

The Family Court of the State of Delaware

ELIZA M. HIRST
JUDGE



NEW CASTLE COUNTY COURTHOUSE
500 N. KING STREET, SUITE 9400
WILMINGTON, DELAWARE 19801

April 23, 2026

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LETTER DECISION AND ORDER

RE: *M----- v. T-----*
FILE No.: 25-08-08 TN; PETITION No.: 25-19652
B----- v. T-----
FILE No.: 25-08-07 TN; PETITION No.: 25-19619
R----- v. T-----
FILE No.: 25-08-06 TN; PETITION No.: 25-19606

PETITIONS FOR TERMINATION OF PARENTAL RIGHTS

Dear Counsel:

On April 3, 2026, the Court received a motion filed by Petitioners M----- and C----- M-----, D----- and E----- B-----, and M---- and L---- R----- (“Guardians”), seeking appointment of an expert to conduct and report on a psychosexual evaluation of Respondent A----- T----- (“Father”). On April 16, 2026, Father filed a timely response partially supporting Guardians’ request. The child attorney took no position. For the

reasons that follow, Guardians' motion is **DENIED**.

With the exception of depositions and requests for production, formal discovery is not permitted in this Court unless and until permitted by order.¹ A party seeking discovery must file a motion "specify[ing] with particularity the need therefor."² The Court's role is to ensure that the scope of discovery remains properly cabined to "non-privileged matter that is relevant to any party's claim or defense and *proportional to the needs of the case*," considering "the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit."³ Before the Court orders a compelled physical or mental examination, a party must additionally show that (1) the condition to be examined is "really and genuinely and controversy" and (2) there is "good cause" for the request.⁴

Guardians contend that there is good cause for a psychosexual evaluation because it "is critical[] to this Court's evaluation of the best interests of these Children."⁵ Guardians explain that the Court's decision on termination should be informed by detailed testimony on the mental health conditions that led to Father's conviction for sexually abusing his child, on his treatment for those conditions (if any), and on the likelihood that he will be able to have a safe parent-child relationship in the future. Consequently, Guardians suggest that best-interest factors (4), (5), (6), and (7) "call for expert opinion" in the circumstances of this case.⁶ Guardians ask the Court to appoint an expert with a broad mandate to review Father's records, clinically evaluate his psychosexual functioning, and assess his ability to safely contact or parent children in the future.⁷ As part of that evaluation, Guardians request that various third parties be

¹ Del. Fam. Ct. Civ. R. 26(a).

² Del. Fam. Ct. Civ. R. 26(b).

³ Del. Fam. Ct. Civ. R. 26(g)(1) (emphasis added).

⁴ *Kelly v. Brown*, 529 A.2d 271, 272 (Del. Fam. Ct. 1987) (citing Del. Fam. Ct. Civ. R. 35(a) and quoting *Schlagenhauf v. Holder*, 379 U.S. 104, 118 (1964)).

⁵ File 25-08-06TN #25-19606, File 25-08-07TN #25-19619, File 25-08-08TN #25-19652, Tab 16, at 4.

⁶ *Id.* at 5.

⁷ *Id.* at 6.

ordered to cooperate and share documents with the expert.⁸

Father denies that expert opinion is necessary to disposition of the case but does not oppose Guardians' request for an examination. He argues, however, that the proposed evaluation is overly broad in scope. Further, he suggests that the cost of the examination should be borne by Guardians or by the Court, and he asks for the opportunity to select the examiner out of a list of three identified by Guardians.

The Court finds that, although the requirement of good cause is designed to protect Father's privacy and is his right to waive,⁹ the request is unwarranted and disproportional to the needs of the case.¹⁰ No doubt, the parental rights at stake are of immense importance.¹¹ More significantly, however, the benefits simply do not outweigh the burdens and delays the requested discovery will impose. Father's conviction has already established grounds for termination of his parental rights.¹² The only question at trial will be whether there is clear and convincing evidence that termination is in the children's best interests.¹³ Father's mental health is just one piece of evidence relevant to one of the eight best-interest factors,¹⁴ and expert testimony is not necessarily required to hear and evaluate mental-health evidence in this context.¹⁵ Moreover, as our Supreme Court has acknowledged, "[t]he amount of weight given to one [best-interest]

⁸ *Id.* at 7.

⁹ See *Kelly*, 529 A.2d at 273.

¹⁰ The provisions of Rule 35 supplement but do not supersede the proportionality factors used to define the appropriate scope of discovery under Rule 26(g). See *Geroski v. Betton*, No. Civ.A. 02C-02-012, 2003 WL 21001033, at *1 (Del. Super. Ct. April 8, 2003).

¹¹ *E.g.*, *Daber v. Div. of Child Protective Servs.*, 470 A.2d 723, 726 (Del. 1983) ("Few[] rights are more sacred than those which derive from the parent-child relationship.").

¹² See 13 Del. C. § 1103(a)(4).

¹³ See 13 Del. C. § 1108(a).

¹⁴ See 13 Del. C. § 722(a)(5) ("The mental *and physical* health of *all individuals* involved") (emphasis added).

¹⁵ *E.g.*, *In re Jeisean M.*, 852 A.2d 643, 652 (Conn. 2004) ("Although we often consider the testimony of mental health experts . . . such expert testimony is not a precondition of the court's own factual judgment as to the child's best interest"); *N.J. Div. of Child Protection & Permanency v. I.L.*, No. A-3452-24, 2026 WL 807485, at *9 (N.J. Super. Ct. App. Div. March 24, 2026) ("Here, the judge determined expert testimony was not required because it would not 'have yielded anything that was[not] already in the record.' Indeed, given the serious allegations of sexual abuse at issue and the no contact orders in place combined with defendant's refusal to participate in psychological evaluations on the advice of her criminal counsel, we are satisfied the judge correctly determined expert testimony would not have yielded additional information."); see also *T.C.C. v. M.L.C.*, No. 02-35211, 02-31525, 03-30915, 2004 WL 3245937, at *6 (Del. Fam. Ct. Dec. 2, 2004).

factor or combination of factors will be different in any given proceeding”¹⁶ and “in some cases one factor may counterbalance or even outweigh the rest.”¹⁷ At trial, the Court will consider not just Father’s mental health, but also the health of the children and Guardians, the criminal no-contact orders presently in place, the possible benefits to the children of permanent placement with and adoption by their respective Guardians, the expressed wishes of the children, and all other facts bearing on whether terminating Father’s rights is in the best interests of the children.

The problem is not only that the likely probative value of Guardians’ requested discovery is limited, but it will also create unfair burdens for the other parties to the action. Importantly, those burdens will ultimately fall not only on Father, but also on the children. Time is always a sensitive matter in termination proceedings.¹⁸ It is especially so where, as here, the children whose interests are at stake have expressly asked for a swift resolution of the case. Additionally, Guardians’ motion is unclear as to whether they will cover the cost of the evaluation or seek for the Court to do so, and the parties do not agree on the evaluator to be used. Trial has already been delayed by nearly four months in this matter. Although expert psychosexual evidence would doubtless have some relevance, that is not enough to justify Guardians’ request to prolong these proceedings.¹⁹ The Court will not at this late stage of the case countenance further delay—and further prejudice to the children’s interests. Accordingly, Guardians’ Rule 35 requests for examinations are **DENIED**.

IT IS SO ORDERED.

/ Eliza M. Hirst /

**ELIZA M. HIRST
FAMILY COURT JUDGE**

cc: File, Parties

¹⁶ *Fisher v. Fisher*, 691 A.2d 619, 623 (Del. 1997).

¹⁷ *Clark v. DFS*, 975 A.2d 813, 822 (Del. 2009) (citing *Fisher*, 691 A.2d at 623).

¹⁸ See 13 Del. C. § 1115 (“This chapter is intended to promote *without undue delay* the paramount objective of advancing the best interest of the child[.]”) (emphasis added); *Edwards v. Cooper*, No. 524, 2004, 2005 WL 1653637, at *2 (Del. May 23, 2005); see also 13 Del. C. § 1108(b) (allowing the Court only 30 days to issue decisions on termination).

¹⁹ *Cf. Kelly*, 529 A.2d at 273.

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