

# The Family Court of the State of Delaware



ROBERT BURTON COONIN  
JUDGE

LEONARD L. WILLIAMS JUSTICE CENTER  
500 N. KING STREET, STE 9400  
WILMINGTON, DELAWARE 19801-3732

March 27, 2019

C----- H---, D---- H--- & C----- M----  
--- Delaware Avenue  
West Pittston, PA 18643

**LETTER, DECISION  
AND ORDER**

J---- M----  
-- Ingrid Court  
Wilmington, DE 19808

RE: J---- M---- v. C----- M----  
File No.: CN15-04096; Petition No.: 18-30862  
**Petition for Modification of Visitation Order: N--- M---- (D.O.B. 03/--  
/12)**

C----- & D---- H--- v. J---- M---- and C----- M----  
File No.: CN18-04156; Petition No.: 18-19917  
**Petition for Third Party Visitation: N--- M---- (D.O.B. 03/--/12)**

Dear Mr. H---, Mrs. H---, Mr. M---- and Ms. M----:

This is the Court's decision regarding the Petition for Third Party Visitation filed by C----  
-- and D---- H--- (hereinafter "Maternal Grandparents") on July 11, 2018 against J---- M----  
(hereinafter "Father") and C----- M---- (hereinafter "Mother"), and the Petition for Modification  
of Visitation Order filed by Father on October 19, 2018 against Mother, both in the interest of the  
minor child N--- M---- born March --, 2012 (hereinafter "Child"). The parties are all self-  
represented.

## Procedural History

In a fifty-one-page interim Letter, Decision and Order on custody of September 6, 2016, the Court awarded Father sole legal custody and primary residency, with Mother receiving unsupervised visitation with Child every other weekend from Friday after school until Sunday at 4:00 PM, and Wednesday afternoon for several hours. At that time, the Court instructed Mother that it was affording her the opportunity to demonstrate “reliability, consistency, stability, and healthy communication” prior to the issuance of a final decision on custody and visitation. As part of the Order, the Court noted concerns, on pages 11 and 12, that joint custody evaluator Dr. Samuel Romirowsky had with Mother’s tendency to lie in order to “project an image of herself that is positive or an image of others that is negative” and her ineffective communication with Father. On pages 12 and 13 of the interim decision, the Court also noted Dr. Romirowsky’s concerns about Mother’s tendency to be “combative and aggressive” toward Father as well as professionals involved in Child’s care “due to her fundamental view of relationships as being threatening.” Also on page 13, the Court noted that Dr. Romirowsky had found that Mother exhibited “traits consistent with the criteria for Antisocial Personality Disorder,” such as being untruthful and showing no remorse for untruthfulness.<sup>1</sup> Finally, on page 15, the Court noted Dr. Romirowsky’s recommendation to limit the amount of interaction between Father and Mother going forward, in order to “eliminate any possibility of conflict in the presence of Child,” until the parties could develop a healthy parenting relationship.

At that time, the Court made further findings, on pages 28 and 31, that Mother had an “unhealthy attachment” to Child that was hindering his ability to adjust appropriately to his home, school and community, and that Mother was “transfer[ing] her emotions to Child.” Especially pertinent to the Court’s decision in this order, the Court found on page 45 of the interim Order that:

Mother has repeatedly shown aggressive behavior towards the school staff and towards Father in the presence of Child. Mother also makes it nearly impossible for people to communicate with her as she responds with lengthy communications that are aggressive, accusatory, and are formed in a way in which Mother victimizes herself. Mother does not communicate in a way that is in the best interest of Child, but in a way that draws attention to everything she perceives as negative in her life

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<sup>1</sup> At the April 2017 final hearing on custody, Dr. Romirowsky elaborated on characteristics of such a diagnosis as being: failure to conform to social norms, such as following rules or court orders; deceitfulness; impulsivity; irritability and aggressive behavior; and, consistent irresponsibility.

and that frame her as an innocent martyr. Mother must cease victimizing herself and start acting as a true advocate for Child. Mother also has a history of untruthfulness, which calls into question everything she reports to Father, educational professionals, medical professionals, and the Court. Not only does Mother outright lie, but she refuses to admit to her false statements or express any remorse for making them.

Finally, the Court found on pages 47 and 48 that:

Mother lacks healthy communication skills and thwarts Fathers ability to discuss Child's welfare as co-parents. [...] Mother is aggressive with Father in the presence of Child causing Child to become upset and confused and with the staff at [Child's school]. Mother has an unfettered propensity to be untruthful not only to Father, but to the Court, which calls into question much if not all of what Mother reports. [...] While Mother appears to love her son, Mother has been unable to make Child's needs a priority and as a result has and will continue to cause Child's emotional development to suffer.

After conducting a review hearing in April 2017 on updates since the issuance of the interim Order, the Court issued a seventeen-page final Letter, Decision, and Order on Custody on May 19, 2017. Despite the express instruction of the Court on September 6, 2016, the Court found that "Mother has failed to provide the Court any evidence that she has been reliable, consistent, stable, or communicated healthily over the past six (6) months" and therefore that "Mother has failed to comply with any of the Court's directions." As to her communication with Father and Child, the Court found on page 13 that "Mother fails to communicate in a healthy way with either Father or the Child, to the detriment of the Child's wellbeing." For example, "Mother repeatedly harasses Father without provocation" and "Mother's communication with the Child is geared largely to meet her own needs, rather than those of the Child."<sup>2</sup> The Court also found that "Mother purposefully manipulates situations to her advantage and refuses to follow Court orders." Finally, Dr. Romirowsky reiterated that Mother's conduct is consistent with someone diagnosed with Antisocial Personality Disorder.

As a result, on page 16 paragraph 2 the Court revised the conditions of Mother's visitation with Child going forward as follows:

The Court hereby suspends Mother's visitation until she engages in individual counseling by a licensed Delaware counselor. Mother shall be solely responsible

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<sup>2</sup> On page 12-13, the Court noted Father's testimony that "Mother invested considerable time in using the Child's echolalia to serve her own needs, such as repeatedly encouraging the Child to say to her "I love you," rather than demonstrating a genuine interest in the Child's emotions or feelings."

for the cost of her individual counseling. Once Mother has been to three (3) visits with her counselor,<sup>3</sup> her counselor shall speak with Dr. Romirowsky to determine an appropriate schedule for supervised visitation with Mother and the Child in Mother's counselor's office. Once Dr. Romirowsky and Mother's counselor feel that it is appropriate, Mother's visitation shall be based upon their collective recommendations.

On page 16 paragraph 3, the Court also directed that Father "provide Mother an update once per week regarding the Child's education and medical issues," and on page 17 paragraph 4 the Court directed that "Mother shall have phone contact with the Child no more than four (4) times per week, at 7:45 p.m. If Mother fails to contact Father by 7:50 p.m., the call that evening is deemed waived."

On October 11, 2017, Mother filed a Petition – Rule to Show Cause ("RTSC") against Father in which she alleged that Father was not in compliance with numerous provisions of the final custody Order, including, but not limited to, Father refusing to allow Mother to communicate with Child. In his Answer, Father responded that he decided to block Mother's calls with Child starting on or about August 3, 2017, because Mother was using the calls "to upset Child and harass Father." During the July 26, 2018 hearing on Mother's Petition, Father testified that he was abiding by the Court's May 2017 custody order on phone contact for the first two and a half months, all the while outlining his concerns about Mother's communication with Child in emails to Mother. However, Father alleged that Mother kept communicating with Child in the same way despite his concerns. Father's ongoing concern prompted him to email Mother on August 3, 2017 that since "your antisocial behavior seems to be continuing unabated, and directly impacting N---, I feel that I must stop answering your phone calls until we can get together with [Dr. Romirowsky and whomever Mother secures as a counselor] and determine a best path forward." Father also testified that he provided Mother weekly updates for about three months but the reports eventually became "overwhelming" because he felt that by sending the emails he was soliciting threats of suit from Mother. For example, on August 23, 2017, in response to a two-line update about Child from Father from earlier in the day which appears to be Father's last such weekly update, Mother sent a long email in which she wrote, among others, that "I have consulted with a Personal Injury/Civil Litigations attorney who is advising on additional civil actions against you for

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<sup>3</sup> On page 15, the Court also noted that these three (3) visits should be "on a consistent schedule, no less than monthly."

defamation/slander/libel; actual damages/lost damages & punitive damages as a result of defamation/slander/libel; negligent & intentional infliction of emotional distress.” In the Decision and Order issued on October 3, 2018 following the RTSC hearing, the Court ordered Father to resume Mother’s phone contact with Child and Father’s weekly email updates consistent with the Order of May 2017, without deciding on whether resumption of such contact with Mother was in the best interest of Child, because the Court’s final custody Order of May 2017 “did not give Father unilateral authority to completely end Mother’s contact with Child.” The Court further noted that “[w]hile Father’s observation was reasonable that terminating calls in progress might have a more detrimental impact on Child than permanently ending all contact, when he took that action, he acted in contravention of the May 2017 Order.”

After Mother filed her Petition - RTSC but before the Court held a final hearing on Mother’s Petition, Maternal Grandparents filed an initial Petition for Third Party Visitation on July 11, 2018 only against Father in the interest of Child.<sup>4</sup> In their Petition, they request every other weekend visits with Child from Saturday morning until Sunday evening. They also requested two weeks every summer for vacation and shared holidays. On August 29, 2018, Father filed an Answer in opposition to Maternal Grandparents having any contact with Child because he stated he had the same concerns about Mother having contact with Child as he did with permitting Maternal Grandmother to have contact, and because he believed that the Petition was “a thinly veiled effort to violate the existing court orders” with regard to Child’s contact with Mother.

About two weeks after the Court issued its order on Mother’s Petition – RTSC, Father filed an Amended Petition to Modify Visitation on October 19, 2018 against Mother in the interest of Child. In his Petition, Father requests, among others, to temporarily stop all phone contact with Mother and Child until Mother engages in counseling. Mother did not file an Answer in response. As such, the Court had no evidence that Mother had acted on the Court’s instruction in its Order of May 19, 2017 to engage in counseling prior to having any in-person contact with Child. Therefore, on December 18, 2018, the Court ordered, by default, that Mother was to have no phone contact with Child, until the final hearing in this matter. However, the Court continued to require Father to send Mother weekly email updates about Child pursuant to the Court’s October 3, 2018 Decision and Order.

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<sup>4</sup> On August 22, 2018, Maternal Grandparents filed an amended Petition including Mother as a co-Respondent with Father.

The Court held a consolidated hearing on Maternal Grandparents' Petition for Third Party Visitation and Father's Petition to Modify Visitation on February 25, 2018 attended by the parties.<sup>5</sup> Testimony was taken from: Child's therapist, Allison Randall; the parties' previous joint custody evaluator, Dr. Samuel Romirowsky; Maternal Grandparents' friend, G---- B-----; Maternal Grandmother's sister, P---- C---- (hereinafter "Maternal Great Aunt"); Maternal Grandfather; Maternal Grandmother; Mother; and, Father.

At the outset of the hearing, the Court addressed the Motion for Continuance that Maternal Grandparents filed on February 25, 2019 (the day before this hearing). Maternal Grandparents' explained that the basis for their Motion is that Father did not disclose that he would be calling Ms. Randall as an expert until after January 26, 2019, the deadline to disclose witnesses set by the Court in its October 29, 2018 Scheduling Order. Father admitted that he did not provide her name, contact information and a general description of her testimony to Maternal Grandparents and Mother until February 1<sup>st</sup>, five days late. In response, Maternal Grandparents admitted receipt of that email, and that they failed to reach out to Ms. Randall at any time thereafter. Therefore, the Court found that, because Father provided that information twenty-five days prior to the final hearing date and Maternal Grandparents failed to utilize the information provided by Father, neither Maternal Grandparents nor Mother would be prejudiced by Father's calling Ms. Randall as a witness. On this same basis, the Court also denied the Motion.

Maternal Grandparents and Mother also presented an oral motion to permit testimony from Maternal Great Aunt, Child's 14-year-old maternal cousin M----- C----, Ms. B-----, and Monsignor John Sempa of the Corpus Christi Parish in Pennsylvania, despite not disclosing names to Father until February 8<sup>th</sup>, with no contact information or general summary of the subject matter of their testimony having been provided. Father responded that he would not be opposed to Ms. B----- or Monsignor Sempa testifying by telephone, or Maternal Great Aunt testifying in person. However, he objected to hearing testimony from M----- C---- due to her age. Based on Father's lack of opposition, the Court permitted testimony from Maternal Great Aunt, Ms. B----- and Monsignor Sempa, but denied the request to call the 14-year-old as a character witness. Thereafter, Maternal Grandparents and Mother determined, without explanation, that they no longer wished to call Monsignor Sempa.

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<sup>5</sup> The Court also permitted paternal aunt M----- M---- to be present in the courtroom as a support person throughout the hearing at the request of Father.

### **Background Facts**

Maternal Grandmother, 63 years old, Maternal Grandfather, 69 years old, and Mother, 42 years old, all reside together at Maternal Grandparents' home in West Pittston, PA. According to Maternal Grandfather, Mother has been in the home the last one-and-a-half or two months and she was residing in Kingston, PA before that.<sup>6</sup> Mother's 23-year-old younger brother, M-----, also sometimes comes home on weekends from State College, PA where he is attending Pennsylvania State University. Maternal Grandmother is employed as the chief financial officer for United Neighborhood Centers of Northeast Pennsylvania, a non-profit organization located in Scranton, PA. Maternal Grandfather is employed as a mathematics teacher in a Wilkes-Barre, PA area high school. Mother is unemployed.

Maternal Grandmother testified that Mother was only residing with Maternal Grandparents on a "temporary" basis and that Mother was looking for an apartment. Maternal Grandmother further testified that "there is a place that is being renovated for her and her – um – uh – what do you call it – roommate." In the middle of Maternal Grandmother's statement, between the "um" and "uh," Mother shook her head at Maternal Grandmother, made a concerned facial expression, and an audible grunt, all appearing to be designed to guide Maternal Grandmother to carefully conclude her statement about with whom Mother might be living going forward. Mother later testified that she "was going to try find a roommate to make it a little bit cost-effective for me but I haven't – haven't really found anybody to live with." While Mother confirmed that Maternal Grandmother's testimony was related to Mother's interest in the concept of having a roommate, Mother denied she had someone in particular with whom she planned to reside. While it may seem strange for the Court to devote so much mention to a seemingly inconsequential issue, the Court notes this apparent conflict between testimonies and Mother's non-verbal attempts to guide Maternal Grandmother's testimony as further evidence of concerns the Court has expressed about Mother's untruthfulness and deception in past Court Orders. Although the Court cannot for certain determine why Mother might have acted like she did related to this question that was presented to both herself and Maternal Grandmother, the Court can only assume that Mother felt that it was in her best interest to say that she was planning on living alone after moving out from Maternal

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<sup>6</sup> Consistent with this testimony, during the October 29, 2018 case management teleconference, Mother and Maternal Grandparents reported that Mother was living in Kingston, PA at that time and that she was only using Maternal Grandparents' home as her mailing address as reflected in the Amended Petition for Third Party Visitation of August 2018.

Grandparents' residence, rather than disclose the identity of her future roommate.

Father, 37 years old, resides with Child in Wilmington, DE. Father is employed at the Wilmington VA Medical Center.

### **Modification of Prior Visitation Order**

Under the Court's final Order on custody and visitation of May 19, 2017, Father received sole legal custody and sole residential placement of Child, and Mother's contact with Child, other than by phone, was suspended, to resume only upon the collective recommendation of Mother's licensed counselor and Dr. Romirowsky.

Pursuant to 13 *Del. C.* § 729(a), the Court may modify an order concerning visitation "at any time if the best interests of the child would be served thereby in accordance with the standards set forth in § 728(a) of this title." Therefore, in making its determination the Court must consider the best interests of Children guided by an analysis of the factors under 13 *Del. C.* § 722.<sup>7</sup> The Court has held that some factors may be given more weight than others in the Court's analysis.<sup>8</sup> Further, pursuant to 13 *Del. C.* § 728(a), the Court shall determine a "schedule of visitation with the other 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

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<sup>7</sup> 13 *Del. C.* § 722(a) provides:

The Court shall determine the legal custody and residential arrangements for a child in accordance with the best interests of the child. In determining the best interests of the child, the Court shall consider all relevant factors including:

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

<sup>8</sup> See *Fisher v. Fisher*, 691 A.2d 619, 623 (Del. 1997) (noting that "[t]he amount of weight given to one factor or combination of factors will be different in any given proceeding. It is quite possible that the weight of one factor will counterbalance the combined weight of all other factors and be outcome determinative in some situations.")

of such a denial or restriction.”

### **Third Party Visitation**

Pursuant to 13 *Del. C.* § 2412(a), prior to granting a third-party visitation order the Court shall find that: “(1) Third-party visitation is in the child’s best interests; and, (2) One of the following as to each parent: (a) The parent consents to the third-party visitation; (b) The child is dependent, neglected or abused in the parent's care; (c) The parent is deceased; or (d) The parent objects to the visitation; however, the petitioner has demonstrated, by clear and convincing evidence, that the objection is unreasonable; and has demonstrated, by a preponderance of evidence, that the visitation will not substantially interfere with the parent/child relationship.”

Mother confirmed at the outset of the hearing that she is in support of Maternal Grandparents’ Petition. Father is opposed. As there is no allegation that Child is dependent,<sup>9</sup> neglected,<sup>10</sup> or abused<sup>11</sup> in Father’s care, the Court will first undergo a consolidated best interest analysis as to both Petitions and then examine, if necessary, whether Maternal Grandparents have met their burden under 13 *Del. C.* § 2412(d).

### **Best Interests Discussion**

The 13 *Del. C.* § 722 factors to be considered in determining the best interest of the child are as follows:

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

Mother stated, generally, that she wants to play a “healthy role” in Child’s future going forward. Although she did not make any specific requests for additional visitation with Child beyond what was set out in the May 2017 final custody Order or for reinstatement of her regular phone calls, Mother has implied that she wants to keep the phone calls open based on her own admission that she has continued to try to talk to Child on the phone (despite the December 2018 Order that temporarily suspended her calls). According to her testimony, Mother has still not completed the requisite three counseling visits with a Delaware licensed counselor pursuant to the May 2017 Order not for lack of interest in seeing Child but due to her lack of funds.<sup>12</sup> Mother

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<sup>9</sup> 10 *Del C.* § 901(8)

<sup>10</sup> 10 *Del C.* § 901(18)

<sup>11</sup> 10 *Del C.* § 901(1)

<sup>12</sup> Mother alleged that, despite the language of the Order that she was to engage in “individual counseling by a licensed Delaware counselor,” she was directed by an unnamed family law attorney to two different “psychologists” one of whom was Dr. Harris Finklestein who offered to do a twenty-hour “second custody evaluation.” The Court is

further testified that she has found a more cost-effective counseling option in Pennsylvania and asked the Court to permit her to see a Pennsylvania licensed counselor to satisfy the Court's requirement.

Mother also stated she supports Maternal Grandparents' request for every other weekend, summer and holiday visitation with Child. Recognizing that her in-person contact with Child is still suspended, Mother attempted to assuage the Court's concern by stating that she would be temporarily absent from Maternal Grandparents' home if the Court granted visitation between Maternal Grandparents and Child in the home.

Father stated that he does not object to Mother seeing a licensed counselor in Pennsylvania. However, he continues to request that Mother comply with the terms and conditions set out in paragraph 2 of the Court's May 2017 Order. Father also asked that the Court amend the paragraph to require that Dr. Romirowsky, Mother's counselor and Ms. Randall all confer together in order to determine what visitation, if any, they will recommend in the future for Mother and Child.

Father stated he is in opposition to Maternal Grandparents having visitation with Child for several reasons. First, he believes that Maternal Grandparents' Petition is motivated by their own self-interest and does not reflect a consideration of Child's best interest. Second, Maternal Grandparents have not seen Child for fifteen months and reintroducing them into his life prior to reintroducing Mother would be "confusing" for Child, especially if it was in a non-therapeutic setting. Third, based on their presentation during the hearing, Father feels that Mother and Maternal Grandparents are still focused on accusing Father for taking Child away from them rather than trying to self-reflect and make sincere progress toward further understanding of why the Court chose to suspend Mother's visitation in the first place.

Therefore, as the parties are taking opposing positions on Maternal Grandparents' request for visitation, the Court finds this factor to be neutral on that issue. As to Mother's phone contact with Child, the Court also finds that this factor is neutral on this issue. However, this factor does support modifying Mother's counseling requirements to permit her to see a counselor licensed in either Delaware or Pennsylvania.

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unclear how Mother, an unnamed family law attorney and a mental health professional could all read the language of the order to mean that Mother was to consult with a psychologist and complete a second custody evaluation. The purpose of the provision was to direct Mother to engage in treatment related to her relationship with Child, and not to get a second opinion on Dr. Romirowsky's conclusions, presented at the prior hearing and upon which the Court had already issued its custody decision.

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

Neither the parties nor Ms. Randall testified about Child's stated preference regarding visitation with Maternal Grandparents or phone contact with Mother. In addition, due to the young age of Child and his substantial mental health needs, the Court chose not to interview him in private following the conclusion of testimony. As a result, the Court finds this factor to be inapplicable.

**(3) The interaction and interrelationship of the child with his 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 person who may significantly affect the child's best interests;**

Child's Relationship with Father

As the focus of the hearing was primarily on whether Mother should be permitted to have phone and in-person contact with Child and whether Maternal Grandparents should be permitted to have regular overnight visitation with Child in their home, the parties presented very limited testimony about Father's relationship with Child. However, Ms. Randall testified that Child presents as having an "extremely positive" and "healthy" relationship with Father. For example, she noted, among others, how Child references Father throughout Child's sessions with Ms. Randall, Child and Father have good eye contact, Father is able to keep Child on task, calm him down and make him laugh. Furthermore, Ms. Randall has observed how Father is able to help Child deal with his stress.

Child's Relationship with Mother

Mother testified that she "miss[es] [Child] so much" but that she has been unable to make more progress to reunify with Child under the terms and conditions set out in paragraph 2 of the Court's May 2017 custody Order due to a lack of funds. As a result, Mother has not had in-person contact with Child since May 2017. The Court also has no evidence that she has talked on the phone with Child since August 2017 after Father unilaterally blocked her calls when he deemed her phone conduct to be inappropriate, and then the Court temporarily suspended those calls in December 2018.<sup>13</sup> During this prolonged break in contact, Mother testified that she has asked Father for pictures of Child, such as his class photograph, and more information about Child's

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<sup>13</sup> During the hearing, Mother testified to the following: "I honestly did not read [the temporary order restricting phone contact]. I'm sure it was there and I just scanned through the document [...] I did not know I was not to supposed to continue to make attempts to make contact. I was going by the last custody order." Based on Mother's history of deception and untruthfulness, the Court finds Mother's testimony on this point to lack credibility and be self-serving.

daily life. However, she feels that Father's Court-ordered weekly updates have been scant on detail about Child's daily life.

In contrast to Father's healthy and positive relationship with Child, Ms. Randall opined that Mother's past relationship with Child was a source of stress that Child "has pushed [...] to the side [of his brain] because he is not able to cope with the stress." In support of that opinion, Ms. Randall testified that, when she has asked Child about Mother, Child does not reference Mother "at all" and that once when she drew a picture of Mother Child scribbled it out and made the picture into somebody else. Relying on evidence presented by Mother in her Counterclaim for Custody and in Mother's testimony at the first custody hearing,<sup>14</sup> Ms. Randall also opined that, as Child's primary caregiver when he was young, Mother was the person "most likely to wire [Child's] brain either healthy or unhealthy." Finally, Ms. Randall offered her opinion that if Child was often distracted during his past phone calls with Mother, it was not necessarily an indicator that Father was interfering with the calls, but that it could be evidence that Child and Mother did not have a secure or healthy relationship at that time that would have kept Child engaged in the calls.

Dr. Romirowsky also reported that he has received no new information regarding Mother that would change his opinions, as reflected in the Court's September 6, 2016 and May 19, 2017 orders on custody, that the Court found persuasive in guiding its decision to ultimately suspend Mother's in-person visitation with Child. Dr. Romirowsky further admitted that he has not interacted with Mother since the issuance of the May 2017 order. However, he has talked to Ms. Randall and Child's former therapist, Dr. Elizabeth Higley. Finally, Dr. Romirowsky testified that, despite the instructions of the May 2017 final custody Order that Mother's counselor was to speak with Dr. Romirowsky regarding setting up a supervised visitation plan for Mother and Child after Mother had been to three sessions with her counselor, no counselor has reached out to Dr. Romirowsky since May 2017 to speak to him about Mother's participation in counseling.

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<sup>14</sup> The Court again finds Mother's credibility to be suspect when she challenged Ms. Randall's testimony that it was documented that Mother was the primary caregiver, perhaps because it was no longer in her interest to attempt to present herself as Child's primary caregiver during his early years. In Mother's August 2015 Counterclaim for Custody, Mother asserted that "[s]ince [Child] was eight months old, Mother has either worked from home or been a stay at home mother [...] to provide [Child's] care. Further, Mother has been the sole coordinator for all of [Child's] therapies, evaluations, appointments, procedures and tests." Page 7 of the September 2016 interim Order also reflects that she maintained this same stance during her testimony.

### Child's Relationship with Maternal Relatives

Despite their documented efforts, Maternal Grandparents and other maternal relatives have not seen Child since the Court suspended Mother's contact with Child in May 2017. In support of their claim that Child's maternal family has tried to reach out to Father to facilitate their contact with Child, Maternal Grandparents presented evidence of emails that Maternal Great Aunt sent to Father in December 2017 and March 2018 asking for contact. MGPs Ex. #1 and 3. Maternal Grandparents also presented evidence of emails they sent to Father in December 2016, March 2017, July 2017, and March 2018, as well as text messages of varying dates, asking for contact with Child. MGPs Ex. #4. They further presented documentation that Maternal Grandmother attempted to call Father twice in December 2018 but the call only lasted one minute. MGPs Ex. #4. Maternal Grandfather used this evidence of their attempts communicate with Father about setting up contact with Child as a defense against why Maternal Grandparents went from May 2017 until July 2018 before requesting formal visitation with Child through the Court. Based on the evidence presented, the Court will not make any negative inferences against Maternal Grandparents for not filing a petition for visitation sooner. The Court always supports parties trying to mutually agree on a matter such as third party visitation with a child prior to involving the courts.

Because they have not had any contact with Child in almost two years, the parties committed extensive testimony about Child's interactions and relationship with Maternal Grandparents and other maternal relatives from Child's birth until he was five years old. For example, Maternal Grandparents provided over seventy undated pictures showing Child's history of interactions with his maternal family from Child's birth presumably until when he was five years old. MGPs Ex. #5. And while the Court notes that Child looks happy in many of the pictures, the Court recognizes Father's express concern that the pictures only capture isolated moments in time and therefore can present a "false narrative" because Child may have smiled for a picture but could have been "screaming and crying" or otherwise been unhappy the rest of the time.

Father testified that he has the same concerns about how Mother used to interact with Child as he has about interactions Maternal Grandmother has had with Child or with Father about Child. Father cited to two specific instances that he found "bizarre." Once, when Child was startled and shaken after a lamp fell over, Father recalls that Maternal Grandmother "just started laughing." Another time, when Child was in the middle of a "traumatic situation," Maternal Grandmother chose to repeat "over and over" that Child was "so happy." Father also presented evidence of a

very long text message Maternal Grandmother sent to Father in April 2016, after Mother and Father had separated but while Mother was still having contact with Child, in support of his position that Maternal Grandparents' actions are not made in the best interest of Child but either in their own best interests or in an attempt to agitate Father. Father Ex. #2. In that text message, Maternal Grandmother asks that Father return "any and all items" ever given to Child from twenty different maternal family members. Maternal Grandmother then sets out to list several specific items she would like to have returned and warns Father that she will send an "itemized list, which includes the cost [...] so that you may reimburse us" if he does not provide these items by the end of the day. Father found this message to be "bizarre" in part because he testified he had never even seen "half" of the toys that Maternal Grandmother mentioned and that some of the clothes that she wanted back were by then "three sizes too small" for Child or had already been donated to a thrift store. Although the Court acknowledges that reasonable minds might differ as to whether Maternal Grandmother's conduct was appropriate in the instances to which Father cited, the Court will not find that any of these instances in isolation or as a whole are dispositive in its final determination in this matter.

In contrast to the image cast by Father, Maternal Grandparents, Ms. B----- and Maternal Great Aunt all used positive language to describe Child's historical relationship with his maternal family. Ms. B-----, Maternal Grandparents' next door neighbor, testified that when Child would come over to spend time with Maternal Grandparents and his maternal cousins that Child was well cared for, and Maternal Grandparents and others did well to engage Child in play and various activities. Maternal Great Aunt noted generally that her nieces and nephews "mean the world" to her, and focused her testimony on how her 14-year-old daughter M-----'s bond with Child "took off" during the summer of 2015 when the two children, despite their large age gap, were "best buddies." Maternal Great Aunt further testified that M----- "loves her cousin very very much" and she wears an autism awareness bracelet that reminds her of Child "every single day."

Maternal Grandmother testified that she loves Child, calling him "the light of my life," and that she misses him. She admitted that she did not see Child much prior to Mother's and Father's separation, but thereafter she believes that Maternal Grandparents developed a "great relationship" with Child once they started seeing him on a regular basis. She recalled a specific intimate exchange she and Child used to share together over a children's song that was always accompanied

by tickles. Maternal Grandmother also testified that Child used to play happily with her other grandchildren who are of similar age.

Maternal Grandfather also testified that he misses Child and that he wants to be reintroduced into Child's life to build on the memories they shared in the past. Maternal Grandfather generally recalled how Child had fun in their home, he was happy, and he had a good time with them. He also specifically spoke about playing sports in the backyard with Child and building trains together. However, he also admitted that he cannot recall any time when Maternal Grandparents had Child in their care for an overnight without Mother and/or Father also being present in the home.

If necessary, Maternal Grandparents both said they would be willing to participate in reunification with Child in a therapeutic setting if ordered by the Court. Maternal Grandfather also countered Father's testimony, about Maternal Grandparents being motivated by their own self-interest, that Maternal Grandfather believes that they are motivated by Child's best interest in pursuing visitation and that, if he thought his having contact with Child would be detrimental for Child, he would not be requesting a formal visitation schedule.

Therefore, because Mother has not made sufficient progress in the last nearly two years to facilitate the reintroduction of her in-person visits with Child and Child, the Court finds that this factor supports suspending Mother's phone contact with Child until Mother's licensed counselor, Dr. Romirowsky and Ms. Randall, all recommend that phone and/or in-person contact between Mother and Child would be in Child's best interest. When the Court suspended Mother's in-person visits in May 2017 but permitted her to have four phone calls a week, the Court could not have foreseen that it would be twenty months before Mother began seeing a counselor. The Court had no intension of allowing Mother to continue the phone calls indefinitely without also complying with paragraph 2 of the Order regarding engaging in her own counseling.

Although Mother and Maternal Grandparents testified that, if the Court ordered Mother not to be present during any visitation Maternal Grandparents received, she would not be present, based on Mother's history of deception and the fact that Mother is presently living with Maternal Grandparents in Northeast Pennsylvania, the Court gives limited weight to that testimony. As it has been almost two years since Child has seen Mother or Maternal Grandparents, and there is no evidence that Child has ever been in Maternal Grandparents home without Mother present, the Court agrees with Father that it would be confusing for Child to be reintroduced to Maternal

Grandparents' home without also being reintroduced to Mother. As a result, until Dr. Romirowsky, Mother's counselor and the child's counselor recommend a resumption in Mother's contact with Child, the Court finds that this factor supports prohibiting Maternal Grandparents' contact until recommended by Child's mental health treatment team.

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

As to this factor, the Court takes judicial notice of its prior findings from May 19, 2017 that Child "requires structure and routine more than the average; it is vital to his emotional health and development that he maintains a consistent schedule." Father expressed concern that Maternal Grandparents are requesting an "abrupt" change in Child's schedule, by asking for every other weekend contact which would necessitate that Child spend five hours in the car, two-and-a-half hours each way, that would not be in Child's best interest. Father also testified that, because of Child's "very significant mental health issues and challenges," the matter is not as simple as selecting a location whereby Maternal Grandparents and Father can facilitate every other weekend exchanges.

Ms. Randall also testified that she believes that Child has made "extraordinary" progress and "his brain is rewiring in a healthy manner" since he has been in Father's sole care to grow out of the complex trauma that Ms. Randall believes Child experienced when he was younger and in Mother's primary care. She attributed his progress to the positive caregiver role that Father plays in Child's life and Father's ability to protect Child from his being exposed to traumatic events. As evidence of his progress, Ms. Randall noted that Child has been placed in a regular classroom. Going forward, in order to continue this progress, Ms. Randall recommended, among others, that Child continue to be involved in the services he is receiving from school and that it would be detrimental for Child's development if Mother or Maternal Grandparents were reintroduced into Child's life at this time.

Therefore, the Court finds that this factor supports continuing to suspend Mother's phone contact and denying Maternal Grandparents' request for visitation at this time.

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

Maternal Grandfather, Maternal Grandmother, Child and Father all appears to be in relatively good physical health. Additionally, neither Maternal Grandparents nor Father have

reported any significant mental health issues.<sup>15</sup> However, Father raised concerns about Maternal Grandmother. Generally, Father believes that Maternal Grandmother sometimes engages in “deliberate deception.” Father also feels that Maternal Grandmother acted in a “real disturbing” way when she allegedly cursed out one of her daughters as lazy after her daughter had just returned from a session of chemotherapy.

Mother testified briefly that she is still dealing with significant medical issues, none of which would prevent her from maintaining regular phone contact with Child. Although the Court heard no evidence on any updates to Mother’s mental health prognosis, Mother testified why it has taken her so long to start seeing a counselor and provided basic details as to what she is currently doing to address her mental health needs. First, she said she did not pursue options in Delaware because those practitioners did not accept her insurance and, therefore, she could not afford to receive counseling in Delaware. However, she reported that her parish church in Northeast Pennsylvania has offered to assist her with the cost of mental health treatment. As such, Mother stated that she has just started meeting with Monsignor John Sempa, her parish priest, every other week. She added that Monsignor Sempa has a psychology degree and that as of the date of the hearing she had visited with Monsignor Sempa twice. Mother further reported that Monsignor Sempa “has connected me with a therapist in the area whose name is Larry Liptock” whom she had met with one time in the “month or two” prior to this hearing.<sup>16</sup> Mother added that she plans to meet with Monsignor Sempa and Dr. Liptock on a rotating basis. Although Mother did not report about the general nature of her visits with Monsignor Sempa, she testified that during her first session with Dr. Liptock that they discussed that she does not have anti-social personality disorder.

Ms. Randall testified extensively about her opinion on Child’s mental health based on her observations during five weekly sessions with him in January and February 2019 and her review of the documentation provided to her. As to his clinical diagnosis, she believes that Child shows signs of being on the autism spectrum, but that he also experienced “complex trauma during his

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<sup>15</sup> Maternal Grandmother also reported that her son M----- has not physical or mental health concerns.

<sup>16</sup> Mother could not provide documentary evidence that Larry Liptock is a licensed counselor in Pennsylvania. She also did not testify to his professional background or areas of clinical expertise. She only reported that he has an “individual practice” located at 1040 Main Street in Scranton, PA that “goes by Dr. Larry Liptock” that he “operates out of another doctor’s office.”

foundation years.”<sup>17</sup> In support of this diagnosis, she explained generally that when children “encounter a very dysfunctional parent-child relationship at a very young age, they can present as being autistic when in reality it is poor parenting.” She went on to acknowledge that Father reported to her that Child sometimes exhibits characteristics of someone on the autism spectrum when he is under stress, when in fact it is evidence of regression related to his past complex trauma. In order to avoid regression and continue to heal from this trauma, Ms. Randall opined that “there needs to be a complete absence of the person or the people who his brain unconsciously associates with this negative caregiving or this negative time in his life.” When pressed as to whether Mother or Father was the primary cause of the complex trauma, Ms. Randall first said that “without a shadow of a doubt” Child’s issues did not come from his relationship with Father because there are no current issues with Child’s relationship with Father evident from their sessions together. Ms. Randall then stated that there is a “very strong likelihood” that Child’s issues came from Mother’s interactions with Child while she was his primary caregiver based on what Ms. Randall has read about their relationship from those years. Ms. Randall added that if Child had a healthy prior relationship with Mother that he would be grieving the loss of Mother and regressing, but that, because he has made “significant progress” since Mother has not been involved in Child’s life, Ms. Randall believes that Child’s relationship with Mother was the source of his stress.

Based on her opinion that Mother is the primary cause of Child’s complex trauma, Ms. Randall recommended that Child continue to reside with Father and attend his current school, and “not have contact with [Mother] as well as her extended family” as such interactions might cause him stress and stall his development. Ms. Randall was especially concerned about the negative impact on Child’s progression if he had an interaction with Mother outside of Father’s presence. Ms. Randall went on to explain that because Child was exposed to five years of complex trauma, and that it can take two to three years to undo every year of complex trauma, that it is going to take until Child is “closer to adulthood,” or “a very very very long time,” before he can appropriately process and regulate the stress of being in an environment with Mother again. She said at his current stage “any contact with Mother or his maternal family” would cause him to regress to the point where he would not be able to “pull himself out.” Ms. Randall even advised against Mother having phone contact with Child when Child is in Father’s presence because of the clearly

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<sup>17</sup> Ms. Randall testified that complex trauma can be caused generally by emotional or physical neglect, deprivation, isolation or specifically by something like chronically putting a young child in front of a television by himself.

documented history of Mother's aggressive tone toward Father that might trigger a "fear response" in Child. Ms. Randall also advised against starting therapeutic reunification efforts at this time because Child still lacks the understanding and comprehension levels necessary to understand Mother's non-verbal cues, among others.

Therefore, based on the opinion of Child's therapist, the Court finds that this factor strongly supports continuing to suspend Mother's phone contact with Child and denying Maternal Grandparents' request for visitation at this time.

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

Pursuant to 13 Del. C. § 701, parents are responsible for the support, care, nurture, welfare, and education of their children, even without the entry of a Court Order. This factor is largely irrelevant because Mother has not had contact with Child since May 2017. In addition, there was no allegation during this hearing that Mother is not currently paying child support. However, the Court is concerned that Mother's primary argument for why she had not started counseling prior to January or February 2019 is money. Although the matter before the Court is not alimony and the Court is not tasked with examining Mother's monthly expenses in comparison to her income, the Court wonders whether reunifying with Child is her top priority based on her express testimony about some of her other financial decisions. The Court agrees with Mother that it would be a difficult choice to have to decide between whether she would eat or receive medical care for herself or whether she would begin sessions with a counselor in order to work toward reunification with Child. However, the Court is confused with why Mother would only start living with Maternal Grandparents a few months ago, per their testimony, and she is already looking to move out again to live on her own, without even a roommate to offset the cost. Rent is a huge monthly expense for most people, even if it is adjusted based on one's income. Choosing independence, over living with her parents or a roommate, does not communicate to the Court that Mother is prioritizing her rights and responsibilities to Child over her own needs. Additionally, if Mother moved back to Northeast Pennsylvania a year ago to ease the strain on her finances, as she testified, and her church is assisting her with paying for the therapy, the Court is also confused why it took her so long to set up therapy with Dr. Liptock.

Therefore, because of the Court's concern about how long it has taken Mother to set up counseling and what that communicates about how high her priority is in meeting her parental

responsibilities to Child, the Court finds that this factor supports suspending Mother's phone contact with Child until her counselor, Dr. Romirowsky and Ms. Randall all agree on a plan for how and when to reintroduce Mother's contact with Child.

As to Maternal Grandparents' request for visitation, this factor is neutral.

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

Pursuant to 13 *Del. C.* § 706A, "(a)ny evidence of a past or present act of domestic violence, whether or not committed in the presence of the child, is a relevant factor that must be considered by the court in determining the legal custody and residential arrangements in accordance with the best interests of the child." There is no evidence before the Court that either Maternal Grandmother or Maternal Grandfather have ever been perpetrators of domestic violence. However, Father obtained a one-year default PFA Order limiting Mother's contact with him from October 18, 2017 until October 18, 2018 and Mother was found, after a contested hearing on the matter, in civil contempt of the PFA Order on December 28, 2017 for contacting Father via email "regarding property division issues." Additionally, the Court takes judicial notice of the extensive testimony in the interim and final custody Order of September 2016 and May 2017 that Mother had a history of being verbally aggressive with Father in Child's presence. Therefore, although there was no testimony that Mother and Father have had any similar disputes arise since the expiration of the PFA, the Court finds that this factor favors suspending Mother's phone contact with Child until she can more extensively address her anger issues. As to Maternal Grandparents' request for visitation, this factor is neutral.

**(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 Court has independently reviewed the Delaware criminal histories of the parties. Neither Mother nor Father have a no criminal record in Delaware other than for minor motor vehicle infractions. Furthermore, Maternal Grandparents testified that neither they nor their son M----- have criminal records. Therefore, the Court finds this factor to be neutral as to both Father's request to suspend Mother's phone calls and Maternal Grandparents' request for regular visitation.

In addition to the above express factors listed under 13 *Del. C.* § 722, the Court may consider other relevant factors in determining the best interest of the child. As a result, the Court

also notes that Mother and Father have demonstrated a very poor communication record. Mother's "combative and aggressive" interactions with Father, sometimes in the presence of Child, are well documented in the interim and final custody orders. As such, Ms. Randall stated that Mother will need to make progress, among others, toward learning how to positively communicate with Father both in and out of Child's presence before Ms. Randall would change her opinion about Mother's not having contact with Child for the foreseeable future. Because Ms. Randall said that "even if [Child] is 14," if Child sees Mother and she is hostile toward Father then that could cause Child undue stress. Additionally, Father and Maternal Grandparents have developed an antagonistic relationship over the past few years. For example, Father believes that Maternal Grandmother was trying to intimidate him by making "a really angry face" through the courtroom glass doors while he testified during the initial custody hearing dates in August 2016. Also, on October 31, 2016, Maternal Grandmother posted to Facebook that "[Child] is the victim in this war [Father] is waging against [Mother]" and "[Mother] is also a victim of [Father's] relentless quest to destroy her." Furthermore, Father does not respond to attempts by Maternal Grandparents to correspond by email, text or phone, and he declined any suggestion during the hearing to talk to Maternal Grandfather "man to man" to find out a mutually agreeable resolution to their request for visitation.

Based on the evidence presented, the Court finds that all of the applicable factors either favor suspending Mother's phone calls and denying Maternal Grandparents' request for visitation, or are neutral. Therefore, upon consideration and weighing of the above factors, and the evidence presented, the Court finds that suspending Mother's phone calls and denying Maternal Grandparent's request for visitation to be in Child's best interest at this time. Although the Court is reluctant to completely cut off Child from any contact with his maternal relatives, especially his cousins like M-----, the Court primarily relies on the recommendation of Ms. Randall under factor five in reaching this conclusion. However, factors three and four are also important to consider as they reflect how well Child has progressed since Mother has been removed from his life, such that an experienced professional would opine that she is not even sure she would diagnose Child as on the autistic spectrum based on how he presents today. Factor seven and additional evidence about how Mother has historically communicated with Father and the detrimental impact that has had on Child also persuades the Court that Mother needs to be able to speak with Father appropriately first before she can speak to Child, even over the phone.

### **13 Del. C. § 2412 (a)(2)(d) Discussion**

Based on the above finding that it would not be in Child's best interest to grant Maternal Grandparents' regular visitation at this time, the Court is not required to undergo the second part of the analysis under 13 Del. C. § 2412 (a)(2) as the Court must find that third party visitation is *both* in the child's best interest under (a)(1) *and* the objecting parent is unreasonable and visitation would not substantially interfere with the parent-child relationship under (a)(2). Nonetheless, the Court will undergo a brief analysis of the factors under 13 Del. C. § 2412 (a)(2)(d) analysis as follows:

**(1) Whether the petitioner has demonstrated, by clear and convincing evidence, that the objection is unreasonable.**

Maternal Grandparents have failed to establish by clear and convincing evidence that Father's objection to their regular visitation with Child at this point is unreasonable. Although they have clearly demonstrated that Father has repeatedly denied their requests to see Child since May 2017, they have not shown that Father's denials have been unreasonable. For example, on December 28, 2017, Father sent a reply email to Maternal Great Aunt where he carefully and respectfully laid out his reasons for why he did not think Child's contact with his maternal family was in Child's best interest at that time. Crucially, Father also noted that "if [Child's then] psychologist was to strongly recommend any kind of visitation because it would be the best thing for [Child ...], then I will certainly be reaching back out to you." MGPs Ex. #2. There is no evidence that Child's past or present therapist has ever recommended that Father permit Child's maternal family to have contact with Child since that time. On the contrary, Ms. Randall clearly opined during the hearing against Child's maternal family having any contact with Child for the foreseeable future.

**(2) Whether the petitioner has demonstrated, by a preponderance of evidence, that the visitation will not substantially interfere with the parent/child relationship.**

For a normal child, if maternal grandparents ask for every other weekend visitation, shared holidays and a few weeks in the summer when mother is not getting any visitation (for one reason or another), that request might in some cases not substantially interfere with the parent-child relationship. However, it is undisputed in this case that Child has significant mental health needs. It is also undisputed that Child is thriving in Father's care and doing very well in school, and that Child has made great progress since he stopped having regular phone or in-person contact with Mother. Furthermore, neither Child's therapist nor any other person with personal knowledge of

Child's current well-being testified to this issue in the affirmative or negative. Therefore, under these facts, Maternal Grandparents have not met their burden that their requested visitation will not substantially interfere with Child's relationship with Father.

**ACCORDINGLY, IT IS HEREBY ORDERED AS FOLLOWS:**

1. Maternal Grandparents' request for visitation with Child is ***DENIED***.
2. Mother's visitation with Child remains suspended until she engages in individual counseling by a licensed counselor. Mother shall be solely responsible for the cost of her individual counseling. Once Mother has been to three (3) visits with her counselor, on a consistent schedule, no less than monthly, her counselor shall speak with Dr. Romirowsky regarding an appropriate schedule for supervised visitation with Mother and the Child in either Mother's or Child's counselor's office. Once Dr. Romirowsky has heard from Mother's counselor, Dr. Romirowsky shall confer with Child's counselor, presently Ms. Randall, about her position on Mother having contact with Child. Once Dr. Romirowsky, Child's counselor and Mother's counselor all feel that it is appropriate, Mother's visitation shall be based upon their collective recommendations.
3. Mother may engage with a counselor licensed in either Delaware or Pennsylvania. If she attempts to complete the requirements of paragraph 2 through the utilization of a licensed Pennsylvania counselor, Mother shall provide Father with the contact information for that counselor, and that counselor's current professional resume within twenty (20) days of the issuance of this order.
4. Mother shall continue to have no phone contact with Child. Once Dr. Romirowsky, Mother's counselor and Child's counselor, presently Ms. Randall, all feel that it is appropriate, Mother's phone contact shall be based upon their collective recommendations but not to exceed four (4) times per week as set out in the Court's final custody Order of May 19, 2017.
5. Father shall continue to send Mother via email an update once per week regarding the Child's education and medical issues. Father is instructed to include specific details about Child in those emails as often as possible and pictures of Child when they are available.
6. The Court shall leave it to the discretion of Dr. Romirowsky and Child's counselor, presently Ms. Randall, about when and if it would be appropriate to include Maternal Grandparents in any therapeutic reunification efforts with Child.

**IT IS SO ORDERED.**

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/s/ **Robert Burton Coonin, Judge**

RBC/plr  
Cc: File  
Mail Date: