

THE FAMILY COURT OF THE STATE OF DELAWARE
IN AND OF NEW CASTLE COUNTY

J---- H----,
Petitioner,

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§ File No. CN16-33191
§ Pet. No. 16-33191
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v.

J----- D----,
Respondent.

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CUSTODY MODIFICATION ORDER

Date Submitted: August 17, 2017
Date Decided: August 29, 2017

Petitioner, represented by Edward Curley, Esquire
Respondent, represented by Laura Brooks, Esquire
Attorney Guardian *ad litem* for the Child, Francis C. Gondek, Esquire

Buckworth, J.

INTRODUCTION

The matter before the Court is a Petition to Modify Custody Order filed on October 11, 2016, by J---- E. H----- (“Father” or “J----”)¹, represented by Edward Curley, Esq., against J----- R. D----- (“Mother”), represented by Laura Brooks, Esq., regarding the parties’ minor child: D---- H----- (“D----”), born August 22, 2008.² Francis C. Gondek, Esq. (“Mr. Gondek”), was appointed Attorney Guardian *ad litem* on May 17, 2017.³ A hearing was held on August 17, 2017 where the Court heard testimony from Father; Mother; Dr. Samuel R----- (“Dr. R-----”); Amanda L----- (“Ms. L-----”); and Mr. Gondek. The Court reserved its decision.

PROCEDURAL HISTORY

D---- is the biological child of Mother and Mark T----- (“Mr. T-----”). The parties met while serving in the U.S. Coast Guard. Father helped to care for D---- when he was 1 month old. In 2009, the parties dated. They married in June 2010. When D---- was 3 years old, Father adopted D---- and Mr. T-----’s parental rights were terminated.

The parties divorced by final decree in the superior court of the state of Washington, Pierce County in 2015. A custody arrangement was achieved by mediated agreement, which was adopted and approved as a final order in the State of Washington on August 13, 2015 (“Washington Custody Order”).⁴ The Washington Custody Order provided that the parties shall have joint legal custody of D----. The parenting plan also provided that D---- shall reside with Mother during the school year and that Father shall have D---- up to 4 times per year in D----’s

¹ The Court will refer to the Petitioner as Father for the majority of this Order; however, the Court found it pertinent to include when Father was referred to as “Jerry” throughout the hearing.

² Pet. to Modify Custody, D.I. 7.

³ Letter – Appointment, D.I. 32.

⁴ Affidavit and Request to Register a Foreign Custody Order, D.I. 2.

state of residence for 7 days each visit. During the summer, D---- shall reside with Father beginning 7 days after school is released and continue until 14 days prior to school commencing. And the Washington Custody Order provided for alternating holiday visitation. The terms of the Washington Custody Order also specified that:

- “The parties agree that it is in their child’s best interests to have access to both parents.”
- “Neither aren’t shall speak in a derogatory fashion about the other parent in front of or in the presence of the child.” “each parent shall make every effort not to make disparaging comments”
- “Both parents shall refrain from unreasonably questioning the child regarding the activities of the other parent.”
- “Neither parent shall make alienating or derogatory remarks to or about the other parent in front of the minor child. If either parent is found to have violated this provision, that parent shall be subject to a finding of contempt, and may be required to pay the other parent’s reasonable attorney’s fees.”

After the Washington Custody Order was entered, the parties relocated. Father moved to Florida, where his family was located; and Mother and D---- relocated to Maryland to live with her mother. In May 2016, Mother and D---- relocated to Delaware to move in with T—H--- (“Mother’s Boyfriend”) and his then 8-year-old son, Cooper. D---- had visitation with Father during the summer of 2016. Upon returning, Mother filed a Petition for Protection from Abuse (“PFA”) against Father’s mother, L—H----- (“Paternal Grandmother”), alleging she physically abused D---- while he was in Florida. Specifically, Mother alleged that Paternal Grandmother grabbed D---- while they were at the beach, resulting in bruises and scratches.

Mother and Father both Petitioned to have the Washington Custody Order registered in Delaware. Mother filed on October 3, 2016⁵ and Father filed on October 4, 2016.⁶ The Order was registered on October 3, 2016 and again on October 11, 2016 under 13 Del. C. § 1934 (c)⁷

On October 11, 2017, Father filed a Petition to Modify Custody Order. Father alleged Mother violated the Washington Custody Order and that it is no longer in D----'s best interest for the parties to continue to be governed by it. Specifically, Father alleged that Mother engaged in alienating behaviors for negatively affecting the relationship between Father and D--- -. Father alleged that Mother interfered in telephone contact, failed to provide him with information about D----'s education, and failed to make D---- available for visitation. Father argued that Mother's behavior has negatively affected D---- and is contrary to his best interests; Father requested the Court grant him custody and placement with such provisions for contact as the Court may find to be in the best interest of the Child.

On October 17, 2016 Father also moved for Custody Evaluation ("Father's Motion").⁸ On October 21, 2016, Mother filed an Answer to Father's Motion.⁹ In her Answer to Father's Motion, Mother argued: "Custody will not be adjusted in any way that will take D---- away from his BIRTH mother (sic) ". Mother also stated: "I refuse to have my (sic) son evaluated by a doctor hired by J---- or his attorney. If the court decides it is best that D---- be seen it will be by a doctor of my choosing." The Court granted Father's Motion on October 25, 2017, ordering Dr. S---- R----- ("Dr. R-----") to conduct the custody evaluation of both parties and D----.

On November 21, 2017, Mother filed an Answer to Father's Petition to Modify Custody.

⁵ *Id.*

⁶ Affidavit and Request to Register a Foreign Custody Order, D.I. 4.

⁷ Order, D.I. 5

⁸ D.I. 11

⁹ D.I. 12

Mother agreed that parenting plan was not working; however, she denied that she interfered in the relationship between Father and D----. Mother alleged that D---- does not wish to talk to Father and that she encourages contact. Mother denied that she did not inform Father about educational matters. Finally, Mother claimed she did not feel comfortable with Father having unsupervised visitation while the PFA filed against Paternal Grandmother was pending. Mother objected to Father failing to notify her of the alleged abuse and for doing nothing to stop it. Mother stated that D---- is far better off, physically, emotionally and mentally when he is not in contact with “J----”. Mother alleged that D---- has only ever been abused while in “J----’s care”. Mother also noted that Father has a documented history of physical disability and emotional instability.

On April 26, 2017, Mother moved for Appointment of Guardian *ad litem*.¹⁰ On May 10, 2017, The Court granted Mother’s Motion and Mr. Gondek was appointed.¹¹

DISCUSSION

Under 13 *Del. C.* §1934(c), a child custody determination issued by a court of another state and registered in this State is enforceable as of the registration like a determination issued by a court of this State. Under 13 *Del. C.* § 729(b), an order or an interim order entered by consent of all parties about the legal custody of the children, may be modified by the Court in

¹⁰ D.I. 27

¹¹ D.I. 30

accordance with the best interest factors.¹² This Court must issue an Order that is in the best interest of Child, under 13 *Del. C.* § 722.¹³

Mother appears to believe that her interests should supersede Father's because she is a biological parent and Father is an adoptive parent. Under 13 *Del.C.* § 919, upon issuing the decree of adoption, the adopted child shall be the child of the adoptive parent.¹⁴ The adoptive parent is entitled to the same rights and privileges and subject to the same duties and obligations had the child been born to the adoptive parent.¹⁵ While Mother posits that as biological parent

¹² Section 729 provides:

(b) An order entered by the Court by consent of all parties, an interim order or a written agreement between the parties concerning the legal custody of a child or his or her residence may be modified at any time by the Court in accordance with the standards set forth in § 722 of this title.

13 *Del. C.* § 729(b).

¹³ Pursuant to 13 DEL. C. § 722:

(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 relevant factors including:

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

(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.

¹⁴ Pursuant to 13 *Del. C.* § 919:

- (a) Upon the issuance of the decree of adoption, the adopted child shall be considered the child of the adopting parent or parents, entitled to the same rights and privileges and subject to the same duties and obligations as if he or she had been born to the adopting parent or parents.
- (b) Upon the issuance of a decree of adoption, the adopted child shall no longer be considered the child of his or her birth parent or parents and shall no longer be entitled to any of the rights or privileges or subject to any of the duties or obligations of a child with respect to the birth parent or parents; but, when a child is adopted by a stepparent his or her relationship to his or her birth parent who is married to the stepparent shall in no way be altered by reason of the adoption.

¹⁵ *Id.i*

there is a presumption in her favor, the Supreme Court of Delaware has considered presumptions for a birth parent when there is a difference in opinion from a third party or de facto parent; however, this presumption is not applicable to the matter at bar because Father is not a third party or de factor parent, but instead is a parent with all the rights and duties to D---- had D---- been born to him. Although not binding to this decision, the Court considered that numerous other states with similar adoption statutes to the State of Delaware have held there is no presumption for a biological parent in custody disputes between a biological parent and an adoptive parent.¹⁶

Finally, the Court considers 13 Del. C. § 932, which provides that all questions of interpretation regarding adoption should be resolved with the objective of the best interest of the child in mind. Father has been a parental figure for D---- since he was 1 to 4 months old, adopting him when he was 3 years old. As Dr. R----- indicated, from D----'s viewpoint, Father has always been “Daddy”.¹⁷ Because there is no distinction natural to D----, there should be no distinction in the consideration of this case simply because one parent is biological and one

¹⁶ See *Carter v. Carter*, 546 S.E.2d 220, 221 (Va. Ct. App. 2001) (“Once the adoption is final, there is no distinction in law between the biological parent and the adoptive parent; they are parents to that child of equal rank and responsibility”); *Commonwealth ex rel. Michael R. v. Robert R. R.*, 293 Pa.Super. 18, 437 A.2d 969, 972 (1981) (“A decree of adoption directs ‘that the person proposed to be adopted shall have all the rights of a child and heir of the adopting parent ... and shall be subject to the duties of a child to him....’ For the purposes of determining custody, therefore, [son] is as much the father’s son as he is the mother’s.”); *Ivey v. Ivey*, 264 Ga. 435, 445 S.E.2d 258 (1994) (holding an adoptive parent has the same footing and rights and obligations as a biological parent in a custody dispute and the test should be the same as in any child custody case: the best interest of the child).

¹⁷ Pursuant to 13 Del. C. § 932

This chapter is designed to achieve without undue delay the paramount objectives of the best interest of the child, and all questions of interpretation shall be resolved with that objective in mind. Where there appears to be a conflict between the best interest of the parent or parents and the child, the best interest of the child shall prevail.

parent is adoptive. Like any other custody dispute, this must be resolved by considering the best interest of the child.

BEST INTEREST ANALYSIS

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

Father requests the Court amend the custody order so he may have primary residential placement of D----. Father believes this is in D----'s best interest because Mother is unwilling to support D----'s relationship with Father. Contrastingly, Father will foster a relationship between D---- and Mother if D---- is primarily in his care. If D---- resided with Father, he would attend Stevenson Elementary School in Merritt Island, Florida. D---- has been approved to attend Stevenson Elementary School, which is located approximately 13 to 14 minutes from Father's home. Father requests that Mother have the visitation schedule allotted to him in the current order.

In her Answer, Mother requested the Court grant her sole custody and that D----'s contact with "J----" be limited to D----'s desire. However, during the hearing, Mother testified that she wishes to maintain the current custody order, wherein the parties have joint legal custody and Mother has primary residential placement. Mother testified that she wishes to keep visitation with Father relatively the same. Mother stated she was not requesting the Court cut off contact between Father and D----, but simply asking for "respectful contact." Mother expressed fears that D---- is not safe in Father's care and asserted that she is protective.

Although Mother testified that she does not wish to alter the relationship between Father and D----, by her own admission her testimony was inconsistent. While saying she did not want to

change anything in the custody order, Mother simultaneously asserted that Father should not be in D----'s life. Mother stated that in her ideal world she would not have to share her child, especially with someone who allowed him to be hurt. Mother indicated that D---- is far better off when he is not in contact with "J----". Mother indicated that she respects that the law recognizes Father as D----'s parent; however, she believes D---- would be better off if Mother's Boyfriend were his father and not "J----".

Mother also indicated to Dr. R----- she wished to eliminate Father from D----'s life. Mother alleged she said this during her first meeting with Dr. R----- in a moment of frustration. Dr. R----- determined that Mother's request for D---- not to have any contact with Father was based on her beliefs that: (1) Father was not physically able to meet his parental responsibilities; (2) Father was not mentally or psychologically able to meet his parental responsibilities; and (3) D----'s grades plummet while in Father's care. Dr. R----- provided there is no indication that these concerns are substantiated. There is no reliable information suggesting Father cannot physically care for D----, despite his physical disabilities, as detailed further below. None of Mother's allegations that Father has anger and memory problems that put D---- at risk for emotional harm or neglect were supported by Dr. R-----'s observations, collateral sources, or assessment. And it is unsubstantiated by D----'s academic records there was or that the school recognized a difference in D---- when he was in Mother's care, following Mother's care, in Father's care, or following Father's care.

Based on the evidence , the Court does not believe that Mother actually wishes to maintain D----'s relationship with Father. Her testimony, filings, and conduct with Dr. R----- all indicate that she wishes to eliminate Father from D----'s life. It is illegitimate for a parent to unilaterally alienate a child from the other parent, particularly when there is no substantiated

rationale . Mother's justifications for wanting to stop the relationship between D---- and Father are unfounded. Conversely, Father wishes for D---- to maintain a relationship with both parents and fears that D---- cannot maintain a relationship with him should he continue to reside primarily with Mother based on the events which have transpired in the past year. The Court finds that Father is considering D----'s best interests while Mother is considering her own interests of building a family with her new boyfriend without respecting the relationship between D---- and Father. This factor weighs in favor of granting Father's Petition.

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

The Court did not interview D---- due to his age. Therefore, this factor is neutral.

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

Mother and D---- reside in Newark, DE with Mother's Boyfriend and his son, C-----, who is with them half of the time. Mother testified that D---- is everything to her, and is her favorite person in the whole world. Mother provided that together they will play games, read books, play football, and go to the park. Mother indicated that D---- has a close relationship with Mother's Boyfriend and that D---- and C----- get along but squabble upon occasion. Mother testified there are multiple family members nearby, including her parents, aunts, uncles, cousins, and sisters. Mother testified that she and D---- see her sisters frequently and her father every other week. Mother also testified that D---- has many friends in the area.

Father resides alone in Florida. When D---- is with Father outside of Mother's presence, he calls him "Daddy"; when D---- speaks to Father or about Father in Mother's presence, he calls him "J----". Together, Father and D---- will go camping, go lobster hunting, build Legos, visit the beach, and ride bikes. He is in a relationship with M----- G----, who has been introduced as his friend to D----. Father has many family members within 15 minutes of him who visit frequently, including Paternal Grandmother and his father ("Paternal Grandfather"). D---- has not been able to visit with Paternal Grandmother since the PFA was entered in November 2016. The PFA will expire November 2017. Father testified that D---- enjoys spending time with his extended family, particularly Paternal Grandfather who has a loving relationship with him. Together, Paternal Grandfather and D---- will work on projects; however, Mother will not allow D---- to bring the projects back to Delaware. Dr. R----- observed that D---- is relaxed, spontaneous and affectionate with both Mother and Father.

The Court finds that D---- has a close relationship with Mother, Father, and their respective families. This factor is neutral.

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

Mother and D---- moved from Maryland to Newark, DE in May 2016, when they moved into Mother's Boyfriend's home. The house has three bedrooms. D---- shares a room with C-----. The home has a nice sized backyard. Mother also indicated that D---- is adjusted to their community. D---- has always resided primarily with Mother.

Father resides near his extended family in Rockledge, Florida. He has owned his home since 2015 and has no plan to move. His home has three bedrooms, and D---- has his own bedroom. The home is in a gated community and has a gated backyard. D---- has spent the past two

summers with Father and also visited for Thanksgiving. There are children in Father's community, and D---- will spend time with his cousin and other kids in the neighborhood.

Last year, D---- attended Keane Elementary, where he was in 3rd grade and taught by Ms. L----. Ms. Lowman testified that D---- is in the process of getting an IEP to help him stay focused and work on writing goals. Ms. L----- testified that she mostly met with Mother about D----'s schooling; however, Father contacted her consistently and seemed attentive and concerned when interacting with D---- and in e-mails. Once, when Father visited Delaware, he scheduled a parent-teacher conference with Ms. L-----.

D---- was referred for evaluation by parental request. And was diagnosed with ADHD. So far, there have been two IEP meetings, where Mother was in attendance and Father was not involved. Mother decided to wait and re-visit D----'s IEP next year. Mother testified that she "mentioned" the evaluation to Father.

D---- moved to Mother's Boyfriend's home in May 2016 and visited Father's home for the first time in June 2016. He is adjusted to both of the homes; however, he has spent more time collectively at Mother's Boyfriend's home and is used to residing primarily with Mother. And Mother is working with D----'s school on developing an IEP for him. While the process has been deferred for the time being for reasons unclear to the Court, staff members at D----'s school are familiar with his needs. This factor weighs in favor of Mother.

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

Mother testified that she is in excellent physical health. She testified she experiences some anxiety and began taking medication in February 2017. Dr. R----- found that Mother

has a preoccupied attachment style of parenting, which tends to makes her less predictable, less consistent, and more confusing to D----.

Father has multiple physical disabilities due to a spinal injury he suffered in 2011 while serving in the military. He has two rods and two screws in his back; has to use catheters and enemas; and receives regular ongoing medical treatment. Father testified that he is in a lot of pain daily. He visits a spinal doctor once every 3 months. He is on medications to address his back pain and a burning sensation in his feet. Father testified that it is hard for him to walk long distance and he cannot run. He does everything he can with D----; however, it will take him a little longer. Dr. R----- did not find that Father's physical disability interfered with his ability to parent and noted that he can care for D---- without assistance in Florida and when he visits in Delaware.

Father also reports he has anxiety and depression, for which he sees a psychologist once a month and takes medication as needed for his anxiety. Dr. R----- found that Father has PTSD. Dr. R----- also found that Father's tests revealed somatic and cognitive complaints and emotional, thought and interpersonal dysfunction. But Dr. R----- did not believe Father's mental health condition was an impairing or posed a risk to D----. Dr. R----- also noted that Father has a secure parenting style, making him a more stable parent in D----'s life.

D---- has no ongoing issues with his physical health. Mother noted that D---- will gain 9 to 15 pounds in the summer when visiting Father. D---- was diagnosed with ADHD in the past year and does not currently have an IEP in place to address his needs. Dr. R----- conducted a custody evaluation under the methodology as set forth by the American Psychological Association and reached a recommendation . Dr. R----- had multiple opportunities to meet with each parent, to observe D---- with each parent, and to interview D---- alone when brought

by each parent. Dr. R----- also facilitated diagnostic tests, and made a home visit to Mother in Delaware and a home visit via video chat with Father and D---- in Florida. Dr. R----- met with D---- individually seven times.

Dr. R----- characterized D----'s present situation as a "tale of two children". Dr. R----- found that D---- behaves differently toward Father when with Mother than he does when with Father and not in proximity to Mother's influence. As noted above, D---- calls Father "J----" with Mother and "Daddy" with Father. Dr. R----- listened to phone conversations from Mother's home where D---- was rude to Father and made statements professing that Father is not his real father and "mommy made me". Dr. R----- also noted that D---- signed his name with Mother's maiden name midway through last year. When D---- was with Mother, he would give Father the cold shoulder. When D---- was not with Mother and outside of her sphere of influence, he would call Father "Daddy", be affectionate with him, and become a relaxed child.

Dr. R----- found there were alienating behaviors perpetrated by Mother and Mother's Boyfriend designed to undermine D----'s relationship with Father. Parental alienation can have severe and long-lasting effects on children including low self-esteem, self-hatred, lack of trust, and depression. Dr. R----- found that Father will promote D----'s relationship with Mother and that Mother is not willing to do the same, as evident by her wanting to eliminate Father from D----'s life and making statements to the effect that Father is not even D----'s father. Dr. R----- found that Mother's basis for asserting that Father should not have contact with D---- had no support. Dr. R----- also found that D---- has a healthier attachment style with Father than with Mother.

Based on his findings, Dr. R----- recommended that physical custody of D---- be transferred to Father, whose attitude is to endorse, support and encourage relationship between

D---- and his Mother. Dr. R----- indicated this is a necessary safeguard so D---- may maintain relationship with both of his parents

Ms. L----- also gave testimony regarding D----'s mental health. Ms. Lowman indicated to Dr. R----- that D----'s emotions often interfere with his attention and ability to engage in class work. Ms. Lowman testified that no other child has ever come up to her stating they wished to change their last name except D----. Ms. L----- also recalled that D---- asked to use the phone at school to call Father. Ms. L----- asked him why he did not make the call after school and D---- said he did not want to "make mom sad".

In assessing the reliability of the proffered expert testimony, the Court examines "(1) whether a theory or technique has been tested; (2) whether it has been subjected to peer review and publication; (3) whether a technique had a high known or potential rate of error and whether there are standards controlling its operation; and (4) whether the theory or technique enjoys general acceptance within a relevant scientific community."¹⁸ These *Daubert* factors "are not a definitive checklist or test," as the Court's inquiry must be tied to the facts of the particular case.¹⁹ Besides the *Daubert* factors listed above, the Delaware Supreme Court has held that the trial Court should consider whether:

the witness is qualified as an expert by knowledge, skill experience, training or education; (2) the evidence is relevant; (3) the expert's opinion is based upon information reasonably relied upon by experts in the particular field; (4) the expert testimony will assist the trier of fact to understand the evidence or to determine a fact in issue; and (5) the expert testimony will not create unfair prejudice or confuse or mislead the jury.²⁰

Dr. R-----'s testimony and report are admissible, given this legal standard. He possesses scientific and specialized knowledge through his education, knowledge, skill, training,

¹⁸ *Bowen v. E.I. DuPont de Nemours, Co. Inc.*, 906 A.2d 787, 795 (Del.2006)

¹⁹ *Id.*

²⁰ *Id.*

and experience. Dr. R----- frequently offers expert testimony in this Court regarding issues related to custody and visitation. This Court has noted that “Dr. R----- is a clinical psychologist with extensive training in family therapy,” and that “[a] significant proportion of his practice consists of performing custody evaluations.”²¹ Besides qualifying as an expert, Dr. R----- offered relevant evidence based upon reliable methods that assisted the Court in determining D----’s best interests.

As Mother has offered no rebuttal expert testimony and as the Court deems Dr. Romirowsky’s testimony reliable, this factor supports granting Father’s Petition.²²

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

Mother alleged that Father was failing to abide by his parental responsibilities. Mother alleged that when D---- was with Father in Florida, Father did not facilitate phone calls between D---- and Mother. Father denied this allegation, testifying that he would always make D---- call Mother back if she called. Father provided that sometimes D---- will say he does not want to, but he tells D---- he must and D---- respects that and has a conversation with Mother. Additionally, Mother alleged that Father did not inform her about enrolling D---- in summer tutoring. Father admitted that he did not inform Mother about the tutoring, claiming he did so because the previous summer Mother undermined his educational work with D----. Mother also

²¹ *L.M.S. v. C.M.G.*, WL 5668820 *11 Del.Fam. Ct. (2006).

²² The Court notes that Mother argued that she did not submit as many documents or correspond as much with Dr. Domirowsky; however, Dr. Romirowsky indicated to each party that he had set no limit on number of documents which should be submitted and each party had the fullest opportunity to share any and all information and concerns with him. Mother’s choice to not take advantage of this opportunity does not make Dr. Romirowsky’s opinion less reliable.

alleged that D---- gained substantial weight each summer with Father and that Father was taking D---- to church without consulting her.

Father presented the Court with multiple allegations that Mother has not abided by her responsibilities as a parent and has flagrantly disregarded Father's rights as a parent. Dr. R----- pointed to a "mountain of evidence" that points to bad parenting practices in Mother's household of denigrating and marginalizing Father. Father testified that when Mother moved in with Mother's Boyfriend, his relationship with Mother as a co-parent began to deteriorate. Beginning in October 2016, Mother began telling Father D---- did not want to come to the phone whenever he called. Father went 70 days without talking to D----, despite attempting to contact him regularly. Father would send D---- gifts and cards during this time period. These gifts were sent back to Florida in the summer, packed in D----'s suitcase.

Mother admitted that she tends to calls Father "J----" in front of D---- and to D----. D---- indicated to Dr. R----- that Mother's Boyfriend does not like Father and that Mother and Mother's boyfriend want D---- to call himself "D---- Dalton". Once, Mother labeled D----'s water bottle "D---- D----" as opposed to "D---- H----". D---- also indicated to Dr. R----- that when he had harsh communications with Father over the phone, he was repeating what he was told to say. Dr. R----- observed Mother instructing D---- not to sit next to Father in his office.

Additionally, Mother has failed to keep Father apprised and involved of D----'s educational needs. Father was not informed that D---- was being evaluated for an IEP until after the meeting took place. Mother does not inform Father about medical or dental appointments, nor did she inform Father she was taking D---- to a therapist.

There is a broken ability of the parents to communicate in the best interest of the child.

In Dr. R-----'s opinion, the evidence points to that most of the brokenness derives from Mother. Through his evaluation of the parties, Dr. R----- found that Mother was engaging in an actual, deliberate, and intentional campaign to eliminate Father from D----'s life, which he found troubling. Based on the evidence, particularly Mother's testimony on cross-examination, the Court is also troubled about Mother's intentions. Mother wishes to remove Father from D----'s life. She testified that she thinks Mother's Boyfriend would be a better Father for D---- now. This attitude and disrespect to Father is an act of cruelty that disrupts the connection between D-- and Father, who, despite not being D----'s biological father, has been D----'s parent since D---- was an infant.

Mother's disregard and lack of respect for Father's parental rights interferes with Father's exercise of his parental rights and interferes with D----'s right to have an ongoing relationship with Father. This factor weighs in favor of granting Father's Petition.

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

Testimony was given regarding a PFA currently in place prohibiting Paternal Grandmother from having contact with D---- until November of this year. After D---- returned from visiting Father in summer 2016, D---- had scratches and bruising. Mother alleged that Paternal Grandmother hurt D---- by grabbing him while in Father's presence. Father denies that D---- was hurt by Paternal Grandmother, testifying he saw no marks on D---- in the days following the alleged incident. The PFA was granted due to testimony by D---- and due the scratches on his back. However, D---- told Dr. R-----, that he did not remember Paternal Grandmother hurting him and volunteered that Mother told him what to say. D---- said he did

not know where he got the scratches but he could have gotten them from playing with Cooper.

Mother repeatedly stated that the reason her relationship with Father deteriorated in October 2016 was because he failed to keep D---- safe.

Father alleges Mother's Boyfriend hits D---- in the back of the head, per D----'s report.

Mother testified there is no physical discipline in the home. Mother testified that Tim will tap D--- on the back of the head, but it is not for discipline, but to get his attention.

There has been no finding of domestic violence against Mother or Father. The Court does not believe the PFA against Paternal Grandmother indicates Father allowing domestic violence to be perpetuated against D---- under his watch, as D---- has recanted his testimony to Dr. R----- and Father saw nothing like what Mother described happen between Paternal Grandmother and D----. There is no evidence that Father's allegation that Mother's Boyfriend hits D---- is true. This factor is neutral.

(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.***

Neither party, nor Mother's boyfriend has a criminal history, except for motor vehicle offenses. Therefore, this factor is neutral.

CONCLUSION

In deciding issues pertaining to custody and visitation under 13 DEL. C. § 722, this Court must balance the best interest factors.²³ The Court has also held that some factors may be given more weight than others.²⁴

The Court finds it is in the best interest of the child for Father to have primary custody. As analyzed above, most of the best interest of the child factors weigh in favor of granting Father's Petition or are neutral, with one factor favoring Mother. Contrary to Mother's opinion, Father as an adopted parent is D----'s parent as much as Mother is D----'s parent. While Mr. Gondek, indicated that he believes the alienation issue can be fixed, the Court does not believe Mother can behave in a manner that would not alienate D---- from Father at this time. Based on her own testimony, in her ideal world D---- would not have a relationship with Father. Despite the difficulty D---- may have in adjusting to having his primary residence in Florida and switching schools, as Dr. R----- testified, children are resilient. Maintaining D----'s relationship with Father and preserving his mental health is of consequence greater than maintaining his status quo, which is residing in Mother's Boyfriend's home.

Therefore, pursuant to 13 Del. C. § 722 the Court orders :

1. Father shall have primary residential placement of D---- during the school year, effective immediately.

²³ See *Ross v. Ross*, 992 A.2d 1237, 2010 WL 1404220 (Del. Apr. 7, 2010) (unpublished table decision).

²⁴ *Ross* citing *Fisher v. Fisher*, 691 A.2d 619, 623 (Del. 1997) (noting that “[t]he amount of weight given to one factor or combination of factors will be different in any given proceeding. It is quite possible that the weight of one factor will counterbalance the combined weight of all other factors and be outcome determinative in some situations.”)

- a. Mother may have time with D---- during the school year in Florida up to four (4) times for a period of seven (7) days each visit per year. The parties may agree to additional visits. Mother will provide no less than fourteen (14) days' notice of any visits to Father. If fourteen (14) days' notice is provided, Mother will have D---- from Friday after school through Monday morning before school and then no less than 2 hours after school each day she is in Florida. If Father has an already planned "out-of-town" event, the parties shall work together to schedule Mother's time. Mother will be responsible for taking D---- to any pre-scheduled events during the time she is in Florida. Mother will be responsible for making sure all homework is done when D---- is with her. Mother shall solely incur the cost of travel for these visits.
- b. Mother shall have winter vacation in even years and Father shall have winter vacation in odd years. Winter vacation shall begin after school on the day school is released and end at 6:00 p.m. at the airport in Florida on January 2.
- c. Father shall have spring break in even years and Mother shall have spring break in odd years. Spring break shall begin after school on the day school is released and end at 6:00 p.m. at the airport in Florida the day before school starts.

2. Mother shall have primary residential placement of D---- during the summer, commencing seven (7) days after school ends and continuing until fourteen (14) days prior to school commencing.
 - a. One time each summer, during Mother's time Father may travel to Delaware at his sole expense and for time with D---- from 9:00 a.m. on Friday until 9:00 a.m. on Monday. Father shall provide twenty-one (21) days' notice of the visit and if

said visit conflicts with a planned “out-of-town” event, the parties shall work together to schedule Father’s weekend.

3. The residential schedule for D---- for the holidays listed below is as follow:

	With Father	With Mother
New Year's Day	Odd	Even
MLK Day	Every	
Presidents' Day	Every	
Memorial Day		Per summer schedule
July 4 th		Every
Labor Day	Every	
Veteran's Day	Every	
Thanksgiving Day	Even	Odd
Christmas Eve	Odd	Even
Christmas Day	Odd	Even
Easter	Even	Odd
Halloween	Every	

Thanksgiving shall begin after school on Wednesday and continue until Sunday at 6:00 p.m.

4. The parties shall continue abiding by the terms of Sections 3.8 onward of the previous Washington Custody Order, attached here, with the exception that where the Washington Custody Order said Petitioner it shall now apply to Mother, and where the Washington Custody Order said Respondent it shall now apply to Father.

5. Since this Order is entered after a full hearing on the merits, any future modifications thereof shall be made under 13 *Del. C.* § 729(c).²⁵

²⁵ Section 729(c) provides:

(c) 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:

IT IS SO ORDERED.

Mark D. Buckworth, Judge

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cc: Edward Curley, Esq.
Laura Brooks, Esq.
File

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

13 Del. C. § 729(c).