

The Family Court of the State of Delaware  
In And For Kent County



JAMES G. MCGIFFIN, JR  
JUDGE

400 COURT STREET  
DOVER, DELAWARE 19901

S----- R-----,	:	FILE NO.	CKXX-XXX
	:	PETITION NO.	XX-XXX
PETITIONER,	:		
	:	<u>FINAL ORDER</u>	
v.	:	PETITION FOR CUSTODY	
	:		
S----- M-----,	:	<u>IN THE INTERESTS OF:</u>	
	:	B---- M---- R-----	
RESPONDENT.	:	DOB: 06/06/2008	
	:	H---- M---- R-----	
	:	DOB: 05/10/2012	

Before the **HONORABLE JAMES G. MCGIFFIN JR., JUDGE** of the Family Court of the State of Delaware:

The Court has before it a Petition for Custody of the minor children in the interests of B--- M----- R----- (B-----), born June 6, 2008 and H---- M----- R----- (H-----), born May 10, 2012, filed by S----- R---- (Father) against S----- M----- (Mother) on July 18, 2016. The Court held a hearing on August 10, 2017. Father appeared represented by counsel, Stephan J. Holfeld. Mother appeared represented by counsel, Peter K. Schaeffer, Jr. The Court reserved decision. This Order is the Court's decision.

**BACKGROUND**

Father filed this Petition for Custody on July 18, 2016. Mother filed an Answer to Father's Petition on August 1, 2016. Father filed an Amended Petition for Custody on August 25, 2016. Mother filed an Answer to Father's Amended Petition for Custody on August 26, 2016.

## LEGAL ANALYSIS

The custody and residential placement of a minor child is determined by the best interest of the child. In determining the best interest of the child, the Court reviews the factors set forth in 13 Del. C. § 722.<sup>1</sup>

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

Father seeks joint custody of the children and shared residential placement of the children. Mother agrees to joint custody but seeks primary residential placement of the children.

This element favors neither party.

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

I interviewed B-----, age nine years old. This conversation took place outside the presence of parents and counsel. B----- presented as a bright, articulate, confident person. She expressed herself with a maturity beyond her young age, but for references to “Mommy” and “Daddy.” I found her to be quite charming.

B----- did not act as though she was well-informed on the day’s court activity. She was aware that her parents did not agree about with whom she should stay and when she should stay with either parent. She also did not presume to speak for her little brother, H---. She explained to me that she is comfortable with the present placement arrangement and was not in favor of a change. B----- enjoys the time she spends in both households. She gets along well with J----- F-----, Father’s paramour, and with her daughters, who all live in the home with Father.

I asked B----- if she had any recollection of what life was when her parents lived together. She recalled that her parents would argue and that Daddy would “get angry” sometimes. She had no other recollections that she mentioned.

This factor favors Mother’s position as she seeks to maintain the *status quo ante*.

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<sup>1</sup> 13 Del. C. § 722 provides, (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 to his or her custodian or custodians and residential arrangements; (3) the interaction and interrelationship of the child with his or her parents, grandparents, siblings, persons cohabiting in the relationship of husband and wife with a parent of the child, any other residents of the household or persons who may significantly affect the child’s best interests; (4) the child’s adjustment to his or her home, school, and community; (5) the mental and physical health of all individuals involved; (6) past and present compliance by both parents with their rights and responsibilities to their child under § 701 of this title; (7) evidence of domestic violence as provided for in Chapter 7A of this title; and (8) the criminal history of any party or any other resident of the household including whether the criminal history contains pleas of guilty or no contest or a conviction of a criminal offense.

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

Father resides in a five-bedroom single family home in St. Jones Commons in Dover. B---- and H----- each have their own rooms. The children have a great relationship with Father. Father described his relationship with the children as “a good and healthy relationship.” He described the children as “affectionate.” Father’s girlfriend, J----- F----, and her two daughters M----- and M----, ages twenty and sixteen, also reside in the home. The children have a great relationship with Father’s girlfriend and her two children. Both M---- and M----- “adore” B---- and H-----.

Mother resides in a single family home in Dover and has a very close relationship with both children.

This element favors neither party.

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

B----- is nine years old and H----- is five years old. Both children are doing very well in school. Mother testified that both children have resided in her home since birth. The children currently reside primarily with Mother and have visitation with Father every other weekend. On the weekends that the children visit with Father, Father takes the children to chess club on Saturdays, an activity they can all enjoy.

This element is neutral. The children are adjusted well in both homes.

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

Father is in good physical health despite reoccurring back issues. Father was voluntarily medically discharged from the Air Force in 2003 and was diagnosed with Post Traumatic Stress Disorder (“PTSD”). Father testified that he has received treatment through the Veteran’s Administration on an as needed basis, but he attends therapy sessions once per month. He receives disability income from the Veteran’s Administration for his PTSD.

Mother is in good physical and mental health. Both children are in good physical and mental health.

This element favors neither party.

**(6) Past and present compliance by both parents with their rights and responsibilities to their child under § 701 of this title;<sup>2</sup>**

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<sup>2</sup> The father and mother are the joint natural guardians of their minor child and are equally charged with the child's support, care, nurture, welfare and education. Each has equal powers and duties with respect to such child, and neither has any right, or presumption of right or fitness, superior to the right of the other concerning such child's custody or any other matter affecting the

Father is employed by Xylem in Bridgeport, New Jersey as an engineer. His schedule is Monday through Friday from 8 a.m. to 5 p.m. Father's supervisor, Michael Ramos, is willing to allow Father to work a flexible schedule in order for Father to care for the children. Father has the option of working from home when he has the children. Father travels about once per month in his current position. Father's friend, Robert Reardon, described Father as hands-on parent. He testified that Father interacts well with the children and is very close to them. Father's girlfriend also described Father as a good parent and she testified to his role as disciplinarian in their household. Father covers the children on his health insurance.

Mother is employed as a tenured biology professor at Delaware State University in Dover. Mother wants the children to have a positive relationship with Father, but she would like the children to reside primarily with her because she can provide a more stable home and she does not trust Father. She testified to Father's frequent alcohol use during the marriage and Father's unpredictable behavior. Father would "routinely drink" after work and Mother used to find empty alcohol bottles in Father's vehicle.

Mother is afraid that Father will act out against the children if the parties share residential placement. She testified that during the marriage, Father would become enraged and Mother would try to keep the children from him. She asserted that Father's behavior is not always alcohol induced. Mother took primary responsibility for caring for the children during the marriage. She asserted that Father would become upset if Mother asked for help with the children, especially when she was getting the children ready for bed.

This element favors Mother's position. Mother has been the primary caretaker of the children since their birth.

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

Mother testified to three incidents of domestic violence that took place when this couple lived together. In the most dramatic of these incidents, Father pushed Mother off a porch and into shrubbery. Mother was injured. This incident convinced Mother to file with the Family Court for Protection From Abuse relief and to notify the criminal law enforcement authorities. The PFA petition was resolved by a Consent Order with no judicial finding of abuse. The criminal case was resolved with Father entering a diversion program and the charges dismissed. Father completed the requirements imposed upon him by both cases. These facts are not seriously disputed by Father.

The occurrence of domestic violence in a familial relationship is counted among the "best interest" factors in our statutory scheme because domestic violence in the home negatively affects children in that home, even when the children are not the direct object

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child. If either parent should die, or abandon his or her family, or is incapable, for any reason, to act as guardian of such child, then, the custody of such child devolves upon the other parent. Where the parents live apart, the Court may award the custody of their minor child to either of them and neither shall benefit from any presumption of being better suited for such award.  
13 *Del. C.* § 701.

of an act of violence.<sup>3</sup> Once domestic violence is introduced into a family environment, things change. Victims, whether direct or collateral, lose some of the trust that is an essential element in family relationships. Tension increases, particularly when the conditions are present that allowed the domestic violence to develop in the past. In this case, Mother's testimony specifically tied Father's abusive behavior to his consumption of alcohol. Father admits that he continues to drink alcohol.

I hope that Father has learned from the programming he completed and that the specter of domestic violence is not again raised. Still, I recognize that the pressures of parenting for an uninterrupted week (which Father seeks) are far greater than the pressures of parenting over a weekend. During the work week, a parent must prepare himself or herself and the children for their daily tasks, meet unforgiving school and work schedules, address homework, make and attend medical appointments, support extra-curricular activities and relate to tired children, even when the parent, too, is tired. The evidence adduced in this case shows that Mother managed these pressures while Father had issues that may have contributed to his drinking and acting out with domestic violence.

This factor favors Mother's position.

**(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.**

The parties do not have any significant criminal history other than previously addressed.

This element favors neither party.

### **CONCLUSION**

The Court finds that it is within the best interests of B----- and H----- for Father and Mother to have joint legal custody with Mother having primary residential placement of B----- and H-----. B----- expressed to the Court that she was comfortable with the present living arrangement- primary placement with Mother and every other weekend visitation with Father. Although it is clear both parents love the children, Mother assumed primary responsibility for caring for the children during the parties' marriage.

The incidents of domestic violence between Mother and Father cause the Court concern. Mother testified that she felt at risk when she was in Father's presence and that she is still afraid

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<sup>3</sup> *MM v JB*, 2010 WL 1200329 (Del. Fam. Ct. Jan. 12, 2010), citing *Christina L v. Harry J.L., Jr.*, 1995 WL 788196 (Del. Fam. Ct. June 15, 1995). See also *In re EM*, 4 N.E.3d 636 (Supr. Ct. Ind. 2014), for a discussion on the harm visited upon children who witness domestic abuse.

of him even though the parties do not reside together. Mother further testified to Father's anger issues, which are exacerbated by his drinking. Mother felt that she and the children were at risk when Father drank. During my conversation with B-----, she recalled Father's anger when the parties were an intact couple. Father's history and lack of experience with handling the child care responsibilities for an extended period of time militate against shared placement.

For the reasons stated,

**IT IS HEREBY ORDERED** that S----- R----- (Father) and S----- M----- (Mother) shall have joint legal custody of the minor children B----- M----- R-----, born June 6, 2008 and H----- M----- R-----, born May 10, 2012. Mother shall have primary residential placement of the minor children.

**IT IS HEREBY FURTHER ORDERED** that Father will exercise visitation with the children every other weekend from Friday until Monday morning. Father will have a weekly dinner visit every Wednesday from 5 p.m. until 8 p.m.

**Holidays:** Mother shall have the children on the holidays in Column 1 in odd-numbered years and the holidays in Column 2 in the even-numbered years. Father shall have the children on the holidays in Column 1 in even-numbered years and the holidays in Column 2 in odd-numbered years:

**Column 1**

Easter or other religious holiday  
Fourth of July  
Halloween  
Christmas Day

**Column 2**

Memorial Day  
Labor Day  
Thanksgiving Day  
Christmas Eve

With the exception of Christmas and Halloween visitation, holiday visitation shall be from 9:00 a.m. the day of the holiday until 6:00 p.m. Halloween visitation shall begin at 5:00 p.m. on the day of the holiday until 8:00 p.m. Christmas Eve visitation shall begin at 6:00 p.m.

on December 24th and end at noon on December 25th. Christmas Day visitation shall begin at noon on December 25th and end at 6:00 p.m. on December 26th. When the holiday falls on a Monday immediately following a visitation weekend, the visiting parent shall be entitled to keep the children continuously from 6:00 p.m. Friday to 6:00 p.m. Monday.

**IT IS SO ORDERED** this 12<sup>th</sup> day of **OCTOBER, A.D., 2017.**

/ JAMES G. McGIFFIN, JR. /  
**JAMES G. MCGIFFIN, JR., JUDGE**

JGM/ac

cc: Stephan J. Holfeld  
Peter K. Schaeffer, Jr.