holidays shall be shared on a mutually agreed upon schedule. If the parties cannot reach agreement, regardless of whose day it is supposed to be, Father shall have Child on holidays in Column 1 in odd-numbered years and holidays in Column 2 in even-numbered years. Mother shall have Child 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 9:00 AM until 6:00 PM the day of the holiday (unless the holiday falls on your normal residential custody, then there is no change). Halloween contact shall begin at 5:00 PM until 9:00 PM. Christmas Eve contact shall begin at 6:00 PM on December 24th and end at noon on December 25th. Christmas Day contact shall begin at noon on December 25th and end at 6:00 PM on December 26th.

13. ***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 Child from 9AM until 6PM.
14. Pick-up and drop-off of Child for all exchanges, except on Father's weeknight dinner visits, shall be by the parent receiving Child at that time at the primary home of the sending parent, unless the parents agree otherwise. On Father's weeknight dinner visits, Father shall be responsible for all pick-up and drop-off at Mother's home unless the parents agree on an alternate location. Pickup may be by the parent or a responsible adult designated by such parent.
15. Child shall be permitted reasonable unsupervised access with the non-residential parent by phone or electronic means. 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.²⁰ 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.
16. The nonresidential parent shall be notified of and invited to attend all medical appointments, school conferences and meetings, school performances and Child's recreational activities including practices and contests and performances. Schedules

²⁰ 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.

provided by the school or the activity shall be made available to each parent. Each parent shall be listed with Child's school as being entitled to access to educational information as well as the right to pick up Child from school if the residential parent is not available.

17. Parents may modify the visitation schedule by mutual agreement in writing.

IT IS SO ORDERED.

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

RBC/plr

Cc: File, parties

Mail Date: