

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

August 23, 2019

J----- L-----
- Doe Run Court, Apt --
Wilmington, DE 19808

LETTER, DECISION AND ORDER

T----- G----- Sr.
-- SE 2nd Street, Apt -
Milford, DE 19963

RE: J----- L----- v T----- G----- Sr.
File No.: CN09-02748; Petition No.: 18-34486
Petition to Modify Custody Order: T----- G----- Jr (DOB 05/--/06)

Dear Ms. L----- and Mr. G-----:

This is the Court's decision regarding the Petition to Modify Custody Order filed by J-----
-- L----- (hereinafter "Mother") on November 16, 2018 against T----- G----- Sr (hereinafter
"Father") in the interest of their minor child T----- G----- Jr (hereinafter "Child") born May --,
2006. The parties are self-represented.

Procedural History

Pursuant to the Consent Order – Custody, Visitation signed by the Court on December 1,
2010, Mother and Father agreed to share joint legal custody of Child, with primary residential
placement of Child going to Mother. Father, who was residing in Milford, DE at that time as he

still does, received visitation with Child every other weekend from Friday evening until Sunday at Noon. The parties agreed for pick-up and drop-off to occur at a McDonald's location in Smyrna, DE. The parties also agreed to work out a holiday and school break schedule by mutual agreement. In her Petition to Modify Custody Order, Mother requested sole legal custody and primary residence and that Father have no visitation with Child due to concerns about Father's alleged alcohol use and inconsistent involvement in Child's life. On February 7, 2019, the Court held a case management conference with the parties. Mother reported that Child no longer wanted to see Father, and that Child wanted to change his name. Father reported that Mother had not brought Child to see Father since April 2018. Mother responded that visitation ceased after an alleged incident of Father driving under the influence of alcohol with Child in the car.

On July 18, 2019, the Court held a final hearing in this matter, participated in by Mother and Father. Testimony was taken from Mother; Child's therapist, Chresencia Alicea; Child's maternal grandmother, S----- D----- (hereinafter "Maternal Grandmother"); and Father.

Background Facts

Mother, 39 years old, has resided with Child in a two-bedroom apartment in Wilmington, DE for "a little over two years." Although she has lived in the Wilmington area for a majority of Child's life, she also spent brief periods living in Milford, DE with Maternal Grandmother and then in Harrington, DE in 2016 and 2017. Mother is currently employed as a senior executive assistant at Citibank.

Father, 38 years old, currently resides in a one-bedroom apartment in Milford, DE. Father testified that he resides alone. When Child has visited in the past, he has slept on a couch. The only bathroom in the apartment is accessible by walking through Father's bedroom. At the time of the hearing, Father had not worked since May 2019 when he got laid off from a position at Baltimore Aircoil. However, he reported that the week following the hearing he planned to begin working for Ensley's Tree Care in Harrington, DE from 7:30 AM until 5:00 PM.

Modification of Custody

Pursuant to 13 *Del. C.* § 729(b), in making a determination on a request to modify the legal custody and residential arrangements for a child set out in a prior order entered by the Court by consent of the parties, the Court must consider all relevant factors including those set forth in 13 *Del. C.* § 722. The Court has held that some factors may be given more weight than others in the

Court's analysis.¹ The factors are as follows:

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

Mother is seeking to modify the prior Order from joint custody to sole custody in favor of Mother. Mother also wants to terminate Father's regularly scheduled visitation with Child. In support of her request for sole custody, Mother testified she has attempted to get a passport for Child since 2017 but Father has refused to sign the requisite paperwork. Since February 2019, Father's explanation for his refusal, according to Mother, has been because he does not want to sign the paperwork until he can see Child. In support of her request to discontinue Father's visitation schedule, Mother testified that Child does not want to see Father anymore in part because he feels unsafe due to Father's alleged alcohol consumption.

Father is seeking to maintain joint legal custody and his current every other weekend schedule. However, he is not opposed to Mother having primary residence of Child.

Therefore, the Court finds this factor to be neutral as to legal custody and Father's visitation, because the parties have taken opposing positions.

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

The Court chose not to speak with Child about his wishes, in part because the Court had the opportunity to hear from Child's therapist. Mother testified that Child does not want to see Father at present, and that if he was made to spend weekends with Father, that instead, he would run to Maternal Grandmother's house. Mother also testified that Child has told her that, when he is older and he can drive his own vehicle, he may decide to go visit Father, because he does not feel safe being driven around by Father. During the summer of 2017, Child wrote in a letter to Father that he sometimes has fun with Father when Father is not drinking and that it makes him happy when Father wants to get him presents for his birthday or Christmas. But when Father is drinking "sometimes [he] get[s] rough," such that Child would prefer to spend time with Father when Father is not drinking. Mother's Ex. #3. Additionally, on New Year's Eve, December 31, 2016, Child wrote the following:

This year that I did not what [sic] is for me seeing my dad and messing his 9th

¹ 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.")

chach [sic] and I want to leave it behind cause I don't want that to be wear [sic] all the time and I don't want to be scared of him and I wish my dad was different like him drinking all the time when I am around.

Ms. Alicea confirmed Mother's testimony that Child has told Ms. Alicea that he wants to stay with Mother and change his name, and that he would be a flight risk if the Court required him to resume visitation with Father. Therefore, based on Child's desire to not have Father involved in his life, the Court finds this factor to favor sole legal custody to Mother, and a discontinuation of Father's visitation schedule until such time as Child's therapist recommends that Child is ready to resume contact with Father.

(3) The interaction and interrelationship of the child with his parents, grandparents, siblings, persons 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 testified that Child is her "best friend" and they have a very close relationship. Since 2015, Mother said it has just been the two of them living together, other than a brief period living with Maternal Grandmother. Mother added that they talk about everything, and Child is very protective of her. Ms. Alicea testified that Mother and Child have a positive relationship.

Child's Relationship with Father

Mother testified that Father and Child have a "very strained" relationship right now. For example, she testified that Child does not want to talk to or be around Father, or even talk about Father during therapy sessions. Furthermore, Child wants to change his name so that he no longer has the same name as Father.

Mother also provided a breakdown of Father and Child's contact history since the 2010 Consent Order. From 2010 until 2014, Mother said generally that they had "off and on" contact. Then from 2014 until December 2016, Father did not see Child for two years because, according to Mother, Father was upset that she would not drop Father's child support arrears. Around Christmas 2016, Child spent an overnight period with Father during which they stayed at a hotel with Father's paramour and others. When Father and the other adults returned Child to Mother's the day after Christmas, all the adults "reeked of liquor." After that Christmas 2016 contact, Child

and Father did not see each other again until the fall of 2017. Thereafter, they resumed regular weekend contact until April 2018, including taking a weeklong trip to Florida in March 2018. However, during a weekend contact in Milford with Father in April 2018, Child described to Mother that Father got drunk at a festival such that Child had to hold Father's keys and phone and then Father drove Child home from the festival drunk, running a red light along the way. After that visit, Child also reportedly told Mother that Father had been getting drunk every weekend that Child was in Father's care. Since April 2018, Father and Child have not had in person contact. Mother testified that after the February 2019 case management conference, Father reached out to Mother to ask about talking to Child and Mother had to force Child to get on the phone with Father. According to Mother, all Father essentially said to Child during the call was "who told you you don't have to come down here?" Mother stated that Father has not called to talk to Child since that time.² Finally, Mother placed full blame on Father for not talking to Child since April 2018 because Child has a cell phone and Father has chosen not to reach out.

In response, Father testified that his relationship with Child is not as bad as Mother makes it seem and he placed blame on Mother for his limited contact with Child in recent years. Specifically, he said that despite the visitation schedule in the Consent Order of 2010, Father's visitation only occurs if Mother is "happy." Furthermore, when he has tried to speak to Child on the phone, he said his calls do not go through leading him to believe his number has been blocked.³ When Father and Child have had contact in the past, Father stated that Child enjoyed playing video games and going to the beach and that Father would do whatever Child wanted to do. Father also testified that Child sent him a text message on Father's birthday as evidence that the relationship is not as bad as Mother portrays it. Finally, Father denied being drunk, driving Child home from the festival in April 2018, or running a red light. However, he acknowledged having a "couple beers" and that Child was holding Father's keys. He also denied ever being absent from Child's life for two years. Rather, the longest gap has been the one at present, since April 2018. All that said, Father also testified that he would be willing to attend family counseling sessions with Child to address their relationship, so long as sessions could be scheduled at times when he is not

² Additionally, the Court notes that there is no evidence in the text exchanges between the parties between February 2019 and May 2019 that Father ever asked Mother if he could talk to Child on the phone.

³ The Court takes notice of a December 2016 text message between the parties where Mother admitted to blocking Father from contacting Child, but also notes that it did not identify any subsequent express admissions that Mother has blocked Father.

working. He added that he did not attend previous sessions with Ms. Alicea because he had to work.

Ms. Alicea testified that Child becomes distant and shuts down emotionally when the topic of having future contact with Father has come up in past sessions. She also testified that Child has told her that, when Father and Child did have contact in the past, there was limited interaction because Child would play his video games and Father would be elsewhere in the residence. However, Ms. Alicea did express optimism that the relationship could improve if Father and Child engaged in family counseling sessions outside of the presence of Mother or Maternal Grandmother.

Furthermore, although it is undisputed that Father has not seen Child since April 2018, text message exchanges between Mother and Father indicate that Father has initiated sporadic correspondence with Mother about seeing Child or asking what he wants for Christmas or his birthday. Father has also reached out to Mother about Child on occasion between Christmas 2016 and the fall of 2017 before Father and Child temporarily resumed regular contact.

Therefore, although much of the testimony presented by Mother was disputed by Father and Mother did not provide any documentary evidence to support the events of Child's April 2018 weekend with Father, the fact remains that Father and Child have not seen each other since April 2018. Additionally, even though Father disputed driving drunk with Child in April 2018, that has been Child's perception and that perception needs to be repaired. As a result, there is insufficient evidence under this factor to persuade the Court that Mother should have sole legal custody but there is sufficient evidence that Father's visitation should not be reinstated without therapeutic assistance.

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

There was very limited testimony related to this factor, perhaps in part because neither party has requested that the Court consider modifying who has primary residency. Child attends Skyline Middle School in Wilmington, DE. He will be entering the eighth grade. During the 2018-2019 school year, he finished the year with Cs or better. However, he has struggled at times to complete his assignments. He has an IEP in place for a learning disability. Therefore, based on the absence of any testimony that Child is not adjusted to the current arrangement and the fact that the parties have not been adhering to the every other weekend residential schedule since April 2018,

the Court finds that this factor is neutral.

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

Both Mother and Father said that they and Child are all in good physical health. Father testified that he has no mental health treatment history, and Mother testified that she takes medication for generalized anxiety. The parties devoted considerable testimony to Father's alcohol consumption and Child's mental health.

As to Father, Mother alleged that he abuses alcohol. In support of her claim, she referenced a Facebook post from May 2017 wherein Father's friends implied that he was drunk and that Father's Facebook cover photo is a bottle of Hennessy cognac. Mother's Ex. #2. Mother also testified, as described above, about times she has come to learn that Father was drinking or drunk during visitation periods with Child. Father responded that those Facebook posts are evidence of what he does in his own time, and not with Child. However, he also admitted that he occasionally drinks alcohol, sometimes in front of Child. When he does drink, he described having "a couple of beers or something" at home on weekends, and clarified that "it's not like I'm an alcoholic."

As to Child, Mother testified that he has generalized anxiety. Child was attending counseling sessions with Ms. Alicea for several years up until April 2019 when she said sessions could continue on an as needed basis whenever Child wanted to check in. Child has not reached out to her by phone since that time. In order to provide additional support for Child, Mother has connected Child with an adult mentor through Connecting Generations. Furthermore, Ms. Alicea confirmed that Child has expressed concerns over the years about having contact with Father and about being scared and intimidated when with Father. She also confirmed that Child has shown an interest in changing his name. She further testified that Child has told her he would run away to Maternal Grandmother's house if he was ever required to spend a weekend with Father in Milford. Finally, she testified about how she once asked Child to draw separate pictures of both Mother and Father. Of Mother, he drew a picture of a happy person with a smiley face. Of Father, he drew a picture of a person with a mean face.

Therefore, the Court finds that this factor favors waiting to reintroduce Father's contact with Child until it can occur in a therapeutic setting such as family counseling. The Court also finds that this factor is neutral as to joint or sole custody because there is no evidence that his

drinking has impaired his ability to make any joint decisions with Mother or that Father does not support Child's participation in counseling.

(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. Pursuant to a Permanent Modification Consent Order - Support issued by the Court on October 24, 2011, Father was to pay Mother \$503 per month in current child support. In her Petition, Mother alleged that Father was in arrears in the amount of \$1,564. At the time of the final hearing, Mother testified that Father was \$3,200 in arrears. Father responded that he fell behind on child support after he lost his job at Burris Logistics last year and he was not making as much money at Baltimore Aircoil. However, he added that he believes he is now working toward paying back his arrears.

Mother presented a 130-page packet of what appears to be all the text messages she and Father exchanged between April 27, 2016 and May 12, 2019. She explained that she believes that these messages show that Father has been non-responsive to her efforts to involve him in parenting such as by telling Father every time she moved. Additionally, on March 19, 2019, Mother informed Father of the time and place of Child's then weekly counseling sessions. However, Father neither responded to that message nor ever attended any sessions.

Finally, Father admitted that he has had very limited engagement in Child's school and medical care in recent years. Although Father has an obvious geographic barrier to his involvement as he would have to drive up from Milford to Wilmington (and there is express evidence in text messages where Mother told Father to not involve himself in Child's school during the brief period when he was attending school close to Father's residence in 2016), the Court declines to attribute all of Father's non-involvement to this fact. Father last attended a school function for Child in 2013 or 2014 and he last spoke to any school staff about Child in 2016. Father does not even know the name of Child's current school. Father defended his lack of recent involvement because he said that when he has asked for Child's school name/information, Mother has responded that it is none of Father's business.

Although it is disputed who is to blame for Father's non-involvement in Child's life in recent years, the Court notes that Father has never attempted to petition the Court to require Mother to give him equal access to Child's education and medical records consistent with a joint legal

custodian. Now, several years have gone by, and Father cannot dispute that he has no knowledge of Child's current educational or medical needs. With the long distance that separates Mother and Father and their strained history of communication, the Court is not optimistic that the parties can effectively make joint decisions on major issues in Child's life as he grows up. Therefore, the Court finds that this factors supports sole custody going to Mother and reintroducing Father's contact with Child through a therapeutic setting.

(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 Mother and Father denied ever being found to be a perpetrator of domestic violence. However, Mother testified that Child told her that Father and his paramour got into a fight at a hotel over Christmas holiday 2016 that necessitated that Father, Child and his paramour move to another hotel. In Mother's text messages with Father, she also indicates that Child has seen Father push his paramours down, and that Father once pushed Child down after Child tried to help one up. Although the Court is concerned about what Child has reportedly told Mother, the Court finds that those generalized allegations are insufficient to completely terminate Father's contact with Child. Therefore, this factor favors sole legal custody and permitting Father to resume contact with Child in a therapeutic setting.

(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. Mother has no criminal record other than repeated speeding offenses. At the time of the July 18th hearing, the Court took judicial notice that Father had nothing of any concern other than motor vehicle offenses. Although he had a conviction for a DUI, it was from May 2008. He also had an alcohol-related conviction from back in September 2000 for Underage Possession or Consumption of Alcohol when he was only 19 years old. However, since taking this matter under advisement the Court has learned that on August 10th Father was arrested on charges of misdemeanor Vehicular Assault Second Degree and Driving Under the Influence. His charges were listed as pending on August 20th, and he had an active bail condition of "Zero Tolerance for Drinking and Driving."

Combined with the above testimony about Father's consumption of alcohol and Child's concerns about driving in the car with Father since April 2018, the Court weighs this factor heavily in favor of granting Mother sole legal custody and suspending Father's regularly scheduled unsupervised visitation until he can rehabilitate his relationship with Child in a therapeutic setting and thereafter transitioning Father to contact in the community supervised by a person selected by the parties where Father is never responsible for driving Child.

Conclusion

Based on the evidence presented, the Court finds that the factors are mostly either neutral or weigh in favor of Mother having sole legal custody of Child. Additionally, all of the factors are either neutral or weigh in favor of suspending Father's visitation schedule until such time as his relationship with Child can be repaired in a therapeutic setting. Upon consideration and weighing of the above factors and the evidence presented, the Court finds that the evidence supports granting Mother sole legal custody and primary residence of Child, and limiting Father's contact with Child, for the time being, to family therapy sessions only. Regardless of Father's denial that he has a problem with alcohol consumption, it is more important to the Court's analysis that Child does not want to be around Father when Father is drinking. Although there appears to have been little attempt made by Father to work toward restoring his relationship with Child since April 2018, despite Mother's invitation to engage in counseling sessions with Child, Ms. Alicea testified that she thinks the relationship could still improve if Father attempted family therapy with Child, without Mother or Maternal Grandmother present. As a result, the Court believes that there is still an opportunity for Father, if he is willing, to repair his relationship with Child.

ACCORDINGLY, IT IS HEREBY ORDERED AS FOLLOWS:

1. Mother, J----- L----, shall have sole legal custody and primary residence of the minor child T----- G-----, Jr born May --, 2006. However, Mother shall be required to keep Father informed about the child's medical care and educational progress and provide Father with reasonable access to obtain such information from the child's school and medical providers.⁴

⁴ 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

2. Father shall only have visitation with Child in family therapy sessions. Neither Mother nor Maternal Grandmother may attend the sessions with Child until such time as the therapist deems it appropriate. In order to facilitate the initiation of these sessions, Father shall contact Child's therapist.
3. Based on any future progress made by Father and Child during family counseling sessions, Child's therapist, in the reasonable exercise of her discretion, may gradually phase in visits with Child in the community up to every other weekend unsupervised contact, shared holidays and extended visitation periods in the summers.
4. At such time as Father has graduated to visits in the community, Father shall not be permitted to transport Child in a vehicle.
5. Father shall not consumer alcohol 24 hours before or during his scheduled contact with Child, whether in a therapeutic setting or in the community.
6. If Child's therapist is not able to schedule family sessions at a time that would allow Father to travel from Milford after work, then the parties are to find a therapist with evening or weekend hours. If the parties cannot reach an agreement on a counselor within 30 days, Father shall provide Mother with a list of three counselors within 10 days thereafter. Within 10 days of her receipt of Father's list, Mother shall select a counselor from that list. If Father fails to timely provide Mother with any names, then Mother may select the licensed counselor of her choosing. If Mother fails to timely select a counselor from Father's list, then Father may select the licensed counselor of his choosing. The cost of the family counseling sessions not covered by insurance shall be paid for by Father.
7. Mother shall not restrict Father from having reasonable access to Child by telephone, mail or other means of communication, once Child desires to resume such communication with Father.
8. The parties may modify Child's visitation schedule by mutual agreement in writing.

IT IS SO ORDERED.

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

RBC/plr
Cc: File, parties
Mail Date:

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.