

The Family Court of the State of Delaware

In and For New Castle County

Petitioner 29 seconds

Respondent

K---- D----
Attorney Judith Jones, Esquire

M----- D----
Attorney Jennifer Hartnett, Esquire

File No. CN10-05898
CPI Nos 19-26865 & 19-01886
Nature of Proceeding Petition to Modify Custody and Visitation
Dates of Hearing 6/4/20, 6/5/20, 6/12/20, 6/29/20, 7/2/20
Date of Decision:
Date Mailed/Emailed:

ORDER:
PETITION TO MODIFY CUSTODY and
PETITION TO MODIFY VISITATION

Before the **HONORABLE JANELL S. OSTROSKI**, Judge of the Family Court of the State of Delaware, is the Petition to Modify Visitation filed on January 22, 2019, and Petition to Modify Custody filed on September 19, 2019, by K---- D---- (herein “Mother”), represented by Judith Jones, Esquire, against M----- D---- (herein “Father”), represented by Jennifer Hartnett Esquire, in the interest of A----- D----, born ----- --, 2002, and O--- D----, born ----- --, 2007, (herein “minor children”). The Court held a hearing over a course of the five (5) days noted above and heard testimony from both parties, as well as B----- M----- (Mother’s therapist), L--- L----- (Mother’s friend), A----- D---- (minor child), Z----- K----- (Father’s former step-son), L--- K----- (Father’s 2nd Ex-wife), S----- R----- (Children and Families First), R--- F----- (Children and Families First), H----- G----- (Mother of O---’s friend), R----- B----- (Reunification Therapist), A---- A----- (A-----’s former therapist), M--- C----- (Father’s therapist), R----- L----- (Father’s friend), M----- L----- (Father’s friend), K---- S---- (A-----’s teacher), J----- Y--- (Father’s friend), R----- D---- (Father’s business partner), M----- B----- (VP of O---’s Football league), S---- K----- (A-----’s Spanish teacher and Wrestling Coach), and H--- D----- (Chad, A-----’s Wrestling Coach).

Prior to the hearing, the parties agreed that they would have joint custody of A----- and that A--- could decide where he wanted to live and how much contact he wanted to have with each parent as A----- was less than two (2) months from turning 18 years old. As such, the trial and the analysis herein relate to custody, residence, and visitation of O--- only.

PROCEDURAL HISTORY

The parties were married on June 13, 1999, and divorced on May 20, 2011. The parties have been through extensive litigation having accumulated four hundred eighty-five (485) tabs in their Court file over the past ten (10) years. There have been multiple Custody Orders entered in this case. The most recent Custody Order was entered on June 5, 2017, by this Court. The procedural history in said Order is incorporated herein by reference and made a part hereof.

Since January of 2019, Mother has filed a Petition to Modify Visitation, a Petition to Modify Custody, and a Petition for Protection from Abuse and requested emergency relief for two of the three Petitions. She has filed six Motions and requested emergency relief for three of them. Father has filed three Motions. The Court has held ten (10) Case Management Conferences or Teleconferences several of which were scheduled on an emergency basis. The procedural history since January, 2020, is as follows:

- **January 22, 2019:** Mother filed a Petition to Modify Visitation.
- **February 26, 2019:** Father filed an Answer to the Petition.
- **March 13, 2019:** A Case Management Conference (herein “CMC”) was held. Mother’s Counsel asserted that the prior Order was not clear and that Mother was confused as to what Mother had to do before she could start reunification counseling with the children. Father’s Counsel argued that not only was the prior Order clear but that Mother had been told numerous times on the record and by professionals what was expected of her. Nonetheless, Father’s Counsel explained to Mother’s Counsel on the record what Father expected before he would agree to any professional starting reunification counseling with Mother and the children.
- **April 19, 2019:** The Court held a second CMC. The Court learned that reunification counseling had not begun. *Mother’s Counsel represented that Mother had begun her own individual counseling.*¹ The parties agreed that Father would provide three (3) names of counselors willing and available to do reunification counseling and Mother would choose one of them.
- **May 14, 2019:** The Court held a third CMC. The Court learned that due to a family emergency with Father’s Counsel, Father’s Counsel had not yet provided Mother’s Counsel with the names of three (3) counselors.
- **June 17, 2019:** The Court held a fourth CMC and learned that the parties had reached an agreement as to a reunification counselor. Counsel indicated the parties would resolve the Petition by Stipulation and expected to file the Stipulation within two (2) weeks. Subsequently, Mother had to change attorneys because her attorney left private practice to take a position as a Judge. No Stipulation was ever filed.

¹ The Court’s Order from June, 2017 required Mother to participate in counseling that would address her alienating behaviors. This counseling was required to take place before Mother started reunification counseling with the children.

- **August 27, 2019:** The Court held a teleconference with counsel and learned that Mother and her attorney had not been able to reach the reunification counselor they had previously chosen and, therefore, the reunification counseling had not begun. Mother wanted the parties to pick a different reunification counselor and *represented that she was willing to allow her individual counselor to speak with the reunification counselor.*² Notwithstanding the fact that Father's Counsel was not on notice that the issue of the reunification counselor was going to be discussed during the Court's teleconference, the Court issued an Order indicating that the parties would choose another reunification Counselor.
- **September 6, 2019:** Father filed a Motion for Reargument of the Court's August 27, 2019 Order requesting the Court allow Ms. C----- to remain as the reunification counselor so that the counseling can commence without further delay as both parties devoted significant amount of time and money to find a counselor they agreed upon. In the alternative, Father requested the Court vacate the August 27, 2019, Order and require Mother to file a Motion so that a clear record could be established regarding the application for relief.
 - **September 19, 2019:** Mother filed her Response to the Motion for Reargument.
 - **September 27, 2019:** Father filed a Motion for Permission to Reply to Mother's Response to the Motion for Reargument, an Answer to the Reply to Motion for Reargument, and an Answer to Mother's Petition to Modify Custody.
 - **October 9, 2019:** Mother filed a Response to Father's Motion requesting Permission to Reply to Mother's Response to the Motion for Reargument.
 - **October 11, 2019:** The Court granted the Motion for Reargument, vacated the August 27, 2019 Order, and ordered Mother to use M----- C----- as the Reunification Counselor or to use one of the three counselor's proposed by Father. Additionally, the Reunification Counselor was to contact Dr. B----- to obtain a copy of her file and to discuss the case prior to the children's first appointment. The Court also granted Father's Motion for Permission to file a Reply and any Answer filed by Mother.
- **September 19, 2019:** Mother filed a Petition to Modify Custody and requested an *Ex-Parte* Order. Based on Mother's allegations, the Court requested that the Court's liaison with the New Castle County Police Department conduct a welfare check on the children in Father's care.
- **September 20, 2019:** The Court held a teleconference with Counsel and reported to counsel that the liaison had seen and spoken to the children and that the children appeared safe and comfortable in Father's care. Mother's Emergency Motion was denied.
- **December 9, 2019:** The Court held a fifth CMC and scheduled the trial in this matter for March 17, 2020.

² Through the course of the instant five day trial, the Court learned that Mother had not yet authorized her individual counselor to speak with a reunification counselor so that a reunification counselor could confirm that Mother had in fact participated in the appropriate individual therapy required under the 2017 Order.

- **March 2, 2020:** Mother filed a Motion to Compel and for Sanctions asking for an Order requiring Father to produce documents previously requested and a Motion for Telephone Testimony³ requesting that Mother’s therapist, M--- C-----, be permitted to testify by telephone.
- **March 9, 2020:** Mother filed a Motion and Affidavit for an Emergency *Ex Parte* Order against Father for sole legal custody and primary residence of the children after A----- ran away from Father’s house.
- **March 11, 2020:** The Court denied Mother’s request for an *Ex-Parte* Order and declined to enter an Interim Order as the trial was scheduled for March 17, 2020.
- **March 12, 2020:** Father filed an answer to Mother’s Motions to Compel and for Sanctions and filed a Countermotion to Compel and for Sanctions. Father also filed an Answer to the Motion for Telephone Testimony indicating all or none of the experts should be by phone.
- **March 13, 2020:** Mother filed a Petition for Protection from Abuse (herein “PFA”) and requested an *Ex-Parte* Order against Father on behalf of A----- . A Commissioner granted the Motion for an Emergency *Ex-Parte* Order.
- **March 16, 2020:** The Court held a teleconference. The parties agreed to continue the trial due to COVID-19 closing the Courthouse. The trial was rescheduled for June 4 and 5, 2020, with the hopes that it would be able to take place in person.
- **March 17, 2020:** The Court held another conference and heard testimony from K----- H--- --- of Children & Families First. Following the teleconference, the Court entered an Interim Order by agreement of the parties. The Interim Order indicated that the parties agreed to accept the recommendation of Ms. Hughart for a family therapist.
 - Regarding A-----, the Interim Order modified the *Ex Parte* PFA Order allowing contact between Father and A----- in a therapeutic setting, provided the parties with joint custody, and allowed A----- to choose where he would live (with Ms. L--- L--- ----⁴ or with Mother).
 - Regarding O---, the Interim Order provided that Father would continue to have sole custody and primary residence and Mother’s contact with O--- would be limited to a therapeutic setting.
- **March 25, 2020:** Mother, on behalf of A-----, dismissed the PFA against Father.
- **March 27, 2020:** The Court held a teleconference with Counsel and heard argument regarding outstanding Discovery issues.
- **May 13, 2020:** Mother filed another Emergency Motion for Interim Relief and/or Contempt requesting primary residence and sole legal custody of the children. She alleged

³ Said Motion was incorrectly titled Motion to Compel and for Sanctions but the body of the Motion referenced telephone testimony.

⁴ L--- L----- is Mother’s friend with whom A----- had been staying after he ran away from Father’s house.

that Father was refusing to cooperate with Ms. R-----, the therapist recommended by Ms. H-----.⁵

- **May 15, 2020:** The Court denied Mother's Motion for Interim Relief.
- **May 19, 2020:** Mother filed an Emergency Motion for Reargument. The Court held a teleconference with Counsel on May 28, 2020. Following the teleconference, the Court denied Mother's Motions.
- **June 2, 2020:** Mother filed an Emergency Motion requesting that a witness, B----- M-----, be permitted appear by telephone instead of by Zoom.
- **June 3, 2020:** The Court denied Mother's Motion. However, Counsel later pointed out that the parties had agreed that all experts could testify by telephone and, therefore, the Motion was not necessary.
- **June 4, 5, 12, and 29 and July 2, 2020:** The case was tried over the course of five days via Zoom.
- **July 8, 2020:** The Court interviewed O--- via Zoom.

FACTUAL FINDINGS

The parties were married on June 13, 1999, and divorced on May 20, 2011. The parties have been through extensive litigation having accumulated 485 tabs in their Court file over the past ten (10) years. There have been multiple Custody Orders entered in this case. The most recent Custody Order was entered on June 5, 2017, by this Court. The Court will not restate all of the facts therein and hereby incorporates the factual findings in said Order by reference. The full record of the instant hearing can be reviewed by listening to the record. The Court will not restate all of the evidence presented during the hearing but the most relevant facts will be referenced herein.

Mother and Father have had a long history with the Court since separating and divorcing. Father is a recovering alcoholic. His history of alcohol abuse contributed to the end of their relationship. After a five (5) day custody trial in 2016, the Court found Mother engaged in behaviors that alienated the children from Father and issued an Interim Order requiring the children and Father to participate in a therapeutic vacation with L---- G-----, LMFT, LCSW-R in Dutchess County, New York, followed by Mother having no contact with the children for up to 90 days. The plan was for a local reunification counselor to reintegrate both Father and Mother into the children's lives. The Court held a Review Hearing in March, 2017, and after learning that Mother had not complied with the counselor's recommendations, gave Father sole custody and primary residence. Mother was given steps to follow in the hopes that she would correct her alienating behavior and would eventually be reunited with the children in a way that supported Father also having a healthy relationship with the children. While Mother was to be working on the issues discussed in the Final Order, Father was working with Dr. R----- B-----, a clinical psychologist. Dr. B----- testified that Father, A-----,

⁵ Ms. R----- was called to testify at the final hearing and refused to testify after pleading the Fifth Amendment. It was not clear and is still not clear to the Court what statement she might have made that she thought might have incriminated her. Therefore, the Court does not have evidence supporting Mother's allegations.

and O--- saw her for an intensive reunification program. She recalled L---- G----- gave Mother and Father directions as to what her expectations were for each of them. The idea was that Dr. B----- would continue working with Father while Mother completed her own therapy. Then, Dr. B----- would help reintegrate Mother into the children's lives. However, to Dr. B-----'s knowledge, Mother never started therapy with an individual counselor to address her alienating behavior.

Dr. B----- testified regarding her interactions with Mother. In November, 2016, she reached out to Mother to try get her to come in for an appointment but it was difficult to reach her. She reached out again on December 2, 2016, to see if Mother found an individual therapist. Dr. B----- did not get a response. In January, 2017, she reached out again to Mother but did not get a response. Again, in February, 2017, she reached out but did not hear from Mother. In March, 2017, Mother contacted Dr. B----- and indicated that she wanted an appointment, but only agreed to phone contact and indicated that she did not want to pay for the appointment. Dr. B----- testified that a phone appointment was made for March 13, 2017, but Mother did not confirm the appointment and she never heard from Mother. Dr. B----- said she periodically heard from Mother thereafter with her last communication in January, 2019. Contrary to Mother's assertions, Dr. B----- testified that she never refused to meet with Mother. Also contrary to Mother's assertions, Dr. B----- indicated that she was very clear to Mother as to what was expected of her before reunification counseling could begin and, therefore, Mother's assertion that she was confused about what was being asked of her should not be an excuse for her failure to start her own counseling.

Understanding a timeline of events since the last Order was entered is critical in this case.

- **November, 2016:** Children were removed from Mother and children and Father participated in a therapeutic vacation where children and Father were reunited.
- **Between November, 2016 and January, 2017:** Mother was to participate in individual counseling to address her alienating behaviors.
- After a maximum of 90 days with Father, it was expected that Mother would have completed her own individual counseling and could begin reintegrating into the children's lives.
- To date, the Court has no evidence that Mother has completed individual counseling specifically addressing her alienating behaviors. Mother is in individual counseling with M--- C----- . She had one appointment with him in March, 2018, and then stopped counseling. She resumed counseling with him in March, 2019, a year later. Mr. C----- is in private practice and, despite Mother listing him as a witness and filing a Motion for him to appear by telephone, he did not testify in these proceedings on behalf of Mother. Based on the evidence the Court does have, it does not appear Mr. C----- is addressing her alienating behaviors. Per Mother, they are addressing sleep issues, anxiety, depression, and lack of focus.
- After months of waiting for Mother to complete her own individual counseling, Father and the boys began to build a life together with Father's wife (L--- D----) and her two children.

- Father was involved in A-----'s high school wrestling career at First State Military Academy. A----- is apparently a talented wrestler and has a chance of wrestling in college. Father was supportive of A-----'s goals and began helping him look for a college where he could wrestle. Witnesses testified as to what they observed regarding their relationship. All evidence supports that A----- was happy in Father's care. Dr. B----- testified that they had a good relationship with Father but that A----- was struggling with a relationship with his stepmother.
- Father was also involved in O---'s football team at MOT Football and Cheer. At times, he was O---'s coach and, at other times, he simply played a supportive role in the All-Star Team's travel. Witnesses testified as to their observations of the relationship. All evidence indicates that O--- has a good relationship with Father and he has been and still is happy in Father's care.
- **Winter 2018/19:** Mother's friend, L--- L-----, started attending A-----'s wrestling matches. Ms. L----- recorded A-----'s wrestling matches and shared those videos with Mother.
- **June, 2019:** Father and his wife, L--- D----, separated. Initially, Father remained in their marital residence with A----- and O---.
- **Later in Summer, 2019:** Father and the boys moved out of L--- D----'s home and rented a home nearby.
- **September 3, 2019:** L--- D---- filed a PFA Petition against Father. Service was obtained by publication. A Commissioner entered a Default Order against Father when he failed to appear for the hearing. Father motioned to reopen that decision but the Commissioner denied the motion.
- **September, 2019:** Mother and Ms. L----- attend one of A-----'s cross-country meets. In violation of this Court's Order and without Father's knowledge, Mother approached A-----. She hugged him and they talked. She told him how much she loves him.
- **September/October, 2019:** Ms. L----- began contacting A----- via his Instagram account and made plans to meet him in his school parking lot in October/November of 2019. Father had no knowledge of the contact or the meetings.
- **January, 2020:** Ms. L----- continues contacting A----- via his Instagram account and made plans to meet him again in his school parking lot.
- **February, 2020:** Ms. L----- continues contacting A----- via his Instagram account and made plans to meet him again in his school parking lot.
- **March 8, 2020:** A----- texted Ms. L----- and indicated that he was afraid of his Father.
- **March 9, 2020:** A----- had a counseling session with Dr. B-----. Dr. B----- testified that he presented fine and was not in distress. A----- left that counseling session and ran away from Father's home. Father had bought him a car to get to and from school and sporting events and he took that car and apparently met Ms. L-----. He never contacted Father and told him where he was. Neither Mother nor Ms. L----- contacted Father and told him where A----- was. Father contacted the police, school officials, and A-----'s

wrestling teammates in an attempt to find A-----. A----- had been involved in a serious car accident in September, 2019, and Father feared he had been in another accident. Eventually, Father learned that A----- was with Ms. L-----.

- **March 13, 2020:** Mother filed a PFA Petition on behalf of A----- against Father. Mother dismissed the PFA after Father agreed to enter an Interim Order in the instant matter giving the parties joint custody and allowing A----- to choose where he was going to live and how much contact he was going to have with the other parent. A----- chose to live with Mother and has had no contact with Father since.
- O--- continues to live with Father and has indicated that he has no desire to see Mother.

Dr. B----- has been having individual therapy sessions with A----- and O--- since they began living with Father in 2016. She acknowledged that A----- struggled with the adjustment from Mother's home to Father's home in the beginning and he would cry in her office because he felt he would never be good enough for his step-mother. He was relieved when she moved out in June, 2019. She indicated that A----- progressed well and the children handled the separation well. Dr. B----- was asked if she thought A----- was afraid of Father or if she thought he was faking it in the therapy when he was acting like everything was fine. She testified that if he was being deceitful during counseling then she was concerned with the level of deceit and his believability. Furthermore, she indicated that his behavior would be a sign of serious pathology due to the level of consistency and believability he presented when he spoke with Dr. B----- during the sessions. She does not believe that A----- was lying about his feelings in counseling. To the contrary, she believes that A-----'s decision to run away from Father and return to Mother is an indication of Mother's psychological hold on A-----.

Dr. B----- also testified regarding her therapeutic relationship with O---. She said he was initially anxious and she considered him a people pleaser. However, his confidence improved over time. Dr. B----- said that when A----- left and the police were involved, O---'s anxiety spiked, but he has adjusted well to his current family dynamic. She characterized his current mental state as fragile.

Mother's friend, L--- L-----, testified that she has known Mother since their children were enrolled in St. Edmonds Academy together. She explained that her friendship with Mother began in 2012 when they bonded over similar divorce situations. Ms. L----- moved to Rehoboth, Delaware in 2013. After she moved, she only saw Mother three (3) times between 2013 and 2016 but they kept in touch via phone and text. During those three (3) years, she only saw A----- and O--- one or two times. In 2016, she moved back to Wilmington and resumed regular contact with Mother. She was a support person for Mother and would sometimes pick up A----- from S----- M----- S-----. When the children moved in with Father, she lost contact with them until she had contact with A----- in the Fall of 2018 at one of his wrestling meets at the S----- S-----. She approached A----- and said, "We miss you and your mom loves you". She testified that she continued attending A-----'s wrestling matches and she would send videos of the matches to Mother.

LEGAL STANDARD

The parties' current Order was entered by the Court on June 5, 2017. The instant Petition was filed on September 19, 2019, more than two (2) years after the current Order. As such, the Court will follow the criteria set forth in 13 *Del. C.* § 729(c)(2), which provides that [a]n Order entered by the Court after a full hearing on the merits concerning the legal custody of a child or his or her primary residence may be modified only as follows:

- (2) If the application for modification is filed more than 2 years after the Court's most recent order concerning these matters, the Court may modify its prior order after considering:
 - 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 § 722⁷ of this title.

DISCUSSION

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;

⁷13 *Del. C.* § 722 provides:

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

- (1) The wishes of the child's parent or parents as to his or her custody and residential arrangements;
- (2) The wishes of the child as to his or her custodian or custodians and residential arrangements;
- (3) The interaction and interrelationship of the child with his or her parents, grandparents, siblings, persons cohabitating in the relationship of husband and wife with a parent of the child, any other residents of the household or persons who may significantly affect the child's best interests;
- (4) The child's adjustment to his or her home, school and community;
- (5) The mental and physical health of all individuals involved;
- (6) Past and present compliance by both parents with their rights and responsibilities to their child under § 701 of this title;
- (7) Evidence of domestic violence as provided for in Chapter 7A of this title; and
- (8) The criminal history of any party or any other resident of the household including whether the criminal history contains pleas of guilty or no contest or a conviction of a criminal offense.

(b) The Court shall not presume that a parent, because of his or her sex, is better qualified than the other parent to act as a joint or sole legal custodian for a child or as the child's primary residential parent, nor shall it consider conduct of a proposed sole or joint custodian or primary residential parent that does not affect his or her relationship with the child.

Dr. Rachel B----- is a clinical psychologist and has been working with the family since 2016. She began seeing Father, A-----, and O--- after they completed their intensive reunification program in November, 2016. She recalled that L---- G-----, the therapist who conducted the therapeutic vacation with Father and the boys, gave Mother and Father directions as to what her expectations were for each of them.

Specifically, according to this Court's Order, Mother was to

...engage a local therapist qualified and trained in high conflict cases, that is acceptable to Ms. G-----, to address Mother's behaviors (intentional and unintentional) that have been unsupportive of the relationship between Father and the children, to understand and acknowledge the psychological ramifications to the children and to recognize it is in the children's best interest to have a relationship with Father. Mother shall sign any releases required to authorize her therapist to collaborate with and release information to Ms. G-----.”⁸

Dr. B----- testified that she reached out to Mother in November and December of 2016 as well as in January and February of 2017 to try to get Mother to come in for an appointment. Mother did not respond until March, 2017. At that time, Mother indicated that she wanted an appointment, but only agreed to telephone contact and would not agree to pay for the appointment. Dr. B----- testified that she explained to Mother that Mother would be responsible for the payment and agreed to schedule a phone appointment for March 13, 2017. However, Mother did not confirm the appointment and Dr. B----- did not hear from Mother on the date of the appointment. Dr. B----- denies that she ever refused to meet with Mother as Mother alleges. Thereafter, between 2017 through 2019, Dr. B----- periodically heard from Mother with her last contact being in January, 2019. Dr. B----- was clear that, throughout the time that Dr. B----- was working with the family, Mother knew what was expected of her before she would be given the opportunity to begin reunification counseling with the boys.

Dr. B----- testified regarding her therapeutic relationship with O---. He was anxious when they first started working together and he gets stressed easily but his confidence has improved. She considers him a people pleaser. Dr. B----- said that when A----- left, O---'s anxiety was revamped, but he has adjusted well to his current family dynamic.

With respect to A-----, Dr. B----- testified that A----- took on the role of parenting O--- because, in her opinion, as a parent he thought he was above the rules. She indicated that A----- thought rules were stupid. A----- struggled with his home life and would cry in her office because he felt he would never be “good enough” for his step-mother. He was relieved when she moved out. However, contrary to A-----'s testimony, she observed that A----- had developed a good relationship with Father. In Dr. B-----'s opinion, if A----- was being deceitful when he was in counseling with her, then she was concerned with the level of deceit he portrayed considering how convinced she was that they had a good relationship. Furthermore, she said that his behavior during sessions, if not true,

⁸ Interim Stipulation from October 28, 2016.

would indicate a serious pathology because of the level of consistency and believability he exhibited. In her opinion, the fact that A----- ran away from Father returned to his Mother and is refusing to see Father after all this time is indicative of the psychological hold Mother continues to have on A-----.

In the Court's Final Order in 2017, this Court noted that Ms. G----- had concerns that the children would regress in their progress with their relationship with Father if Mother were reintegrated into the children's lives before Mother engaged in her own therapy. Dr. B----- believes that A----- has regressed such that it is nearly impossible for Father to now have a relationship with A-----. As such, in her opinion, it would not be good for O--- to begin counseling with Mother without Mother doing the work required of her first. O--- would struggle since he is a people pleaser. He would have a hard time managing the stress of Mother coming back into his life and juggling his relationship with Father. Dr. B----- predicted that O--- would gravitate toward the parent who has the most power over him psychologically, which she believes would be Mother in this case. In the alternative, if the Court ordered reunification counseling to begin immediately, Dr. B----- indicated that the reunification counselor needs to be someone who has full transparency of the family's situation in order to make the proper assessments. She concedes that she can no longer be the reunification counselor for this family given the fact that she has been counseling Father and the boys without Mother's involvement for so long.

For all of the foregoing reasons, the Court finds it would be harmful to O--- to modify the current order if Mother has not engaged in the appropriate counseling to address her alienating behaviors.

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

While neither parent has been sanctioned by the Court under 13 *Del. C.* § 728(b) since the prior Order was entered, Father argues that Mother has not complied with and blatantly violated the Court's Orders. During Father's closing argument, his counsel pointed out that the parties' Interim Orders were incorporated into the June 5, 2017 Final Order. The Court agrees with Father's Counsel that on page 3 it says, "The best interest analysis was set forth in the Court's Interim Order. Said Order is incorporated herein and made a part hereof."⁹ Additionally, the Court's Interim Order from November 16, 2016, provides on page 12 that "the prior Interim Orders remain in effect until further order of the Court".¹⁰ The reference to the prior Interim Orders includes the Interim Stipulation signed by the Court on October 28, 2016, including the terms from pg. 3 paragraph 11, which states:

Mother shall engage a local therapist qualified and trained in high conflict cases, that is acceptable to Ms. G-----, to address Mother's behaviors (intentional and unintentional) that have been unsupportive of

⁹ Final Order June 5, 2017 – tab 384.

¹⁰ Interim Order November 16, 2016 – Tab 357

the relationship between Father and the children, to understand and acknowledge the psychological ramifications to the children, and to recognize that it is in the children's best interest to have a relationship with Father. Mother shall sign any releases required to authorize her therapist to collaborate with and release information to Ms. G-----.¹¹

Father argues that Mother has not complied with the aforementioned provision of the October 28, 2016, Interim Stipulation because Mother has not engaged a local therapist trained in high conflict cases. While Mother argues, she has engaged M--- C----- and B---- M----, it does not appear that either were engaged to address Mother's behaviors that have been unsupportive of the relationship between Father and the children.

Mother began counseling with M--- C----- in March, 2018, and she had one session with him. She claims she stopped counseling at that point because she was running out of money. She reengaged M--- C----- in March or April, 2019, one year later, "to focus on what was important". On cross-examination, Mother was asked about her therapy and what issues she told Mr. C----- she wanted to address. Mother testified that she told her counselor that she had sleep issues, anxiety, depression, and lack of focus. There is nothing in the record to suggest that she reported to Mr. C----- that she wanted to address her alienating behavior. It is undisputed that Mother has not signed a release for Mr. C----- to speak with Dr. B----- or B---- M---- prior to the instant hearing. However, Mother testified that she would be willing to sign a release so that Dr. B----- could speak to Mr. M-----.

Mr. M---- testified that he had his first session with Mother on April 6, 2020, and that he and Mother had completed four (4) sessions together by the time he testified. He indicated that Mother is frustrated that she has not seen O--- and she understands that some of the problems that happened along the way are her fault. Furthermore, he testified that she is willing to acknowledge that she has had a role in how things turned out. He indicated that he is aware Mother is engaged with Mr. C----- for individual therapy and agrees Mother needs active support from every direction. However, he indicated that Mother has not yet authorized him to speak with Mr. C----- . On cross-examination, Mr. M---- testified that he was aware that he has to help Mother recognize her alienating behavior. He said Mother's purpose for seeing him was that Mother wanted "to be in the best possible position to receive O--- back into her life". Additionally, she was looking for someone to work alongside her as she reconnects with O---. He acknowledged that Mother did not tell him about the findings of the previous custodial evaluations nor did he speak with the prior expert, L---- G----- . He was also not aware of findings from Dr. T----- which stated that Mother frequently distorts the reality of events so the retelling provides support for her anger of Father. Furthermore, he was not aware that Dr. T----- had found that, in order to gain allies, Mother provides the distortion of reality which can be emotionally and psychologically damaging for her children. He believes Mother is committed to moving forward with her relationship with O--- and not consider the past. He testified that Mother

¹¹ Interim Stipulation from October 28, 2016. – tab 355

does acknowledge that her dragging her feet has contributed to the problem of her not reuniting with the O---.

Father also alleges that Mother violated the Court's June 5, 2017 Final Order. Specifically, Father alleges that Mother's contact with A----- violates page 9, paragraph C, which states:

Mother's contact with the children shall begin in the therapeutic setting and progress to Mother having visitation *at least* every other weekend and one evening overnight per week at the discretion of the therapist. If Mother makes satisfactory progress in counseling and the counselors support contact outside of the therapeutic setting, the Standard Contact Guidelines shall apply to Mother's contact schedule.[footnote omitted] If Mother believes she has fully complied with the counselors' requests and the counselors have not authorized contact with Mother, Mother may file a Petition to Modify Visitation pursuant to 13 Del. C. § 729(a) as visitation may be modified at any time if it is in the best interest of the children.

The Court's Order expressly states that Mother's contact shall be in a therapeutic setting and will progress to Mother having visitation at the discretion of the therapist. Mother admitted and her witness confirmed that Mother went to A-----'s cross-country meet in September, 2019. While there she spoke to A----- and hugged him. Mother and her witness proved that Mother is in contempt for violating the Court's Order.

Father also inferred that Mother violated the Court's Order by using Ms. L----- as a conduit for Mother to communicate with A-----. Ms. L----- had somewhat regular contact with the boys until 2016, when they moved in with Father. She admitted that she lost contact with them until she made contact with A----- in 2018 at one of his wrestling meets. Her first communication with A----- occurred at the ----- in 2018 when she told A-----, "We miss you and your mom loves you". She indicated that she continued to attend A-----'s sporting events through 2018 and 2019. Furthermore, she took videos of him competing and sent the videos to Mother. In September, 2019, Ms. L----- had contact with A----- via Instagram. In her messages, she told him she was "thinking about him and loved him". Furthermore, she would say, "we miss you and we are pulling for you and O---". Ms. L----- admitted that A----- never reached out to her (except on March 8, 2020) and that Ms. L----- was the one reaching out to A-----. She claims she was acting on her own and not at the direction of Mother. However, the Court does not find her testimony credible in this regard. Ms. L----- was clearly indicating the "we" love you and "we" miss you and "we" are pulling for you and O---. The Court must assume that the "we" she is referencing includes Mother. Therefore, the Court finds that it is more likely than not that Mother was involved with Ms. L-----'s contact with A-----.

Father testified that he only learned that Ms. L----- was contacting A----- during the course of the instant litigation. Father asserts that Ms. L-----'s actions were totally inappropriate and she helped Mother violate the Court's Order. He expressed his concern that a grown woman, who is a professional, would violate a Court Order in an attempt to manipulate a child. The Court does not find Ms. L----- credible when she said she acted on her own and not at the directive of Mother. The Court

has a hard time believing that Ms. L----- began secretive communication with a high school senior that she had not seen in three (3) years and met the child in his school's parking lot on three different occasions behind Father's back all on her own without discussing or planning it with Mother first.

For all of the foregoing reasons, the Court finds Mother has not complied with the prior Court Order because she has not presented evidence proving that she has engaged a counselor in high conflict cases to help her address her alienating behavior. Furthermore, the Court finds that Mother violated the Court's Final Order when she went to A-----'s cross-country meet and spoke to him and hugged him. Finally, the Court finds that it is more likely than not that Mother worked with L--- L----- -- when Ms. L----- was contacting A----- via social media and meeting him in his school parking lot.

C. The § 722 FACTORS:

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

Mother is seeking joint custody and requesting that the Court put into place a gradual plan for the parties to have shared residence. Mother wants to begin contact in a therapeutic setting and follow the recommendations of the counselor. Oddly, this is the exact plan the Court put in place three (3) years ago. The only difference is Mother wants to skip the part where she is required to participate in counseling to address her role in alienating Father from the children years ago.

Father is seeking to continue sole custody and primary residence of O---. He alleges Mother has not complied with the Court's Order. He believes Mother's contact should begin after she has addressed her alienating behavior and then proceed in a therapeutic setting and as recommended by the counselors.

The Court finds this factor is neutral.

2. The wishes of the child as to his or her custodian or custodians and residential arrangements;

The Court interviewed O---. O--- is thirteen (13) years old. The Court found him to be an intelligent and mature young man. He was very clear that he wants to continue living with his Father. He indicated that he does not want to see his Mother because "she left me and I haven't seen her in forever and I don't want to see her". He explained to the Court that he feels she left him because "she couldn't change" and "she couldn't get healthy, she thought she was right". He explained that Dr. B----- told him that his Mother was not writing the letters or going to her own counseling. O--- also told the Court that Father said O--- could have contact with Mother if he wanted. It was his decision.

O--- has many friends including N--- L-----, J---- Y----, and C--- T-----. They live near Father's home. O--- indicated that he spends time after school at the L-----'s house and Father picks him up after his work.

When he was asked about his Father's house, he said he likes Dad's house because his school and friends are close. When he is at Father's house, they are engaged in different activities. He told the

Court that Father is fun, they go fishing together, they watch movies, and hang out together. Overall, there is nothing about Father's house that he does not like.

When the Court asked about what he remembers about his Mother's house, he indicated that he remembers visiting Father's home. The Court asked if he thinks his Mother misses him and he said, "I doubt it". He said whenever he was at Mother's house, "I was not the important child". He said, "A---- - was more important". He recalls feeling that Mother was putting A----- before him when they lived together. With respect to Mother's pleadings, O--- indicated that his Mother "filing stuff in the Court and trying to see me more, she is not actually doing it in my best interest". He thinks she "files stuff for herself" because "my best interest is to stay here [with Father]". He said that "she never actually cared what I think because it's never been my choice". He indicated that he wants a voice in the decision.

O--- told the Court that he does not want to have a relationship with his Mother who he referred to as K----. He explained that he calls her K---- because she never treated him like a son. O--- said he does not talk with Mother's side of the family. O--- explained to the Court that he got rid of his Instagram account and blocked his GG (maternal grandmother) because he did not want Mother to go through GG to speak with him.

It is clear to the Court that O--- wants to continue living with Father and he does not want to see his Mother at this time. While he appeared to be mature for his age, it is odd for a child of his age to have such an extreme opinion about not seeing his mother and this is very concerning to the Court. Nonetheless, the Court must find this factor supports Father having primary residence with Mother having contact in a therapeutic setting. The Court gives this factor little weight as to legal custody.

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

O--- indicated that he has a good relationship with his Father. He told the Court that Father is fun. They go fishing, watch movies, and hang out together. He said that Father plays board games with his friends when they are over Father's house. O--- likes playing football and Father is involved with the team.

O--- seems to want the Court to believe that he never had a great relationship with A-----. He recalled A----- would call him names and punch him when Father was not home. Specifically, O--- remembers that A----- would wrestle him to the ground. O--- said there were good times when A----- was nice to him but when A----- had his friends around, they would not include O--- and A----- would "act all cool". The Court found O--- to be genuine in his feelings when speaking with the Court as he was crying when he talked about being mad at A-----. O--- said A----- never saw him as an actual person. O--- said that A----- broke his trust by leaving and O--- was upset that A----- left. On March 9, 2020, when A----- did not return to Father's home, O--- said he never heard from A----- and he was worried because he thought A----- hurt himself again in a car accident like he had just six months earlier. O--- does not believe that A----- was worried about him after A----- ran away.

Mother said she last saw O--- in October, 2016. She said she dropped him off at school in the morning and Father picked him up in the afternoon. Mother said that O--- did not speak to her or say goodbye to her and she has had no communication with O--- since.

According to Father, he and O--- are close and have a good relationship. Father described O--- as the kid that “everyone loves to be around”. O--- loves football, school, the Lord, and his friends. They enjoy spending time with friends, traveling with the football team, and doing things with their church community. Their friends are a support system for them.

Dr. B----- said that Father and A-----’s relationship was difficult for Father, because he and his wife, L---, were not on same page. Dr. B----- felt that Father was open to Dr. B-----’s suggestions while L--- was not. Dr. B----- recalled L--- describing A----- and Father’s relationship as toxic. Dr. B----- said that she met with L--- regularly. They did not have an official session but they had conversations after the children’s sessions. Dr. B----- recalled L--- asked if A----- should get a psychological evaluation. When L--- left the home and the children came to terms with her being gone, Dr. B----- said the children managed it better than expected.

Based on the foregoing, the Court finds this factor supports Father having sole custody and primary residence and Mother having visitation in a therapeutic setting after she has completed individual therapy.

4. The child’s adjustment to his or her home, school and community;

Mother lives in North of Wilmington and has lived in her home since 2011. Mother’s home is the same home that A----- and O--- lived in before they moved to Father’s home in 2016. Mother’s neighbor, H----- G-----, testified that her son and O--- were good friends when O--- lived with Mother. She indicated that if O--- were returned to Mother, he would have a friend in the neighborhood.

Father lives in Middletown and has lived in his current home for ten (10) months. He resides with O--- and he indicated that O--- has friends that live near his home. Father testified that O--- will be going into 8th grade at ----- and attended the same school for 6th and 7th grade. Father testified that O--- has adjusted well and has good grades. He indicated that O--- is liked by his teachers and he has a great group of friends.

Given that O--- has adjusted to living in Father’s home, school, and community, the Court finds this factor supports Father having primary residence but is neutral as to legal custody. No evidence under this factor would prevent Mother from having visitation but the Court must balance this factor with the other factors when making a decision as to Mother’s contact.

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

Mother testified that she has no physical health issues and she has been working on her mental health since March of 2018. Mother testified that based on her understanding, she needed to find a therapist to address her alienating behavior and she needed to send letters and summaries to Ms. G-----

--. Mother testified that she sent letters and summaries to Ms. G----- and Dr. B-----.¹² Mother provided two letters from March 24, 2017, that she wrote to A----- and O---. O---'s letter was its third revision and A-----'s letter was its fourth revision. Mother indicated that she sent the letters to Ms. G-----, but Ms. G----- responded that she was no longer involved in the case. She also sent the letters to Dr. B-----, but Mother testified that she did not receive a response or any follow up from Dr. B-----.

Mother began her counseling with M--- C----- in March of 2018, and she had only one session with him. Mother concedes that she should have continued therapy but she claims she was running out of money. She later sought the assistance of an attorney to get advice as to how to proceed and then reengaged Mr. C----- in March or April of 2019, because she needed therapy "to focus on what was important". Mother testified that she provided her therapist the June 5, 2017, Order which she claimed was silent on the issue of what her therapy was to address. Apparently, she did not give him the Interim Order that was referenced in the June Order. Mother admitted that she "played a role in the parental alienation". Mother explained that she is a protective parent and did not want things that happened to her to happen to her children. Mother further explained that when she was with Father she suffered physical and emotional abuse, yelling and screaming, and excessive drinking. Mother now concedes that after not seeing her children for a prolonged period of time, she understands why Father was likely upset with her when he did not see the children in 2015-16. Mother acknowledged she "should have forced kids into a car and let the therapist figure it out".

On cross-examination, Mother was asked what issues she told Mr. C----- she needed to address. Mother indicated that she told her counselor that she had sleep issues, anxiety, depression and lack of focus. It appears undisputed that she did not tell Mr. C----- that he needed to address her alienating behavior. Mother has not authorized Mr. C----- to speak with Dr. B-----. However, during her testimony she indicated a willingness to authorize her new therapist, B----- M-----, to speak with Dr. B----- to determine if she is engaged in the appropriate therapy.

B----- M----- testified that he had his first session with Mother on April 6, 2020, and they have had a total of four (4) sessions together. He indicated that Mother is frustrated that she has not seen O---. He testified that Mother understands that some of the problems that happened along the way were her fault and that she is willing to acknowledge that she has had a role in how things turned out. He indicated that he is aware Mother is engaged with Mr. C----- for individual therapy and he agrees Mother needs active support from every direction. However, as of the date of his testimony, Mother had not yet consented to him speaking with Mr. C-----.

Mr. M----- was asked why he was seeing Mother. He struggled with that answer and simply said that "Mother wanted to prepare herself to be in the best position possible to resume some kind of contact with O---". Additionally, she was looking for someone to work alongside her as she reconnects with O--- and "to monitor the quality of communication" between her and O---. He indicated that Mother wants to have contact with O--- and he would work with Mother to support her as she reestablishes a relationship with O---. Mr. M----- also said, "she understands, I think, that some

¹² Mother's Exhibit 2

of the problems that have happened along the way and she is willing to acknowledge that she had some...negative role in that too”.

When asked on cross-examination about what Mother has told him, he indicated that he is aware Mother has two (2) sons and a long history of Court issues. He admitted that Mother did not tell him about the findings of the previous custodial evaluations and he did not speak with the prior expert, L---- G----- . He was also not aware of Dr. T-----’s conclusions that Mother frequently distorts the reality of events so the retelling provides support for her anger of Father. Furthermore, he was not aware that Dr. T----- found that in order to gain allies Mother provides a distortion of reality which can be an emotionally and psychologically damaging situation for her children. He believes Mother is committed to moving forward with her relationship with O--- and not consider the past. When asked if Mother has identified a single behavior that she engaged in that was part of the alienating behaviors referenced in the prior Court Orders, Mr. M----- said, “no but we’re getting there. I’m impressed that she is open to talk about that stuff but I’m also impressed that she wants to look to the future”.

Dr. A---- A----- was A-----’s therapist from February, 2018, through May 29, 2018. He believes he had a good relationship with A----- . Dr. A----- described A----- as more frustrated than fearful in Father’s home. In Dr. A-----’s opinion, Father and L--- were headed toward divorce and A--- -- was a source of conflict in their marriage. A----- disclosed to Dr. Alfano that L--- and Father believed A----- was following Mother’s values and they wanted A----- to hate his Mother but he said he could not do it.

While A-----’s custody or residence have been resolved, A-----’s mental health plays a significant role in this case. A----- was not interviewed by the Court. He appeared as a formal witness in this matter and supported Mother’s position that she should have contact with O--- . He wants this Court to believe that he had a bad relationship with this Father and that he was treated poorly by both his Father and his step-mother. While it appears undisputed that there was much conflict between the step-mother and all members of Father’s household, the evidence does not support A-----’s testimony that he had a bad relationship with Father. Many witnesses, Dr. B-----, R---- L----- (Father’s friend), M----- L----- (Father’s friend), K---- StarkS---- (A-----’s teacher), J----- Y--- (Father’s friend), R---- D---- (Father’s business partner), S---- K----- (A-----’s Spanish Teacher and Wrestling Coach), and H--- (C---) D----- (A-----’s Wrestling Coach) all testified that they observed A----- and Father having a good relationship and that Father was loving and supportive of A----- . The Court does not doubt that there may have been times when they didn’t get along but it appears that the bad times may have been related to normal challenges of raising a teenager. The overwhelming evidence supported Father’s position that he and A----- had a good relationship and, therefore, the Court does not find A-----’s testimony in this regard credible. The Court agrees with Dr. B----- and has concerns for A-----’s mental health since he suddenly left Father’s home and is now refusing to see Father.

A----- testified that he faked his feelings in counseling with Dr. B----- because he learned that faking it was the only way he was going to get through it. Dr. B----- agrees that A-----’s relationship with his step-mother was a source of stress for him but she does not believe that A-----

was faking his relationship with his Father. If he was, his behavior would indicate a serious pathology due to the level of consistency and believability he portrayed when he spoke with her during the sessions. She does not believe he was faking it. To the contrary, she believes that A-----'s current behavior is indicative of Mother's psychological hold on A-----.

Dr. B----- testified regarding her therapeutic relationship with O---. She described O--- as a people pleaser who was initially anxious and has a propensity toward anxiety. In addition, she said he gets stressed easily. Dr. B----- said that when A----- left and the police were involved, O---'s anxiety was revamped, but he has adjusted well to his current family dynamic living with just Father.

Father testified that he is healthy and there are no concerns for his or O---'s health. Father said that when O--- moved in with him in 2016 he was in 3rd grade and weighed 120 pounds, which Father considered not a healthy weight. He indicated that they started exercising and making healthy food choices in his home and O--- is now at a better weight.

Father admits he is a recovering alcoholic. Father testified that he does not drink alcohol and provided hair follicle test results which were negative for alcohol from September, 2019¹³, and March, 2020¹⁴. Father testified that his hair follicle test from June 2, 2020, was negative for alcohol however, the results arrived after the deadline to exchange exhibits. Father indicated that he voluntarily submitted to the hair follicle screens because there were false allegations that he was drinking regularly.

Father admits he drank alcohol on December 27, 2019. Father is not proud of his actions but he used it as a coping mechanism due to the high stress in his life at that time. He explained he had litigation on multiple fronts including Family Court and Federal Court. Father said on the night in question, he met his friend, R—D----, for a drink and made a very bad judgement call. Father said his decision shocked his friend and himself. After Father drank a shot and a beer, he claims he waited one to two hours before leaving but was pulled over while driving home. Father testified that he did not submit to a breathalyzer and instead asked for a blood test. Father indicated he was taken to the Troop on Kirkwood Highway where they administered the blood test. Father testified that his blood alcohol content (BAC) was .051 or .052. R—D---- testified and corroborated Father's testimony with respect to the events of that evening.

Father sees Dr. M--- C----- for counseling. Dr. C----- testified that Father's criminal lawyer referred Father to him. He has had a professional relationship with Father since January 16, 2020, and sees Father weekly to every other week.

Dr. C----- indicated the Father sought an evaluation after incurring a charge for DUI and continued a counseling together thereafter. Dr. C----- testified that Father is engaged and cooperative during the sessions and he is pleased with Father's participation. Father has been open and they have worked on issues related to his anger, people pleasing, and alcohol addiction. Dr. C----- said that Father has been a people pleaser his entire life which leads Father to not make independent decisions.

¹³ Father's Exhibit 8.

¹⁴ Father's Exhibit 9.

Furthermore, he said that Father has been traumatized by the whole custody case as he thinks he is the bad person because people say he is and he has been protecting himself with anger because it feels safer.

Father has taken three (3) hair follicle tests; September, 2019, March 2020, and June, 2020. Dr. C----- indicated that based on his counseling and interactions with Father, he has no concerns that Father is consuming alcohol. Furthermore, he has no concerns that he can appropriately parent O---.

Dr. C----- indicated that Father has completed 13 sessions thus far but he and Father have not yet finished their work. On cross-examination, Dr. C----- explained that he is aware of Father's history including events prior to the DUI such as the disbarment and his struggle with alcohol. Furthermore, Mother's counsel asked about Father's custody and how he has been handling it. Dr. C----- said that the custody trial has been stressful and provides Father with a great deal of self-doubt and confusion.

Mother's counsel also asked Dr. C----- if he understands why Father has "cut off" his family referencing his relationship with his ex-wife, L---. Dr. C----- indicated that from his understanding it was not an independent decision made by Father but it was L---'s decision to end the relationship. He does not believe that the breakdown in the relationship with his family was due to recent alcohol abuse.

In summary, Father is addressing his mental health needs. The Court appreciates the fact that he has admitted that he relapsed in his recovery and commends him for seeking help. The Court also commends Mother for seeking help with her mental health. However, she did not prove that she has received help to address her alienating behavior. And, most significantly, A-----'s behavior of running away from Father and refusing to now see Father supports Dr. G-----'s prediction that, if the children are returned to Mother before she addresses her alienating behavior, they will revert to their prior behaviors when they were refusing to see Father and all of the work that has been done over the past 4 years will be wasted. As such, the Court places great weight on this factor and finds this factor supports Father having sole custody and primary residence. With respect to visitation, the Court finds that this factor only supports Mother having contact with O--- after she has received therapy to address her alienating behaviors which she has not yet done.

6. *Past and present compliance by both parties with their rights and responsibilities to their child under § 701 of this title;*¹⁵

Mother alleged that Father has not complied with his rights and responsibilities as the children's parent. Mother tried to communicate with the children over the past years while they were in Father's care. Mother testified that she mailed many cards to Dr. B-----'s office and was shocked to learn that the children did not read them.¹⁶ Furthermore, Mother was shocked that L--- D--- and Father were aware of the cards existence. However, Mother fails to prove why Dr. B-----'s refusal to give the cards to the children is a reflection on Father's parenting responsibilities.

¹⁵ 13 Del. C. § 701(a) states in relevant part: "The father and mother are the joint natural guardians of their minor child and are equally charged with the child's support, care, nurture, welfare, and education."

¹⁶ Mother's Exhibit 4.

Mother called A----- as a witness to support her position that Father was not complying with his rights and responsibilities. A----- testified that Father required loyalty and if A----- was not loyal, Father would hurt him. He did not give any examples of times when he was not loyal to his Father and how Father hurt him. A----- also alleged that Father and his ex-wife, L---, were tough disciplinarians. He recalled that one time he was sent to his room for five (5) days. He explained that typical punishment included writing things down and he had to admit what he had done wrong in writing. While A----- may not have agreed with Father's discipline style, he failed to show the Court how a time out punishment (even if it was for 5 days) or writing apology letters is an inappropriate form of discipline.

Mother also claims that Father did not comply with his responsibilities as a parent when Father: refused to relinquish his sponsorship on A-----'s license; refused to let A----- change his address at the Division of Motor Vehicles; closed A-----'s bank account; cancelled A-----'s wrestling recruiting account; and reported A-----'s phone as stolen so he is unable to access the information on his old phone, which included his wrestling videos.

Father denies Mother's allegations. Father testified that on March 9, 2020, when A----- did not return home, he activated the find my phone feature, which reports the phone as lost or stolen in order locate it. Father admitted that he removed A----- from his cell phone plan but only after A----- began living with Mother. Father explained that he closed A-----'s bank account and transferred the \$11 out of A-----'s account because it was a joint account linked to Father's account. Father explained that he was worried about A----- over drafting Father's account. When asked about A-----'s driver's license, Father said he tried to transfer the address by phone but he needed to do it in person and he never got to do it before COVID-19 shut things down. Father admits closing the wrestling account but only to the extent that it obligated him to pay for it as it was quite expensive. Father explained that the NCSA account was a parent/child account. Father said that A----- received an email about it because Father was copied on the email. The email indicated that A-----'s data was still on the website. Father asserted that Mother and A----- can reactivate it if they are willing to pay for it.

When A----- testified, he claimed that Father wrote a letter to Dr. B----- (copied to Ms. Hartnett) about Mother and forced A----- to copy and paste it into an email as if it was from A-----. He claims Father forced him to do this after A----- was in a car accident where he was injured and airlifted to the hospital. A----- did not explain to the Court why Father would need to have A----- write such a letter at that stage of the proceedings. Father denies the allegation and testified that A----- wrote the email himself after Mother filed an emergency motion in the instant matter which prompted the Court to request the police to conduct a welfare check. Father indicated that A----- was upset by the welfare check. Father testified that A----- asked Father what he could do and Father suggested he could write the email if he wanted. The Court finds Father's version of the events more credible than A-----'s version.

Finally, Mother alleges that Father did not comply with his rights and responsibilities as the children's parent when he prevented Mother from having therapeutic counseling with the children through Children and Families First (CFF). Mother alleged that Father inhibited the sessions and canceled the sessions to stifle Mother's reintegration into O---'s life. However, the evidence showed

that it was Dr. B----- who gave her professional opinion (as O---'s counselor) to Ms. H----- that O--- was fragile and not ready for counseling with Mother. Therefore, Mother did not prove that it was Father's fault that the counseling did not take place.

The Court also notes that almost all of the arguments Mother made under this factor occurred after Mother filed her Petition and, with the exception of the allegation that Father failed to give the children cards and letters that were in Dr. B-----'s possession, she made no arguments that Father was not complying with his rights and responsibilities before this litigation began.

Father testified that he and Mother had limited communication prior to the change of custody in 2016. After the change of custody in November, 2016, Father testified that as early as November 8, 2016, he begged Mother to cooperate. He recalled Mother attempted to turn the conversation to what Father had done in the past.¹⁷ Thereafter, Father kept Mother informed of what was going on and attempted to communicate with her. Father explained that Mother did not respond to phone calls or emails. Father testified that he sent Mother detailed updates about the children but he stopped sending the updates because he felt his efforts were futile.¹⁸ Father's last attempt to contact Mother was on June 6, 2017.¹⁹

The Court finds Father had a reasonable explanation for all of Mother's and A-----'s accusations regarding his alleged failure to comply with his rights and responsibilities as a parent. However, in the instant case, Mother was to engage in her own counseling and not have contact with the children except in a therapeutic setting. Mother failed to do either. She has not engaged in counseling to address her alienating behaviors and she conspired with her friend to reach out to A----- and made contact with A----- outside of a therapeutic setting. For all of the foregoing reasons, the Court finds that Father has complied with his rights and responsibilities while Mother has not. Therefore, the Court finds this factor supports Father having sole custody and primary residence with Mother having visitation in a therapeutic setting after she has engaged in individual therapy to address her alienating behavior.

7. Evidence of domestic violence as provided for in Chapter 7A of this title;²⁰ and

On March 13, 2020, Mother, on behalf of A-----, filed a PFA against Father and requested an *Ex-Parte* Order. A Commissioner issued an *Ex-Parte* Order. Mother later voluntarily dismissed the Petition on March 25, 2020, after the parties reached an agreement for an Interim Order in the instant

¹⁷ Father's Exhibit 1.

¹⁸ See Father's Exhibit 2.

¹⁹ Father's Exhibit 1.

²⁰ 13 Del. C. § 706A in relevant part states:

(a) Any 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.

litigation which gave the parties joint custody of A----- and allowed A----- to choose where he wanted to live.

A----- alleged that he and his Father got into an argument in the Spring of 2019. He explained that he woke up with his Father screaming at him. They argued and A----- indicated that Father hit A----- in the chest and said “stop being afraid of me”. Father later grabbed his duffle bag that he was taking to school and dumped the bag in the road. A----- indicated that he went back into the home and was forced to sit on the couch. A----- said that the fight with Father continued when Father returned from work. A----- said his Father was angry and pushed him. Father denies A-----’s allegations.

While the Court is always concerned about allegations of domestic violence, the Court gives this evidence the proper weight given the Court’s assessment of A-----’s credibility as discussed herein. As the Court has no evidence under this factor that would suggest one parent is better suited to have legal custody or residence over the other, the Court finds this factor supports joint custody and shared residence.

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 reviewed the criminal histories of all parties involved. The Court has no concerns with Mother’s Delaware criminal history. Father has pending charges for Resisting Arrest from March 14, 2020, as well as charges from December 27, 2019, including a Resisting Arrest, DUI, and other driving related charges. Father testified that the evidence will show that his BAC on December 27, 2019, was under the legal limit. The Court can only consider convictions and cannot consider arrests. Father’s previous criminal matters occurred prior to the last Order being entered in this matter and were addressed in the 2016 and 2017 Orders.

Therefore, As the Court has no evidence under this factor that would suggest one parent is better suited to have legal custody or residence over the other, the Court finds this factor supports joint custody and shared residence.

CONCLUSION

As discussed herein, the Court finds that modifying the current Custody Order would likely result in harm to O---. The evidence showed that if O--- is returned to the care of his Mother before Mother receives her own therapy to address her alienating behaviors, he is likely to turn against Father and refuse to see him, as A----- has done. Furthermore, it is not likely that the harm will be outweighed by the advantages, if any, to O--- if the Court were to modify the Order. While the advantage would be that O--- would have a relationship with his Mother, the relationship would not necessarily be healthy as it may cause O--- to reject his Father and all of their hard work in counseling over the last 4 years would be wasted.

Also, for the reasons stated herein, the Court finds that Mother has failed to comply with the Court's prior Order by not having successfully engaged in counseling prior to the instant hearing to address her alienating behaviors. Furthermore, Mother has in fact violated the prior Court Order by contacting A----- at his cross country meet and working with Ms. L----- to contact A----- outside a therapeutic setting. Given these findings, the Court does not believe it needed to proceed with addressing the best interest factors but did so out of an abundance of caution.

Based upon the Court's analysis of the best interest factors²¹ set forth above as they relate to legal custody, the Court finds factors (1), (2), and (4) are neutral; factors (7) and (8) support the parties having joint custody; and factors (3), (5), and (6) strongly favor Father's position that he should retain have sole custody of O---.

Based upon the Court's analysis of the best interest factors set forth above as they relate to residence and a contact schedule, the Court finds factor (1) is neutral; factors (7) and (8) support the parties having shared residence; and factors (2), (3), (4) (5), and (6) strongly favor Father's position that he should have primary residence with Mother having visitation in a therapeutic setting after she has engaged in individual therapy for her alienating behavior.

In conclusion, it appears that Mother has made this case much more difficult than it needed to be. This Court has consistently indicated on the record that it has always intended to allow the children to resume contact with Mother but that Mother needed to address her alienating behavior in therapy before that could happen. Mother has been told what she needed to do multiple times by this Court and multiple times by the counselors involved in this case. Unfortunately, she continues to enlist others to assist her in her attempts to make Father look like the one who is not complying with his responsibilities when the responsibility lies with Mother. With respect to factor (1), Mother was seeking joint custody and requesting that the Court put into place a gradual plan for the parties to have shared residence. Mother proposed that she begin contact in a therapeutic setting and follow the recommendations of the counselor. Mother did not prove that the factors support the parties having joint custody. Mother's request for contact in a therapeutic setting with a gradual plan toward shared residence is the exact Order that was entered in 2017. Mother has just refused to take the steps necessary to start the contact in a therapeutic setting.

WHEREFORE, the Court enters the following Order:

- A. Father is awarded sole custody of the child. As the sole custodian, Father shall have the exclusive right to make all decisions and give all consents for matters affecting child, including but not limited to the child care, nurture, welfare, medical consents under 13 Del. C. § 707, and education decisions under Title 14 of the Delaware Code. It is the responsibility of the sole custodian to provide upon request all material information concerning the child's progress in school, medical treatment, significant developments in

²¹ 13 Del. C. § 722.

the child's life, and school activities and conferences, special religious events and other activities in which parents may wish to participate, unless specifically restricted in this Order.

- B. Father shall have primary residence.
- C. Once Mother has engaged with a therapist qualified to address her alienating behaviors that have been unsupportive of the relationship between Father and the children, Mother may have contact with the child in a therapeutic setting.
1. Mother shall provide Father or Father's counsel with proof that she has engaged the proper therapist and shall sign a release for the counselor to speak with Father, Father's counselor, and the reunification counselor;
 2. Mother shall then provide Father or Father's counsel with the names of three (3) counselors she wishes to use for reunification counseling. Father shall choose one of the counselors within two weeks of receiving the names. Mother shall be responsible for paying for the reunification counseling;
 3. Mother shall provide the counselor with a copy of this Order as well as the relevant Stipulated Order and Interim Order from 2016 and the Final Order from 2017;
 4. The parties shall follow the recommendations of the counselor with respect to Mother's contact with O--- with the hope that Mother will eventually have visitation at least every other weekend; and
 5. If Mother and O--- have completed reunification counseling and Mother is not satisfied with the amount of contact she is having with O---, she may file a Petition to Modify Visitation.
- D. This is a Final Order entered after a full hearing on the merits. Therefore, any future modifications shall be made pursuant to 13 Del. C. § 729(c).²² Visitation may be modified at any time pursuant to 13 *Del. C.* § 722.

²² 13 Del. C. § 729(c) provides: An order entered by the Court after a full hearing on the merits concerning the legal custody of a child or his or her primary residence may be modified only as follows:

- (1) If the application for modification is filed within 2 years after the Court's most recent order concerning these matters, the Court shall not modify its prior order unless it finds, after a hearing, that continuing enforcement of the prior order may endanger the child's physical health or significantly impair his or her emotional development.
- (2) If the application for modification is filed more than 2 years after the Court's most recent order concerning these matters, the Court may modify its prior order after considering:
 - 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;

IT IS SO ORDERED this _____ day of _____, 2020.

JANELL S. OSTROSKI
Judge

cc: Parties, Counsel, File

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- 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.