

SUPREME COURT OF THE STATE OF NEW YORK

P R E S E N T:

**Hon. Elaine Jackson Stack,
Justice**

_____ **X**

**TRIAL/IAS PART 20
NASSAU COUNTY**

M L.

Petitioner,

**DECISION AFTER
TRIAL**

-against-

G S.,

XXX

Respondent

_____ **X**

Papers Submitted:

Order to Show Cause.....x

Affidavit in Opposition.....x

Reply Affirmation.....x

The parties to this action are the unmarried parents of two daughters, A, who is 10 years of age and R, who is 8 years of age. This action was commenced on June 10, 2003 by Petitioner who moved by Order to Show Cause seeking to renew his relationship with his children, alleging that for the prior eighteen months, although there was a Family Court Order in place which provided for access, he had effectively been denied any opportunity to be with his daughters. The parties entered into a stipulation and an Order was entered thereon in Family Court on April 29, 1998 [Brennan, J.] which awarded custody to Respondent and directed that Petitioner should have supervised visitation with the children. The designated supervisor was Respondent herein. That arrangement was unsuitable and Respondent's parents later assumed the role of supervisor; however, Respondent did

not often make the children available to Petitioner.

Respondent alleged that Petitioner had voluntarily ceased all contact with the children five years before the commencement of this action. Petitioner however, stated that he had been thwarted in his efforts to contact the children, that Respondent told them that he was dead, or not their father or that he did not love them.

This court [DeMaro, J, 3/2/04] appointed William Kaplan, Ph.D. to conduct forensic evaluations of the parties and the children. On August 10, 2004 Dr. K. was appointed to commence therapeutic supervised visitation [Stack, J.] between the children and Petitioner. On October 26, 2004, Dr. K was replaced by Raymond H, Ph.D. to continue the therapeutic visitation [Stack, J]. Ann Block, Esq. was appointed Law Guardian to represent the children [Woodard, J., 12/22/03].

Efforts were made by Petitioner to re-establish a relationship with his daughters, assisted first by Dr. K and then by Dr. H. With the efforts of the latter, Petitioner was ultimately able to move from supervised visits with his daughters to unsupervised ones and to overnight visitation at the home he shares with his wife, Janet L., in Brooklyn.

A hearing was held on the issues of the permanent residence of the children and parental access for that parent with whom the children did not reside, on a variety of dates.¹

Two of the therapists who had been appointed to conduct supervised therapeutic visitation between Petitioner and the girls testified. Dr. K., a clinical psychologist and child and family forensic psychologist, was appointed by the court to facilitate the relationship between Petitioner and his children. She first heard from Petitioner on August 12, 2004; initial contact with Respondent occurred on September 3, 2004 and the first appointment made by Respondent was later cancelled

¹The hearing was held on November 1, 2, 3, 17, 28, and 29, 2005; March 6, and 29, 2006.

by her.

When they did meet initially, Respondent told Dr. K that the children were fearful based on early experiences. She told Dr. K, “He better be nice to me and the children or this won’t happen.” Respondent was not overly cooperative in scheduling appointments. Dr. K urged weekly meetings so that they could ease the girls into meeting with their father. Respondent however alleged holidays and vacations that “might interfere” with such a schedule.

When Petitioner and Dr. K met he told her of his problems in seeing and speaking to the girls and alleged that Respondent interfered with his visitation. He told her of purchasing gifts for the children and that Respondent told them to “throw it in the garbage.”

The first time she met the children was on September 9, 2004. The children arrived visibly agitated, especially A. She appeared “anxious”; R. was “jumpy.” She assured them they were safe in her office although A. appeared fearful.

Dr. K saw the children again on September 24th, on which date Dr. K told the children they would meet their father in two weeks for a little while. She emphasized again that they would be safe with her and that if their father said anything inappropriate, he would be asked to leave. Again A. reacted with anxiety and agitation, moving around the room a lot and getting up and down from a chair. Her younger sister consoled her and attempted to quiet her.

On October 7, 2004 Dr. K instructed Respondent to remain in the waiting room until the father arrived and then to leave. When the Petitioner did arrive for the meeting with the children, the 45 minute session was half over. When speaking to their father the children were openly “hostile” but Petitioner was very supportive of them; and the children calmed down. R. read a poem to him. He had brought a collage of photographs of them when they were younger which they were

interested in seeing. He also brought them gifts from Bali which he had purchased there. Their reaction to these was “negative.”

Other meetings followed. Petitioner met with Dr. K alone on October 10th. He told Dr. K he was “committed” to the process and broached the subject of introducing his wife to the children. Dr K told him to wait “indefinitely” before bringing her into the picture, a determination which he accepted, according to her testimony. On the next meeting with the children, October 14th, they came into her office in a very upset manner, pulling their jackets over their heads so she could not see their faces. She asked Respondent to leave. She prepared the children for the arrival of their father, keeping the conversation light and talking about good experiences. The children, however, continued to be hostile and aggressive toward her. A. threw a book at her and grabbed her sleeves. R. tried to calm her sister down. Dr. K told them, “if you calm down, you can leave.” When Petitioner arrived, he spoke to the children about their early years, telling stories to them. R. pressed her hands over her ears to avoid hearing him speak. R. and A. said they were leaving. Dr. K asked them to just sit down. A. grabbed her and she removed the child’s hands. The children ran out and their mother was there waiting for them.

Respondent/mother later made a claim to Child Protective Services (“CPS”) that the children had been abused by Petitioner and by Dr. K. Both reports were later determined to be “unfounded.” Although Respondent testified that it was “absolutely false” that she made the report to CPS, and that it was a lie that she had done so, in an Affidavit previously filed with the court Respondent wrote, “your affirgant filed a complaint with CPS [against Dr. K].” In her testimony she recanted the statement which appeared in her affidavit. She either perjured herself in her affidavit or in her testimony, since it is abundantly clear that she is the person who made the report to CPS.

When Respondent and the children were together with Dr. K and they appeared to be anxious, she did nothing, Dr. K reported, to relieve their anxiety or to make the connection or relationship between the children and their father any easier for them. Following the October 14th incident, the court relieved Dr. K of her assignment and appointed Dr. H. on October 26, 2004, in her stead, to supervise therapeutic visitation between Petitioner and his children.

Dr. H testified that Petitioner told him, "I will do whatever you tell me to do" in terms of participation in the process. Respondent told him that she wanted to cooperate but she insisted upon his adopting her treatment rules. For example, according to Dr. H, Respondent told him that her "version of the truth was the truth" and that she had "trained the children to understand truth and to find that the only acceptable version of the truth was the mother's account." Further, Dr. H testified, she told him that the children should be permitted to behave in any way they chose and any "impingement of their behavior would be inappropriate to the process."

Testifying about his first meeting with Respondent, Dr. H recalled that he informed her that in order to be successful she and Petitioner must do what he tells them and that they will not have discussions in front of the children. Her response, he stated, was to emphasize that the way he should conduct these sessions was to allow the children to be themselves and to "have whatever emotions they want in the presence of their father." Respondent also emphasized how Dr. H should conduct himself. He did not feel that she showed a willingness to agree with him although she told him she wanted the children to have a relationship with their father.

In December 2004 Dr. H met with both parents jointly. He set out the rules for both parents, telling them that his office must be treated in a civil, positive manner and that the objective of their and their children's appearances was to bring the children and the father together. He told them that

they could consult with him on parenting issues on which he would have an opinion. He testified that he informed both parents of the danger to the children if this issue, that the children were not having contact with one parent, could develop into a serious problem for them later in life. He told them that this issue “wasn’t about them” and that the children could be adversely affected. Petitioner said he would do anything necessary; Respondent was less than enthusiastic about accepting the ideas he promoted.

Specific guidelines under which Dr. H was proceeding included the following: the encounter was to be relaxed and not accusatory; civility was to be the reigning construct; Respondent was not to call Petitioner “liar” in front of children; they should not have acrimonious discussions in front of children. Additionally, Dr H commented on the fact that the Respondent demanded that the children leave each session exactly at 7:00 pm, not one minute later. Dr. H testified that he first met the children on January 19, 2005. According to his testimony, they showed signs of stress, indicated by lots of body movements, nervousness which gave way to more relaxed responses during their discussion. Neither parent was at this first meeting. At the next meeting, on January 26, 2005, the Petitioner/father was present, having arrived before the children. They tried not to make eye contact with him, demonstrating anger and resentment to hm, covering their faces and heads with their jackets. Later in the meeting they calmed somewhat. The father brought gifts for the children, including a Star of David necklace for each of them and some dolls/puppets that he had acquired in Indonesia. The children showed adverse reactions to these gifts and said they didn’t want them.

At the end of the session the mother was invited to come up to the second floor where they had been meeting and to join the session but she refused, stating that she had a problem with her legs and she couldn’t climb the stairs, an infirmity that had not been noted on any of the prior

times she had been present. She asserted that after she inquired of the children about discussions had in her absence and they reported the contents to her, she told them that their father was a liar. This comment was made in front of the children, although Dr. H told Respondent that it was not appropriate to call the father names in front of the children and further that in these sessions they did not discuss controversial topics. She insisted that Petitioner was lying in the sessions and telling lies to the children. Dr. H urged her to accept the fact that each parent has a different account of the past and that the bonding process is necessary to be promoted. Respondent's response was to insist that the father is a liar. The following morning, she telephoned Dr. H and apologized for her conduct.

Respondent made an appointment with Dr. H for a private consultation to occur on February 10, 2005. Respondent stated she was ill on that date and did not attend the scheduled session.

In an April 10, 2005 session the children began the session in their "angry, destructive phase," using angry words, hiding in a closet, locking themselves in a bathroom, running out into the waiting room. Eventually they settled down, R. becoming somewhat compliant and taking part in play. A. was less cooperative, expressing feelings of anger and using insulting language to her father making "age inappropriate" comments and using "adultification" language, in what Dr. H called "affect incongruity," which he described as sudden switches in emotional behavior.

A. at one point was using watercolors and put hot water into a cup instead of cold from Dr. H's water cooler. She got a drop of hot water on her leg and said she was in pain. She was resistant to have her father look at it but he did and characterized it as a "minor burn" and R. put a cold compress on it as he suggested. They contacted Respondent and offered to go to a local pharmacy to secure some ointment but the child refused. When the mother picked the children up she said that

the burn was clear evidence that Petitioner “was not capable of supervising children.”² Dr. H suggested that the mother’s presence in meetings might be of assistance. Her response, he said, was “You mean to tell me you can’t control the children without my presence?” He testified that he thought the anguish of the children caused them to act out and that her participation would help direct them to more civil behavior toward their father. The mother was not responsive to this request.

The sessions with Dr H continued through and including the summer on a regular basis. He assisted in arranging dinners attended by Petitioner, Respondent and the children and Petitioner and the children alone. The dinners went well, according to Dr. H. In the sessions R. began to respond favorably to her father, reading to him on one occasion. A. continued her angry behavior and often interrupted dialog between the father and the younger daughter.

It was not Petitioner who brought up the past in these sessions, Dr. H reported; rather it was the children who made allegations. Respondent and Dr. H exchanged some angry comments after the session noted above, with Respondent urging that she “always taught the children what the truth was” and asking Dr. H if he was asking the children to lie. His response, he said, was to urge her to respect the fact that each parent had varied accounts of what had happened in the past and that the bonding process has to be promoted by Respondent in order to be effective.

At a later session with Respondent and the children, Dr. H mentioned A.’s aggressiveness and that she demonstrated a lot of “acting out in sessions with her father.” Respondent’s reaction,

² Respondent thereafter took the child to a walk-in clinic where a doctor examined the child and stated that the burn was a “second degree burn” and required medicating on a regular basis.

according to Dr. H, “So noted, so what?” Respondent wanted to discuss the hot water incident and did not agree that A. was being overly dramatic. “The child needed hospital treatment,” she said. She insisted that his opinion that the application of cold compresses was an adequate remedy was wrong. At the end of one session in which Respondent participated she again claimed Petitioner was a “violent person.” Gifts that Petitioner had brought for the children were refused by Respondent. Eventually, she was persuaded to take some of them home.

During the parties’ participation, Dr. Havilcek testified that Respondent called Petitioner a “liar” on at least two occasions in front of the children. She disparaged the father in several matters, including his eating habits. Although Dr. H suggested to Respondent that they not have acrimonious discourse in front of the children and that Respondent might benefit from assistance from Dr. H in improving her conduct, no such intervention occurred.

Outside the presence of the children Respondent alleged that Dr. H had suggested that Petitioner buy a house nearer to Respondent’s so as to wrest custody from her. Although he agreed that it would probably be better if Petitioner lived nearby, Dr. H assured her that he believed the case was not about custody, but she apparently did not believe this representation. She told him further that if she had confidence that Petitioner would not “harm” the children, she would permit them to have contact with their father.

At Dr. H’s suggestion, the parties, the children and Dr. H had dinner together in a restaurant at which there was conversation among the participants on a wide range of subjects. It was “as good as it gets” Dr H felt and indicative of how things could be.

About a month later another restaurant visit occurred with the father and children at one table and the mother sitting at a separate one. The children moved back and forth between the parents and

there was “spontaneity and that was good,” according to Dr. H.

Other sessions followed during which there were incidents of the children’s uncivil behavior at the start of a session and often well into it. If R. appeared to be relaxed with her father, her older sister would be “in her face” interrupting her, attempting to get her to act rudely, to offer angry words or other similar behavior. In all there were 44 sessions; on many dates there was a double session of one and one half hours. Dr. H’s participation ended at the end of July or beginning of August when there was a transition to unsupervised meetings with the children and their father.

On July 27, 2005 Petitioner and his wife went to the summer camp where the girls were campers and picked them up to take them for a visit at the Petitioner’s Brooklyn home, according to testimony of Petitioner’s wife. When they arrived there Mrs. L.’s 20 year old daughter from a previous marriage was present.

She took the girls to her room and helped them to explore the three-storey house. After they ate an early dinner, the children were returned home to their mother. The next visit was less successful with the children speaking angrily and offensively to the adults, making racist comments; driving home they put their fingers in their ears and made gibberish sounds while they played with the door handles and windows in the car.

On their next visit the girls’ behavior was equally distasteful, according to Mrs. L.. They used angry, curt, rude voices and made unpleasant comments while they drove to a Queens Science Museum. While in the car they were constantly on their cell phones and persisted in kicking the back of the front seats where the adults were seated. When the girls were taken out to dinner by Dr L. and his wife, they would not speak to the adults, spent a great deal of time in the bathroom talking on their cell phones and spoke rudely and insultingly to the adults. In the car on the return trip to Nassau County, they made angry comments, kicked the seats, flipped door handles and engaged in

similar behavior. After an early September visit, Mrs. L. discovered cream cheese smeared all over the back seat of the car, where the girls had been seated.

The quality of visits declined rather than improved over time. The girls seemed to ratchet up their nasty comments, rude behavior, failure to interact or respond to questions or comments from the adults. When they were taken out to dinner they spent much of the time in the bathroom, having taken their cell phones with them. They would whisper to each other but refuse to have any conversation with any adult at the table. In the Brooklyn house the girls wreaked havoc by creating disarray in every upstairs room, throwing pillows on the floor, balling up rugs, taking objects from one room or another and hiding them. Given any opportunity, they would despoil their surroundings and other people, often throwing dirt from the ground at Petitioner and his wife.

A culmination of this behavior occurred on the weekend of the 30th of September. The girls went from room to room on the second and third floors of the house throwing pillows on the floor, messing the carpets, leaving food cartons, tearing fabric from chairs. In an upstairs bathroom Petitioner and his wife discovered that the tiles were covered with lipstick, toothpaste and the contents of every jar in the bathroom. The door to the laundry chute was broken and clean towels from the bathroom had been put in the chute along with bathrobes, floor mats, terriyaki sauce, toiletries, perfume, empty bottles and lastly, honey had been poured over all the laundry chute contents which included, upon inspection, banana peels, tissues, soap and similar debris. When told to “clean it up” they refused.

This kind of behavior continued throughout the fall. Petitioner and his wife made every effort to make the girls’ visits to their home enjoyable, permitting the children to choose the movie they might see or the attraction they would visit. Notwithstanding this effort, the girls continued to

behavior outrageously.

Mrs. L. reported having investigated a local private school for the girls' attendance if Dr. L. were to be granted custody. The school has a gifted program which she thought the girls would be qualified to join. She and Petitioner had also reviewed local dance and swim programs, two areas the girls were interested in. When asked if she loved the children, Mrs. L. replied, "I have a deep affection for them."

In Respondent's testimony, she recounted that she had an electrical fire at her home in 1991. The Respondent and the girls moved to a hotel for some period of time and later rented a condominium while the repairs were undertaken. Her recollection of these events was dim; she could not recall the length of time she spent in the hotel, the rented condominium or who paid for the repairs on her home.

She testified that she never made the statements to Dr. H which were attributed to her, specifically those related to her version of the "truth." She said she had never told him that the only definition of truth was her truth nor had she said that the children should be permitted to behave in any manner they wished. She stated she never called Dr. L. a liar in the presence of the children, she denied that she was not always cooperative in the therapeutic process or that she told Dr H how to conduct the sessions or that the children should be permitted to display their emotions. Considering Dr. H's testimony in its totality, in any aspect in which he discussed Respondent's conduct or conversation, Respondent denied such occurrence or statement by her.

Respondent did recall appearing before Justice Woodard of this court and expressing the view that it would be in the best interests of her daughters to have no relationship with their father and that her daughters wanted no interaction with him. She did not recall telling Justice Woodard that because of the history between herself and Petitioner, the children's lives should not be

disrupted at this time and further, that the children should not be forced into any situation. Respondent could not recall saying, “the children don’t need a relationship with their father” in an appearance before Justice Woodard, although such a statement appeared in the transcript of the proceedings.

Although Respondent testified that she was fearful of Petitioner because of his violence and uncontrolled temper, she testified that there were no incidents of violence in 2003, 2004, 2005 or 2006.

Respondent also claimed that this proceeding was “all about money” and that Petitioner was trying to end his child support obligations. She testified that she caused him to be arrested and spend a night in jail in 2003 after claiming a failure of child support although, as the record was reviewed, it was determined that he was not actually in arrears in any payment. Similarly, he has never been in arrears and owes nothing for the years 2004 to the present.

Respondent was asked in her testimony to detail the ways in which she has fostered the relationship between the children and their father. She said that she urges the children to look positively on their visits; she always brings them on time and has told them to be positive and that the visits will be “really great.”

Respondent stated that the children have returned from visits, particularly the one which ended on December 25th as detailed above, when they were “crying hysterically.” She has observed them “upset” after visitation. As to whether she has sought therapeutic intervention for them, she testified that she took the children to a therapist “once,” did not recall that individual’s name and could not recall the date.

Respondent also denied telling the teachers or principal of the children’s elementary school

or telling the Hebrew school not to provide information to Petitioner about the girls. She denied telling officials at the Synagogue that Petitioner was not to pick up the children. She denied that she had denigrated Petitioner's bringing of an anatomical ear to one of the sessions at Dr. H's office.

In his testimony, Petitioner, who is 57 years old, described his education and training as a physician. He currently has a practice in Brooklyn specializing in pediatrics. He has been married three times; he has two daughters aged 19 and 17 from his second marriage. His older daughter is in her second year at college and the younger one is a senior at a private school. Petitioner described meeting Respondent more than ten years ago. A relationship developed, he stated, and they began to live together in his house in Brooklyn. That relationship began to deteriorate and frequent arguments occurred after A's birth, centered largely on money and family relationships. After R's birth Respondent was living in Nassau County in her home. Petitioner testified that he would see the children pursuant to supervised visitation in Plainview at the home of Respondent's parents. In December 1998 the parties and children went to Disneyland for A's third birthday. There was a short reconciliation after that trip which devolved into hostility shortly afterward.

In December 1999 Petitioner had dinner with the children after a lapse of almost a year since his last visitation with them. Thereafter, until July 2, 2000 he did not see the children. He testified that Respondent had called him and requested that he bring a chest he had in his house to Nassau County for A. He hired a van and a helper and drove to Nassau County, he stated. He also brought gifts for both girls. He testified that the children were outside when he arrived. He attempted to hug A. who appeared "confused." Respondent told A. that Petitioner was not her father because her father was dead. She then took the gift that Petitioner had brought and given to A. and threw it into the garbage. Thereafter, according to Petitioner's testimony, he did not see the children again

until he brought this action. There were no other court proceedings in the interval although he stated that he tried to speak to Respondent and request an opportunity to see the children. Her response, he testified, was that “[he’ll] never see them” or that visitation “will never happen.” Petitioner testified that he frequently telephoned to Respondent’s home usually leaving a message. When he did reach her personally so that he could request an opportunity to see the children, he stated, she would hang up on him. He testified further that Respondent would sometimes call him thirty or forty times in one day, leaving messages containing vile statements, often in the middle of the night. Other voice mail messages from Respondent were that he was not the children’s biological father and that she would never let him see the children.

Petitioner testified that he commenced this proceeding “seeking to become part of their [the children’s] lives and to be their father.” Petitioner asserted further that he ultimately decided to seek custody rather than parental access because whenever some progress was made in his relationship with the children, it was “undone very quickly” by Respondent. Every session with Dr. H began with resistance. Then the children would get used to the environment and “lose themselves” and they seemed to make some gains. As soon as Respondent arrived, “everything was undone.” According to Petitioner, she would pull the children out, negate their progress and offer some criticism.

Petitioner offered as an example the events of A’s birthday in November 2005. Petitioner and his wife had a cake for her which they presented to A. while she was with them in Brooklyn. Her response was “revulsion and a desire to have him leave.” They returned the children to Respondent in Nassau County and offered the cake to Respondent because they wanted A. to have it. Respondent’s comment, according to Petitioner was, “you don’t want to take anything from those

people.”

Petitioner has formulated a plan, should the court award him custody. He has investigated the private school which he thought to be closest to the type education the children are currently receiving. As well, if they are living in Brooklyn they could be potential candidates for entrance into one of the special high schools in New York City such as Stuyvesant H.S. Petitioner and his two associates would provide medical care for the children and he had made accommodations to have them receive religious instruction as well. He had plans for their extra-curricular activities as well as cultural enrichment through attendance at theatre and musical performances.

Petitioner testified about the time he spent with each of the children in the early stages of their lives. He testified that with A. he “would see her every day, many of the nights.” As well, when she was at his house in Brooklyn, she would often share their bed. He “did everything. [He] prepared food for her, [he] fed her, [he] changed diapers.” As for his time with R. as an infant, it was a “rare” occasion that he spent time alone with her, he fed her on only one occasion, and had no opportunity to diaper her.

At the point in time during these proceedings when Petitioner was seeking liberal visitation and had not yet sought custody, he provided a visitation schedule for himself in an Order to Show Cause [Stack, J., 9/22/05]. The suggested schedule is similar to that which the parties currently follow, providing alternate weekend parenting time from 5:00 pm on Friday until 6:00 pm on Sunday, plus one afternoon per week from 3:30 pm to 8:00 pm on Thursdays. *Petitioner’s Affidavit, sic 9/31/05* [actually August 31, 2005, as per page 1 of Affidavit, p.23].

Petitioner was less certain at the conclusion of the hearing that this schedule would be effective in creating and maintaining a “meaningful relationship with the children and for them to

establish a worthwhile relationship with [him].” In order to do that, Petitioner asserted, something major has to change.

Several of the children’s teachers testified about their academic achievement. The teacher who is involved in an alternate curriculum for gifted children, “Project Beyond,” testified about R’s active participation in the program. R’s third grade teacher also testified and stated that participation in Project Beyond does not involve teacher recommendation or discretion. Seven of her 27 students are in this program, she stated.

The principal of the Synagogue Religious school testified about both girls’ participation in Hebrew School, about their bat mitzvah preparation, their torah and bible study. They also have a “mitvah project” through which they aid the less fortunate persons in their community. Both girls are also in the choir and youth group. She was unable to explain why it was that Petitioner had been denied the opportunity to speak to the girls’ teachers other than that it might have been too close to class time and that might have upset the teachers.

Testimony from the chair of the art department of the Elementary School established that A. is in an art enrichment program for more talented and gifted students. A.’s fifth grade teacher also testified and spoke of her writing ability and of a short story she had written.

Many of the children’s unsupervised visits with Petitioner are detailed above. Among the more noteworthy of these however, is the one which concluded on Christmas Day 2005. Petitioner and his wife arrived later than anticipated at the library, a location which they then utilized as a transfer point, claiming that bad weather and traffic impeded their progress. Shortly after they arrived, Petitioner’s wife and Respondent engaged in a free-for-all hair pulling, scratching match which Mrs. L. claimed was initiated by Respondent. It was short-lived but was witnessed to some

extent by the children.

Additionally, when they were in their mother's car, according to Respondent, the younger child claimed that Petitioner had attempted to strangle her while they were driving home. After arriving at her parents' home, Respondent and her "boy friend" took both girls to the 2nd Precinct where they made a complaint to police. Two days later, December 27, 2005, Respondent appeared in Family Court, making the same allegation, upon which the court issued an *ex parte* order of protection against Petitioner.

This court held a hearing on whether the temporary order should remain in effect. Both Petitioner and his wife testified about the automobile ride from Brooklyn to Nassau County that day and they described the intentionally disruptive behavior of both children. Both agreed that they became angry at the children who would not reduce the level of noise they were generating and both told them to "shut up." At no time did Petitioner strike or threaten to harm either of the children, he testified. Mrs. L. testified about the assault on her by Respondent and submitted photographs of her injuries into evidence.

Respondent invoked the 5th amendment to the Constitution when asked about the alleged assault by her on Mrs. L., asserting she would not testify about the event because of the danger of self-incrimination. The court met with the children *in camera*. The order of protection was vacated in this court's order [Stack, J., 1/12/06] and visitation was resumed.. The visitation detailed by Petitioner and his wife ensued thereafter, as detailed above.

FORENSIC EXAMINATION

A forensic examination to be conducted by William Kaplan, M.D. was ordered by this court [DeMaro, J., 3/2/04] and an update ordered on April 5, 2005 [Stack, J.] Both of Dr. Kaplan's reports, one dated June 10, 2004 [Ex.23] and an updated report dated August 15, 2005 [Ex. 22],

were received in evidence. As well, Dr. Kaplan appeared and testified about his examinations, interviews with the parents, children and collateral sources and findings.

During his interviews with the children, Dr. Kaplan noted that they showed “tremendous anxiety in anticipation of any requirement to resume contact with their father whom they have not seen for four years.” *Kaplan report, 6/10/05, p.16.* A., he stated, said she would “have a heart attack” if she was required to see her father, a reaction which “verged on hysteria.” *Id.*

R., he said, “recalls incidents involving her father, which must have been inculcated from her sister and mother...” Such recollections are “incomprehensible,” recalling mistreatment of her mother when she was herself an infant. She also related an incident when she was “in utero.”

Dr. Kaplan reported on Respondent’s failure to “facilitate and honor visitation schedules which have been imposed by the Nassau County Family Court.” Respondent claimed that Petitioner had failed to “avail himself of visitation” while Petitioner alleges it is Respondent who has placed “insurmountable obstacles in his attempt to spend time with his daughters.” *Id.* According to Dr. Kaplan, Petitioner’s successful relationship with two daughters from a prior marriage is a testament to his ability to have such a relationship with these two children, particularly since he does not “pose any threat to his daughters.”

Dr. Kaplan found Petitioner to be a person of “wide ranging interests, brilliant intellect, love of travel and study of different cultures...[with] the potential to enrich the lives of his young daughters.” He did seem to be “lacking in sensitivity about the apprehensions” of the children. The forensic examiner compliments Respondent for having “provided [the girls] with a nurturing and richly stimulating life” and as a “dedicated mother who is obligated to protect her children from harm.” However, he found her to be overly protective and fostered the children “having a grossly

distorted view of their dad as an unloving, rejecting and potentially menacing individual.” *Id.*, p.17, ¶ 2. In his first report, Dr. Kaplan urged therapeutic supervised visitation as a means for Petitioner to resume a relationship with the children. As noted above, such a process was undertaken.

More than a year later, Dr. Kaplan’s second report is critical of Respondent in several areas. He describes Respondent as a “dedicated mother” and “an exemplary mother ...except in her persistent and pervasive efforts to sabotage the father’s legitimate efforts to have regular contact with his daughters. [Respondent] has repeatedly acted out her courtroom statement that the children do not need their father.” *Kaplan Report*, 8/15/05, p 12, ¶2. As examples, he points to the fact that she has “damaged the children’s perception of their father by making many denigrating, inappropriate and inaccurate statements to the children” about him. *Id.*, ¶5.

Dr. Kaplan’s explanation of Respondent’s “tenacity and rigidity in using the children to vent her contempt” for Respondent is that psychological testing indicates that she has features of “Narcissistic Personality Disorder,” which affects her judgment and allows her to make intemperate remarks about Petitioner in front of the children “who then have embellished and further distorted their own grievances about dad as a liar, and as a person who unremittingly acts toward them as a selfish and uncaring person.” *Id.* ¶ 6. Respondent provides no information about Petitioner to the children that would mark him as a normal person, with both good and bad qualities. The girls’ poisoned view of Petitioner could not have come from their own experiences; it was learned information, from Respondent, and included indictments of him for failure to give money to them, for not permitting them to go to camp [although he actually paid for it], for stealing their grandfather’s car, for not caring for them medically, denying them treatment even though he was a pediatrician. There was an unremitting flow of experiences which indict the father with no

counterbalancing evidence.

Dr. Kaplan cites to several additional examples of Respondent's conduct, all of which is directed to short circuit the attempts by Petitioner to establish a relationship with his children. Not only does she attack him verbally but she actively undermines anyone who attempts to assist in the therapeutic process, including both therapists appointed by the court, Drs. K and H. Dr. Kaplan points out that Respondent reported Dr. K to CPS for allegedly pulling on the arms of the children, a case reported unfounded by CPS. Respondent thought that Dr. H was too supportive of Petitioner and had moved too quickly in the therapeutic process.

Moreover, because of her Narcissistic Personality Disorder, Respondent believes she has all the answers and understanding relevant to the wants or needs of her daughters. She has been opportunistic, exploitive and manipulative in regard to events which occurred during the therapeutic visitation sessions. Dr. Kaplan does not believe that Respondent will be amenable to psychotherapy or that she will accept constructive criticism of her parenting judgment.

Dr. Kaplan believes that Petitioner should have unfettered access to his children. He finds that his behavior and judgment have consistently been appropriate. Further, he accepts criticism about his parenting skills and is receptive to guidance from mental health professionals as to how to improve his communication with his daughters.

With regard to Petitioner, Dr. Kaplan noted in his first report that Petitioner "did not reveal insight about how he inflamed and exacerbated the relationship with [Respondent]." *Kaplan report*, 6/10/04, p. 16, ¶ 3. Petitioner's "emotional intensity, narcissism and need to control situations will pose impediments to establishing a [rewarding] relationship with his daughters." *Id.*, p.17, ¶ 1.

Both parties participated in psychological testing using the Minnesota Multiphasic

Personality Inventory-2 (“MMPI-2”) and Millon Clinical Multiaxial Inventory III (“MCMI-III”). Respondent “met criteria on the MCMI-II for a Narcissistic Personality Disorder with obsessive-compulsive features. Such a profile is consistent with an individual who presents a public front that cloaks deep antagonism.” *Kaplan report*, 8/15/05, p. 9, “Psychological Testing.” Petitioner’s testing revealed a “high degree of self confidence” and “both narcissistic and histrionic personality features.” His profile is suggestive of “a man with an inflated sense of self worth, an air of imperturbability and a pretense of self satisfaction.” *Id.*, p.10³.

The court interviewed the children *in camera*. They are, as acknowledged by several witnesses, bright and articulate. To assert, as the mother does here, that they are well adjusted, would not comport with the court’s meeting with them. Although their conversation with the court is wholly confidential, it was clear that they presented as overly anxious. In their conversations with the court, as in conversations with several mental health professionals, their language was “adultified.” Their recitation of events was schooled and mimicked that of their mother’s testimony. The anxiety and stress level obvious in the older child’s demeanor, was frighteningly high. The younger child’s demeanor was less anxious than her sister’s.

CONCLUSION

Disputes involving custody and visitation are acknowledged to be among the most difficult the courts are called upon to resolve, for they so deeply affect the lives of children and the parents who love them. *Daghir v Daghir*, 82 A.D.2d 191, 441 N.Y.S.2d 494 (2nd Dept. 1981), *aff’d*, 56 N.Y.2d 938 (1982). Between two natural parents the concern in a custody determination is what is

³The testing referred to was administered and evaluated by Dr. Barbara Libov, Ph.D.

in the best interests of a child. *See*, Domestic Relations Law § 240; *Friederwitzer v Friederwitzer*, 53 N.Y.2d 89, 447 N.Y.S.2d 893 (1982). In making such a custody determination the court must weigh several factors of varying degrees of importance including the quality of the home environment, parental guidance provided by each parent, the financial status and the ability of each parent to provide for the child's economic, emotional and intellectual development needs. *Eschbach v Eschbach*, 56 N.Y.2d 167, 451 N.Y.S.2d 558 (1982). *See, also, Matter of J.D. v N.D.*, 170 Misc.2d 877, 652 N.Y.S.2d 468 (Fam.Ct., Westchester Cty, 1996).

The Second Department has also outlined the factors to be considered in determining a child's best interests. *See, Robert T.F. v Rosemary F.*, 148 A.D.2d 449, 538 N.Y.S.2d 605 (2nd Dept. 1989); *Keating v Keating*, 147 A.D.2d 675, 538 N.Y.S.2d 286 (2nd Dept. 1989). Some of the factors to be considered are: the relative fitness of each parent; the child's desires; quality of the respective home environment; parental guidance given to the child; financial status of each parent; parent's ability to provide for the child's emotional and intellectual development. Wherever possible, the best interests of a child lie in being nurtured by both natural parents. *See, Dagher v Dagher, supra*.

The analysis of the various factors to be taken into account in deciding a custody question is made when, as here, the trial court has had the opportunity to evaluate the testimony, character and sincerity of the parties. *See, Louise E.S. v W.Stephen S.*, 64 N.Y.2d 946, 488 N.Y.S.2d 637 (1985).

The relative fitness of the parents.

There is no perfect parent. Both of these parties have strengths and weaknesses. Each has limitations which inhibit their ability to parent. This case began as an application by Petitioner/father for access to his children. Because of the conduct of the Respondent/mother which has been

obstructionist and damaging, Petitioner has made an application for a change of custody, asserting that unless that happens Respondent will continue to thwart his efforts to have a meaningful relationship with his children. Respondent's conduct, and destructive, damaging, inappropriate language used against the Petitioner and anyone associated with him, including therapists, Petitioner's wife, his and her children from prior relationships and other family members, have created an atmosphere of fear and distrust which the mother reinforces on a regular and daily basis.

Notwithstanding her courtroom assertions that she will make a consistent effort to afford Petitioner access to the children and that she will facilitate regular and meaningful contact between the children and their father, this court finds that the past conduct of Respondent is the best indicator of the future and the rosy future she portrays is unlikely to occur.

There is no question but that Respondent consistently and regularly alienates the children from their father. Respondent's version of the "truth" to which she referred in conversations with both Dr. K and Dr. H, has been communicated to the children. Her own vitriol has been translated into events which may or may not have occurred but which the children have accepted as fact and which impede their opportunity to meet and know their father on fair terms. The mother's manipulation of events and individuals who are involved in this process is also noteworthy. Respondent has proven herself a witness unworthy of belief in her attestations of good faith; she has shown no good faith throughout this process and has made every effort to destabilize any growth in the relationship between Petitioner and the children.

Although she told Dr. Kaplan that she would cooperate with the court and would support rehabilitation of a relationship between the father and the children, she has failed to do so. She continues to function under a guise of cooperation, which masks alienating behavior such as to

endanger the welfare of the children in the future.

The fitness of parents is also evaluated by the likelihood that each will make a good faith effort to see to it that the other has parental access time that is unhindered and unencumbered. As well, the non-custodial parent must be able to have telephone and e-mail access to the children. “It is unclear if [Respondent] desires or will make a good faith effort to support [Petitioner’s] relationship with his daughters.” *Kaplan report*, 8/15/05, p. 14, ¶ 2. The risk to the children of “developing personality disorder features and pathological interpersonal relationships in the future,” *Id.*, ¶ 3, is real if the mother fails to allow the relationship between the children and their father to develop. Petitioner is more likely to promote a full relationship with the mother than the reverse situation.

The quality of the home environment

Respondent is evidently a loving and nurturing parent, when not dealing with issues involving Petitioner. The children are bright, articulate and very successful in school. They participate in age appropriate extra curricular events such as dance, hebrew school and choir. Respondent has encouraged them to join additional activities, the multiplicity of which inhibit the father from seeing and being with them, which was undoubtedly Respondent’s plan.

The father’s home is a safe, warm environment, which the girls have made every effort, some successful, to damage and despoil. They are doubtless encouraged in this irresponsible behavior by their mother who asserts that they should not be hindered in any manner in terms of their behavior. It is certain that such a rule does not prevail at their home; only in Petitioner’s.

Both Petitioner and Respondent are employed, he as a pediatrician and she as a college instructor teaching classes in three Long Island college programs. The fact that either parent is employed is not significant insofar as custody determinations are made. “[M]others as well as

fathers of even young children are, or must be, gainfully employed. That being so, the custody-seeking mother who works outside the home should not be penalized for her employment, any more than should the father.” *Linda R. v Richard E.*, 162 A.D.2d 48, 561 N.Y.S.2d 29 (2nd Dept. 1990). Any alternative would confront a working parent with the Hobson’s choice between livelihood and parenthood, which would be wholly unacceptable. A heavy work schedule does not render a party unfit to assume sole custody of the party’s child, even where the other parent is unemployed and could care for the child full time. *Moreau v Sirles*, 268 A.D.2d 811, 701 N.Y.S.2d 745 (3rd Dept. 2000).

The parental guidance given to the child

In some areas Respondent, who has been the custodial parent throughout the children’s lives, has offered guidance to them which is both appropriate and moral. She has failed totally in providing them with the ability to achieve a relationship with their father, by filling their heads with misinformation in the guise of truth and transferring her animosity towards Petitioner to them. They have been given no opportunity to formulate any perception of their father on their own, bound as they both are by their mother’s incantations, which overwhelm them.

Both parents have offered the children some religious training which the girls have accepted from their mother but which they have fought against when their father presented it to them. In whatever custody determination is made, both parties are prepared to offer the children continued religious training.

Petitioner, whose interests are wide and varied, presented a panoply of opportunities which he would offer the children, were he to be awarded custody. Not only would they be free to pursue those activities they have already indicated interest them, such as dance, music, swimming and

horseback riding, but he has indicated his interests in travel, theatre and ballet, foreign languages and other similar activities which he would share with them.

The parent's financial status

The father's earning capacity appears to exceed that of the mother. Petitioner seems to have no problem in providing the necessities of life for himself and for his wife. As well, he has consistently paid child support on a regular and continuing basis, which amount is currently more than \$5,000 each month, an obligation set by the Family Court. This court did not explore the financial circumstances of the parties since the Family Court has already investigated these issues and issued an appropriate order.

The parent's ability to provide for the child's emotional and intellectual development

The children's intellectual development could be provided for by both parents, each of whom has special knowledge in particular areas. Petitioner is well traveled and knowledgeable in multiple areas, beyond medicine and has a wide array of interests which he wishes to share with the children. Respondent has provided an atmosphere of intellectual and creative challenges and experiences which have served the children well.

In terms of their emotional development, Dr. Kaplan testified that during adolescence, when an individual is consolidating his or her personality and view of the world, beginning dating and intimate relationships, the malevolent view of their father as a person full of violence, selfishness and lack of competence and concern, will have a major impact on future relationships involving trust; the children, Dr. Kaplan stated, are at risk for developing personality disorders and problems in future relationships. Their adolescent and pre-adolescent years are a training ground and it is essential that they have meaningful and healthy relationships with adults; their relationship with their father will be important in how they parent their own children.

In parental alienation, described by Dr. Kaplan as a conscious or unconscious action on the part of one parent to poison the relationship a child or children has with the other parent, children incorporate or embellish distortions which they have learned from one parent as to the other. Further evidence of parental alienation is present in statements which the children volunteer about their father: a bad person, doesn't love or care about them, poses a risk to them, doesn't want to provide for them and won't even offer basic medical care; a liar, thief with no "human" attributes. Every action of that person is found to be malignant, even insignificant conduct like taking a piece of a child's cookie.

Impact of Domestic Violence

In addition to the case law factors set forth, the court is also mandated by statute to consider the impact of domestic violence on the child in custody/visitation proceedings. Domestic Relations Law § 240 (1). "[A]buse or violence perpetrated by one of the parents against the other or a child is a legitimate factor for the court to consider in making its custody determination." *Domestic Relations Law §240, Practice Commentaries*, ¶ 240.10A, Alan B. Scheinkman.

Here the court finds that the domestic violence has not been proven by a preponderance of the evidence. The only testimony regarding domestic violence was received from Respondent, whose overall testimony was not found by the court to be credible. Petitioner has demonstrated a temper which can rise to anger, but there is no evidence, save only references to past events by Respondent, to any physical or psychological abuse by him to her or in the presence of the children. On several occasions she expressed fear of violence, which is "no less damaging than a physical blow," *J.D. v N.D., above*, but the court on the evidence presented could not determine that such fear was justified. Where one party makes allegations about the other's conduct, which allegations

are found to be baseless, such conduct places that party's interests above those of the child. *Cucinello v Cucinello*, 234 A.D.2d 365, 651 N.Y.S.2d 93 (2nd Dept. 1996). Allegations of domestic violence are not, alone, determinative of custody issues. The court is to consider it with other facts and circumstances which the court deems relevant in making a decision. Domestic Relations Law, § 240 (1); Sheinkman, *ibid*.

Under Section 240 of the Domestic Relations Law, neither parent has a “prima facie right” to custody. The court is required to have regard to the circumstances of the case and of the respective parties and to the best interests of the child. Joint custody in two parents, based on a finding that the parties are capable of cooperating to jointly raise their child and to provide for his needs as a common enterprise, is a highly desirable outcome. It is encouraged primarily as a “voluntary alternative for relatively stable, amicable parents behaving in mature civilized fashion.” *Braiman v Braiman*, 44 N.Y.2d 584, 407 N.Y.S.2d 449 (1978). However, where, as here, the parents are antagonistic toward each other and have demonstrated an inability to cooperate on matters concerning the children, joint custody is inappropriate. *See, Bliss v Asch*, 56 N.Y.2d 995, 453 N.Y.S.2d 633 (1982).

These parties are unable to function in a manner necessary for such a joint or shared arrangement. When parties' views are so diverse they cannot deal jointly on the issues which involve their children one individual must be determined to be the person who makes the decisions. Such decision making authority may be granted to one parent in matters affecting the welfare of the children. *See, Follansbee v Richards*, 237 A.D.2d 437, 656 N.Y.S.2d 876 (2nd Dept. 1997); *Tran v Tran*, 277 A.D.2d 49, 716 N.Y.S.2d 5 (1st Dept. 2000).

As with all cases involving custody and visitation, the dispute must be resolved not only out

of consideration for the desires of the parents but out of concern for the best interests of the children.
Daghir, supra.

The Court has weighed all of the significant factors and circumstances during a lengthy fact-finding hearing and has had an opportunity to hear the testimony and test the credibility of the parties as witnesses; the court has heard the lengthy testimony of the forensic evaluator as well as the testimony of both psychologists who participated in therapeutic visitation, as well as several collateral witnesses. The Law Guardian's comments with regard to the ultimate determination of this court was that the "best interest of the children" standard could not be served in this case; the arrangement that was "least detrimental" should prevail. She noted that the children's school and activities are all centered in the Nassau County area and that any disruption of this arrangement would be harmful to the children, who had expressed to her that they wished to remain in their mother's care.

Notwithstanding her repeated insistence that she is cooperating with the court, Respondent's conduct in alienating the children has undermined Petitioner's efforts to restore some reasonable visitation with them. While Respondent may appear on time for pick up and drop off, her actions between visits compromises the effort in which the parties are allegedly jointly engaged.

The best interests of a child lie in her being nurtured and guided by both of her natural parents. A non custodial parent and his children jointly enjoy a natural right of visitation. "To be meaningful, however, visitation must be frequent and regular." *Daghir, supra.* So jealously do courts guard the relationship between a non custodial parent and a child that any "interference with the relationship between a child and a non-custodial parent by the custodial parent has been said to be an act so inconsistent with the best interests of the child as to per se raise a strong probability that

the offending party is unfit to act as a custodial parent.” *Id.*

Changes in custody for reason of the interference with visitation by the custodial parent or the alienation by that parent of the children against the non-custodial parent, have been approved by the courts. A “consistent attempt to undermine, if not eradicate, the child’s relationship with her mother and to portray the mother as a child abuser,” resulted in a transfer of custody to the mother. *Carl J.B. v Dorothy T.*, 186 A.D.2d 736, 589 N.Y.S.2d 53 (2nd Dept. 1992). An interference with the relationship between the child and the non-custodial parent was an action that raised the likelihood that the “offending party is unfit to act as a custodial parent,” *Hamersky v Hamersky*, 290 A.D.2d 414, 736 N.Y.S.2d 603, (2nd Dept. 2002); *Bobinski v Bobinski*, 9 A.D.3d 441, 780 N.Y.S.2d 185 (2nd Dept. 2004). *See also, Green v Gordon*, 7 A.D.3d 528, 776 N.Y.S.2d 73 (2nd Dept. 2004) (father is the parent more likely to assure meaningful contact between the child and the noncustodial parent); *Salvatore M. v Tara C.*, *NYLJ*, 3/3/06, p.23, col. 1 (Supreme Court, Suffolk Cty.)(mother’s willful, repeated interference with visitation results in change of custody).

As these cases demonstrate, conduct which seeks to alienate children from a non- custodial parent often results in a change of custody. It would be an appropriate outcome for this case but for the delicate condition of the children as the court saw them. In this court’s view, and one shared by the Law Guardian, the children are so bonded to their mother that a change in custody would serve to punish them for their mother’s transgressions against their father. Her conduct in proactively attempting to keep the children from any normal relationship with their father or building toward one, should result in a change of custody. Such a change will not occur at this time.

The court finds that it would not be in the children’s best interest at this time to change custody to their father. Their school, extracurricular, religious and family connections are all in the

Nassau County and neighboring areas. It would be unfair to uproot them from their familiar lives to a new and totally different environment because of their mother's conduct. However, Respondent should see this as no victory. As *Salvatore M. V Tara C.*, *supra*, illustrates, changes in custody can occur at any time and under particular, specific circumstances; even involving this family, a change might occur in the future. Accordingly, it is hereby

ORDERED, that Respondent shall retain sole custody of the children of these parties, A. and R; and it is further

ORDERED, that Respondent shall make day-to-day decisions about the children's activities including their education and religious upbringing, subject to the order of this court as noted below, and shall consult with Petitioner on any medical issues requiring surgery or consultation with specialists. Should the parties not agree, Respondent shall have final approval; and it is further

ORDERED, that Respondent shall not schedule the children's activities so that they deny Petitioner access to them; and it is further

ORDERED, that the children shall have at least one afternoon each week during which they have no scheduled activity and no activity shall be scheduled on Saturday and/or Sunday which would interfere with Petitioner's access to the children.

Petitioner opined during his testimony that if Respondent retained custody she would see to it that he did not have any meaningful contact with his children. He seemed convinced that any attempt to reconcile with them would be futile, especially since the mother would not make a good faith effort to assist him in achieving a relationship with them.

This court believes strongly in the view expressed in *Daghir*, *supra*, with regard to the value to children of frequent and regular visitation with the non-custodial parent. It is incumbent upon

Respondent to facilitate those visits and to actively work for and with the Petitioner's re-unification with his children. Not only is it important to them to receive the guidance and counsel of their father and to have him be a source of comfort and solace to them where necessary, but he deserves the opportunity to share in the pleasure of watching his children grow to maturity, just as he has with the two daughters of his prior marriage.

Perhaps most relevant and significant are the dangers inherent in the continuation of the hateful and hate-filled conversations that Respondent has with the children about their father and his current wife. The potential for serious psychological and emotional damage is not far fetched and has been forecast not only by Dr. Kaplan but by both of the psychologists who worked with this family in an effort to move them toward *rapprochement*.

It is this danger that the court now addresses. Having witnessed the effect of the *angst* in this litigation on the children and being cognizant of the dangers in the continuous conduct of Respondent, help must be provided to the children and to both parents. The potential for permanent damage to the children's psyche is such that the court would be irresponsible if no action was taken to ameliorate the damage already done and to prevent any more emotional damage. While the court may not compel a party to undergo therapy as a precondition for visitation, *DeJesus v Tinoco*, 267 A.D.2d 308, 699 N.Y.S.2d 905 (2nd Dept. 1999), the court may require a party to obtain therapy and counseling as a component of a custody and visitation order, *Irwin v Schmidt*, 236 A.D.2d 401, 653 N.Y.S.2d 627 (2nd Dept. 1997); *Landau v Landau*, 214 A.D.2d 541, 625 N.Y.S.2d 239 (2nd Dept. 1995).

Accordingly, it is hereby **ORDERED**, that each of the children shall be enrolled in therapy separately and individually, thus allowing each child to express her thoughts, without influence by

the other, so that each may explore and dissipate the fears with which they have been inculcated; each may learn to view their father as a normal person possessing both good and bad qualities; each may come to accept that they bear half his genes and that their genetic makeup is his as well as that of their mother; and it is further

ORDERED, that the Petitioner/father shall enter therapy where he shall seek assistance in anger management and in parenting, learning to be sensitive to his children's fears and needs; and it is further

ORDERED, that the Respondent/mother shall enter therapy where she shall endeavor to differentiate between her anger and disappointment with the Petitioner personally and its relation to the children and to channel that anger so that it does not interfere with her judgment, learning to affirmatively accept that Petitioner is the father of the children and shares in their genetic makeup; and that she must examine the reasons for her deliberate alienation of the children against the father and put an end to it; and it is further

ORDERED, that Dr. C. is hereby appointed **Parenting Coordinator**; the totality of his role shall be delineated and enunciated in the accompanying Order of Appointment but he shall be the coordinator of all therapies; each participant shall sign a release so that the individual therapists may discuss with him the participation of the parties and the children in the court-ordered therapy detailed above. It shall further be his responsibility to see to it that the schedule of parental access by Petitioner shall be followed by Respondent and that Respondent shall cease her negative conduct as described above; and it is further

ORDERED, that parental access for the father with the children shall follow the schedule accompanying this Order. Any modifications and/or interference with this schedule shall be addressed to the Parenting Coordinator; and it is further

ORDERED, that child support and ancillary issues shall continue to be dealt with by the Family Court, and the parties shall continue to follow the order of the Family Court which determined the child support obligation of Petitioner; and it is further

ORDERED, that Petitioner shall pay 90% of the cost of the services of the Parenting Coordinator and that Respondent shall pay 10%, and it is further

ORDERED, that Respondent shall choose therapists who are participants in any medical plan provided by Petitioner and Petitioner shall be responsible for 90% of any un-reimbursed medical or psychological costs and Respondent shall be responsible for 10% of the same. Respondent shall promptly provide bills to Petitioner when they are received so that they may be paid in an appropriate fashion.

PETITIONER'S APPLICATION FOR CONTEMPT

Petitioner moved by Order to Show Cause for an order of this court finding Respondent in contempt for failing to abide by this court's April 4, 2005 order; imposing sanctions against Respondent; directing suspension of Petitioner's child support; directing Respondent to be responsible for 100% of the Law Guardian's fee; directing Respondent to undergo therapy with Dr. H and to pay for same; directing that the children undergo therapy with Dr. H and that Respondent pay the cost of same; permitting Petitioner to visit with the children separately; granting Petitioner a normalized visitation schedule; granting Petitioner an award of counsel fees and for such other and different relief as the court deems proper. Respondent opposed the motion.

Petitioner's complaint is that Respondent has failed to follow the court's order [Stack, J., 4/4/05] in that she failed to pay Dr. H's fees, failed to pay the Law Guardian's fees, failed to "abide by Dr. H's suggestions," failed to "forego any conduct, speech or activity which would install in the children feelings of hostility toward petitioner."

This application was submitted just prior to the trial of the custody/visitation issues. Thus the court heard from both parties' testimony with relevant evidence about these issues.

Several of the issues raised by Petitioner are moot due to the conclusion of the trial and this decision and order of the court.

Petitioner has been granted a "normalized visitation schedule" as per the accompanying parenting access order. Petitioner may visit with the children individually. He must, however, inform Respondent of his plans for any given day or date if he is not going to be picking up both children on a particular date. He should make every effort to balance the time spent with each child so that it is approximately the same. Pickup and drop-off shall be curbside at Respondent's residence, thus ending the artificiality of any "neutral" location.

Relief from his child support obligations is denied. "Where a child voluntarily abandons a non-custodial parent by refusing all contact and visitation, without cause, the parent's child support obligation may be terminated [citations omitted], " *L.F.W. v J.R. W.*, 10 Misc.3d 1067A (Family Court, Nassau Cty, 2005). However, the burden of proof is on the movant to show that the custodial parent is directly responsible for the interruption of the non-custodial parent's visitation; only then may child support obligations be terminated. *Id.*

The court directed visitation to resume pursuant to an established schedule. The court anticipates that Respondent will comply with this court's orders and cooperate in affording Petitioner access to his children. Should she fail to do so, Petitioner has his remedies.

It should be clear from this decision that the court has found that Respondent has alienated the children and has not followed the prior orders of the court with regard to her behavior *vis-a-vis* the children and Petitioner. Because this court finds that Respondent has serious psychological

issues which inhibit her from acting in a wholly rational and objective manner, the court will not, at this time, find her to be in contempt of the court's prior orders. In this aspect of the decision and order, the court anticipates that Respondent will seek and enter therapy, as it has been ordered by the court.

Petitioner's request that Respondent pay the fees of the Law Guardian and Dr. H have already been dealt with in orders of the court during trial.

Petitioner's request for attorney's fees for the making of the aforesaid application, is denied. Any other application in the aforesaid motion not granted herein, is denied.

During the trial of this action both parties on the record waived the hearing to which they are entitled and consented to the submission of the issue of attorney's fees on papers. Accordingly, a separate decision on that question shall issue.

This constitutes the decision and order of this court.

Dated: Mineola, NY
April 28, 2006

Elaine Jackson Stack
J.S.C.

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