

The Family Court of the State of Delaware



FELICE GLENNON KERR
JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 N. KING STREET, SUITE 9400
WILMINGTON, DELAWARE 19801-3732

October 6, 2026

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LETTER DECISION AND ORDER

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Re: B----- B----- v. J---- E-----
File No. CN26-01364, Petition No.:26-02243
Petition Type: Petition for Custody

Dear Counsel & Parties:

The Court held a hearing on September 17, 2026, on the above-mentioned Petition for Custody regarding X----- E----- (X-----) (d.o.b. -/-/2023) (referred to as "the Child"). J----- E----- ("Father") appeared with his counsel, Christofer Johnson, Esq. B----- B----- ("Mother") appeared with her counsel, Staci Harpell, Esq.

The parties presented the Court with a Stipulation which resolved all issues regarding this petition except for one. The Stipulation shall be the Order of the Court on all custody issues except for the one issue tried on September 17, 2026.

The remaining issue is whether A----- E----- ("Paternal Grandfather") may drive the Child. The Court heard testimony from Mother, Father, the Child's Paternal Grandfather, and C----- E----- ("Paternal Aunt 1") and S----- E----- ("Paternal Aunt 2"). Based on the testimony presented, the Court comes to the following conclusions of fact and law.

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PROCEDURAL HISTORY

On February 11, 2026, Mother filed a Petition for Custody. Mother also filed for a Motion and Affidavit for Emergency Ex Parte Order. On February 12, 2026, the Court denied the Motion and Affidavit for Emergency Ex Parte Order because there was no immediate and irreparable harm. On February 12, 2026, Father filed an Answer to Mother's Custody Petition.

On March 18, 2026, Father filed a Motion for Interim Relief. On March 31, 2026, the Court denied the Motion for Interim Relief and Mother's Response. On April 9, 2026, Father filed a Custody, Visitation and Guardianship Disclosure Report. On May 1, 2026, Mother filed a Custody, Visitation, and Guardianship Report. On May 1, 2026, Father filed a Request to Participate Remotely.

LEGAL STANDARD

The Court determines legal custody, residential arrangements, and visitation for children in accordance with the best interest factors set forth in 13 *Del. C.* § 722¹. In consideration of 13 *Del. C.* § 722, the Court balances the best interest factors "in accordance with the factual circumstances presented to the Family Court in each case."² In some situations, the weight of one factor will counterbalance the combined weight of the other factors.³

¹ 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.

² *Ross v. Ross*, 922 A.2d 1237 (Table) 3 (Del. 2010).

³ *Id* at 3 (citing *Fisher v. Fisher*, 691 A.2d 619, 623 (Del. 1997)).

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BEST INTEREST FACTORS

Below, the Court addresses all the evidence presented and identifies the facts that correlate to each factor. In the interest of judicial economy, the Court will not recite all the testimony and evidence presented at trial that can be more fully obtained from the record. Rather, the Court will summarize the evidence as it applies to the 13 Del. C. § 722 best interest factors to the extent relevant to the one issue of Paternal Grandfather driving with the Child in the car.

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

Father requests that Paternal Grandfather be allowed to drive the Child when Father has custody of the Child.

Mother requests that Paternal Grandfather not be allowed to drive the Child to and from daycare when she stays with Father.

Factor (1) is neutral as Mother and Father have differing requests. However, the Court notes that Mother is essentially stating that Father, although competent to have shared residential placement and joint legal custody, cannot decide whether to let his father provide transportation for his child.

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

The Court did not interview the Child in relation to this proceeding as she is only three years old and not likely able to weigh in on Paternal Grandfather's driving. Therefore, factor (2) is inapplicable.

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.

Father testified that Paternal Grandfather and the Child have a great relationship. He explained how Paternal Grandfather and the Child spend time together. They play, get donuts, and spend time together as grandfather and granddaughter. Further, Father emphasized how close knit the paternal family is, and Paternal Aunt 1 and Paternal Aunt 2 confirmed this. Also, Father acknowledged problems with Father's drinking in the past.

Mother did not testify to the relationship between the Child and the Paternal Grandfather.

Factor (3) supports letting Father determine if Paternal Grandfather is able to drive X----- . There is no concern about the Paternal Grandfather's relationship with the Child. It is also clear that the Children see their family members while with Father or Mother, as their family is very involved in their lives.

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

The child appears well adjusted to both parents. She spends time with her maternal and paternal family, often spending time with her paternal extended family when she stays with the Father.

The Mother testified that her mother ("Maternal Grandmother") will pick the Child up from daycare if the Mother is unable to pick up the Child.

Factor (4) is not very relevant as the issue is just about driving with Paternal Grandfather.

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

Neither party disputes that the Paternal Grandfather has a history of alcohol abuse at least from 2020 to 2023. Multiple people from Father's family testified about the alcohol abuse and its effects on the family and people associated with the family.

However, it appears that the Paternal Grandfather has been sober since 2023. The Paternal Grandfather testified that once he decided to stop drinking alcohol, he quit cold turkey and has not had alcohol since that decision. His family members corroborated his testimony. Although he did not obtain professional treatment, the Court cannot determine he needed it to stop drinking. Additionally, the Court does not need to determine if Paternal Grandfather will relapse. The Court just has to determine that Father would not allow him to drive with X----- if he resumes his alcohol abuse.

More importantly, there was absolutely no evidence that Father had any mental or physical impairment that would render him incapable of determining if Paternal Grandfather would put the Child at risk and require the Court to make this parenting decision for him.

Therefore, Factor (5) supports leaving this decision to whichever parent the child is with.

6) *Past and present compliance by both parents with their rights and responsibilities to their child under § 701 of this title*⁴.

⁴ Pursuant to 13 Del. C. § 701:

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Mother and Father appear to care for the Child. Mother shares custody with Father. They both drive her to and from daycare and spend extended amounts of time with the Child.

Additionally, several paternal family members testified that the Paternal Grandfather has car seats for his grandchildren.

Therefore, Factor (7) favors each parent being capable of deciding with whom their child drives during their time.

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

Neither party has alleged domestic violence issues between them either in the past or present throughout the entirety of the filings. Mother testified that Paternal Grandfather was "handsy" with her in the car when she drove him home one night as he was too drunk to drive. She also described him being very handsy and hanging on Father when he was drunk.

The Court finds that this factor is neutral. Although Paternal Grandfather was inappropriate toward Mother when he was drunk, this is something that appears to be associated with his drinking and is not violent. Mother's request is limited to Paternal Grandfather driving with X-----.

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.*

Mother has no criminal history. Father also has no criminal history. The Paternal Grandfather has no criminal history and no infractions on his driving record.

This factor supports allowing Father to determine if Paternal Grandfather can drive with the Child.

COURT'S AUTHORITY TO RESTRICT A JOINT CUSTODIAN

This is not the first case where a litigant has asked the Court to restrict a custodian from exercising their parental authority. One notable example is from *D. E. W. v. R. W. E.* where the Court declined to limit the Father's custodial authority by preventing him from

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- (a) The Father and Mother are the joint natural guardians of their minor child and are equally charged with the child's support, care, nurture, welfare, and education.

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flying with the children⁵. The Court reasoned that it will not insert itself into the day-to-day issues that parents encounter when raising children⁶.

The Court in *D.E.W. v. R.W.E.* cited the case, *Mord v. Peters*, where the father engaged in formal flying lessons for two years, possessed a pilot's license, and nothing in the record indicated that the Father would endanger the children's welfare or that the children did not want to fly with their father⁷. The *Mord v. Peters* court adopted the rationale in *Eichenberger v. Eichenberger*, where the Court denied a parent's request to restrict a child from riding a mini-bike during the other's parent's visitation. *Eichenberger* stated,

"Absent a finding by the court that the non-custodial parent has acted without concern for the child's well-being or best interest, has demonstrated irresponsible conduct, has interfered with basic decisions in areas which are the responsibility of the custodial parent, or finding that the activity which is questioned by the custodial parent presents a danger to the child's safety or well-being, neither the custodial parent nor the court may intervene to restrict activities during visitation."

Mord, 571 So.2d at 985-85 (quoting *Eichelberger v. Eichenberger*, 345 S.E.2d at 12) (emphasis in the original⁸).

The Court agrees with *D.E.W. v. R.W.E.*'s and *Mord*'s analyses. While Mother's apprehension is understandable based on Paternal Grandfather's previous behavior, the Court cannot intervene every time a child engages in an activity when there is a slight risk of serious injury. The Father can make decisions that benefit his child and this Court will not insert itself into the day-to-day issues which parents encounter. If the Court intervenes, it will go down the slippery slope of restricting a parent's custodial authority.

⁵ Family Court, *D.E.W. v. R.W.E.*, (Del. Fam. Apr. 23, 2008)

⁶ *Id.*

⁷ *Mord v. Peters*, 571 So.2d 981, 985-86 (Miss, 1990)

⁸ While *Mord v. Peters* is from the Mississippi Supreme Court, Chief Judge Newell (at the time, he was called Judge Newell) of the Family Court of Delaware previously cited this in his decision *D.E.W. v. R.W.E.* (Del. Fam. Apr. 23, 2008).

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CONCLUSION

The court finds that based on the above analysis that as a competent parent and joint custodian, Father can decide if the Paternal Grandfather transports the Child.

IT IS HEREBY ORDERED this 6th day of **October, 2026** that:

- 1) The Court declines to limit Father's custodial authority by preventing him from letting the Paternal Grandfather from transporting the child during the Father's custodial time.

SO ORDERED.

Very truly yours,

/ Felice Glennon Kerr /

Felice Glennon Kerr, Judge