



# The Family Court of the State of Delaware

MICHAEL K. NEWELL  
CHIEF JUDGE

LEONARD L. WILLIAMS JUSTICE CENTER  
500 N. KING STREET, SUITE 9445  
WILMINGTON, DELAWARE 19801-3703

May 8, 2017

C----- E. O-----  
-- M----- Road  
V---- S-----, NY ----

Curtis P. Bounds, Esquire  
Bayard  
222 Delaware Avenue, Suite 900  
Wilmington, DE 19899

D----- J. R-----  
--- C----- Road  
W-----, DE ----

**Re: C----- O----- v. D----- J. R-----**  
**File No.: CN09-04138; Petition No.: 15-18847**

Dear Ms. O-----, Mr. R----, and Mr. Bounds:

On April 10, 2017, the Court conducted a final hearing on a Petition to Modify Visitation filed by C----- E. O----- ("Mother") on June 30, 2015. Present in Court were Mother, representing herself; D----- R---- ("Father"), representing himself; Curtis P. Bounds, Esquire ("Mr. Bounds"), the Court-appointed guardian *ad litem*; and R----- M----- ("Mr. M-----"), Father's support person.<sup>1</sup> Mother seeks to modify this Court's Custody Order dated April 12, 2011, which prohibits her from having any visitation with the parties' two minor children, A---- R---- ("A----"), born ----- -, ----, and I----- R---- ("I-----"), born - ---- -, ----. The Court received testimony from both parties as well as A---- H----- ("Ms. H-----"), a licensed clinical social worker who has served as the children's therapist since May 2013. Based upon the evidence presented, the Court enters the following decision.

## ***Procedural History***

The parties have a long and complex history in regards to the children's care and custody, which the Court will summarize without discussing in full. Father was awarded sole legal custody and primary residency of the children by Order of this Court on April 12, 2011 ("April 2011 Custody Order"). In that Order, Mother was prohibited from having any visitation with the children in light of her history of failure to comply with Court

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<sup>1</sup> Neither Mother nor Mr. Bounds objected to Father's request for Mr. M----- to be present in the courtroom. Although Mother initially requested that her father be permitted in the courtroom as her own support person, she subsequently withdrew that request in light of Father's and Mr. Bounds' objection.

Orders on custody. On July 15, 2011, the Court denied Mother's "Motion for New Hearing" and "Motion for Stay of Order."

Mother had been residing with the children in New York and attempted to initiate litigation therein, refusing to forfeit residency of the children in compliance with the April 2011 Custody Order in the meantime. Father filed a Petition – Rule to Show Cause ("RTSC") on November 21, 2011, which the Court heard on May 29, 2012 after concurrent jurisdictional proceedings had been conducted with New York. The Court deferred its decision on the Petition – RTSC and ordered the parties to engage in therapeutic reunification supervised by Dr. D----- F----- in Bridgewater, New Jersey.

The Court conducted another hearing on Father's Petition – RTSC on January 14, 2013. Mother, who failed to appear for the hearing, had not complied with Court-ordered therapeutic reunification, and Father still had not had any contact with the children at that time. Accordingly, the Court issued an Order finding Mother in Contempt and sanctioned her to incarceration until she returned the children to Father's care and custody. Mother was incarcerated at Baylor Women's Correctional Institute until the children were finally located by the authorities in Suffolk County, New York with W----- and E---- S----- ("Maternal Grandparents"). The children were returned to Father's care on May 17, 2013 and have been primarily residing with him in Delaware since that time.

Mother filed a Petition to Modify Custody on June 30, 2015. On February 23, 2016, Mother also filed a Motion for a Custody Evaluation by and through her counsel at the time. Both Father and Mr. Bounds opposed Mother's request for a custody evaluation, and the Court issued an Order on April 18, 2016 denying Mother's Motion for lack of good cause. At a teleconference on April 20, 2016, Mother's counsel moved to amend Mother's Petition to Modify Custody to a Petition to Modify Visitation, and the Court granted that request in an Order dated April 28, 2016. Mother's attorney was subsequently permitted to withdraw from representation of Mother in this matter.

The Court conducted an Interim Visitation Hearing on August 23, 2016. By way of an Interim Order dated September 13, 2016 ("Interim Visitation Order"), the Court denied Mother's request for interim contact with the children but indicated that it would review her mental health treatment progress at a hearing in six months and enter a final decision on appropriate visitation with the children at that time. The Court held a status teleconference on January 23, 2017 and scheduled this Final Visitation Hearing for April 10, 2017.

### ***Factual Background***

Mother is thirty-two years old and continues to reside at -- M----- Road in V----- S-----, New York with her aunt and uncle, Dominic and A----- M----- (“Mr. M-----,” “Mrs. M-----,” collectively, “the M-----”).<sup>2</sup> Mother rents her own apartment within the home, where she has a private entrance and three bedrooms to herself. However, Mother is considering moving into her grandmother’s home in L-----, New York, which her grandmother reportedly owns in full and offered to give to Mother once she relocates to Florida later this year.

Although Mother is not currently employed, she told the Court that she has been hired as a legal assistant at a law firm owned by J---- Y-----, Esquire, a personal injury attorney. She explained that the firm is in the process of relocating to 1 C---- I----- Plaza in R-----, New York, but that she expects to begin her employment within two weeks of this hearing. Mother did not have a telephone number for the law office to provide to the Court.

Father is forty-one years old and resides at --- C----- Road in W-----, Delaware with A---- and I-----. Father is also not employed at this time but receives disability income as a result of back surgery two years ago, which partially paralyzed his leg.

Although Father has served as the children’s sole legal custodian since the April 2011 Custody Order was issued, the children were not returned to his physical care until May 17, 2013. The children have been primarily residing with Father since that date, and Mother has not had any subsequent contact with them in light of this Court’s Order prohibiting contact.

### ***Legal Standard***

Under 13 Del. C. § 729(a), “[a]n order concerning visitation may be modified at any time if the best interests of the child would be served thereby in accordance with the standards set forth in 13 Del. C. § 728(a).”<sup>3</sup> The Court analyzes the factors set forth in 13 Del. C. § 722(a) when rendering decisions on a child’s best interest.<sup>4</sup>

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<sup>2</sup> The M----- are not blood relatives of Mother but are her close family friends. Mother indicated that both Mr. and Mrs. M----- are in their late fifties or early sixties. Mr. M----- works for the Sanitation Department in V----- S-----, while Mrs. M----- earns income by babysitting for her friends’ children.

<sup>3</sup> 13 Del. C. § 729(a).

<sup>4</sup> Under § 722(a), “[t]he Court shall determine the legal custody and residential arrangements for a child in accordance with the best interests of the child. In determining the best interests of the child, the Court shall consider all relevant factors including:

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

Further, pursuant to 13 Del. C. § 728(a), the Court shall determine a schedule of visitation with the non-residential parent, consistent with the child's best interests and maturity, which is designed to permit and encourage the child to have frequent and meaningful contact with both parents unless the Court finds, after a hearing, that contact of the child with one parent would endanger the child's physical health or significantly impair his or her emotional development. The Court shall specifically state in any order denying or restricting a parent's access to a child the facts and conclusions in support of such a denial or restriction.<sup>5</sup>

### ***§ 722 Factors***

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

Mother would like to “move on from the past” and “get on the road” to seeing the children, who she has not seen in four years now. She told the Court that she has complied with the Interim Visitation Order by seeking mental health treatment and has been working on herself since the last hearing. Mother expressed her willingness to comply with Ms. H-----’s recommendation for therapeutic contact with the children and will do “whatever she has to” to avoid missing any more time with them.

Although Father has given Mother’s request careful consideration, he ultimately does not believe the Court should grant her contact with the children in any setting. He emphasized that custody matters have been “dragged through the Court” for years by Mother and Maternal Grandparents, who Father believes were abusive to the children while they were illegally residing in New York. Despite Mother’s participation in mental health treatment pursuant to the Interim Visitation Order, Father still thinks it would be emotionally harmful for the children to have any contact with her in light of all they have been through in her care.

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

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

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

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

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

(8) The criminal history of any party or any other resident of the household including whether the criminal history contains pleas of guilty or no contest or a conviction of a criminal offense.”

<sup>5</sup> 13 Del. C. § 728(a).

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

Neither party requested that the Court interview A---- and I-----, who are ten and eight years old, respectively, to determine their wishes on visitation with Mother. Mr. Bounds met with the children but did not feel it was appropriate to ask about their desire to have contact with Mother due to their ages.

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

As noted, Mother has not seen the children or had any type of contact with them since May 2013. However, Mother told the Court that she thinks and dreams about them all the time and believes they deserve to have her in their lives. In regards to her previous request to send A---- a birthday gift,<sup>6</sup> Mother represented that she sent a card for A---- and a \$50 Amazon gift card for each child via Fed Ex in February 2017. Father asserted that he did not receive any such card or package from Mother.

Although the children were hesitant towards Father when they first returned to his care in May 2013, he told the Court that they now “know [he is] a great dad” and love him.

Father does not want the children to have any contact with Maternal Grandparents due to suspicions of sexual and physical abuse while in their care, as discussed in factor (7). He also believes Maternal Grandparents “brainwashed” the children and will continue their efforts to control Mother in order to gain access to the children if Mother is permitted contact. Ms. H----- also recommended that the children should not have any contact with Maternal Grandparents or any other members of Mother’s family due to the history of abuse.

Despite Father’s position, Mother maintains that she chooses to keep a distance from Maternal Grandparents and no longer has regular contact with them. She last visited Maternal Grandmother in the hospital approximately two months ago, and although Maternal Grandfather calls to check in once or twice a month, Mother does not have contact with him in person. However, notwithstanding that representation, Mother admitted that Maternal Grandfather accompanied her to the courthouse on the date of this hearing and was present outside the courtroom.<sup>7</sup> She explained that he offered to give her

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<sup>6</sup> Mother made this request at the January 23, 2017 teleconference, and neither Father nor Mr. Bounds objected.

<sup>7</sup> Although Mother initially requested that Maternal Grandfather be permitted in the courtroom as a support

a ride since she does not have a vehicle and was unable to afford an Amtrak ticket to Delaware. Mother also represented that she has no contact with her twenty-five-year-old brother, J----- S----- (“Maternal Uncle”), who she believes is still residing with Maternal Grandparents. Nonetheless, Mother told the Court that she understands Father’s concerns and will not involve Maternal Grandparents in the children’s lives in the event she is granted contact. She emphasized that this matter is between her and Father alone.

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

According to Ms. H-----, the children were initially very fearful and guarded when she first began seeing them in May 2013. They appeared to have had an emotional setback atypical for children and were experiencing shock similar to post-traumatic stress, including alarming dreams. Ms. H----- told the Court that the children had also regressed in social norms and did not want to be separated from one another.<sup>8</sup>

Since that time, the children have reportedly made great progress in their environment with Father. They are more relaxed and act in a more appropriate manner with each other and their peers. According to Father, the bizarre statements and behaviors initially displayed by the children have diminished a great deal. A---- and I----- participate in Boy Scouts and Girl Scouts and are active in their church. Although both children mention having friends, Ms. H----- believes A---- continues to struggle with bossiness towards other children.

Mr. Bounds offered the children’s report cards from M----- Elementary School into evidence<sup>9</sup> and reported that they are both earning good grades. Further, the children have near perfect attendance records with infrequent, excused absences only.

Ms. H----- and Mr. Bounds have both seen the children with Father and expressed no concerns for his parenting. Mr. Bounds informed the Court that Father’s home appears clean and appropriate, and the children seemed to be happy. Although A---- was busying playing with a friend, I----- was “popping in and out” during Mr. Bounds’ visit. Overall, Mr. Bounds thinks the children’s placement with Father is appropriate.

Mother represented that she is very involved in her community, which is “tight-knit” and family-oriented. She would like to be involved in the children’s lives as well and to know what they are up to in school and the community.

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

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person, she later admitted that this was “impulsive” and conceded to the objections of Father and Mr. Bounds.  
<sup>8</sup> According to Ms. H-----, the children stated that they were only allowed to play with each other while residing in New York.

<sup>9</sup> The children’s report cards were admitted collectively as GAL’s Exhibit 1.

Prior to the Interim Visitation Hearing, Mother had submitted to a psychological evaluation on March 25, 2016. She was diagnosed with post-traumatic stress disorder ("PTSD") and was determined to be on the spectrum for bipolar disorder. Although Mother was recommended to continue treatment and medication after her evaluation, she had only attended one follow-up session in April 2016 as of the Interim Hearing in August 2016. In light of her failure to pursue mental health treatment, the Court denied her request for interim contact with the children subject to a review of her progress at the time of this final hearing.

Mother told the Court that she recommenced mental health treatment at New Horizons Clinic in V----- S-----, New York in November 2016. Although there was some delay in treatment due to insurance issues, Mother now believes she is in compliance with the Interim Visitation Order. On cross-examination by Mr. Bounds, Mother confirmed that she attended two intake appointments with C--- R----- ("Mr. R-----") on November 15<sup>th</sup> and November 22<sup>nd</sup>, 2016, and she first saw a psychiatrist, Dr. J----- S---- ("Dr. S-----"), on November 17, 2016. Thereafter, Mother attended medication management appointments with Dr. S---- on December 1<sup>st</sup> and 29<sup>th</sup>, 2016, January 9<sup>th</sup>, 19<sup>th</sup>, and 30<sup>th</sup>, 2017, February 13, 2017, and March 6, 2017. She was also initially assigned to clinical therapist A-- D----- ("Ms. D-----") for biweekly therapy, with whom she met on November 28, 2016, January 9, 2017, February 8<sup>th</sup> and 15<sup>th</sup>, 2017, and March 8, 2017. Mother is currently prescribed a mood stabilizer, with which she has been compliant.

Although Ms. H----- believes Mother's course of treatment is appropriate, she expressed concern about the apparent gaps and inconsistencies in her therapy attendance. Mother explained that she missed one appointment in January 2017 as a result of illness, and two visits were cancelled by Ms. D----- thereafter due to a family emergency. In March 2017, Mother was reportedly assigned to a new therapist, M-----, with whom she first met on April 3, 2017. Going forward, Mother intends to continue meeting with M----- every other Saturday. Ms. H----- expressed further concern that, based upon Mother's therapy notes, there does not appear to be much insight as to what happened with the children. Mr. Bounds echoed concerns for Mother's awareness of past events in this case.

On cross-examination by Mr. Bounds, Mother explained that her version of bipolar disorder causes moodiness and difficulty regulating emotions. For instance, she talks very quickly and cries frequently. However, Mother believes her medication has helped to level out the "highs" and "lows;" she does not believe she experiences much impulsivity or is a danger to anyone. Although being unemployed has negatively impacted her mood, Mother has learned to cope through journaling, listening to music, and talking to friends. She told the Court that she does not consider her bipolar diagnosis to be a disability and intends to begin working shortly. Mother indicated that she is in good physical health but for some seasonal allergies and a case of the flu in January 2017. She

currently receives Medicaid health insurance.

The children appear to be in good physical health based upon Mr. Bounds' observations, and he reported that their immunization records are up to date. In regards to their mental health, the children began seeing Ms. H----- for therapy immediately upon their return to Delaware in May 2013. Although she initially met with them on a weekly basis, the children now attend counseling twice a month for one to two hours. Father is typically not present during their therapy appointments.

Ms. H----- told the Court that the children have made great progress in therapy but for a brief setback and re-traumatization in October 2014, when Mother and Maternal Grandparents appeared at their home to serve Father with the instant Petition to Modify Visitation. According to Ms. H-----, who met with the children that day, I----- "shut down" and regressed to sitting on her aunt's lap. A---- presented in a very protective manner towards Father and expressed fear that he and I----- would be "taken away" again. Based upon those concerns, Ms. H----- fears that any non-therapeutic contact with Mother may cause another significant setback to the children's mental health and emotional wellbeing. Although the children have not reported direct physical or verbal trauma at the hands of Mother,<sup>10</sup> Ms. H----- emphasized the need to watch for similar behaviors to those displayed in October 2014 in the event contact with Mother is implemented.

According to Ms. H-----, Mother should be reintroduced to the children in a therapeutic setting with appropriate steps to ensure their contact is positive. Ms. H----- is willing to conduct therapeutic visits between Mother and the children, which would progress in accordance with the steps outlined in the Interim Visitation Order. Specifically, Ms. H----- would first meet individually with Mother two to three times<sup>11</sup> in order to identify any issues that need to be addressed prior to implementing joint sessions with the children. Mother must continue to substantially engage in her own individual mental health treatment throughout the entire process of therapeutic reunification, ideally to include weekly therapy sessions rather than biweekly. Ms. H----- would need permission to communicate with Mother's individual therapist for an ongoing review of her progress notes.<sup>12</sup>

Mother expressed her willingness to comply with Ms. H-----'s recommendations and protocols for therapeutic contact with the children, and she agreed to execute any necessary consent forms to allow Ms. H----- to communicate with her

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<sup>10</sup> According to Ms. H-----, the children's trauma seems to have been directly inflicted by Maternal Grandparents and Maternal Uncle while Mother was largely absent during their time in New York.

<sup>11</sup> These individual meetings would be separate from Mother's own course of mental health treatment.

<sup>12</sup> Ms. H----- advised that this may require Mother to execute a HIPAA release form.



individual therapist(s).<sup>13</sup> Mother told the Court that she will do “whatever it takes” to attend therapeutic sessions with Ms. H----- despite the distance; however, she suggested that the first individual sessions take place via Skype. On cross-examination by Mr. Bounds, Mother also expressed willingness to cover the cost of her sessions with Ms. H----- and the children, which she hopes will be reasonable. Although she does not know what to expect from the children upon their reunification, Mother is not afraid and is anticipating many questions. She told the Court that she is mostly looking forward to finally giving A---- and I----- and hug and a kiss.

Despite Mother’s participation in individual mental health treatment, Father was still not agreeable to Mother having therapeutic contact with the children at this time. He emphasized that she is mentally unstable, and any contact would be emotionally harmful for the children in light of what they have been through in the care of Mother and her family. Father also believes Mother is a flight risk. When questioned by Mr. Bounds about the risk of having supervised contact with the children, Father asserted that there was a recent news report about a man who “walked out with a kid” during a supervised visit at the State Visitation Center. Although he could not state what may happen to the children if they met briefly with Mother in Ms. H-----’s office, he expressed his belief that there are no circumstances under which Mother’s contact with the children would be appropriate.

Mr. Bounds opined that there is no way to know how the children will react to Mother or behave in her presence until contact is initiated. While he imagines there will be some emotional setback, Mr. Bounds pointed out that the children could also be negatively impacted if they never have any contact with Mother again. Accordingly, Mr. Bounds believes therapeutic contact pursuant to Ms. H-----’s protocols is appropriate, assuming Mother continues to comply with her own individual mental health treatment, and that the “proof will come out” by and through her compliance.

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

As noted in the Interim Visitation Order and procedural section above, Mother has a history of refusing to comply with this Court’s Orders on custody and residency of the children. Mother failed to return the children to Father for nearly two years after he was awarded sole legal custody and primary residency in April 2011; they were only returned after Mother was incarcerated for Contempt of Court in January 2013 and legal authorities were able to locate the children in Suffolk County, New York in May 2013.

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<sup>13</sup> Mother requested one more session with her individual therapist prior to executing such consent.

Father contends that Mother abandoned the children and left them in the care of Maternal Grandparents, who were abusive, while she resided with her ex-husband in Florida from 2009 through 2013. Mother denied that allegation and maintained that she lived with the children in the home of Maternal Grandparents, who merely babysat while Mother was at work. Mother acknowledged that Maternal Grandfather filed a Petition for Guardianship while she was incarcerated in 2013, but she could not recall the contents of the petition.

Although she admits she has made mistakes and is not a perfect mother, Mother stressed that she is not a criminal and did not abandon the children. However, Mother has not seen the children since May 2013 in accordance with Court Orders prohibiting contact, and Father has been primarily responsible for their care since that time. On cross-examination by Mr. Bounds, Mother confirmed that she has not sent any birthday cards to the children over the past four years other than A----'s most recent birthday in February 2017, when she claims to have sent him a card via Fed Ex.

Father asserted that Mother has blatantly disregarded the Court's authority by lying about the children's whereabouts and repeatedly providing conflicting testimony throughout the custody litigation. Further, Father believes Mother to be a flight risk. Since he does not believe Mother will ever change, Father filed a Petition for Termination of Parental Rights ("TPR") on September 14, 2016. However, that Petition was dismissed by the Court on March 31, 2017 due to Father's failure to submit a social report by the deadline. Father confirmed his intention to re-file his TPR Petition.

Mother has not paid any financial support for the children since they returned to Father's care in May 2013. On December 12, 2016, Mother failed to appear at a hearing on a Petition for Child Support filed by Father by and through the Division of Child Support Enforcement ("DCSE"). She told the Court that she did not receive notice until Friday, December 9<sup>th</sup> and had insufficient time to make travel arrangements from New York to Delaware. As a result of the hearing, a Default Child Support Order was entered against Mother in the amount of \$1,670 per month for current support and arrears.<sup>14</sup> On cross-examination by Mr. Bounds, Mother admitted she has not provided any voluntary financial assistance other than the two \$50 Amazon gift cards she reportedly sent to the children around A----'s birthday in February. Mother asserted that, while she would be happy to support the children, she would like to have her support obligation adjusted since she is not currently earning the amount upon which the Support Order was calculated.

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<sup>14</sup> Pursuant to the Default Support Order, Mother owes \$1,520 per month for current support and \$150 per month towards her arrears, which were established at \$55,480. Although Mother received a letter from DCSE notifying her of the amount of arrears, she claims to have received a follow-up letter approximately two months prior to this hearing indicating that the matter was "dismissed." Mother reportedly contacted DCSE but neglected to follow up with the appropriate caseworker, as she figured she would "get something in the mail."

Mother acknowledged that the children are entitled to financial support from her regardless of whether she has contact with them, and she confirmed her intention to begin sending payments once she starts her job.<sup>15</sup>

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

As discussed in the Interim Visitation Order, Father believes Maternal Grandparents and Maternal Uncle were mentally, physically, and sexually abusive to the children while they were residing in New York from 2009 until 2013. Although he does not believe Mother physically or sexually abused the children, he believes she mentally and emotionally abused them by abandoning them and allowing them to be abused in Maternal Grandparents' care.

The Court will not restate the evidence pertaining to these allegations, which is outlined in the Interim Visitation Order. However, the Court notes that Ms. H----- reported the matter to the Department of Services for Children, Youth, and Their Families ("DSCYF") in Delaware based upon the children's indications of physical and sexual abuse, which she believed to be valid, at the time she first began treating them. Although the children were interviewed at Al duPont Hospital, they were asked to return to New York to be interviewed by the Office of Children and Family Services ("OCFS"), which was primarily responsible for handling the matter.<sup>16</sup> Due to the trauma suffered by the children in that state, Father did not feel it was safe to return them for an interview. Ms. H----- later received notice from OCFS that the allegations were unfounded since the children could not be interviewed. The Court received a letter from DSCYF on August 20, 2015 indicating that no findings had been made despite its concerns for sexual abuse by Maternal Grandparents.

When asked by Father, Mother stated that she does not know if the children were abused by Maternal Grandparents and/or Maternal Uncle. However, she would have liked the investigation to have been pursued and to have heard it "from the children's mouths." Father expressed his belief that Mother is still in denial about the abuse inflicted upon the children by her family. Mother admitted on cross-examination that she was hit as a child but denied any sexual abuse; she confirmed that she informed Mr. R----- about this during her mental health intake appointment.

Additionally, the Court notes that an Order of Protection from Abuse ("PFA") was entered against Mother on November 21, 2014 as a result of the incident in October 2014 when Mother and Maternal Grandparents appeared at Father's home to serve him with the instant petition. That incident is summarized in the Interim Visitation Order, and

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<sup>15</sup> Mother confirmed that she has the address of DCSE where her child support payments can be sent.

<sup>16</sup> The Court received a letter from DSCYF on July 29, 2015 recounting the children's disclosures of abuse and indicating that, although DSCYF's case would remain open, the investigation must procedurally be pursued in New York.

the Court takes judicial notice of the PFA Order pursuant to DRE 202(d)(1).<sup>17</sup>

Lastly, Mother told the Court that she was involved in one incident of domestic violence with her ex-husband, Mr. O-----. Although criminal charges were filed against her in Florida, they were ultimately dismissed. Mother denies that she ever resided with Mr. O----- in Florida on a permanent basis despite Father's allegations to the contrary. She asserted that she is currently separated from Mr. O----- and is in the process of finalizing their divorce in New York, where they were married.

**(8) *The criminal history of any party or any other resident of the household including whether the criminal history contains pleas of guilty or no contest or a conviction of a criminal offense.***

Mother's Delaware criminal record does not contain any convictions. Although she was previously incarcerated for interference with custody from September through May 2013, her conviction was ultimately overturned by the Delaware Supreme Court.<sup>18</sup> Mother indicated that she was on probation while the charges were still pending following her release from imprisonment. Further, Mother admitted that she pled guilty to a first time DUI offense in New York in 2012, for which she paid a \$2,000 fine and performed community service. On cross-examination by Mr. Bounds, Mother confirmed that presently she does not have a driver's license since she neglected to have it reinstated after her DUI. However, she does not believe the fact that she is without a license or vehicle would impact her ability to visit with the children in Delaware. She intends to contact the Department of Motor Vehicles in New York in the near future to determine what is necessary to reinstate her license.

Father also has a DUI on his criminal record from September 15, 2010. The Court further notes that Father was convicted of third degree burglary, non-violent, in 1997, as well as violation of probation in 1998.

***Conclusion***

Based up on the evidence presented, the Court finds that it is in A----'s and I--'s best interests to begin therapeutic contact with Mother in accordance with Ms. H-----'s protocols. Factors (3), (4), (5), (6), and (7) of the best interest analysis support this decision, factors (1) and (8) are neutral, and factor (2) is inapplicable to the Court's analysis. In light of Mother's history of custody interference and the resulting trauma to the children in New York, the Court finds that premature, non-therapeutic contact with

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<sup>17</sup> Under Delaware Rule of Evidence 202(d)(1), a Court may take judicial notice of records of the Court in which the action is pending.

<sup>18</sup> Mother confirmed on cross-examination that she was held in Contempt of Civil Court as a result of her custody interference.

Mother would be harmful to their emotional wellbeing at this time.

Under factor (1), Mother expressed her willingness to comply with Ms. H-----'s recommendations for therapeutic contact in the interest of seeing her children. However, Father still does not wish for Mother to have contact with the children in any setting. Thus, factor (1) of the best interest analysis is neutral.

The Court was not asked to interview A---- and I----- to ascertain their wishes in regards to contact with Mother under factor (2). The Court notes that the children are still young and have likely already suffered trauma as a result of their involvement in the parties' drawn-out custody dispute. Therefore, this factor does not apply to the Court's analysis.

The evidence under factor (3) suggests that the children's relationship with Father has greatly improved since they returned to his care in May 2013. Conversely, the children have not had any kind of relationship with Mother since that time in light of Court Orders prohibiting contact. The Court further notes Father's concerns about the children's contact with Maternal Grandparents due to suspicions of physical and sexual abuse while in their care, which were echoed by Mr. Bounds and Ms. H------. Despite Mother's representation that she no longer has regular contact with Maternal Grandparents, the Court notes that Maternal Grandfather accompanied Mother to the courthouse for this hearing. Based upon the children's estrangement from Mother and the concerns for their relationship with Maternal Grandparents, the Court finds that factor (3) supports limiting Mother's contact to a therapeutic setting at this time.

Under factor (4), the Court notes that children have made great strides in their social development since returning to Father's care in May 2013. Although the transition was difficult, the evidence suggests that they have adjusted to Father's home and are feeling more comfortable in their environment. Neither Mr. Bounds nor Ms. H----- had any concerns for the children's placement with Father or his parenting skills, and the children appear to be performing well academically. In light of the apparent setback they suffered following the incident involving Mother in October 2014, the Court finds that any non-therapeutic contact with Mother would risk impairment to the children's emotional wellbeing. Thus, factor (4) supports therapeutic contact in accordance with Ms. H-----'s recommendations only.

The Court places substantial weight on factor (5) of the best interest analysis due to mental health concerns for both Mother and the children. A---- and I----- have been participating in mental health treatment with Ms. H----- since returning to Father's care in May 2013. While they have made significant progress since that time, the Court credits Ms. H-----'s belief that non-therapeutic contact with Mother would impede their mental health and emotional wellbeing. The Court commends Mother for pursuing her own

mental health treatment in accordance with the Interim Visitation Order, although there are some questions as to the consistency of her attendance in early 2017. Assuming Mother remains consistent and compliant with individual treatment, Mr. Bounds expressed support for her therapeutic contact with the children pursuant to Ms. H-----'s professional protocols. For those reasons and despite Father's opposition, the Court finds that factor (5) supports the implementation of therapeutic contact at this time.

In regards to factor (6), Mother has not provided Father with any financial support for the children despite the Default Support Order issued in December 2016. Further, Mother has a history of refusing to comply with this Court's Orders; she failed to turn the children over to Father's primary residency pursuant to the April 2011 Custody Order, and she only revealed their whereabouts two years later after being found in contempt and incarcerated. Therefore, factor (6) strongly supports the Court's decision for Mother's contact with the children to be conducted in a therapeutic setting in accordance with Ms. H-----'s protocols.

The evidence under factor (7) also supports the Court's best interest conclusion. The Court notes that Father was granted a PFA against Mother in November 2014 as a result of the October 2014 incident, and although the criminal charges were reportedly dropped, Mother admittedly engaged in domestic violence with Mr. O----- in Florida. Further, the Court has grave concerns about the allegations of physical and sexual abuse of the children by Maternal Grandparents and Maternal Uncle prior to 2013. Although OCFS was unable to interview the children and enter a finding in New York, the Court notes Ms. H-----'s belief that their statements and allegations of abuse had merit. For those reasons, factor (7) supports a finding that it is in the children's best interests for Mother's contact to be supervised and conducted therapeutically.

The Court does not take great concern with either party's criminal history under factor (8). It appears the parties were both convicted of DUI at some point, and Father's additional convictions are both dated and non-violent in nature. Accordingly, factor (8) of the best interest analysis is neutral.

Based upon the above analysis and the recommendations of Mr. Bounds and Ms. H-----, the Court finds that it is in the children's best interests for Mother's contact to be implemented in a therapeutic setting. In light of Mother's history of custody interference and the resulting trauma to the children in New York, the Court finds that premature, non-therapeutic contact with Mother would be harmful to their emotional wellbeing at this time. Therapeutic contact shall begin promptly and shall progress in accordance with Ms. H-----'s protocols, which are outlined in this Order and the Interim Visitation Order. Mother shall also continue to comply with professional recommendations for her own mental health treatment and shall execute any necessary consent for Ms. H----- -- to communicate with her individual therapist. Factors (3), (4), (5), (6), and (7) of the

best interest analysis support the Court's conclusion. Factors (1) and (8) are neutral, and factor (2) is inapplicable to the Court's analysis. **IT IS SO ORDERED.**

**ORDER**

**IT IS HEREBY ORDERED** that:

1. Mother's request for contact with the children is **GRANTED** but shall be supervised and conducted therapeutically in accordance with Ms. H-----'s protocols.
2. Mother shall continue to comply with professional recommendations for individual mental health treatment, and she shall execute any necessary releases to allow Ms. H----- to communicate with her individual therapist.

**IT IS SO ORDERED.**

Very truly yours,

/ Michael K. Newell /

MICHAEL K. NEWELL, Chief Judge

MKN/amp

Date mailed: 5/8/17