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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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ALLAN KASSENOFF,

Plaintiff,

-against-

**DECISION AND ORDER**

Index No.: 58217/2019  
Mot. Seq. Nos. 6 & 10

CATHERINE KASSENOFF,

Defendant.

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QUINN KOBA, J.

For ten days during the weeks of July 13, 2020 through July 17, 2020 and July 20, 2020 through July 24, 2020, the Court conducted a hearing regarding the branches of the plaintiff-father's order to show cause, motion sequence no. 6, seeking, among other things, modification of an order of the Court (Everett, J.) dated June 10, 2019, so as to provide him with temporary sole legal and physical custody of the parties' three children and exclusive use and occupancy of the marital residence, to suspend the defendant-mother's overnight access with the children until such time as she finds suitable housing, and upon obtaining suitable housing, providing her with access to the children on alternating weekends from Friday afternoon to Sunday before dinner, and a

dinner visit each week on Wednesday night, with all access to be supervised by a therapeutic supervisor to be paid for by the mother and permitting the mother to have a daily video-chat with the children for 15 minutes per night, which video chats are to be recorded and reviewed by the attorney for the children (AFC). The hearing also encompassed the father's order to show cause, motion sequence no. 10, to modify an order of the Court (Everett, J.) dated March 27, 2020 to provide that the mother be permitted only therapeutically supervised visits, twice per week, for two-hour durations and terminating her daily Zoom calls; to prohibit any communication between the mother and the children, other than her weekly visits, such as e-mail, texts or communicating via other applications and/or video games, and to grant an order of protection in favor of the father and the parties' children and against the mother.

After considering the testimony of the parties, the documents admitted into evidence, and the procedural history of this case, the Court hereby makes the following findings of fact and reaches the following conclusions of law regarding temporary custody of the children and parental access pending a custody trial.

**PROCEDURAL HISTORY**

On May 24, 2019, the father commenced this action for a divorce and ancillary relief. On June 4, 2019, he filed an order to show cause seeking temporary sole legal and physical custody of

the parties' children and temporary exclusive use and occupancy of the marital residence located at [REDACTED] Larchmont, New York. A hearing regarding the same was commenced on June 7, 2019 (NYSCEF Doc. No. 46). On June 10, 2019, the parties entered into a stipulation agreeing to share temporary joint legal and physical custody of the children and to share access in the familial home pursuant to a two-week alternating schedule ("custody stipulation") (id. at 1). Each party was also entitled to FaceTime contact with the children at 7:30 p.m. on each day the party was not with the children (id. at p.5). It was further agreed that the mother's access time with the children would be supervised at all times by one of the individuals identified in the custody stipulation (id. at 3). The Court (Everett, J.) so-ordered the stipulation.

Given the custody issues, the court appointed Carol Most, Esq., as the AFC and appointed Marc Abrams, Ph.D., to conduct a neutral forensic evaluation of the parties and the children. Dr. Abrams issued his written report on March 25, 2020, which was received by the Court and provided to counsel for the parties and the AFC. Based upon his evaluation, Dr. Abrams recommended a change in physical and legal custody of the children and the final decision-maker as soon as possible. On March 27, 2020, the father filed an order to show cause (motion seq. no. 6) seeking, among other things, sole temporary legal and physical custody of the

minor children in accordance with Dr. Abrams' recommendation as well as the other relief detailed above. The mother opposed the motion. After oral argument, the Court determined that a hearing was required to resolve the factual issues raised in the papers.

On July 8, 2020, the father filed an order to show cause (motion seq. no. 10) to modify an order of the Court (Everett, J.) dated March 27, 2020 to provide that the mother be permitted only therapeutically supervised visits, twice per week, for two-hour durations and terminating her daily Zoom calls; to prohibit any communication between the mother and the children, other than her weekly visits, such as e-mail, texts or communicating via other applications and/or video games and to grant an order of protection in favor of the father and the parties' children and against the mother based upon her alleged conduct since the order was issued, including her failure to record the Zoom calls with the children, continued "gaslighting" and manipulation of the children, encouraging ██████ to sneak out of the house and go to the police station, continuing to email the children and using the "chat" function of the Zoom software to communicate with the children without the knowledge of the supervisor and failing to take immediate action when she received an email from ██████ stating that she wanted to disappear or kill herself. The father also sought a temporary order of protection on his behalf and on behalf of the children against the mother based upon Facebook posts she

made and other conduct he alleges constitutes harassment in the second degree (see Penal Law § 240.26 [3]).

At the hearing, a redacted version of Dr. Abrams' report was admitted into evidence and reviewed by this Court as the finder of fact. Dr. Abrams was called as a witness and gave extensive testimony regarding his fact gathering, interviews of the parties, children and collateral witnesses, psychological testing, experience, analysis and basis for his findings and recommendations. He was subject to vigorous cross examination by the mother's counsel. The parties also testified as did three former nannies, two supervisors, Det. Pompilio, Dr. Filova, the mother's treating therapist, Dr. Weiss, the mother's parenting counselor, and the mother's experts - Drs. Cling and Pogge. Photographs, audio and video recordings and numerous documents were admitted into evidence.

At the conclusion of the hearing, the parties and the AFC were given one week to submit their written summations. All submitted closing arguments, which were reviewed by the Court.

**THE FACTS**

The parties were married on October 20, 2007, and there are three children of the marriage: [REDACTED]  
[REDACTED]  
[REDACTED]. Both parents are licensed attorneys and are employed full-time.

The father is a shareholder at Greenburg Traurig, LLP and works in its Manhattan office. He frequently traveled on business. He increased his work hours and business travel during the few years leading up to the divorce filing to avoid conflict with his wife. The mother is an employee of the State of New York. She began this employment in 2015, which allowed her to often work from home and provided her flexibility during work hours to take the children to after school activities and pick them up from school. The parties also employed nannies to help with childcare. The mother was the primary caretaker of the children and handled their daily schedules, took them to medical appointments and extracurricular activities and met with their teachers. The father also attended many teacher conferences and took the children to extracurricular or sports activities on weekends and some evenings.

*The Testimony*

The father testified that the marital relationship was very stressful. He admitted exhibiting poor parenting behavior in the past when he yelled at his wife and children, fought with his wife in front of the children and spoke of inappropriate topics in front of the children such as hating his wife, accusing her of having a boyfriend and stating that he was getting a divorce. He denied ever being physical with either his wife or his children but stated his wife had hit him on occasion. Photographs depicting scratches and abrasions he sustained from the wife's actions were admitted

into evidence (Exs. 39 & 40). He denied assaulting his wife and throwing her against an ottoman as she alleges. He says she punched him in the face and was going to punch him again. He defended himself by pushing her away from him. He admitted throwing a weed at his wife in May 201 but stated it was in response to her first throwing a weed at him. He also denied kicking [REDACTED] in May 2019. He started therapy in June 2019.

The father testified that the mother treated [REDACTED] differently than the other children. When she was born, [REDACTED] had to stay in the hospital. The mother told him to stay at the hospital overnight and she would be back in the morning. Within two months of the adoption, the mother wanted to resume attempting to have a biological child. She became pregnant with [REDACTED]. After [REDACTED] was born, he observed the mother spent more time with [REDACTED] than she had with [REDACTED] as an infant. When [REDACTED] cried, he typically attended to her. When [REDACTED] cried, the mother typically attended to her as she was nursing. There were differences in the clothes and toys the mother purchased for [REDACTED] [REDACTED] [REDACTED], who was treated like [REDACTED]. He stated the mother's favoritism of the two younger children was obvious. She permitted [REDACTED] [REDACTED] [REDACTED] to sleep in the master bedroom with her, excluded [REDACTED] and then would tell Ally to make the bed. This changed after [REDACTED] witnessed the weed throwing incident in May 2019. Then, [REDACTED] was permitted to sleep in the bedroom with her mother and sisters and to eat with

them. [REDACTED] also had to clean up after their dogs while the other children did not have chores.

According to the father, when [REDACTED] was 8 or 9 years-old, she occasionally soiled her underwear, and as a punishment, the mother made her wear a diaper to school. As another punishment, the mother took [REDACTED] princess bed away from her and gave it to [REDACTED] while [REDACTED] was given a mattress and slept on the floor. As another punishment, the mother cut [REDACTED] long hair into a "boy's" haircut. The mother also destroyed [REDACTED] toy bear, which she had made herself, in front of her and would punish her by making her eat alone while the mother ate with the two younger children. The mother also limited [REDACTED] food intake. The father further testified that when [REDACTED] was approximately 4 years-old the mother told her she was not part of their family, was a criminal like her birth mother, and she was going to send [REDACTED] back to Florida where her birth family resided. The mother also sent [REDACTED] to the finished basement for extended periods of time as a punishment. The father stated that due to the mother's treatment of [REDACTED] there was a clear split in the house of the youngest children on one side and [REDACTED] on the other.

On March 30, 2020, three days after the court's order temporarily granting the father sole legal and physical custody of the children was issued, the mother participated in a Zoom visit with the children, which was recorded ("March Zoom Visit") (Exs.



7 (a)-[e]). During the visit, [REDACTED] [REDACTED] [REDACTED] discuss going to the police and telling them they do not want to stay with their father. When the father enters the room, the mother directs the children to switch from speaking in English to speaking in French and shakes her head yes when [REDACTED] holds up a sign asking "Can [REDACTED] and I go to the police tonight or tomorrow morning" (Exs. 7 [a]-[e] & 94). The next morning, [REDACTED] unbeknownst to her father, ran away from home to the Larchmont Police Station. She was seen by Det. Pompilio, who testified that [REDACTED] was visibly upset, shaking and distraught. [REDACTED] told her she ran away because she was upset from the night before when her father had been yelling at them and at someone on the phone. [REDACTED] also told Det. Pompilio that her father does not allow her to call her mother but that she "sneaks calling her mother all the time." Det. Pompilio felt [REDACTED] account was real and notified CPS. [REDACTED] was returned home to her father within one to two hours. The father testified he had not yelled at [REDACTED] the night before and did not yell at her when she returned home. Nor did he punish her. He sent her to her room so he could review the matter and then discussed it with her. CPS investigated and the complaint was determined to be unfounded (Ex. 121).

On June 1, 2020, [REDACTED] sent an e-mail to her mother stating she wanted to disappear or kill herself (Ex. T). The father testified he first learned of this email from his attorney, who had received a copy of a letter the mother's attorney sent to the

Court on June 4, 2020. The father immediately scheduled a Zoom visit between [REDACTED] and her therapist, who did not believe [REDACTED] was suicidal (Ex. 124). He further noted he was with [REDACTED] essentially 24 hours per day before the e-mail was sent and did not believe she was suicidal.

Due to Covid-19, the father indicated he has been working from home since he was awarded temporary sole custody of the children. He has also hired a full-time nanny and secured a permanent office in his firm's White Plains location. Moreover, he stated the children now have a more loving and inclusive relationship, often play together and have "sleepovers" with each other two to three times per week.

The mother denied she treated [REDACTED] differently because she was adopted. She testified [REDACTED] birth parents lived in Tampa, Florida, where her brother resides and works as a radiologist. Thus, he facilitated everything, and when [REDACTED] was born the parties lived with him for two months. [REDACTED] had a few gastrointestinal issues at birth and the parties took turns staying with [REDACTED] at the hospital; they both stayed overnight with her. When the parties took [REDACTED] home from the hospital, the father returned to work the next day while the mother and her mother cared for [REDACTED]. The mother was not working as she delayed taking a new position for several weeks to stay with [REDACTED]. She was home with [REDACTED] for one month after they returned to New York. When she returned to work, [REDACTED] was

cared for by the parties' nanny.

According to the mother, when [REDACTED] was at [REDACTED] [REDACTED] [REDACTED] began to lie. By the time she entered Chatsworth School in 2015, they began to get regular communications from school about Ally lying and stealing, eating the other children's snacks in from of them and plagiarizing her homework assignments. When [REDACTED] was in the first grade, the mother sought to have her evaluated by an occupational therapist who was coming to the house to see [REDACTED]. The therapist thought [REDACTED] might have a sensory processing issue as she would scream in pain every time her hair was brushed. Because her scalp was incredibly sensitive, the mother cut [REDACTED] hair; she denied cutting it as a punishment. She sought medical help for [REDACTED] whose testing suggested she had attention deficit hyperactivity disorder (ADHD). Ultimately, [REDACTED] began to see Dr. Kusher, who the mother located and researched. The father neither attended these appointments nor spoke to Dr. Kusher.

The mother also testified that [REDACTED] had an eating disorder per Dr. Kusher. She would come home from school very hungry, so the mother got in the habit of offering [REDACTED] her meal in advance. Occasionally, [REDACTED] ate or snacked in her room. The mother tried to locate an eating disorder group for her, but she was too young. [REDACTED] made multiple reports to the school about the mother, which triggered CPS investigations that were determined to be unfounded. The mother successfully enrolled [REDACTED] in a program called Dramatic

Pragmatics to work on her on social skills. The mother spoke with the therapist every week and did the homework provided with [REDACTED]. [REDACTED] enjoyed the program. However, she stopped attending because her father said it was too expensive. He said he would find an alternative program but did not find a new therapist for one year.

The mother denied forcing [REDACTED] to sleep in the basement many times. She stated [REDACTED] was sent to the basement two times at her request. The first time [REDACTED] had just ordered \$2,000 in merchandise on Amazon, a lot of which was secreted in her room, and the mother sent her to the basement while she inventoried the merchandise. The second time [REDACTED] had been writing all over her desk, drawers, and on walls, so the mother thought it was an appropriate punishment take time out in the basement. She denied [REDACTED] was excluded from sleeping in the master bedroom with her and her sisters. She said [REDACTED] slept in the room with them all the time. Typically, [REDACTED] preferred to sleep on the mattress on the floor in the room. The mother also testified that all the girls had chores and took turns making her bed. She denied taking [REDACTED] bed and giving it to [REDACTED] to punish [REDACTED]. Rather, she stated that the bed did not fit in [REDACTED] room at their Larchmont house. [REDACTED] was given a twin bed that only fit near a window (Ex. JJJJ). She was concerned about the girls jumping on the bed due to the window. She and her husband gave [REDACTED] the choice of putting the mattress on the floor to jump on it or keeping her bed and not jumping on

it. [REDACTED] opted to jump on the mattress on the floor.

The mother denied making [REDACTED] wear a diaper to school as a punishment. She testified [REDACTED] was having numerous episodes of diarrhea and was coming home every day with soiled underwear. She talked to Dr. Kusher, who said that it was okay for [REDACTED] to wear a pullup, which she wore to school once. She denied making [REDACTED] clean up after the dogs in the yard at night while not wearing a jacket during the winter and denied removing everything in [REDACTED] room as a punishment. It was a strategy recommended by her teacher to help keep her room organized.

The mother has had two bouts of breast cancer. She was first diagnosed in February or March 2008. She was diagnosed with a different type of cancer in the same breast in July 2017. She underwent a double mastectomy on July 6, 2017, and eight rounds of chemotherapy commencing in August, which was very debilitating. Some days she could not even get out of bed. In February 2018, she underwent an ovariectomy and reconstructive surgery. She immediately went into menopause and was prescribed multiple medications. She stated her husband was stressed for himself during this period.

Prior to the divorce, the mother stated the children had a complicated relationship with their father. They wanted to try to love him and find ways to connect. However, he often lost his temper and was very impatient. She stated he would scare them and

put them off, and they would give up trying to relate to him. As time went on, his anger worsened, and they became fearful of him. She testified they would run away and go upstairs because they were afraid he was going to yell at them.

The mother also testified that her husband was verbally, emotionally and, on occasion, physically abusive toward her. She denied punching her husband before he pushed her, causing her to fall and strike her head on the ottoman. She sought treatment at Memorial Sloan Kettering following that incident on December 6, 2017 (Ex. J). On February 28, 2016, she testified her husband picked her up and slammed her to the ground. She sought treatment at Montefiore Hospital in New Rochelle (Ex. K). Regarding the incident in May 2019, she denied throwing a weed at her husband before he threw the weed/clump of dirt at her, striking the left side of her temple and eye. This occurred in front of [REDACTED]. She also testified that a few days later she learned from [REDACTED] school that [REDACTED] reported her father kicked her while he was wearing a surgical boot. The mother did not see the alleged kick and did not initially believe it occurred given [REDACTED] history of lying. She changed her mind when a bruise appeared on [REDACTED] leg several days later and [REDACTED] said she saw the father kick [REDACTED]

The mother denied she was coaching her children to go the police and report their father during the March Zoom visit. She was concerned as she was not present in the house, and the children

were saying they wanted to leave. She was providing them with different avenues to obtain help. Her initial reaction was to have them call someone neutral like her friend. When [REDACTED] indicated her father was coming, she was concerned he was listening in on her conversation as he was constantly interfering with her calls. She told the children to speak in French because she was concerned that he would punish them for something they said. She shook her head yes when asked by [REDACTED] if they could go to the police because she had a limited understanding of what was occurring, and she was aware that [REDACTED] understood in what circumstances she should go to the police. After the visit ended, she immediately sent an email to Ms. Most advising her the children were interested in going to the police and asking her to intervene (Ex. V), but she did not receive a response from her until the next morning. She did not believe her conduct during this visit was inappropriate.

The mother admitted receiving the email from [REDACTED] on Monday, June 1, 2020, at 9:41 p.m. which stated "I can't live with daddy one minute it is all good than the next he is yelling then one second later he screams it scares me and I cry it makes me want to disappear or kill myself" (Ex. T) and admits she did not immediately forward the email to or notify the father, the AFC or [REDACTED] therapist of the same. She emailed her attorney. She felt the more involved she became the less [REDACTED] would be heard. She also knew [REDACTED] had a session scheduled with her therapist

the next day and encouraged [REDACTED] to talk to Dr. Adler about it during their session. She raised the email with the supervisor on June 4 because she was not sure if [REDACTED] had discussed it with Dr. Adler. She did not contact her husband about the email because she was worried that he would retaliate against [REDACTED] or he would discuss the email with [REDACTED] and the mother would lose her trust. She testified this was not the first time [REDACTED] had raised these feelings with her. Thus, she was not so concerned because [REDACTED] did not say she was going to do something. She contacted her mother and asked her to check on [REDACTED]. The grandmother called the house numerous times on June 2 and June 3, but the phone just rang. On June 2, [REDACTED] seemed down but did not seem overly anxious to the mother. She stated that even if she did call Dr. Adler she was limited to discussing scheduling with her. She did not believe her response to [REDACTED] email was inappropriate.

*The Plaintiff's Counselors*

Since this action was filed, the mother has been in therapy with Dr. Filova, who she sees once every one or two weeks. Dr. Filova testified she disagreed with Dr. Abrams' opinion that the mother had a personality disorder. Although Dr. Filova agreed that the mother does have some personality traits, she opined that these traits are not severe enough to constitute a disorder. She stated the mother did not exhibit signs of being a danger to either herself or her children, did not have a mental illness, and did



not need psychotherapy. She admitted being unaware that the mother's time with her children was being supervised. The mother did tell Dr. Filova that she believed that the AFC, Judge Everett (who was previously assigned to this action), and Dr. Abrams were all biased against her. The mother also told Dr. Filova that she feared for her children's emotional needs, but she did not fear for their physical safety when with their father. Dr. Filova did not evaluate the mother's parenting skills.

Dr. Weiss is working with the mother on her parenting skills, and she testified regarding their work together. In her opinion, the mother has been receptive during their sessions and does not pose any risk to the children.

*The Neutral Forensic*

Dr. Abrams testified that both parents had demonstrated poor modeling behavior and an inability to de-escalate conflicts in their high-conflict home. Neither party supported the other. He perceived the mother as being the more dominant partner while the father tended to become angry, yell, and leave. Both yelled at each other and said inappropriate things in front of the children. Both claimed to be victims of domestic violence by the other during the marriage, including verbal, emotional and, on occasion, physical abuse. Both continued to exhibit high levels of acrimony, tension, and anger, all of which was harming the children and raised concerns of some form of continued domestic violence. Thus,

Dr. Abrams concluded the existing nesting arrangement was not in the best interests of anyone involved. He believed swift, major changes were needed to ensure the best psychological interests of the children. The parties needed real separation so the children would have a more emotionally calm and stable environment.

According to Dr. Abrams, the father is intellectually brilliant but psychologically unsophisticated. His personality was comprised of obsessive-compulsive, histrionic, turbulent, and negativistic personality traits. He did not seek to initiate conflicts and would emotionally lash out in anger and frustration when he was not able to escape or de-escalate conflicts in his personal life. He was angered and embittered by his home life.

Dr. Abrams was not concerned about the father's personality traits impacting his parenting the children if he was no longer in a toxic household because he looked to avoid conflicts. Also, he stated the father could have therapy to address impulsivity. The father was more likely to be successful in therapy.

Dr. Abrams stated that the narrative presented by the mother is that the father has anger management issues, needs medication, yells, and the children are afraid of him. However, when he met with the father and the children, Dr. Abrams noted the children were physically affectionate with their father and talked to him in a loving manner. He observed a loving and attentive father who interacted with his children in a consistent and loving manner

using age appropriate language and warm tone. All the children appeared to have a loving relationship with him. Despite the complaints about the father being angry, mean, and yelling all the time, Dr. Abrams did not observe any fear, anxiety or dislike of their father when he was interacting with the children away from their mother. If the children were genuinely afraid of their father, Dr. Abrams would expect them to exhibit avoidance behavior with their father, such as overreaction to stimulus, flinching and fear. No frightful reactions were observed when the children were seen with their father.

Dr. Abrams stated the father displayed two major shortcomings that impacted the emotional/psychological needs of his children. First, the father was a passive partner who allowed his wife to exclude him from significant parts of his two youngest daughter's lives. Second, the father would become frustrated and lose his temper too often, resulting in yelling at his wife and children.

Dr. Abrams testified that the mother is very intelligent and psychologically sophisticated. She exhibited signs that were indicative of a developing adjustment disorder with anxiety and depressive affect. He stated she highlighted perceived problems with her husband while minimizing or denying her own problems and sought to unduly influence anyone she could to either support her position or to keep them from wanting to accurately describe their experiences to him. He found her personality was comprised of a

core of histrionic, turbulent and obsessive-compulsive personality traits. Narcissistic and sadistic personality traits were also noted. Based upon her clinical history and clinical presentation, Dr. Abrams made a diagnosis of an unspecified personality disorder with predominantly histrionic and narcissistic traits.

When he met with the mother and her children, she was warm in her tone and supportive of the girls throughout the session and was adept at balancing her attention on all the children. He noted that she and the children clearly loved playing together and that she clearly loved her children. In his opinion, she had emotionally secure and loving relationships with her two youngest children and a less secure and loving relationship with [REDACTED]. His evaluation revealed evidence of a genuine bonding problem between the mother and [REDACTED] who is adopted, and treatment of her that differed from the mother's treatment of the two youngest, biological, children, which negatively impacted all the children and their development of healthy sibling relationships.

Dr. Abrams also saw evidence of the mother involving the children in the divorce, gaslighting, and possibly even coaching the children to exclude their father and alienate them from him, including manipulating them to stay together in expressing unrealistically negative comments to others about their father, which acts bordered on emotional neglect. He noted that the mother's treatment of [REDACTED] bordered on neglectful and abusive

behaviors and that she successfully got ██████ to align with her and her sisters against their father. He was concerned the mother would continue to do what she wanted to do, regardless of the emotional costs to her own children, which he indicated she was incapable of recognizing at the time of his evaluation.

In Dr. Abrams' opinion, the father would do a superior job of fostering the relationship between the children and the non-custodial parent. Dr. Abrams did not receive any evidence showing the mother putting aside her own emotional anger and upset toward the father to foster his relationship with their children. As a result, his report recommended that the father be provided sole legal and physical custody of the children with alternate weekends and mid-week visits with the mother. Dr. Abrams noted that the mother truly loves the children and that they would benefit from positive interactions with her. He balanced these positives against the mother's damage to the children's relationship with their father. Dr. Abrams also noted his concern that the mother would do what she wanted to do regardless of rules or conditions that may be established for her and his conclusion that supervision would not work with her given her inability to accept responsibility for her own actions and the potential it would spur non-compliance by her. Dr. Abrams also recommended daily Zoom visits between the mother and the children and that these visits be recorded to ensure the mother was not trying to undermine the

father's role as the primary guardian.

Prior to and during the hearing, Dr. Abrams was provided with information regarding events that transpired subsequent to the issuance of his report, including the recording of the March Zoom Visit (Exs. 7 [a]-[e] & 94). He was shown another video and asked to assume that at the time it was recorded there was a CPS investigation ongoing into the father and the caseworker's name was Tyesha Hillary. In the video, the mother is advising the children that they will be contacted by Ms. Hillary to discuss why [REDACTED] went to the police and she instructs them to be "very honest" with her about what is going on and to be truthful (Ex. 8 [f]). In Dr. Abrams' opinion, the mother's line of questioning was not appropriate. Moreover, he noted the mother spoke poorly of the father in front of the children, made a vague threat against him, and began crying, which resulted in the children consoling her (Ex. 8 [b]-[c]). Dr. Abrams stated this behavior was not emotionally healthy for the children and inappropriate parenting.

He was also shown recent Facebook posts made by the mother to a group of 334 friends, which included mothers and fathers whose children attend [REDACTED] school. She posted a photograph of her vehicle and wrote "This is what living out of your car for a YEAR \*\*\* while your entitled ex, who is a partner at a major law firm and enjoys the comforts of your home with your children - looks like" (Ex. 107). Other posts stated she had been encouraged to

"continue this fight publicly," complained she had not received a dime in legal fees in her divorce case, thanked [REDACTED] parents for finding places for her to stay until she could move into her rental house, and stated she is "anticipating strong resistance from my ex, who would have me continue to live out of the car, so many of the moms (and dads) are prepared to make a 'human chain' across the driveway and hold up signs of support. I think it is safe to say that there are not 'fine people on both sides' in this one" (Ex. 104 A & B). Dr. Abrams opined the posts would negatively impact [REDACTED] because if a parent's reputation is demeaned, diminished or destroyed in a community where the parent and child reside it typically impacts other families allowing their children to interact with the children themselves.

Based upon the recent events and the reports from the therapeutic supervisors (Exs. 95 & 106), Dr. Abrams was now of the opinion that the mother should have therapeutic supervision with the children in a more confined context for a shorter period of time to build success and should enter into dialectical behavior therapy. He would also curtail all communication outside the therapeutic supervised visits. He would expand access once there was a track record of non-problematic behavior. It was his continued opinion that the father should have sole legal and physical custody of the children.

### DISCUSSION/ANALYSIS

"To modify an exiting custody order, the parent seeking modification must establish a substantial change in circumstances since the initial custody determination such that the modification is necessary to protect the best interests of the child" (Moore v Gonzalez, 134 AD3d 718, 719 [2d Dept 2015] [internal citations omitted]; see also Matter of Mackauer v Meyers, \_\_\_ AD3d \_\_\_, 124 NYS3d 847 [2d Dept 2020]). In making such a determination,

"the court should consider the totality of the circumstances, including whether the alleged change in circumstances suggests that one of the parties is unfit to parent, the nature and quality of the relationships between the child and each of the parties, the ability of each parent to provide for the child's emotional and intellectual development, the parental guidance that the custodial parent provides for the child and the effect an award of custody to one parent might have on the child's relationship with the other parent"

(Moore v Gonzalez, 134 AD3d at 719).

"When determining issues of custody and parental access, the most important factor to be considered is the best interests of the child" (Matter of Henry v Fiala, 184 AD3d 562 [2d Dept 2020] [internal citations omitted]). Also, "[t]he stability and companionship to be gained from keeping the children together is an important factor for a court to consider" in deciding custody (Bowe v Robinson, 23 AD3d 555, 556 [2d Dept 2005]). "Close familial relationships are much to be encouraged. Young brothers and sisters need each other's strengths and association in their everyday and



often common experiences . . .” (Eschbach v Eschbach, 56 NY2d 167, 173 [1982]).

A substantial change in circumstances warranting modification of a joint custody arrangement in the best interests of the children has been found where the parties’ relationship has so deteriorated since the initial order that they no longer engaged in joint decision-making rendering joint custody unfeasible (see Matter of O’Connell v McDermott, 80 AD3d 701, 701-702 [2d Dept 2011]; see also Matter of Velez v Chandiramani, 183 AD3d 752 [2d Dept 2020]); where one parent’s behavior resulted in fear and anxiety in the children (see Matter of Solomon v Fishman, 180 AD3d 1051, 1052 [2d Dept 2020]); where the children’s relationship with one parent has deteriorated since the initial order, the parent threatened to strike the children with a belt, and the parent continued to denigrate the other parent in the presence of the children (see Matter of Georgiou-Ely v Ely, 181 AD3d 885, 886 [2d Dept 2020]; Matter of Reyes v Fisher, 180 AD3d 1050, 1051 [2d Dept 2020]); and where one parent interferes with the other parent’s relationship with the child (see Matter of Edwards v Edwards, 161 AD3d 979, 980 [2d Dept 2018]).

Here, the father established there has been a substantial change in circumstances since the parties entered into the June 10, 2019 custody stipulation. A significant amount of testimony was elicited during the hearing regarding the history of the

parties' marriage and interactions with the children pre-divorce that established a toxic, and sometimes violent, environment existed in the home that was created and continued by both parents. Unfortunately, the toxicity between the parties continued after the custody stipulation was entered with continued damage to the children's emotional and psychological health. The parents were unable to make joint decisions regarding the children's medical care or education (Exs. EEEEE, XXXXXX, ZZZZZZ). Both violated the custody stipulation provisions designed to protect the children during the pendency of this proceeding to gather evidence for use in court. For example, in January 2020, the father recorded the mother's interaction with him in front of the children contrary to court order, lied when asked if he was recording, and then entered the audio recording into evidence during this hearing (NYSCEF Doc. No. 46, p.5; Ex. 103). On February 16, 2020, the mother had her cousin, who was acting as her supervisor, record her conversation with her children during which the mother encouraged the children to tell her "what bothered them" about their father and asked leading questions such as "were you scared," "was it loud," "what else," and then entered the audio recording into evidence at this hearing (Ex. HHHHHHHH). The further deterioration of the parties' relationship, their continued palpable dislike of each other and inability to work collaboratively in parenting their children necessitates a

modification of the current 50/50 nesting arrangement.

Thus, the Court must determine what temporary custody arrangement will be in the best interests of the children under the totality of the circumstances, pending a final custody trial.

Dr. Abrams' report and testimony detailed his interviews with the children and the parties, fact investigation, clinical presentation of the parties and children and results of psychological tests administered to the parties. The Court found him to be a credible and unbiased witness whose opinions were based upon a thorough evaluation of the information provided to him by the parties and the collateral witnesses contacted.

In contrast, the court found the testimony of Dr. Cling, who was retained by the mother to conduct a peer review of Dr. Abrams' report, to be unpersuasive, lacking in an adequate foundation and biased. Moreover, "the role of an expert conducting a peer review is to determine whether the methodology used in a forensic evaluation comports with professional standards such as those set forth in the 'Model Standard of Practice for Child Custody Evaluation' as approved by the Association of Family and Conciliation Courts [AFCC]" (M.M v L.M., 42 Misc3d 1235 [A], \*10 (Sup Ct, NY County 2014), *affd*, 125 AD3d 407 [1st Dept 2005], *lv denied*, 25 NY3d 904 [2015]). Dr. Cling's testimony and report demonstrate that she did not attempt to conduct such a review. She primarily attacked Dr. Abram's conclusions, not the methodology he

followed, and criticized the alleged limited attention he gave to the mother's claims of domestic violence in his report. However, during his testimony Dr. Abrams elaborated on his analysis of the domestic violence claims made by both parties.

Dr. Cling's review is similarly flawed as an additional forensic evaluation as she only spoke to the mother and did not review all the materials provided to her that had been reviewed by Dr. Abrams. Her failure to interview the father and the children is a sufficient basis to reject her report and testimony (*id.* at 1235 [A], \*10; see also Matter of Custody of Rebecca B., 204 AD2d 57, 58 [1st Dept 1994]). Therefore, the Court concludes Dr. Cling's testimony is without probative value as either a peer review or an additional forensic evaluation.

While the court found Dr. Pogge to be a credible witness and knowledgeable about the administration and interpretation of the psychological tests administered to the parties by Dr. Abrams, he conceded Dr. Abrams was called to testify and could supply some of the information Dr. Pogge maintained was missing from his report. He also conceded that Dr. Abrams' conclusions could be correct and that he might agree with them had he had been able to see all the information relied upon by Dr. Abrams, or if Dr. Abrams had listed the basis for his conclusions in his report. He further conceded that Dr. Abrams had used the "four sources of data that can be drawn upon when developing a psychological formulation," which

include direct observations of the person, historical information, records and other collateral information and psychometric data (Ex. AAAAAA). Thus, Dr. Pogge did not definitively refute Dr. Abrams' methodology.

The role of the court-appointed forensic expert in custody matters is to offer guidance and inform with the ultimate determination on custody being a judicial function, not one for the expert (see Matter of John A. v Bridget M., 16 AD3d 324, 332 [1st Dept 2005] [Sullivan, J., concurring]). The Court has considered Dr. Abrams' opinions along with the totality of the evidence and circumstances presented during the hearing, including the wishes of the children, who want to live with their mother, to determine the best interests of the children regarding temporary custody and access.

"One of the primary responsibilities of a custodial parent is to assure meaningful contact between the children and the noncustodial parent, and the willingness of a parent to assure such meaningful contact between the children and the other parent is a factor to be considered in making a custody determination" (Matter of Wright v Perry, 169 AD3d 910, 911-912 [2d Dept 2019], quoting Matter of Vasquez v Ortiz, 77 AD3d 962, 962 [2d Dept 2010]; see also Matter of Hildebrandt v St. Elmo Lee, 110 AD3d 491, 492 [1st Dept 2013]). There is evidence of both parties lacking good judgment in parenting their children and in demeaning the other

parent. However, although the father needs to improve his efforts to actively foster the relationship between the children and their mother, he has not engaged in an intentional course of conduct to interfere with the children's relationship with their mother while there is ample evidence of the mother's deliberate and unrelenting campaign to disrupt the children's relationship with their father.

Since the issuance of the prior custody order, the mother has continued to demean the father in the presence of the children (Exs. 8 [b], [c], [e] & 15 [a]); made statements in front of the children that he does not care about the children and/or is inept or unable to assist them with schoolwork (Exs. 8 [e] & 11 [c]); discussed enrolling the children in camps with them without first discussing it with the father so she "can have the recording" (Ex. 9 [a]); referred to the father by his first name instead of "dad" or "father" when speaking to the children (Ex. 15 [a]); threatened to call the police in front of the children when the father appeared at the marital residence during her access time to deliver money to [REDACTED] after she told [REDACTED] she could not participate in a school activity because she did not have any money (Ex. 103); encouraged the children to communicate with her on the Zoom chat function which was not visible to the supervisor (Exs. 9 [c], 10 [b]-[c], 14 [b], 106); implied the father is acting inappropriately in terminating the Zoom visits after they exceeded the court ordered time limit, instructed the children to keep talking despite

his request that they end the visit and stated that she “doesn’t care what he says” (Exs. 10 [d]-[h], 11 [b]-[c], 12, 14 [c], [e]); discussed the court proceeding with the children and encouraged them, while speaking on Zoom, to discuss their complaints regarding their father so that the judge would ultimately hear them (Exs. 15 [a], 106, 118); and told the children to ask their father why they have not seen their mother (Ex. 15 [a]-[b]).

Another factor to be considered by the court is each parent’s ability to provide for the children’s emotional and intellectual development (Mohen v Mohen, 53 AD3d 471, 473 [2d Dept 2008]). Both parents are capable of providing for the children’s intellectual development, but given the mother’s actions over the past year and given her failure to recognize and understand that her actions have been and are deleterious to her children’s psychological health and emotional well-being, the father’s ability to provide for the children’s emotional well-being and development is superior to that of the mother’s at this time. Specifically, the Court finds the mother’s orchestration of [REDACTED] running away to the police department on March 31, 2020 to state she is afraid of her father and does not want to live with him was extremely harmful to the children, their father and the children’s relationship with him. The mother’s manipulation of the children is apparent in the recorded Zoom Visit the preceding night during which she is

informed by [REDACTED] [REDACTED] of their "plan" to go to the police department, asked by them if they can go, and her affirmative response that they can do so.<sup>1</sup> In the recording, however, none of the children show any signs of fear precipitated by their father. Nor do they react when he enters the room other than to caution their mother to be quiet as he had entered the room; at which point she directs them to speak in French. While they are discussing going to the police to report their father, the children are laughing and giggling as if it is a joke. During the hearing, the mother testified she was trying to help her children and give them options because she is not there; she is telling them it is their decision whether to go to the police.

The Court finds the mother's explanation and her denial that she manipulated the children incredible. If genuinely concerned for her children, then the mother exhibited very poor judgment in not taking any action that would realistically permit timely intervention. Although she emailed the AFC, it was at 7:36 p.m., after working hours (Ex. V). She did not immediately call the AFC or her attorney to advise of the urgency of the situation. Moreover, during the April 3, 2020, Zoom visit, the mother asked

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<sup>1</sup>Although the Zoom visits were to be recorded, the Zoom visits prior to the March 30, 2020 visit were not recorded. The testimony at the hearing revealed that the mother was emailing with the children and using the Zoom Chat function, which thwarted the intent of the court's March 27, 2020, order to have all interactions between the mother and the children supervised to avoid actions seeking to undermine the father as the custodial parent.



█████ the location of the note she wrote during the March Zoom Visit. █████ asked why she was asking about the note, and the mother responded because "it's a very important note." She was annoyed when █████ told her the father had the note (Ex. 8 [a]). It is clear the mother's goal was to have the children run to the police, complain of the father and trigger a CPS investigation which might result in evidence to use in court and an order changing custody in her favor. In fact, a CPS investigation was triggered, and █████ complaint was determined to be unfounded.

A more egregious example of the mother's poor parenting judgment and inability to provide for the children's emotional well-being is seen in her actions following receipt of the e-mail from █████ on June 1, 2020, at 9:41 p.m., stating she wanted to disappear or kill herself (Ex. T). The mother admitted she did not immediately notify the father or █████ therapist when she received the email. The first step she took was to contact her attorney. She also contacted her mother and asked her to call █████ The grandmother attempted to call █████ on June 2 and June 3 without success. The mother also recommended █████ contact the school counselor. She said she did not contact █████ therapist as she knew she had an appointment the following day and had suggested to █████ that she discuss it with her. She also said she did not contact the therapist because her contact was limited to scheduling issues. She testified she did not notify her

husband because she was concerned that he would either retaliate against [REDACTED] or discuss it with her, which would cause [REDACTED] to lose trust in her mother. As this was not the first time [REDACTED] raised feeling this way with her, the mother testified she was not so concerned as [REDACTED] did not actually say she was going to do something.

On June 2 and June 3, the mother had supervised Zoom visits with the children and did not advise the supervisor of the e-mail. On June 4, the supervisor reported the mother told her she had to speak to [REDACTED] because she sent her an e-mail that was "very concerning." She told the supervisor that [REDACTED] e-mailed that she did not want to live with her father and wanted to kill herself. She was going to ask [REDACTED] if she was telling the truth about the [e-mail and if she was serious about it" (Ex. 106 at 18). [REDACTED] responded she was serious, and the mother told her to call her grandmother and contact her school counselor (id.) [REDACTED] later e-mailed her school counselor.

The first notice to the father of [REDACTED] e-mail was via his counsel who had received a copy of a letter the mother's counsel sent to the Court on June 4, 2020. Contrary to her testimony regarding the lack of immediate concern/urgency regarding the e-mail, the letter to the Court requested an emergency conference due to the mother's receipt of "alarming" e-mails and her daughter being in the "midst of a life-threatening

situation" (Ex. 108). Upon learning of the e-mail, the father immediately scheduled a Zoom session between [REDACTED] and her therapist, who did not believe [REDACTED] was suicidal (Ex. 124). The mother admitted she has access to [REDACTED] e-mail and deleted the June 1 email. A CPS investigation has apparently been instituted as a result of this e-mail.

The most immediate action that would be taken by a concerned parent would be to contact the custodial parent with whom the child is residing to apprise him of the e-mail and permit the parent to personally speak with, observe and help the child. A concerned parent would not keep the custodial parent in the dark about an urgent situation involving their child and delete the e-mail so the custodial parent could not otherwise learn of the urgent situation and would not fail to take any other action to arrange an immediate welfare check on the child. Based upon the mother's reaction to the e-mail and testimony that the situation was not urgent on June 1 when Charley's e-mail was received because she did not actually state she was going to do something, which suddenly became urgent three days later on June 4 after the mother and her counsel had agreed upon the strategy to send a letter to the Court about the now "life threatening situation," the Court can conclude only that the mother either manipulated the child to send the email knowing [REDACTED] was not really despondent or suicidal and/or generated it herself. In either event, the e-mail

was clearly used by the mother in an effort to gain an advantage in this proceeding, and the direction by the mother to [REDACTED] to send it to her school counselor, rather than to her treating therapist, was an effort to trigger, as it did, another CPS investigation of the father. When he learned of the e-mail, the father took appropriate action and immediately scheduled a session between [REDACTED] and her therapist.

The mother also testified the father has anger management issues, needs medication and yells and screams which frightens the children, who are afraid of him. The evidence does contain audio and video recordings of the father becoming angry and frustrated, yelling and screaming at his wife and children and then leaving the home. This is poor behavior. Of significance, however, the children do not cower or run away when their father does so. The children are observed ignoring him, not responding to his requests, yelling back at him, or even following him throughout the house as he makes his way to an exit. Reactions from the children are seen when the father states he is going to take away a possession or cancel an activity if the child does not cooperate. Similarly, when Dr. Abrams observed the children with their father, he noted they were not frightened and did not exhibit behavior one would expect from a frightened child with an alleged abuser: avoidance, flinch reaction, overreaction to stimulus and fear.

The Court finds credible evidence of domestic violence in the

household during the marriage. The audio and video recordings showed emotional and verbal abuse being inflicted by both the wife and the husband on the other. Photographs were introduced of abrasions and scratches to the husband's neck and face he testified were inflicted by the wife. Medical records were also introduced of the wife's visits to the emergency room following being pushed or thrown to the ground by the husband, who stated he acted in self-defense.

The husband admitted the incident in May 2019 wherein he threw a weed/dirt clump at the wife. He says the wife first threw a weed at him. The Court finds the wife's version of the May 2019 incident more credible than the husband's version. This evidence demonstrates the high level of acrimony in this household that was created by both parties. The Court's observation of the parties during the hearing confirmed Dr. Abrams' assessment that both parties continued to exhibit high levels of acrimony, tension and anger, which was harming the children, and which raised concerns of some form of continued domestic violence unless the parties fully separated. Despite both parents engaging in therapy, neither displayed any real insight into their behaviors or ability to move beyond their anger and antagonism toward the other.

Evidence was also presented demonstrating that the mother treated [REDACTED] differently than the two younger children and that this disparate treatment negatively impacted both the bond between

the children and the bond between [REDACTED] and her mother. [REDACTED] has special needs with very challenging behaviors. The mother's treatment of [REDACTED] may have been due to the mother's extreme frustration at her daughter's behavior, her inability to stop [REDACTED] lying and stealing through positive reinforcement and then increasingly severe punishments, [REDACTED] numerous unfounded complaints to CPS regarding the mother and/or the father's limited assistance in addressing [REDACTED] issues (Exs. 17, 42). Nevertheless, [REDACTED] resultant less-secure bond with her mother has made her more susceptible to her mother's manipulation in this proceeding. The evidence establishes [REDACTED] receives positive feedback and has positive interactions with her mother when she is reporting upon and complaining about her father and furthering the narrative that he needs anger management, yells all the time, is mean and frightens her.

The mother's manipulative conduct demonstrates a deliberate "placement of her self-interest above the interests of others" (Mohen v Mohen, 53 AD3d at 474 [internal citations omitted]). The evidence of false allegations of abuse against the father, i.e., the March Zoom Visit, and the purposeful actions to alienate the children from him is "so inconsistent with the best interests of the child[ren] that it raises, by itself, a strong probability that the offending party is unfit to act as a custodial parent" (id. at 474 [internal citations omitted]; see also Matter of Khan-

Soleil v Rashad, 111 AD3d 728 [2d Dept 2013]; Alvarez v Alvarez, 114 AD3d 889 [2d Dept 2014]). There was no evidence presented that the father manipulated the children into making any false claims against the mother.

Another factor to consider is the relationship between the siblings. It is firmly established that close sibling relationships are to be encouraged in custody proceedings (see Eschbach v Eschbach, 56 NY2d at 173; see also Matter of Lopez v Noreiga, 182 AD3d 551 [2d Dept 2020]). Due to the mother's treatment of ██████ her relationship with her siblings was damaged to the point where ██████ were aligned against ██████ and where ██████ would tell ██████ she is not part of the family. The siblings' relationship has grown stronger since the father was awarded temporary sole custody in March. Now, they often play together and have "sleepovers" with each other two to three times per week. Moreover, when Dr. Adler visited ██████ ██████ ██████ at their home on July 7, 2020, she described them as being "happy - bouncing around and smiling" (Ex. 124).

The father also has taken steps to make himself more accessible and available to the children during the day. Due to Covid-19, he has been working from home. He has also hired a full-time nanny and secured a permanent office in his firm's White Plains location. The mother does not presently have a permanent residence.

The AFC advised the court the children wish to live with their mother. Given the ages of the children, they are not mature enough to recognize or understand that their mother's actions, such as those detailed above, are harmful to them. As stated in the children's bill of rights, which were incorporated into the custody stipulation, the children have the right not to be asked to "choose sides" between their parents, the right not to be told the details of bitter or nasty legal proceedings going on between their parents, the right not to be told "bad things" about the other parent's personality or character, the right not to be used as a confidant regarding the legal proceedings between their parents, the right to be protected from parental warfare, and the right not to be made to feel guilty for loving both parents (NYSCEF Doc. No. 46). The court finds this one factor is insufficient to award custody to the mother, who continues her harmful behavior to the present, while evidence was not adduced that the father has acted contrary to the children's rights.

Based upon the totality of the circumstances, the Court concludes the award of temporary sole legal and physical custody of the children to their father is in their best interests at this time. Due to the continued antagonism between the parties and the evidence demonstrating the parties' inability to cooperate on matters involving the children, the father shall be the final decision-maker. However, the father must first consult with the



mother regarding all major issues concerning the children, i.e., their health, education, religious upbringing and welfare, before exercising his final decision-making authority (see Lopez v Noreiga, 182 AD3d at 656; Matter of Moore v Gonzalez, 134 AD3d at 721-722). The record demonstrates that due to their animosity the father has failed to consult with the mother on issues regarding the children's religious upbringing (for example, by instituting daily prayers and declining to give the children their Easter baskets), failed to permit her to participate in a doctor's Zoom visit involving ██████ and even refused to provide her with the physician's name; notified her that ██████ had injured her arm while bicycle riding but then refused to respond to the mother's text message's regarding the treatment ██████ was receiving at urgent care (Exs. HH, OOOO, RRRR, TTTT, FFFFFFFF). The father does not satisfy his obligation to consult the mother before he acts by simply informing her that he is going to do something, permitting her to respond, and then without considering her position or further discourse, proceed as he initially stated (Ex. BBBB). The father must consult with the mother in a good faith effort to reach agreement regarding major issues involving the children before he acts.

The mother loves her children and they love her and need to spend time with her. Since March 2020, the mother's actions detailed herein have resulted in increasingly restricted access

with the children. It is essential that the mother's access to the children become consistent and stable so that she and the children can maintain their bond and the children can benefit from her positive parenting skills. This goal must be balanced against the need to foster the children's emotional and psychological health by protecting them from their mother's detrimental behaviors, which include involving the children in this action, manipulating the children to align with her and against their father and in essence choosing her over their father, manipulating the children to make additional unfounded reports about the father to the police, resulting in police and CPS investigations, and saying bad things about their father as a person and as a parent to them or in front of them.

The Court is concerned the mother will continue her harmful behavior if she has unsupervised visits with the children because she testified multiple times that she does not believe her behavior was inappropriate. Given her lack of insight regarding her actions and how they are detrimental to her children, the Court concludes the best interests of the children require that the mother's visits with her children continue to be supervised by a therapeutic supervisor who can intervene if the mother begins to engage in harmful behavior and who can assist her in developing the skills to be with her children without damaging their emotional health (see Lopez v Prudencio, 179 AD3d 690 [2d Dept 2020]; Marsi v Marsi,

171 AD3d 1183 [2d Dept 2019]; Mikell v Bermejo, 139 AD3d 954 [2d Dept 2016]).

The primary basis for the court's issuance of the temporary order of protection in favor of the father and the children and against the mother was due to the mother's Facebook posts disparaging her husband and appearing to encourage her Facebook friends, who were suggesting they would picket the courthouse while this hearing was occurring and would form a human chain across the driveway if the father objected to the mother moving into their rental house. However, the mother successfully dissuaded her friends from taking any such action. Therefore, the temporary order of protection is vacated.

Accordingly, it is hereby,

ORDERED that motion sequences no. 6 and no. 10 are granted to the extent that the Court's orders, dated June 10, 2019 and March 27, 2020, are modified as follows:

- a. The father is awarded temporary sole legal and physical custody of the parties' three children, [REDACTED];
- b. The father is awarded final decision-making authority for all major issues concerning the parties' three children;
- c. Before exercising his decision-making authority, the father shall first consult with the mother regarding all major issues involving their children;
- d. The father is awarded exclusive use and occupancy of the marital residence located at [REDACTED], Larchmont, New York;

- e. The mother shall have only therapeutically supervised visits with the children on Wednesdays from 5:30 p.m. to 7:30 p.m. and Saturdays from 11:00 a.m. to 1:00 p.m. If a supervisor is not available on said days and at said times, then the mother shall have visits with the children two days per week for two-hour durations on days and at times agreed to by the parties and the supervisor;
- f. On days the mother does not have in person visits with the children, she shall have a 15-minute Zoom visit with the children at 12:30 p.m., which shall be supervised by a therapeutic supervisor and which shall not include the use of any chat, e-mail or instant message feature of the Zoom program. If a supervisor is not available at that time, then the mother shall have the Zoom visit at a time agreed to by the parties and the supervisor;
- g. Other than the supervised visits, the mother shall not communicate with or have any other contact with the children, including, but not limited to, via phone, mail, e-mail, text, online chats while playing video games, or other electronic means;
- h. The supervisors shall be appointed on the recommendation of the attorney for the children, Carol Most, Esq., and shall be paid for by the mother;

and is further,

ORDERED that the court's June 10, 2019 order, as amended, continues in effect; and it is further

ORDERED that the parties shall immediately implement use of Family Wizard to post all of the children's activities and to communicate regarding the children's needs in accordance with the Court's June 10, 2019, order and shall notify the Court on or before August 21, 2020 that use of Family Wizard has been

implemented; and it is further

ORDERED that each party shall respond to the other party's Family Wizard communication with 24 hours unless it is an emergency, and shall not again communicate with the other party on the subject of a sent communication before the 24 hours period has elapsed; and it is further

ORDERED that the temporary order of protection entered on July 9, 2020 against the mother is vacated; and it is further

ORDERED that a virtual conference shall be held with the Court on September 18, 2020, at 2:00 p.m. to review the mother's supervised access and whether there should be a modification to the same; and it is further

ORDERED that all other relief requested and not decided herein is denied.

Dated: White Plains, New York  
August 17, 2020

E N T E R,

  
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HON. NANCY QUINN KOBA, J.S.C.

TO:

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