



visitation (the “Motion for Visitation”), to be heard on April 6, 2023 (the “April Hearing”).<sup>5</sup>

D. After the April Hearing was scheduled, J.G. and C.A.G. filed a status report confirming that C.S.G. had accepted a plea in the related criminal proceedings and was sentenced to probation and to have “No Unsupervised Contact with J.D.G.”<sup>6</sup> By letter dated March 9, 2023, I added the Petition to Remove to the agenda for the April Hearing.<sup>7</sup>

E. On March 30, 2023, J.G. and C.A.G. filed a motion to relinquish placement and resign from guardianship (the “Motion to Resign”).<sup>8</sup> The Motion to Resign, if granted, would moot the Motion for Visitation. Thus, by minute order on March 31, 2023, I added the Motion to Resign to the April Hearing agenda.<sup>9</sup>

F. At the April Hearing, all parties testified and presented argument regarding the Petition to Remove and Motion to Resign. J.G. and C.A.G. seek to resign and have J.D.G. moved out of their home. Although they did not advocate for a specific placement, J.G. and C.A.G. raised concerns about the fitness of their co-guardians to continue serving or to have J.D.G. live with them. If all co-guardians

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<sup>5</sup> D.I. 128.

<sup>6</sup> D.I. 129-130.

<sup>7</sup> D.I. 131.

<sup>8</sup> D.I. 132.

<sup>9</sup> D.I. 133.

are removed, J.G. and C.A.G. propose the State, the Office of the Public Guardian, as successor. M.S. and C.S.G. seek to remain as co-guardians and M.S. is ready to have J.D.G. move in with her.

G. A guardian may be removed for “for any sufficient cause.”<sup>10</sup> The decision to remove a guardian is committed to the discretion of the Court.<sup>11</sup> In determining whether to remove a co-guardian, the Court reviews whether the co-guardian acted with competency, rationality, and integrity and in the best interest of the person with a disability.<sup>12</sup> The Court will also consider whether removal is in the person with a disability’s best interest under the circumstances.<sup>13</sup>

H. The Office of the Public Guardian is the guardian of “last resort.”<sup>14</sup> “Last resort” includes: “Circumstances in which a person willing or able to serve, or already serving, as . . . a guardian, is available but sufficient cause has been found by the court that the individual available or so acting is not suitable to serve and that the appointment of the Public Guardian is in the best interest of the person who is incapacitated.”<sup>15</sup>

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<sup>10</sup> 12 *Del. C.* § 3908.

<sup>11</sup> *In re Harris*, 2003 WL 22843905, at \*1 (Del. Ch. Nov. 14, 2003).

<sup>12</sup> *Id.*

<sup>13</sup> *See In re Williams*, 2011 WL 3925690, at \*2 (Del. Ch. Aug. 25, 2011).

<sup>14</sup> 12 *Del. C.* § 3981(a)(1).

<sup>15</sup> 12 *Del. C.* § 3982(4)(b).

NOW, THEREFORE, IT IS ORDERED this 20th day of April 2023, as follows:

1. The Petition to Remove is GRANTED IN PART and DENIED IN PART. The Motion to Resign is GRANTED.

2. C.S.G. is hereby removed as co-guardian of the person and property of J.D.G. C.S.G. pled guilty to, and was convicted of, assault against J.D.G. and ordered to serve one year of probation and have no unsupervised contact with J.D.G. She is not an appropriate guardian at this time but may reapply to serve as co-guardian when the above restrictions are lifted.

3. I also accept the resignation of J.G. and C.A.G. who are hereby removed as co-guardians of the person and property of J.D.G.

4. With the removal of J.G., C.A.G., and C.S.G., I am left with two options: (1) maintain M.S. as sole guardian or (2) remove M.S. in favor of the Office of the Public Guardian. I choose option (1) for the following reasons:

a. At most, the evidence confirmed that M.S. has a more relaxed parenting style than J.G. and C.A.G., has allowed her emotions to get the best of her in certain visitations with J.D.G., and has a blind spot regarding her daughter, C.S.G. The first two points do not weigh in favor of removal. The last point, though, is concerning.

b. C.S.G. admitted to the assault on J.D.G. both in the criminal proceedings and under oath at the April Hearing. Yet M.S. continues to deny any assault took place, presumably because of her love for and allegiance to her daughter. Normally, I would not fault such allegiance but as a fiduciary for J.D.G., M.S. is expected to place J.D.G.'s needs first and protect him from those who may harm him, even those for whom M.S. has great love and care.

c. But I find, at this stage, there is not sufficient cause to remove M.S., the only remaining co-guardian, in favor of the Office of the Public Guardian. M.S. has a close, loving relationship with J.D.G. and has fought to maintain that relationship during these proceedings. Although her steadfast allegiance to her daughter despite the objective evidence is concerning, she has not acted on that allegiance to, for example, advocate for visitation with C.S.G. or for C.S.G. to remain as co-guardian. On this record, I find it is in J.D.G.'s best interest that M.S. be provided the opportunity to serve as sole guardian and demonstrate that she can and will put J.D.G.'s needs first.

5. I further find that placement with M.S. is most appropriate. I have no concerns about the suitability of M.S.'s home for J.D.G.'s needs and am comforted by his prior, part-time placement therein. Pertinent to my finding is M.S.'s confirmation that C.S.G. does not reside in her home and J.D.G. will have his own

room. On the record before me, M.S.'s home, where J.D.G. has lived before and should be comfortable and protected, is preferable to a facility.

6. I expect all parties to work cooperatively to move J.D.G. from J.G. and C.A.G.'s home to M.S.'s. After J.D.G. is relocated, M.S. shall ensure that J.D.G. visits with J.G. and C.A.G. in-person one weekend per month, on Zoom twice per week, and on special occasions as agreed to by the parties. The parties shall work together cooperatively to devise a visitation schedule along these lines and submit that schedule for approval with twenty (20) days. I expect the parties to submit a joint proposal; if, despite good faith efforts, they are unable to agree, I will accept competing proposals.

7. C.S.G. has been ordered by the Superior Court to have "No Unsupervised Contact with J.D.G." Effectuating that order is within the province of the Superior Court and probation authorities, but I recommend to those authorities that M.S. not be permitted to supervise C.S.G.'s visitations. As addressed above, I remain concerned about M.S.'s ability to see C.S.G. clearly and fully protect J.D.G. from any potential harm by or from C.S.G. I expect the Superior Court and probation authorities would prefer a supervisor who does not have these biases. Thus, C.S.G. is hereby directed to provide a copy of this Order to her probation officer such that my recommendation is noted in the officer's files, for whatever it may be worth.

8. Although I am hopeful that this new arrangement will go smoothly, I find the Guardianship Monitoring Program (the “GMP”) should be appointed to review this guardianship after a six-month cooling off period. I will appoint the GMP at such time through a separate appointment order and plan to direct the GMP to review M.S.’s role as sole guardian, J.D.G.’s placement, and visitation with interested parties, and report back with any recommendations.

9. This is a final report under Court of Chancery Rule 143 and exceptions may be filed under Court of Chancery Rule 144. Once this report becomes a final order of the Court, a new final order will be issued confirming M.S.’s appointment as sole guardian and setting forth, in more detail, her duties and responsibilities.

*/s/ Selena E. Molina*

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Selena E. Molina

Magistrate in Chancery