



The Family Court of the State of Delaware

In and For New Castle County

CIVIL DISPOSITION - JUDGE

Petitioner
V---- P-----
GEORGE TSAKATARAS, ESQ.

Respondent
A----- F----
JOHN MACCONI, ESQUIRE

File No(s) CN14-03321
CPI No(s) 21-26510
Nature of Proceeding Petition For De Facto Parentage
Date of Hearings May 31, 2023 June 1, 2023 June 2, 2023
Post-Hearing Submissions July 14, 2023
Guardian's Subsequent Submission August 11, 2023
Date of Decision November 1, 2023

Announced in Court

Decision Reserved

Before the **HONORABLE MARY S. MUCH, JUDGE** of the Family Court of the State of Delaware:

Petitioner, V---- P----- (hereinafter "Guardian"), her counsel, George Tsakataras, Esquire,¹ and A----- F---- (hereinafter "Father") appeared for hearings on the above-captioned Petition for De Facto Parentage, in the interest of L--- F---- (DOB --/--/2014) (hereinafter "Child"). S----- M----- -- (hereinafter "Mother") is deceased.

Procedural and Factual History

On or about June 16, 2014, Guardian filed a Petition for Guardianship of a Minor Child against Father and Mother, and Father filed a Petition for Custody of Child against Mother. On June 18, 2014, the Court entered an Interim Order, granting Guardian guardianship of Child, and Father visitation with Child facilitated by Guardian bringing Child to Father's home two (2) times per week for one (1) to two (2) hours; Mother consented to Guardianship at this time. By Order dated October 9, 2014, and upon receipt of Quest Diagnostic Report indicating Father tested positive for cocaine and marijuana, the Court suspended all "face to face" contact between Father and Child. By Order dated November 13, 2014, the Court determined Child remained dependent as to Mother and Father and, by agreement of the parties, Father's visitation was reinstated; Father was permitted to have weekly visits with Child directly supervised by Guardian at Father's apartment and Guardian had discretion to establish the length of visits and to suspend visitation based on safety concerns for Child or Guardian and "for reasons including, but not limited to, any verbal abuse from the Grandparents of the Child, intoxication of Father or any other reasonable basis."²

On March 16, 2015, Mother and Father engaged in mediation on Father's Petition for Custody, at which time Mother and Father agreed Father would have sole custody of Child, with visitation by Mother. The Court declined to sign the Consent Order reached by Mother and Father,

¹ Following the hearing and post-hearing submissions, by Order dated September 20, 2023, Mr. Tsakataras was permitted to withdraw as counsel.

² File CN14-03321, Tab 25.

as Father tested positive for cocaine and marijuana five (5) months prior to the Consent Order in September 2014. By Order dated April 23, 2015, the date of the scheduled Guardianship and Custody hearings, the Court indicated the parties had reached an agreement resolving the pending matters and concurred in determining Child remained dependent and it remained in Child's best interest to remain with Guardian. By Order dated June 5, 2015, Guardian was granted Guardianship of Child, by consent of Mother and Father. The parties further agreed not to seek modification or rescission of the Guardianship for a period of one (1) year.

On or about March 10, 2016, Father filed a Petition for Parental Visitation, alleging Guardian was inhibiting the bond between Father and Child and making it "extremely difficult" for Father to have visitation with Child.³ In his Petition, Father requested unsupervised visitation with Child every week. On June 22, 2016, parties appeared for mediation on Father's Petition for Parental Visitation, at which time Father indicated he no longer wished to pursue his Petition. As such, Father's Petition was dismissed. On or about July 17, 2017, Father filed a Petition to Rescind Guardianship. The Court held hearings on Father's Petition to Rescind Guardianship on May 8, 2018, August 3, 2018, September 5, 2018, November 9, 2018, and March 13, 2019.

Following the August 2018 hearing, the Court entered an Interim Order granting Father supervised visitation with Child for Tuesday dinner visits (supervised by H---- M---- (hereinafter "Girlfriend") and Saturdays for four (4) hours (supervised by K----- F----(hereinafter "Paternal Grandmother") and S---- M----- (hereinafter "Maternal Grandfather") on a rotating basis), in addition to the Friday evening Strengthening Families program.⁴ Guardian moved to reargue this Interim Order; Father filed a Response and on or about August 28, 2018 filed a Petition – Rule to Show Cause, amended on August 30, 2018. Guardian filed a timely Answer thereto. By Order dated August 29, 2018, the Court denied Guardian's Motion for Reargument and scheduled a teleconference in the matters with counsel and Dr. S---- R-----; Dr. R----- advised "something is clinically happening" with Child and recommended Father's visitation schedule be modified to cease Tuesday dinner visits. By Order dated September 6, 2018 following the teleconference, Tuesday dinner visits were cancelled, Paternal Grandmother and Maternal Grandfather were directed to contact Dr. R----- for guidance regarding supervision of visits, and Father was directed to meet with Dr. R----- as soon as practicable.⁵

The parties reconvened for hearing on November 9, 2018, at which Dr. R----- testified concerning Child's psychological well-being. Father dismissed his Petition – Rule to Show Cause. At the close of evidence on November 9, 2018, the Court determined it could not rescind guardianship to Father based on the emotional trauma of his extended visits on Child. By Order dated November 13, 2018, the Court reiterated Dr. R-----'s testimony that Father's visitation schedule was having a "dramatic, negative psychological impact" on Child; the Court modified Father's contact with Child; Father was directed to continue with Strengthening Families classes with Child, undergo a mental health evaluation and follow any treatment as a result thereof, cooperate with co-parenting counseling arranged by Guardian, have two (2) hour supervised visits with Child each Saturday (not supervised by Guardian) and the parties were directed to coordinate holiday visits for Father with

³ File CN14-03321, Tab 44.

⁴ CN14-03321, Tab 76.

⁵ CN14-03321, Tab 84.

Child.⁶ A fourth hearing was scheduled for March 13, 2019.

Father filed a Motion for Reargument on November 16, 2018; Guardian filed a Response thereto. By Order dated December 13, 2018, the Court denied the Motion for Reargument, but noted to both parties, “Father was blindsided by Dr. R-----’s testimony, as was the Court;” further providing “[i]n the interest of all concerned, it would have been most prudent to present Dr. R-----’s testimony earlier in the day at which time Father could have engaged in extensive cross-examination. The Court does not condone the drama which occurred at this hearing.”⁷ In addition, the Court indicated should Father wish to cross-examine Dr. R----- at the subsequent hearing, it would be at Guardian’s expense.⁸ By letters to the Court dated December 13, 2018, counsel for both parties advised Dr. R----- suspended Father’s visitation with Child outside of attendance at Strengthening Families counseling.⁹

Dr. H----- F-----, Father, and Guardian testified at the final hearing on March 13, 2019; Dr. R----- was not called as a witness. Following this hearing and by Order dated March 13, 2019, counsel were directed to submit Closing Arguments/Memoranda of Law to this Court, with the last submission from Father due to the Court no later than July 10, 2019.¹⁰ By Order dated August 9, 2019, the Court denied Father’s Motion to Rescind Guardianship; Father was ordered to engage in individual therapy, family therapy with Guardian and Child, and ultimately reunification therapy upon recommendation of the family therapist.¹¹

On or about March 9, 2020, Father filed a Petition – Rule to Show Cause alleging Guardian failed to follow recommendations of the family therapist, including the recommendation that Father’s paramour participate in visitation and the recommendation Father and Child engage in reunification counseling. After multiple teleconferences and two (2) hearings, by Order dated December 16, 2020, Guardian was found in contempt of the August 9, 2019 Order, and Father and Child were ordered to “immediately engage in reunification counseling.”¹² On or about January 25, 2021, Father filed a Petition – Rule to Show Cause, alleging Guardian failed to facilitate reunification counseling between Father and Child. By Order dated March 30, 2021 after a teleconference with the Court, the Court directed Guardian to “comply with reunification counseling facilitated by the counselor chosen by [Father].”¹³ On or about May 13, 2021, Guardian filed a Petition – Rule to Show Cause alleging Father was in violation of the Court Order as he had failed to select a licensed reunification counselor. Following a hearing on the cross Petitions-Rule to Show Cause and by Order dated July 23, 2021, the Court failed to find either Father or Guardian in contempt of the Court Order; the Court again ordered reunification counseling to proceed and granted thirty (30) days for Guardian to provide Father with a list of three (3) reunification counselors from which Father could choose to conduct reunification counseling and ordered both parties to follow the recommendations of the chosen reunification counselor.¹⁴ The Court held a six-month review with parties and counsel on January 10, 2022 to

⁶ CN14-03321, Tab 85/86.

⁷ CN14-03321, Tab 92.

⁸ *Id.*

⁹ CN14-03321, Tab 93/94.

¹⁰ CN14-03321, Tab 96.

¹¹ CN14-03321, Tab 105/106.

¹² CN14-03321, Tab 135/136.

¹³ CN14-03321, Tab 143.

¹⁴ CN14-03321, Tab 160/165.

ensure Father’s reunification had begun without issue; a reunification counselor had been retained but counseling had yet to occur. By Order dated January 10, 2023 after discussion with parties and the reunification counselor at the hearing, the Court outlined the dates for Father’s reunification counseling.¹⁵

In the midst of the Petitions-Rule to Show Cause proceedings and on or about November 10, 2021, Guardian filed the above-captioned Petition for De Facto Parentage Rights; Father filed a timely response thereto. The hearing on the above-referenced Petition was originally scheduled August 24, 25 and 26, 2022, but was continued upon Guardian’s Motion. On or about October 24, 2022, Father filed a subsequent Petition-Rule to Show Cause alleging Guardian was in contempt of the Order for failing to comply with reunification counseling and Father’s visitation. On or about March 13, 2023 following the January 27, 2023 partial hearing on the Petition-Rule to Show Cause, Father filed an Amended Petition-Rule to Show Cause continuing to allege Guardian was hindering reunification of Father with Child. By Order dated April 20, 2023, following the final hearing on the Petition-Rule to Show Cause, the Court found Guardian in contempt of the underlying Orders for “failing to facilitate reunification counseling from October 2022 . . . [and] fail[ing] to facilitate Father’s two-hour weekly visitation.”¹⁶ Guardian subsequently filed a Petition to Modify Visitation and Petition for Permanent Guardianship; Father subsequently filed another Petition-Rule to Show Cause. These matters remain outstanding pending resolution of the Petition for De Facto Parentage.

Legal Standard

13 *Del. C.* § 8-201(c) establishes the standard to grant de facto parent status. 13 *Del. C.* § 8-201(c) provides de facto parent status is established if the Family Court determines the de facto parent: (1) has had the support and consent of the child’s parent or parents who fostered the formation and establishment of a parent-like relationship between the child and the de facto parent; (2) has exercised parental responsibility for the child as the term is defined in § 1101 of this title; and (3) has acted in a parental role for a length of time sufficient to have established a bonded and dependent relationship with the child that is parental in nature.¹⁷

Testimony

S----- M-----

S----- M----- (“Maternal Grandfather”) testified Mother, who passed away on May 23, 2021, wanted Guardian to raise Child; Maternal Grandfather estimated Mother indicated this “more recently,” approximately three (3) years ago. Maternal Grandfather testified Mother was aware of the court proceedings throughout 2018 and 2019.¹⁸ Throughout that time, Mother made statements to Maternal Grandfather indicating Child would be “better off” being raised by Guardian. Maternal Grandfather recalled a specific conversation with Mother in which Mother indicated she wanted Guardian to raise Child into adulthood; Mother gave Guardian Mother’s blessing to raise Child. Maternal Grandfather testified Mother believed it was “best” for Child to be raised by Guardian and Mother wished Father would “let it go.” Maternal Grandfather further testified at times Mother had doubts about allowing Guardian to raise Child; these comments came at times when Mother was “frustrated” with Guardian for inhibiting Mother’s ability to visit with Child as Mother wished.

¹⁵ CN14-03321, Tab 181/182.

¹⁶ CN14-03321, Tab 207/208.

¹⁷ 13 *Del. C.* § 8-201(c).

¹⁸ Mother rarely participated in these proceedings.

Maternal Grandfather testified these doubts were not in regard to Guardian's ability to meet Child's emotional needs. Towards the end of Mother's life, Mother was aware she was not stable enough to raise Child; Maternal Grandfather is unsure whether Mother ever stated Mother wanted to raise Child.

Maternal Grandfather further testified Guardian has been involved in Child's life "from the beginning." Guardian provides food, clothing, and housing for Child. Maternal Grandfather visits with Child and Guardian approximately two (2) times per month. Maternal Grandfather described the relationship between Child and Guardian as "very close" and indicated Child and Guardian have a "mother-child" relationship based on the love Guardian and Child have for one another. Maternal Grandfather testified Child started referring to Guardian as "Mom" approximately four (4) to five (5) years ago; prior to that, Child referred to Guardian as "Ga."

A--- P-----

A--- P----- ("Ms. P-----"), daughter of Guardian, testified she currently lives next door to Guardian and previously resided with Guardian and Child for approximately one (1) year. Ms. P----- testified Guardian communicated often with Mother regarding care for Child. Guardian was someone Mother "leaned on" for support and mentoring throughout the time Mother was in high school. Ms. P----- testified Mother respected Guardian's authority over Child; before taking any action regarding Child, Mother would ask Guardian for permission.

Ms. P----- testified Guardian was present at Child's birth in the hospital; Ms. P----- is unsure if Father requested Guardian be present at Child's birth. Shortly after Child's birth, Guardian went to Mother and Father's residence "a lot" and assisted in providing care for Child. Ms. P----- testified from the time of Child's birth, Guardian helped to feed Child, bath Child and purchase necessities for Child. Ms. P----- further testified since Child began living with Guardian full time, Guardian has continued to provide care for Child. Child turns to Guardian for "psychological comfort" and Guardian fills Child's need to be loved, valued, appreciated, and received as an essential person. Ms. P----- testified Guardian views Child as an "essential person" and Guardian's life revolves around Child. Ms. P----- further testified Guardian makes most routine decisions for Child, including educational decisions, medical decisions, and mental health decisions. Ms. P----- testified Guardian sets the daily routine for Child and acts as a moral guide for Child.

Ms. P----- testified, based on her observations, Guardian adequately meets Child's emotional, physical, mental health, safety and well-being needs. Ms. P----- described Child and Guardian's relationship as "bonded" and "parental in nature." Ms. P----- testified Child feels "safe" with Guardian and seeks out Guardian for comfort. While Ms. P----- resided with Child and Guardian, when Child woke up from her sleep, screaming, Child would call out for Guardian and Guardian would calm Child down. Ms. P----- testified Child is unable to fall asleep unless Guardian lays with Child; Child used to be able to fall asleep without Guardian laying with her but has recently been unable to do so. When Child feels upset or is hungry, Child asks for Guardian. Ms. P----- described Child as a "happy kid;" yet went on to describe Child as "clingy" and indicated Child is "clingier" now than she was in the past. Ms. P----- testified Child refers to Guardian as "mommy," to Mother as "belly mom," and to Father as "daddy."

Ms. P----- testified Guardian fosters relationships between Child and biological family members, and Child and her friends. Guardian arranges play dates for Child and Child's friends and engages Child in extracurricular activities. Child is currently engaged in karate, horseback riding, girl scouts, volleyball, and church choir; Guardian pays for Child's activities, and transports Child to and from all activities.

A--- D'I----

A--- D'I---- (“Ms. D'I----”) testified she has known Guardian’s family for approximately six (6) years. Ms. D'I---- owns a house near Guardian’s home at the beach, and lives at that home during the summer. Ms. D'I---- resides with her husband and two (2) daughters, who are aged nine (9) and twelve (12). Ms. D'I---- testified her nine (9) year old daughter is close with Child, and they play at the beach with one another. Ms. D'I---- described Guardian as a “mother figure” to Child and indicated Child refers to Guardian as “mom.” Child previously referred to Guardian as “Ga” but began referring to Guardian as “mom.” Ms. D'I---- testified since meeting Guardian and Child six (6) years ago, Guardian has acted in a parental role for Child, and no other individual has acted in a parental role for Child. Ms. D'I---- described Guardian’s relationship with Child as “any other mother-daughter relationship.”

Ms. D'I---- further testified Guardian meets Child’s needs; this observation is based on the fact Guardian is always the individual taking care of Child and setting boundaries for Child. Ms. D'I---- indicated Guardian’s daughters assist in caring for Child, but it is “mostly [Guardian]” who cares for Child. Ms. D'I---- testified Guardian assists Child in completing homework and shapes Child’s daily routine. Ms. D'I---- further testified Guardian disciplines Child when necessary. Based on Ms. D'I----’s observations of Child’s interactions with Guardian, Child looks to Guardian for comfort when needed. Ms. D'I---- described Child as a “member of the [P-----] family,” indicating Child is treated the same by all members of the family.

Guardian

Guardian testified at the time of the guardianship hearing in 2014, Mother consented to guardianship of Child with Guardian. Guardian testified at no time between when the guardianship was entered to when Mother died did Mother revoke consent. Guardian testified she became acquainted with Mother while Mother was in high school; Guardian was an assistant principal at Mother’s school and Mother was on Guardian’s case load. Guardian testified Mother viewed Guardian as a mother figure and relied on Guardian for “a lot of things.” When Mother was eighteen (18) years old, Mother dropped out of school due to her addiction.

Guardian testified Mother and Father used illicit drugs “routinely” and using drugs was Mother and Father’s primary focus; Guardian witnessed Mother and Father under the influence of drugs. Mother and Father’s time and money went to buying drugs; Guardian testified Mother and Father used to sell items in their home in order to buy drugs. Guardian testified Mother’s drug of choice was Xanax, but Mother would use “any drug,” and Father’s drug of choice was cocaine. Guardian further testified Mother and Father would use “any and everything.” Guardian further testified at the time of Child’s birth Mother was not active in addiction, but Father was active in addiction.

Guardian testified she became “very involved” in Child’s life shortly after Child’s birth. Beginning in February 2014, when Child was approximately five (5) weeks old, Child began “periodically” spending the night at Guardian’s home. Guardian testified the times when Child had overnights at her home were consistent with the times Father was paid and subsequently had a day off. Guardian believes Mother and Father allowed Guardian to have Child overnight to allow Mother and Father to use drugs. During these times, Guardian testified there were “a lot of things going on;” Guardian testified to drug use, domestic violence, and parties at Mother and Father’s home.

Guardian testified prior to the entry of the Interim Guardianship Order in 2014 and while

Child was an infant, Guardian cared for Child “very frequently;” Guardian assisted in feeding, changing, and bathing Child. Guardian frequented Mother and Father’s apartment to assist in caring for Child. When Guardian stayed the night at Mother and Father’s house she slept on the couch, and Child slept in a bassinet in the living room; Guardian would soothe Child when Child woke up throughout the night. Guardian testified during this time, she assisted in household chores at Mother and Father’s apartment by washing Mother and Child’s clothes and washing the dishes.

Guardian testified her main point of contact was Mother. Guardian had Father’s phone number, but Guardian and Father did not have frequent communication. Guardian and Father would communicate occasionally to discuss pick up and drop off of Child. Guardian testified following Child’s birth, Father was always working and was usually not around while Guardian was at Mother and Father’s residence. Guardian testified Father was uncomfortable with Guardian’s relationship to the family; Guardian believed this was due to Guardian invading Father’s space. Guardian testified to an occasion when Guardian was downstate and Mother contacted Guardian indicating she needed help with Child; Guardian’s daughter retrieved Child from Mother and Father, and Father assisted in putting Child in the car seat in Ms. P-----’s car.

Guardian testified in 2015, Mother and Father consented to the guardianship and agreed not to rescind or modify the guardianship for a period of one (1) year. On June 9, 2014, Guardian received a text from Mother indicating “I want u [sic] to be [Child’s] mom,” to which Guardian replied, “I will take good care of [Child] and love [Child] until you are ready.”¹⁹ Guardian confirmed Guardians’ reply indicated Guardian did not believe the guardianship would be permanent. On June 10, 2014, Mother texted Guardian, stating “U [sic] just seem so much Better for [Child].”²⁰ Approximately two (2) years later on September 6, 2014, Guardian received a text from Mother indicating “... if [Mother] could just let [Guardian] adopt [Child] [Mother] would. [Child] better off with [Guardian].”²¹

Guardian testified in addition to Father’s consent to guardianship, Father’s absence from Child’s life led Guardian to believe Father supported the formation and establishment of Guardian’s parent-like relationship with Child. Guardian cited Father’s knowledge that Guardian was often at Mother and Father’s home, and an occasion where Father assisted in placing a car seat in Ms. Petrucci’s car as Father’s actions supporting the establishment of a parent-like relationship between Guardian and Child. Guardian disagreed with Father’s testimony at his August 2, 2022, deposition that any help provided by Guardian was over Father’s objection and Father did not agree to have Guardian present at Child’s birth.²² Guardian testified she could not recall whether Father supported Guardian’s presence at his home; however, Father believed Mother needed help with her addiction and caring for Child while he worked. Guardian further testified Father struggled with Guardian’s involvement in Mother, Father and Child’s lives and Father “resented” how involved Guardian was in Father’s life.

Guardian testified she has been Child’s primary caregiver since Child’s birth; Guardian was invited to the hospital by Mother and was present at Child’s birth. Guardian testified throughout 2014 and 2015, Guardian believed she was acting in a “mother role” to Child based on Child’s connection with Guardian. Guardian testified Child was “more comfortable” when Guardian cared for Child than when Mother cared for Child. Guardian further testified Child was “bonded” with Guardian during

¹⁹ Petitioner’s Exhibit 6.

²⁰ Petitioner’s Exhibit 8.

²¹ Petitioner’s Exhibit 7.

²² Joint Exhibit 1.

this time, and Mother fostered this relationship between Guardian and Child.

Guardian further testified since Child began residing with Child in 2014, Guardian has been the primary financial support for Child. Mother occasionally provided money for Child. In 2015, at the time of the final Guardianship Order, Father agreed to pay Guardian \$100.00 per month for Child, which Father failed to regularly pay. As of November 30, 2019, Father owed Guardian \$3,800.00 for missed child support payments under the previous June 5, 2015 Order to pay \$100.00 per month.²³

Guardian testified since Child has resided with Guardian, Guardian provides food, clothing, and shelter for Child. Guardian “cannot recall” when Child has not stayed the night with Guardian. Guardian testified she makes Child’s educational and health care decisions; Guardian provides for Child’s safety and well-being, and shapes Child’s daily routine. Guardian addresses Child’s developmental needs and serves as a moral guide for Child. Guardian provides insurance for Child; in November 2015, Father texted Guardian asking Guardian to send a letter indicating Child is covered under her insurance, so Father could remove Child from his insurance.²⁴ Guardian testified when Child required medical assistance, Guardian took leave from work to care for Child.

Guardian testified she fosters relationships between Child and biological and non-biological family members, including maternal family members, paternal family members, and members of Guardian’s family. Guardian further fosters relationships between Child and friends. Guardian facilitates Child’s participation in extracurricular activities. Guardian testified Guardian’s family holds out to others that Child is a member of their family; Child has appeared in Guardian’s family Christmas card since 2014.²⁵ Guardian introduces Child as her daughter, and Child introduces Guardian as her “mommy.”

Guardian testified following a March 2023 court hearing, Guardian and Father met with one another, and each recorded the conversation. Guardian testified this was the “first conversation [Father and Guardian] had in years” and it was “really nice;” during this conversation, Father indicated Guardian “has acted as [Child’s] mother.”²⁶ Father further stated he refers to Guardian as “mommy” when speaking to Child; however, Guardian indicated as recently as 2022, Guardian heard Father refer to Guardian as “Ga” when speaking to Jerome Garrett, the reunification counselor. Guardian further testified Father requested to be involved in Child’s life and activities, such as school dances and plays, and referenced “co-parenting” with Guardian.

Guardian testified between October 2022 and April 2023 Father did not have visitation with Child. Guardian testified Child believes she has done something wrong, and Father does not want to see Child. Guardian testified she stopped offering visitation to Father in November 2022, when Father asked Guardian to “stop harassing me about visits with Child.”²⁷ Following the meeting between Father and Guardian in April 2023, Guardian sent a text message to Father asking to schedule a visit between Father, Child and Guardian.²⁸ Guardian, Father and Child subsequently engaged in a visit on April 6, 2023 at Panera Bread. Prior to this visit, Guardian made a list of suggestions with regard to how the visit with Child should occur;²⁹ Guardian testified these suggestions were made in

²³ Petitioner’s Exhibit 20.

²⁴ Petitioner’s Exhibit 25.

²⁵ Petitioner’s Exhibit 32.

²⁶ Petitioner’s Exhibit 18/19.

²⁷ Petitioner’s Exhibit 37.

²⁸ Petitioner’s Exhibit 33.

²⁹ Respondent’s Exhibit 1.

consultation with her daughters and Child's therapist.

A----- R-----

A----- R----- testified she completed a caregiver-child bonding assessment in 2015 to determine the best interest of Child, and a report was created.³⁰ In conducting this testing, Ms. R----- interviewed Guardian, Mother, and Father. Mother reported to Ms. R----- she felt "very close" to Guardian and Child was "better with [Guardian]." Mother further stated Mother trusts Guardian and is comfortable with Child in Guardian's care. Ms. R----- testified Mother made it clear Mother and Guardian had a positive relationship. At that time, Father indicated to Ms. R----- he would not allow Guardian to see Child if Father were awarded custody of Child. Father indicated he felt he was "competing" with Guardian for Child, and felt Guardian was not "family" and Child needed to be with family. Ms. R----- testified Father made it "very clear" he would not allow visitation with Guardian; however, following this assessment, Father consented to Guardian having guardianship of Child. Pursuant to her 2015 investigation and report, Ms. R----- recommended Guardian maintain guardianship of Child; Ms. R----- never recommended Guardian be a "parent" of Child. Ms. R----- further recommended Father engage in programs, complete interaction therapy with Child, and maintain sobriety.

In 2018, Ms. R----- completed a follow up caregiver-child assessment and again met with Guardian, Mother and Father.³¹ Ms. R----- testified Mother remained agreeable for Child to remain in Guardian's care, as Mother was "not ready to be a mom." Ms. R----- testified Mother felt comfortable being Child's "belly mommy" and forming a relationship with Child without the responsibility of being a full-time mother. Ms. R----- testified during both the 2015 and the 2018 assessments, Mother indicated to Ms. R----- Mother was "fearful" if Father was granted custody of Child, Father would refuse to allow Mother to visit with Child. Father again advised Ms. R----- if he was given custody of Child, he would not allow Guardian to visit with Child. Father also reported to Ms. R----- he was dissatisfied with Guardian, and indicated Guardian was "controlling" during visitation between Father and Child and did not allow Father or Father's paramour to establish a relationship with Child. Pursuant to her 2018 report, Ms. R----- recommended guardianship remain with Guardian, and Father maintain sobriety and work with Guardian to maintain a regular visitation schedule.

Ms. R----- testified during her assessments Ms. R----- became aware of Guardian's involvement in Child's life. Ms. R----- testified Mother routinely called Guardian to tend to Mother and Child. Throughout her assessments, Ms. R----- received no indication from Mother that Mother did not wish for Guardian to care for Child; however, Ms. R----- observed Mother did not understand the nuances of the parental relationship between Child and Guardian. Ms. R----- testified Mother made it clear she trusted Guardian, viewed Guardian as her own mother, and was confident in Guardian's parenting abilities, which made Mother feel confident in Guardian acting in a "mothering role" for Child. Ms. R----- noted it was clear Mother viewed Guardian as her mother; however, Mother did not directly express this to Ms. R-----.

Ms. R----- testified in 2022, she observed Child and concluded reunification counseling was causing additional stress to Child.³² Ms. R----- recommended that visitation with Father continue, but occur in a "relaxed" setting. Ms. R----- testified during her observations, Child seemed

³⁰ Petitioner's Exhibit 36.

³¹ Petitioner's Exhibit 35.

³² Petitioner's Exhibit 34.

dysregulated “across the board,” including academically and in peer relationships. Ms. R----- testified Child specifically stated reunification counseling was stressful for Child due to the way reunification therapy was proceeding. Child reported to Ms. R----- Child was asked too many questions, and Father was not “playing” with her, but Child was watching Father play.

Father

Father testified at no point has Father fostered a parental relationship for Child with Guardian. Father testified prior to Child’s birth, Father met Guardian one (1) time and was not familiar with Guardian. Father testified Mother spoke about Guardian “here and there.” Father further testified when he and Mother were in the hospital and Mother informed him that she wanted Guardian present at Child’s birth, he told Mother he did not want Guardian in the delivery room for Child’s birth.

Father testified paternal grandmother stayed at Mother and Father’s home to assist in caring for Child during the first week following Child’s birth. During this time, Guardian came to Mother and Father’s home “every other day.” Father testified he told Mother he believed Guardian was at Mother and Father’s residence too much and asked Mother to request Guardian to stop. Father testified prior to June 2014, Guardian spent two (2) nights at Mother and Father’s home at the request of Mother. Approximately one (1) week after Child’s birth, Guardian spent the night at Mother and Father’s home; Father testified he objected to Guardian’s presence in the home but understood Mother’s need for extra help. Father testified Guardian insisted on staying at Mother and Father’s residence.

Father testified at the time of Child’s birth, Father was employed full-time with Horizon Services, working a rotating shift. Father testified there were occasions when Father would return home from work to find Child in Guardian’s care. Father described a specific occasion in February 2014, while Father was traveling home with Child from paternal grandparent’s house, Guardian contacted Father to relate her concerns about Mother’s ability to care for Child. Father testified regarding another occasion in 2014 when he returned home from work to find Guardian at Mother and Father’s residence. Father testified he asked Mother not to have Guardian in the home; however, Mother did not honor Father’s wishes. When Father returned home to find Guardian in the home, Father became mad and left the apartment. Father testified when he returned home that evening at approximately 8:00 p.m., Guardian was still in the home.

Father testified Child spent the night at Guardian’s home over Father’s objections. Father described “multiple” conversations with Mother about Guardian not needing to keep Child at Guardian’s home overnight. Father did not know Guardian and was uncomfortable with Child being in Guardian’s care. On one occasion in which Father became aware Guardian had Child in her care, Father learned that Mother did not know where Guardian lived; Father contacted Guardian and “demanded” Guardian return Child to Mother and Father’s care. Father confirmed there were two (2) occasions between Child’s birth and June 2014, that Father acquiesced to Child being in Guardian’s care to allow Mother and Father to have a “date night.”

Father described a conversation he had with Mother where Father learned Guardian had a car seat for Child and a crib at her home. Father indicated to Mother it sounded like Guardian was “trying to take [Mother and Father’s] baby.” Father testified Guardian was not a part of a “triad” with Mother and Father, and Father did not see Guardian in that role. Father further testified Mother would tell Guardian a lot about Mother and Father’s relationship and circumstances; Father did not want Guardian to know his “life decisions” because Father’s life was “none of [Guardian’s] business.” Father believed Mother informed Guardian of Father’s objections to Guardian’s care of Child.

Father testified at the time he consented to guardianship, Father was struggling with addiction and wanted to “do right” by Child. Father testified in approximately March 2014, Father began using Xanax. In approximately September or October 2014, Father entered the PACE program and resided in paternal grandparent’s home. Father completed the PACE program in 2015, and filed a Petition for Custody of Child, seeking sole custody. Father testified he had discussions with Mother regarding this petition, in which Father informed Mother he wanted to end the guardianship; Father testified Mother agreed the guardianship should be rescinded. Father further testified his intent in agreeing to guardianship was to allow him and Mother time to get sober and regain custody of Child.

Father testified immediately prior to the 2015 guardianship hearing, Father relapsed and felt “forced” to consent to guardianship due to his ongoing addiction. Father understood by consenting to guardianship at the 2015 hearing he could then focus on, and maintain, his sobriety with the goal of rescinding guardianship in the future. Father explained the one (1) year term prohibiting rescission of the guardianship was to allow Father to “get [his] stuff together.” Father further testified he did not expect or intend for the guardianship to be permanent.

Following the entry of the 2015 Guardianship Order, Father entered an Oxford House, a sober-living residence. Two (2) months into his residence at Oxford House, Father was removed from the program for using steroids; Father then began using heroin. On April 22, 2016, Father again entered a sober-living facility, Limen House, where he resided until approximately April 1, 2017. After leaving the sober living facility, Father resided with a friend in recovery for approximately two (2) weeks, before moving in with his paramour (now wife), H-----, at the end of April 2017.

Father testified although he was permitted to file to rescind the guardianship in 2016, pursuant to the provisions of the 2015 Guardianship Order, he did not file to rescind until 2017 because he was continuing to work on maintaining his sobriety. During the year between April 2016 and April 2017 when Father resided in Limen House, children were not permitted to reside therein. Father testified once leaving sober living, Father waited an additional three (3) months to file for guardianship because Father had just moved into a home with his paramour, and he wanted to ensure she was a good fit to be in Child’s life before bringing Child into Father’s care.

Father testified in July 2017, he requested to visit with Child at the beach with his paramour. Guardian agreed to facilitate visitation with Child; however, Guardian said she was “strong armed” into visitation. During this visitation, Guardian advised Father she would allow Father’s paramour to say “hi” to Child, but paramour would then have to leave the area. Father noted Mother had two (2) boyfriends, who were active in substance use, who Guardian permitted to meet Child. Father further testified during this visitation Guardian “blocked” Father from hugging Child. Father testified this visitation made Father realize Guardian was not going to “work with” Father, and Father subsequently filed a Petition to Rescind Guardianship.

Father testified in October and November 2022, when Guardian offered for either her or her daughters to supervise visitation between Father and Child, Father suggested either J----- G----- or Father’s wife supervise visitation. Father made this suggestion based on the underlying Court Order and his belief in the need for reunification counseling. Father further testified in a text message sent to Guardian at the end of 2022, Father requested Guardian to “stop harassing” Father about visitation. Father sent this message due to Guardian’s visitation options being limited to supervision by either Guardian or Guardian’s daughters, as opposed to a mutually agreed upon third party. Father testified he suggested his wife supervise visitation, which Guardian declined. Guardian insisted supervision be done by someone who is “qualified.”

Father testified regarding the meetings between Father and Guardian, which occurred in March and April 2023. Father testified during the March 2023 meeting, Father referred to Guardian as Child's "mom" as a way to calm Guardian down and avoid conflict with Guardian. Father indicated Child refers to Guardian as "mommy" and Father does not correct Child because he does not want to confuse Child. During this conversation, Father confirmed he told Guardian "You are [Child's] mom" because that is how Child refers to Guardian; Father indicated this statement has no "depth or weight" to Father. Father further testified during the April 2023 meeting between Guardian and Father, Father told Guardian he wanted to "co-parent" with Guardian, as a way for Child to see Guardian and Father on an "equal level." Father testified when he used the term "co-parent" he did not intend to mean he sees Guardian as a parent. Father testified at this point, Father understands if guardianship was to be rescinded, Guardian would still be a part of Child's life; Father views Guardian's role in Child's life as that of a grandparent. During Father's meeting with Guardian, Guardian indicated she would not allow Child to visit with Father and his wife because Child would view them as her family, and Child "already has a family."

On May 20, 2023, Guardian sent a text message to Father stating she wished to move forward with visitation between Child and Father supervised by either Guardian or Guardian's daughters.³³ Father testified he took this text message as an ultimatum, and believed Guardian should not supervise visitation between Child and Father. Father believes Guardian is the "problem," in referring to Child's anxiety concerning visitation with Father. When Child visited with Father without Guardian, Child was open with Father. Father testified that the visit between Father and Child on April 6, 2023, when Guardian was present, Child seemed "stiff as a board," but when Father and Child walked away from Guardian, Child was talkative with Father and discussed school and her dog, ----. Father further testified during visitation, Father was "very aware and mindful" not to ask Child questions as requested by Guardian; however, Father observed Guardian "fire off" questions to Child. Father indicated Child looked uncomfortable during visitation while Guardian was present, and Father was "so uncomfortable watching [Child] be uncomfortable" that Father wanted to end visitation early. Father testified following visitation, Father texted Guardian informing Guardian of the concerns he observed during the visitation; Father further indicated to Guardian he believed a professional was needed to move forward with visitation and offered to meet with Guardian again to discuss a way to move forward.

Legal Analysis

Parents have a fundamental liberty interest, protected by the Due Process Clause of the Fourteenth Amendment, to direct the upbringing of their children.³⁴ These constitutional protections do not extend to guardians.³⁵ A de facto parent is accorded the same constitutional rights as a biological or adoptive parent, a role this Court does not take lightly.³⁶

The Delaware Code sets forth three factors which must be satisfied in order for a court to grant de facto parentage status.³⁷ First, the petitioner must demonstrate she has the support and consent of the child's parent or parents who fostered the formation and establishment of a parent-like relationship between the child and the de facto parent. This factor can be satisfied by a showing

³³ Petitioner's Exhibit 33.

³⁴ *Troxel v. Granville*, 530 U.S. 57 (2000).

³⁵ *N.N. v. L.N.*, 2022 WL 3347516, at *2 (Del. Fam. Ct. 2022).

³⁶ *Basciano v. Foster*, 284 A.3d 1116, 1138 (Md. Ct. Spec. App. 2022).

³⁷ 13 *Del. C.* § 8-201(c).

of express consent or implied consent. Second, the petitioner must demonstrate she has exercised parental responsibility for the child as defined in 13 *Del. C.* § 1101.³⁸ Lastly, petitioner must have acted in a parental role for a length of time sufficient to establish a bonded and dependent relationship with the child that is parental in nature.

Consent

Guardian must demonstrate she had “the support and consent of the child’s parent or parents who fostered the formation and establishment of a parent-like relationship between the child and the de facto parent.”³⁹ Consent must occur at the formation and establishment of the parental relationship. This Court has previously held where a parent consented to the formation of the relationship at the onset, withdrawal of consent did not negate a parent’s initial consent.⁴⁰ Therefore, Guardian needs to establish Child’s parent or parents consented to Guardian’s parental relationship with Child at the formation and establishment of the relationship.

In drafting § 8-201(c), the Delaware General Assembly took care in crafting the requirement that petitioner demonstrate she has “the support and consent of the child’s *parent or parents*.”⁴¹ Courts in varying jurisdictions have interpreted “parent or parents” statutory language to mean if there are two legal parents, a prospective de facto parent must demonstrate *both parents* have consented.⁴² Where there are two legal parents, to find only one needs to consent to the formation and establishment of a parent-like relationship between a child and the de facto parent would be to unconstitutionally dilute the other legal parent’s rights.⁴³ Therefore, the Court analyzes parental consent as it relates to both Mother and Father separately.

Guardian asserts Mother consented to the formation of a parent-like relationship between Guardian and Child. Guardian introduced testimony of Maternal Grandfather, who testified Mother gave Guardian the blessing to raise Child. Guardian also testified regarding text messages in which Mother indicated Mother would like Guardian to adopt Child. Father testified there were times when Mother did not wish for Guardian to act in a parent-like role of Child; however, Guardian’s evidence is sufficient to establish Mother’s consent.

The inquiry does not end with Mother’s consent; Father’s consent is a requisite element to a de facto parentage claim. Father testified at no point did he expressly consent to a parental relationship between Guardian and Child. For Guardian’s de facto parent claim to proceed, Guardian must prove Father impliedly consented to a parental relationship between Guardian and Child.

³⁸ 13 *Del. C.* § 1101(15).

³⁹ 13 *Del. C.* § 8-201(c)(1).

⁴⁰ *C.M.G. v. L.M.S.*, 2010 WL 2696112, at *7 (Del. Fam. Ct. 2010).

⁴¹ Compare 13 *Del. C.* § 8-201(c)(1) with *K.A.F. v. D.L.M.*, 96 A.3d 975, 982-83 (N.J. Super. Ct. App. Div. 2014) (“The Court’s continual reference to ‘a’ legal parent or ‘the’ legal parent in the singular strengthens our conclusion that the consent of both legal parents is not required to create a psychological parent relationship between their child and a third party.”).

⁴² *E.N. v. T.R.*, 255 A.3d 1, 30 (Md. 2021) (“a prospective *de facto* parent must demonstrate that both legal parents consented to and fostered such a relationship or that a non-consenting legal parent is unfit or exceptional circumstances exist”); *Jw.S. Jr. v. Em.S.*, 2013 WL 6174814, at *5 (Del. Fam. Ct. 2013) (finding the consent requirement was satisfied when “the evidence establishes that J. fostered a parent-child relationship with M. with the consent and support of Mother *and* D.) (emphasis added).

⁴³ *Martin v. McMahan*, 264 A.3d 1224, 1234 (Me. 2021) (citing *E.N. v. T.R.*, 255 A.3d 1, 31 (Md. 2021)).

Implied consent is “consent inferred from one’s conduct rather than from one’s direct expression.”⁴⁴ Implied consent must be “knowing and voluntary and must be shown by conduct that would be understood by a reasonable person as indicating consent.”⁴⁵ The Court closely examined the testimony and evidence in this case to determine whether Father knowingly and voluntarily implied his consent, and whether Father’s conduct would be understood by a reasonable person as indicating Father’s consent to the formation of a parental relationship between Guardian and Child.

Guardian testified following Child’s birth Father was uncomfortable with Guardian’s relationship to the family. Furthermore, both Guardian and Father testified they did not intend the nature of the guardianship to be permanent.⁴⁶ This shows at the creation of the Guardian’s relationship with Child, Father did not consent to Guardian having a parental relationship with Child.

Guardian testified she inferred Father’s consent to a parental relationship with Child due to Father’s absence in Child’s life. Father was “absent” in Child’s life because Father was recovering from drug addiction. Father entered drug treatment in 2014, the year of Child’s birth, and Father completed the program in 2015. Father filed a Petition for Custody of Child in 2015. This is evidence Father had a desire to be present in Child’s life since 2015.⁴⁷ Father testified his intent in agreeing to guardianship was to ensure Child was cared for while Father worked on his recovery.⁴⁸ Father relapsed, but after going through treatment and maintaining his sobriety, Father filed a Petition to Rescind Guardianship in 2017, immediately after completing the program at Limen House and moving into a residence with his paramour (now wife) where he could raise Child.⁴⁹ The Court commends Father’s recovery from addiction and does not find Father’s temporary absence from Child’s life to constitute implied consent.⁵⁰

While Guardian argues Father impliedly consented to de facto parentage because Father consented to Guardian’s guardianship of Child, the nature of Father’s consent to guardianship is insufficient to constitute consent to a de facto parentage. If this Court were to find consent to a guardianship is implied consent to a de facto parentage, all guardians would inevitably be capable of becoming de facto parents. The nature of a guardianship differs greatly from the nature of de facto parentage. A guardianship can be rescinded by the legal parent, upon a showing that the guardianship is no longer necessary for the reasons it was established so long as the child will not be dependent, neglected or abuse in the parent’s care or suffer physical or emotional harm upon such rescission.⁵¹ A legal parent has constitutional rights the guardian lacks and once granted the status of de facto parent, the de facto parent has all rights and responsibilities attendant to a parent. Father’s consent to a guardianship, where Father has greater legal rights to Child than Guardian,

⁴⁴ *Consent*, BLACK’S LAW DICTIONARY (11th ed. 2019).

⁴⁵ *E.N. v. T.R.*, 255 A.3d 1, 34 (Md. 2021).

⁴⁶ Petitioner’s Exhibit 6 (Guardian’s testimony accompanying Petitioner’s Exhibit 6 above); Joint Exhibit 1, page 31, lines 21-22.

⁴⁷ *Contra In re Parentage of J.B.R.*, 336 P.3d 648, 653 (Wash. Ct. App. 2014) (finding Father’s decision not to support Child and not to seek a relationship with Child for over a decade evidenced his consent to a de facto parentage).

⁴⁸ Joint Exhibit 1, page 35, lines 6-8 (“Again, a guardianship to me was she was going to care for L---- in the meantime while I got better, not forever.”).

⁴⁹ CN14-03321, Tab 44.

⁵⁰ *Basciano v. Foster*, 284 A.3d 1116, 1139 (Md. Ct. Spec. App. 2022) (finding Father did not provide implied consent to establish a de facto parentage when Father was recovering from heroin addiction).

⁵¹ 13 *Del. C.* §2332(c).

is not sufficient to imply Father consented to the formation of a parental relationship between Child and Guardian.

Parental Responsibility

Pursuant to 13 Del. C. § 8-201(c), a person seeking de facto parentage must also prove she has exercised parental responsibility for the child as defined in 13 Del. C. § 1101.⁵² 13 Del. C. § 1101 defines parental responsibility as “the care, support, and control of the child in a manner that provides for the child’s necessary physical needs, including adequate food, clothing and shelter, and that also provides for the mental and emotional health and development of such child.”⁵³

Guardian presented multiple witnesses who testified regarding Guardian’s responsibility in caring for Child. Guardian provides food, clothing, and housing for Child. Ms. P-----, Guardian’s daughter, testified when Child is upset or hungry, Child asks for Guardian. Ms. P----- testified Guardian arranges play dates for Child and Child’s friends and engages Child in extracurricular activities.

Father avers Guardian failed to advance Child’s mental and emotional health. Father’s claim is based on Guardian’s failure to facilitate regular phone contact between Child and Father, despite Child’s express desires, and Guardian’s failure to engage Child in reunification counseling and visitation with Father, over the course of the Court’s Orders, hindering Child’s ability to establish a relationship with Father.⁵⁴ Guardian points to Ms. R-----’s testimony Guardian has met and advanced Child’s mental health needs.

It is uncontested Guardian has provided clothing, shelter, and food for Child since guardianship began in 2014. While Guardian’s parental responsibility as to Child’s mental and emotional health is contested, the Court finds Guardian has exercised sufficient parental responsibility for Child in other facets of Child’s life.

Bonded Relationship

Pursuant to 13 Del. C. § 8-201(c), a person seeking de facto parentage must have acted in a parental role for a length of time sufficient to have established a bonded and dependent relationship with the child that is parental in nature.⁵⁵ The parties have stipulated to this factor, agreeing Guardian has established a bonded and dependent relationship with Child.

Conclusion

The Court finds Guardian has failed to meet her burden of proving all three (3) criteria necessary to achieve de facto parent status as defined in 13 Del. C. § 8-201(c). In is undisputed that Guardian has a bonded and dependent relationship with Child. In addition, Guardian has exercised parental responsibility for Child; Guardian has provided clothing, shelter, and food for Child since the outset of the guardianship. Guardian has failed to establish she has consent and support of Child’s parents in the establishment of a parent-like relationship between Guardian and Child. In Mother’s absence, the Court can infer from Guardian’s evidence that Mother consented

⁵² 13 Del. C. § 8-201(c)(2).

⁵³ 13 Del. C. § 1101(15).

⁵⁴ *Wilcox v. LaClaire*, 263 A.3d 1014 (Del. 2021) (holding father had a right of reasonable access to child by telephone unless mother demonstrates father’s requested contact would significantly impair child’s emotional development or endanger child’s physical health).

⁵⁵ 13 Del. C. § 8-201(c)(3).

to the establishment of a parent-like relationship between Guardian and Child. However, for the reasons set forth above, Guardian has not established Father expressly or impliedly consented to such a relationship. As a requisite element of de facto parent status is missing, Guardian's Petition for De Facto Parentage must be denied.

Based on the foregoing, **IT IS SO ORDERED** this _____ day of November, 2023:

1. Guardian's Petition for De Facto Parentage is **DENIED**.
2. Guardian's Motion *in Liminae* to Exclude Testimony from J----- G----- is **MOOT** as Father chose not to call Mr. G----- as a witness.

MARY S. MUCH, Judge

MSM/snk
cc: Parties, John Macconi, Esq., File
Date mailed: _____