**IN THE FAMILY COURT OF THE STATE OF DELAWARE**
**IN AND FOR NEW CASTLE COUNTY**

| | | |
|---|---|---|
| **J---- S-----,** | ) | |
| | ) | |
| Petitioner, | ) | File No. CN20-01084 |
| | ) | Case No. 25-22244 |
| v. | ) | |
| | ) | |
| **J------ G-----,** | ) | |
| | ) | |
| Respondent. | ) | |

**ORDER ON PETITION TO MODIFY CUSTODY**
**AND MOTION FOR RELOCATION**
Date Submitted: June 1, 2026
Date Decided: June 12, 2026

Jaycee H. DiNardo, Esquire, MacElree Harvey, Ltd., 5721 Kennett Pike, Centreville, DE 19807, jdinardo@macelree.com, *attorney for Petitioner*

Seth L. Thompson, Esquire, Parkowski, Guerke & Swayze, P.A., 2961 Centerville Road, Suite 310, Wilmington, DE 19808, sthompson@pgslegal.com, *attorney for Respondent*

**ARRINGTON, Judge.**

The Court conducted a hearing on June 1, 2026, on the merits of a Petition for Custody Modification in the interest of V------ K------- (born 4/11/19) ("Child"). Present for the hearing were Petitioner J---- S----- ("Father") and Respondent J------ G----- ("Mother"). Father appeared represented by Jaycee H. DiNardo, Esquire. Mother appeared represented by Seth L. Thompson, Esquire. Based upon the evidence presented, the Court **GRANTS** the Modification of Custody Order and **GRANTS** Father's request for relocation for the reasons set forth below.

## PROCEDURAL HISTORY

Father filed a Petition for Custody on June 23, 2025.[1] Mother answered the Petition on July 16, 2025.[2] Following a hearing on the merits, the Court, on August 19, 2025, issued a final order ("Current Order") awarding the parties joint legal custody with Father having primary residential placement and final decision making authority after considering Mother's views on the issue(s) to be decided.[3]

On October 7, 2025, Father filed the instant Petition to Modify the Current Order and a Motion for an Emergency *Ex Parte* order.[4] The Court granted Father's request for an *ex parte order,* and awarded him temporary sole legal custody and primary residential placement of Child.[5]

[1] Dkt. 23.
[2] Dkt. 29.
[3] Dkt. 31.
[4] Dkt. 32, 34.
[5] Dkt. 35.

The Court held a Case Management Conference ("CMC") on November 18, 2025. Father orally amended the Petition to include a request to relocate to South Carolina. and clarified that he sought sole legal custody and primary residential placement of Child.[6] Trial was set for February 18, 2026.[7]

Mother filed a Motion for Continuance on February 3, 2026, and a Motion for Bonding Assessment on February 5, 2026.[8] Father responded to each of Mother's motions on February 11, 2026.[9] The Court granted the Motions to allow Dr. Harris Finkelstein to conduct the bonding assessment, and to prepare for trial prior to the end of the school year.[10] The Court held a second CMC on March 3, 2026, and set trial for June 1, 2026.[11] The parties stipulated to the admissibility of all trial exhibits.

## JURISDICTION

The Custody Order was entered in Delaware. Delaware maintains exclusive jurisdiction over modification of the Custody Order as parents and Child continue to live in Delaware.[12] This Court has jurisdiction to adjudicate the Petition pursuant to 13 Del. C. § 1921(a).[13]

---

[6] Dkt. 36-37, (unnumbered).
[7] Dkt. 37.
[8] Dkt. 42-44.
[9] Dkt. 46-48.
[10] Dkt. 45, 49-50.
[11] Dkt. 51-52.
[12] Dkt. 32-33.
[13] "(a) Except as otherwise provided in § 1923 of this title, a court of this State which has made a child custody determination consistent with § 1920 or § 1922 of this title has exclusive, continuing jurisdiction over the determination until:

## FACTUAL BACKGROUND

The Court conducted a full hearing on the merits and issued a fifteen page, single spaced opinion on August 19, 2025. The petition for modification was filed on October 7, 2025. The facts set forth in the opinion, which was not appealed, are established and incorporated by reference. The facts set forth below are the Court's findings of fact based upon credibility of the witnesses and relevance to the modification petition and the request to relocate. A complete recitation of all evidence is available in the record. Statements in quotation marks are paraphrases or actual quotes from the testimony.

### *I. Facts through August 19, 2025.*

The Court fully addressed most of the factual issues in the Current Order in determining that Father should be the primary residential parent and have final decision making authority. The August 19, 2025 custody order was not appealed and became the final order on custody and residential placement. The instant Petition to Modify Custody was filed forty-nine days later. The reasons set forth in the Conclusion section of the August 19, 2025 custody order have compelling persuasive effect on this decision, and bear repeating in full in this Order:

---

A court of this State determines that neither the child, nor the child and one parent, nor the child and a person acting as a parent have a significant connection with this State and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships; or
A court of this State or a court of another state determines that the child, the child's parents and any person acting as a parent do not presently reside in this State."

The Court's primary concerns in this matter center on Ms. G-----'s history of alcohol abuse and her demonstrated pattern of attempting to exert control over Child's relationship with Mr. S-----. The evidence establishes that Ms. G----- suffers from alcoholism, with relapses occurring approximately every nine to twelve months. These relapses render her unable to care for Child, requiring Mr. S----- to assume sole caregiving responsibilities for extended periods. While Ms. G----- has participated in treatment programs (including a six month stay at the Limen House which supports individuals battling substance use disorder and mental health challenges) and experienced periods of sobriety, her history demonstrates that such sobriety has not been consistently maintained. This ongoing instability, combined with multiple homes in a three-year period, creates uncertainty regarding her ability to meet Child's needs on a reliable basis.

In addition to her substance abuse, the Court finds that Ms. G----- has engaged in conduct intended to control the custodial arrangement and limit Mr. S-----'s role in Child's life. When Mr. S----- sought to establish paternity, the Court ordered genetic testing on two separate occasions, yet Ms. G----- failed to appear for two of the three scheduled appointments. This delayed confirmation of paternity and, in turn, delayed the development of Child's relationship with her father. More recently, Ms. G----- filed a stipulation with the Court that purported to reflect an agreed shared custody arrangement, despite bearing only her signature and lacking Mr. S-----'s consent. Her claim that she believed the document was merely a proposal is not credible given her professional background as a legal assistant and her demonstrated familiarity with filing stipulations to end court proceedings. The attempt of Ms. G----- and her mother to influence Child to suggest shared placement on terms similar to her "stipulation" is yet another example of intent to control. This conduct, taken together with her history of substance abuse, reflects a consistent pattern of placing her own preferences above Child's best interest.

In light of the testimony presented, the Court awards the parties **JOINT LEGAL CUSTODY.** Mr. S----- shall have the ability to make final decisions, but only after consulting with Ms. G----- in advance and after fully considering her opinions on issues affecting the child. The Court, of course, retains the right to decide the reasonableness of all major decisions upon filing of a Petition – Rule to Show Cause. As joint

custodians, the parties must discuss all the major decisions in Child's life. These decisions include, but are not limited to, Child's support, care, nurture, welfare, education, and religion.

Mr. S----- shall have **PRIMARY RESIDENTIAL PLACEMENT** of Child. The Court is required by statute to award a non-residential parent a schedule of parenting time "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 1 parent would endanger the child's physical health or significantly impair such child's emotional development."

While Ms. G-----'s periodic relapses raise concerns, they do not rise to the level of requiring significant restrictions on custodial time. Rather, it was Ms. G-----'s unilateral decision to relocate from Wilmington to Millsboro, two hours apart, that makes a more balanced placement nearly impossible. Child is in a school in Wilmington, selected by both parties, where she is well adjusted and happy. A shared placement is not possible based on these facts. Fortunately, Ms. G----- does come to Wilmington every Monday, Wednesday, and Friday, making it possible for her to have some Sunday overnights at her mother and stepfather's home, Wednesday for some custodial time, and Friday afternoon for pickup at the start of her weekends.

Ms. G----- will have custodial time on alternate weekends from after school on Fridays until the start of school on Mondays. Ms. G----- will also have custodial time every Wednesday from after school until 7:00 p.m. As a prerequisite to this schedule, **Ms. G----- will not consume any alcohol from twenty-four hours prior to her custodial time until Child is returned to Mr. S-----.**[14]

### *II. Facts Between Current Order and Petition for Modification.*

The Current Order was issued on August 19, 2025. The Petition for Modification was filed on October 7, 2025. Consistent with the August 19, 2025 custody order, Mother had custodial time with Child during this period on three

[14] Dkt. 31 (bold in original).

weekends from Friday afterschool until Monday morning and five Wednesday dinner visits from afterschool until 7:00 p.m. Although the testimony was not clear, it appears that she exercised those times primarily at her parents' home in Newark.

On Wednesday, October 1, 2026, Mother left her parents' home with Child to return her to Father. Father suspected that Mother was intoxicated based upon his personal experience of alcohol addiction, his years of experience as an alcohol treatment provider, and his personal experience with Mother. Father testified that she arrived at his home in an altered state. He explained that "she was slurring her words, she was standing funny, and she parked her minivan sideways in straight parking spots, which she's never done before."[15]

On Friday, October 3, 2025, Mother had an accident in her van on the way to her parents' home. She abandoned the van in the street and immediately walked to her parents' house. Maternal Grandfather testified that Child was out with the grandparents for dinner at the time. He saw the six to eight police cars around the vehicle and took a detour to prevent Child from seeing her Mother's crashed van as it would cause her emotional harm.

On Saturday, October 4, 2025, Mother went to a car rental company to get a replacement vehicle so she could take Child to a party. Maternal Grandfather testified that Mother made a "booze stop" at a liquor store.[16] She returned to the

[15] Trial Tr. at 12:10:46.
[16] Father's Ex. 21.

home intoxicated. Mother insisted that she would be driving Child to the party. The Maternal Grandparents intervened and told Mother that she was not driving the Child anywhere in her intoxicated state. Mother stormed out of the house and drove off. She totaled the rental car and was arrested for her fifth driving under the influence charge.

Father already had concerns about Mother being drunk when driving Child to his home the previous Wednesday. Maternal Grandfather testified that, "around October 1st," Father expressed his concerns about Mother drinking. But Maternal Grandfather believed that he and his wife could protect Child. Maternal Grandfather was aware that Mother was going to drive Child, and testified that it was Mother's "intention to take [Child] to the birthday party."[17] He explained that neither Maternal Grandparent would allow Mother to drive Child due to Mother's intoxicated state on October 4th. Maternal Grandfather provided Father with his update of the situation by text message:

> **J------ Update – Weekend of 10/2 thru 10/4/25**
>
> - Another relapse this week (10/2) that has continued into the weekend
> - J------ & V---- spending the weekend with us (10/4 – 10/6)
> - J------ in accident turning into our development (Fri night 10/3)
> - Left scene, leaving car blocking intersection then walked to our house

[17] Trial Tr. at 4:01:17.

- We were out with V---- but upon return found 6-8 State police cars at the entrance
- Saw J------'s van & to protect V---- we drive around for 1hr while chaos cleared
- We suspect J------ was drinking & was trying to avoid a DUI
- J------'s van is impounded until Monday (10/6)
- J------ rents a car (10/4) & ends upon making a booze stop
- Returns to our house thinking she is going to take V---- to a WCS bday party (Sat 10/4)
- We say she's not taking V---- anywhere. She gets in her rental car and drives away
- C-------- and I take V---- to the bday party that she had been looking forward to
- While at party (10/4), C-------- receives a call that J------ in accident & totaled the rental car
- Later that night (10/4), C-------- receives a J------ txt. she's in hospital & seeking a ride
- Sunday (10/5) we find out she's in jail w/potential of doing serious jail time. Her last DUI was 6yrs ago but this will be her 4th or 5th DUI. [18]

Maternal Grandmother also confirmed that Mother had been drinking. She testified:

> The Saturday morning after the Friday event, she spent the night with us and she was fine at, at, at to a point, I, I mean, until a certain point in the day, *we had already alerted Mr. S----- that she had been drinking* and we had assured him that under no circumstance, regardless of her demeanor or comportment, was V---- going anywhere with her unless they were both in our presence and vehicle. So as a result, I mean, *but the Friday night the accident didn't happen yet.*[19]

[18] Father's Ex. 21 (red type in original).
[19] Trial Tr. at 3:11:16 (emphasis added).

### *III. Facts Between Petition for Modification and Trial Date.*

***a. Mother.*** Mother was arrested on her fifth DUI charge on October 4, 2025. She pleaded guilty on December 18, 2025, and was sentenced to institutional confinement for 18 months. She is serving her sentence at the Baylor Women's Correctional Institution. Mother testified that she has made progress at the facility and is two steps below "Chef" in the kitchen with commensurate responsibility. She participated in a three day spiritual retreat. At Baylor, she reads the Bible, joined the Choir, and wants to "learn more about praising God." Her technical release date is April 4, 2027, but she anticipates an early release on or around November 4, 2026, after application of good time and merit credits.

Mother claims that "I've gotten in trouble with the law in the past. I never had children when that happened. All that stuff happened before I became a mother and I always was grateful for that and I couldn't imagine what it would have been like to be away from my children for any, any period of time like that."[20] Mother's testimony does match the history of this case where intoxication, guardianship, custody modification, and temporary removals have occurred since Child was born.

She maintains FaceTime contact from prison with the two-year-old daughter of her marriage. She does not have the same contact with Child, primarily because she has not listed Father as an authorized caller. Mother is entitled to virtually

[20] Trial Tr. at 2:18:53.

unlimited calls, but only to four individuals that she identified for Baylor. She named her husband, her mother, her father, and her sponsor as those individuals. Yet Mother still blamed Father for her lack of contact with Child, claiming that "the point for talking was over" because "he wished to annihilate me as her mother" because he filed a petition for termination of parental rights that he voluntarily dismissed after speaking with Counsel.[21]

Mother admitted that she had two phone calls with Child during her sentence. While she characterized the conversations as "very brief," they were clearly more detailed. Mother testified that Child "would come in and want to speak" with Mother.[22] She stated that Child indicated that she was potentially relocating. Mother testified,

> South Carolina got brought up. Myrtle Beach, I think, she said. She had just gone there and then she said, "Daddy and Jess are moving to South Carolina," which surprised me because that hadn't been decided but also that she knows about it. And I just said, oh, and I said, geez, are you going to South Carolina? Because I was curious to see what he had told her if she was going with them, like if that was assumed in her world. And she said she didn't know. This was back in December. She said, I don't know. And then I was curious just for honesty, for my own knowledge, I said, do you want to go to South Carolina? And she said no. And I was like, oh, you want to stay here with mommy and Honey and Papa? And she said yeah, at that time.[23]

[21] Trial Tr. at 2:53:20.
[22] Trial Tr. at 2:20:24.
[23] Trial Tr. at 2:21:15.

Mother testified that she would have to rely on her parents to care for Child if Father moved to South Carolina without Child. She stated, "I would live in their home, they would be there to help, like the support system that everyone talks about."[24] This plan is at odds with her husband's plan for Mother's recovery.

Mother's husband was asked whether Mother would be living with him and his parents in Millsboro. He responded, "So from my understanding, and I don't totally know how her probation is going to work, but I know she'll be on probation. She'll have an ankle monitor at that time she will be residing with me, my parents and [our daughter]. And honestly, I don't really want her getting a full time job, anything like that. I want her to focus on her recovery."[25]

***b. Father.*** Father's facts during this period are more limited. He disputes Mother and Maternal Grandmother's assertion that he does not want Child to speak with Mother. Rather, Father claims, he has concerns about the two of them attempting to influence Child toward their position. He referenced the Court's Order denying the grandparents' request for visitation because of attempts to manipulate Child. Father testified that "we – me and [Maternal Grandfather] – came to the conclusion over the years that when [Child] talks to her mother on the phone, the mother makes promises and gives her hopes and dreams that never prevail."[26]

[24] Trial Tr. at 2:54:40.
[25] Trial Tr. at 1:59:49.
[26] Trial Tr. at 1:15:34.

The Court sustained those allegations in the Current Order.[27]

Father's testimony on relocation was fulsome. He explained that his own father had sold the recovery centers (where Father had worked) and planned to move to South Carolina. Father supported the decision and desired to move there as well. He was given $500,000 from the sale of the business which he used to purchase outright a home in a community in Little River, SC, near North Myrtle Beach, for $360,000.[28] Additionally he has an income stream of $4,000 per week for one year. Father described his intended neighborhood as "prominent" where Child would have:

> her own room, her own windows. She has her own door. She has her own living room upstairs. But I think this is an actual home where, you know, we can build as a family, go through things as a family, get through things as a family, love as a family. And, you

[27] *See* Dkt. 58, File No. CN20-04241, Case No. 25-28643. The April 24, 2026 Interim Order recites, "Father remains concerned about both the Maternal Grandmother and Mother attempting to influence V------. He noted that the seven-year-old child has returned from visits with the Maternal Grandparents angry with Father and that it took her a few days to calm down. She told Father that Mother had spoken to her on the phone, even though the Maternal Grandparents had pledged that such contact would not occur. He testified that the Maternal Grandparents went to V------'s school for a book fair but did not tell Father of their intentions. At the book fair, the grandparents gave V------ $100 to buy books and told her to return the $50 that Father had given her. Father stated that the Maternal Grandparents were invited to V------'s birthday party and they attended. However, Mother and Maternal Grandmother told V------ that Mother had bought a great gift for her which she would get when she visits with her grandparents. Each of these incidents caused Father serious concerns and he is not willing to allow the contact schedule as requested by the Maternal Grandparents.
"Father's objections are not unreasonable. He offered unlimited video phone contact with V------, but the Maternal Grandmother did not believe it would be adequate. He also offered in-person visits approximately once per month so long as they arranged it with Father. The Maternal Grandparents did not request time under Father's prerequisites."

[28] Father Ex. 32.

know, it's just a space for consistency and it's a perfect house. It's the perfect house for a family.[29]

His clear preference is to move to South Carolina.[30] If relocation is not granted, Father and his wife would be forced to look into long term renters or potential AirBnB occupants.[31] He contrasted his potential home to his current home – a two bedroom condominium in Wilmington where Father, his wife, their young son, and Child would have to continue to live. Father explained that they already had to move to the two bedroom unit because the one bedroom unit they were in was too small for the family, but even the two bedroom condo was too small for their four person family.

Father explained that the South Carolina home was a blessing: "It's amazing how God worked on this one because this was a 'diamond in the rough' and I can't believe we ended up getting it. There was a $100,000 price cut on it. I love the area – absolutely beautiful – It's on the waterway."[32]

Father testified that he is proficient in many trades, but working as a heavy equipment operator in South Carolina would allow him to begin work immediately. He explained, "I do have connections there and I've done the work. I know what they want, where they're going to be, but I still need income at the same time. So,

[29] Trial Tr. at 11:49:50.
[30] Trial Tr. at 4:08:24.
[31] Trial Tr. at 11:50:03.
[32] Trial Tr. at 11:48:48.

you know, I would definitely, there's so much work in South Carolina right now that they're literally flying people in from different States and putting them in hotels to work."[33]

Father has looked into a number of schools for Child – some of which were provided by Mother during their discussions on relocation over the last two years. Father, Mother, and Mother's husband had extensive conversations about South Carolina, where each would be moving, the time frame for such moves, and the like. Father introduced multiple e-mail messages from Mother enthusiastically supporting a move. Mother provided information from her husband om schools.

> Oh hey. R---- said that you can't choice in anywhere so you basically want to pick your school district and find a home that falls into it. Which a realtor can help with. According to this one site Early College HS right where coastal Carolina is [ ] good. And you'd want to pick based on the high school not elementary school. Near there are a bunch of cute homes on a lake. Don't even know if we're buying or renting but the coastal Carolina area is nice according to R---- and considered Conway. I'm just brainstorming lol[34]

Mother sent a picture of listings. Father responded with similar enthusiasm, writing "It's so crazy how [yo]u can get that house for $264,000." Mother's reply was "I know, right it's why I refuse to buy anything around this area."[35] Father agreed, noting that the cost for a similar house in Wilmington would cost "$600[,000] easily

[33] Trial Tr. at 11:51:29.
[34] Father's Ex.7 at F-063.
[35] *Id.* at F-064.

for that here."[36] She sent Father a screenshot of the electoral map with the President's picture and the text "This northeast problem here is one reason why I want to move south."[37] Mother provided additional support in another message:

> R----'s parents would move to North Myrtle and his brother and sister are over in Columbia so we would want to be somewhere not exactly in Myrtle and more toward Columbia but not necessarily all the way in Columbia so Conway isn't bad. He just doesn't want to live right at the beach.[38]

Mother's text messages did not discuss Maternal Grandparents. While she claimed at trial that she was just hypothesizing in the messages, the actual texts show her being supportive of a move at best, and ambiguous at worst.

## ANALYSIS

The commentary set forth below recounts the testimony introduced at trial. Phrases in quotation marks are quotes or paraphrases from the testimony. The Court considered all of the testimony but finds the following as credible and relevant in the analysis of the 13 Del. C. § 729(c)(1) threshold, the 13 Del. C. § 722 best interest factors, and the 13 Del. C. § 734 relocation factors. A complete recounting of all testimony is available on the record.

[36] *Id.* at F-065.
[37] *Id.* at F-066.
[38] *Id.* at F-065.

## I. Custody Modification

Father filed his modification petition within two years of entry of the Custody Order. The Court may grant Father's requested modification only if "it finds, after a hearing, that continuing enforcement of the prior order may endanger [Child's] physical health or significantly impair [her] emotional development."[39] The Delaware Supreme Court has held that if a petitioner meets the threshold test set forth in 13 Del. C. § 729(c)(1), the Family Court must explicitly consider the 13 Del. C. § 722 best interest factors before granting petitioner's desired modification unless petitioner also sought a new visitation schedule that would permit and encourage the child to have frequent and meaningful contact with both parents.[40]

### A. 13 Del. C. § 729(c)(1) Threshold

On August 19, 2025, the Court entered the Current Order after a full hearing on the merits. The Order provided the parties with joint legal custody, but allowed Father to make final decisions after fully considering Mother's views on the issue to be decided. Father was granted primary residential placement and Mother was given parenting time on alternate weekends and dinner visits every Wednesday.

On October 7, 2025, seven weeks later, Father filed the Petition for Custody Modification presently under consideration. Since the filing occurred within two

[39] 13 Del. C. § 729(c)(1).
[40] *Tatum v. Yost*, 931 A.2d 438, 2007 WL 2323791, at *1, 3 (Del. 2007); *Hill v. Fox*, 312 A.3d 1156, 2024 WL 566073, at *4 (Del. 2024); *see* 13 Del. C. § 728(a).

years of the Current Order, the Court must consider whether enforcing the Current Order would endanger Child's physical health or would significantly impair her emotional development.

In order to evaluate whether the requested modification meets the statutory criteria, we must first look to the Current Order and the reasons why it was entered.

**1. Background to Current Order.**

The parties have a long and tortured history in their custody cases. Mother and Maternal Grandparents were involved in multiple guardianship cases due to Mother's alcohol abuse. The first petition, filed by Maternal Grandmother, listed "Unknown Father" as a Respondent, and was voluntarily dismissed on March 3, 2020.[41]

Maternal Grandparents filed the second time, again listing "Unknown Father" on the petition. An interim order was issued with the parties' consent which required, in pertinent part, that trial be set for September 2021 with the grandparents having guardianship while Mother was at the Oxford House recovery center.[42] The parties subsequently executed a stipulation of dismissal removing the second case from Court consideration.

Maternal Grandparents filed their third Petition for Guardianship one month later, alleging that Mother left Child (then age two) "in the home unattended on

[41] File No. CN20-01373, Dkt. 8.
[42] File No. CN20-04241, Dkt. 16.

October 16 to go to a liquor store for alcohol."[43] Maternal Grandparents further alleged that there was a "substantial risk of physical and emotional harm to Child" in Mother's care.[44] Unknown to the Court at the time, Mother had already filed a petition for child support against Father three months earlier. The Court required that Father be added to the guardianship petition, and Maternal Grandparents filed an Amended Petition, this time naming Father as a Respondent. The Court scheduled trial for September 16, 2021.

Mother knew who Father was, and she filed a petition for custody on April 2, 2020. Paternity testing was ordered with the consent of the parties on June 25, 2020. When Mother learned that paternity testing had been ordered, she moved to withdraw her custody petition. The Court dismissed Mother's petition at her request on September 6, 2020. However, the order for paternity testing remained open. An appointment letter was sent to Mother and Father for testing on February 1, 2021. Mother called the Court on January 25, 2021, asking "why the notice was sent since the petition was withdrawn."[45] On October 18, 2021, a second consent for paternity testing was executed by Mother and Father. On January 24, 2022, a Commissioner entered the Order of Paternity.[46]

[43] File No. CN20-04241, Dkt. 22.
[44] *Id.*
[45] Dkt. [minute entry], Jan. 25, 2021.
[46] File No. CN20-01084, Dkt. 21.

Three weeks later, on February 17, 2022, Maternal Grandparents, Mother, and newly-confirmed Father executed a Consent Order of Guardianship. Mother had successfully delayed her cases through dismissals and stipulations until Father was finally confirmed for Child who was then close to three years old.

Mother was able to have the guardianship rescinded by Stipulation on March 26, 2024,[47] the parents had joint legal custody, and the situation was settled for the next year. In the meantime, Mother had a second child on August 31, 2024, and married the father. Mother, her husband, and the paternal grandparents all had alcohol addictions. Her husband and his own parents had been sober for a considerable time – Father for two years, his parents for nearly 40 years. Mother was not, and her parenting ability deteriorated. On June 23, 2025, her husband filed a Petition for Custody of their ten-month-old daughter.[48]

On June 23, 2025, Father filed a Petition for Custody of Child and an *ex parte* motion due to Mother being intoxicated regularly for over a period of three weeks. He stated that Mother showed "anger and rage" on the phone, calling Father and his wife more than thirty times over twenty minutes. She was slurring her words and was unable to express coherent thought in conversation.[49]

[47] File No. CN20-04241, Dkt. 44.
[48] File No. CN25-03106, Dkt. 1.
[49] Dkt. 25.

The Court granted Father and Mother's husband the requested ex parte orders. An interim order was issued at the probable cause hearing. Mother's custodial time was suspended until trial on August 18, 2025. Mother attempted to circumvent this hearing as well. On July 21, 2025, she prepared and filed a document that she represented was a "Stipulation" ending the case.[50] The Court contacted Father and learned that he had not seen the document and was not in agreement.[51] Trial was conducted as scheduled, resulting in the Current Order.[52]

**2. Status Under Current Order.**

The Current Order gave Father primary residential placement and restricted Mother's time with Child to alternate weekends and a weekly dinner visit. This was the first time that Father had a substantial period of time to "parent" Child, and the Court allowed joint custody to continue with a *caveat* – Father would have authority to make final decisions after consulting with Mother.[53] Joint legal custody was limited, but not eliminated, to allow Mother to participate fully in decisions affecting Child. However, in light of her numerous in-patient treatments, a two-plus years of guardianship, and her recent return to intoxication, Father would make the final decisions.

[50] Mother filed a similar stipulation with her husband concerning their infant, thereby resolving their separate custody petition.
[51] Dkt. 30.
[52] Dkt. 31.
[53] *Id.* at 12.

### 3. Changes Post-Current Order.

So, what had changed in the forty-nine days between the entry of the Current Order and the filing of the petition for modification, and does it create a risk of physical and developmental harm for Child? Mother had already "lost sobriety" in April 2025, and followed it up with altercations with her husband in June 2025. Her husband and their daughter had to move from Wilmington to Millsboro due to her alcohol problems.[54] At the time of the last hearing, Mother had entered another treatment program.

This time Mother was intoxicated on two (and arguably three)[55] days during the same custodial week. She had two car accidents, one of which totaled a replacement rental vehicle. Her damaged van remains impounded. Father identified Mother's intoxication on October 1st. Mother crashed her van on October 3rd. She took her rental vehicle for a "booze stop" before showing up at her parents' home drunk on October 4th. Maternal Grandfather testified that it was her intention to drive Child to a birthday party. When the grandparents intervened, Mother stormed out and ended up totaling the rental car.

---

[54] Trial Tr. at 2:02:53 – 2:06:23.

[55] Mother denied that she was intoxicated when she crashed her van on October 3, 2026. Her statement is highly questionable as she immediately left the scene, abandoned the van at the crash site where six to eight police officers responded, and immediately walked to her parent's house which would not have been quickly identified by the officers as it was not Mother's registered address. Moreover, Paternal Grandfather wrote that "we suspect [Mother] was drinking & was trying to avoid a DUI." The logical conclusion from these facts is that Mother was attempting to avoid arrest and a possible new DUI charge.

These incidents, less than seven weeks after Mother was ordered not to consume alcohol, creates a serious risk of physical harm for Child. They indicate that Mother places alcohol abuse above her parenting obligations and Court Orders. While Maternal Grandparent can do their best to protect Child, they are not always going to be present. Indeed, Mother has challenged her parents on multiple occasions, and the grandparents had to file three times for guardianship when Mother and Child were not in their presence. If, for some reason, Mother is alone with Child, there is a high likelihood that Child may suffer serious physical injury when Mother again chooses alcohol over her children.

Mother's husband recognizes this risk. It is the reason why he believes that, after she is released from prison on her fifth DUI, Mother should not work outside the home, but rather focus exclusively on her recovery. Maternal Grandparents recognize this risk. Their multiple guardianship petitions all reference the risk of harm to Child while in Mother's care. They have intervened to prevent Mother from driving Child while intoxicated despite her intention to take Child. They have instructed Father not to release Child to Mother in similar situations.

Mother is aware of the risk. In her own words at trial,

> [I]t's a daily thing that I have to keep going at because like I have proven that if I lit up for any reason, like I drink again, regardless of consequences and things of that nature, that … this is … this does happen. And if there's any second where I don't ask for, for strength and to fight this, this disease that I have alcoholism, I don't think it's a question that I have alcoholism. I've been to rehabs, I've had

> DUIs. I mean, that I don't that … that shouldn't be up for discussion. It is a fact. And I need to do what I need to do to fight it on a daily basis.[56]

The risk of physical harm is palpable, credible and real.

Risk of developmental harm also exists. Mother was sentenced to prison for eighteen months. She was in a twenty-eight-day program in June 2025. She was in the Limen House for ninety days. She was in the Oxford House for an unspecified period of time. Yet, neither Mother nor Paternal Grandmother have shared this information with Child. Paternal Grandmother tells Child that "her mother is not well and she needs time to get better."[57] Paternal Grandfather "kind of defers on those questions to the maternal grandmother."[58] It is unclear from the testimony exactly what Mother has told Child. Father is unsure of what to say. He is torn between telling her the truth and allowing the grandparents to tell her about their own daughter, Child's Mother. Father stated, "I don't think it's appropriate to tell a seven year old that your mom's in jail and you're not going to see her for a while. So what I have said was … 'is … I don't know where she is.'" Dr. Finkelstein, the expert who opined on bonding between Child to Father, and Child to Grandparents – but not Child to Mother – testified that he had no indication that Child knew her mother

[56] Trial Tr. at 2:22:27.
[57] Trial Tr. at 10:11:19.
[58] *Id.*

was in prison. Curiously, Child told Dr. Finkelstein that it was the judge who is keeping her from Mother, a misdirected assertion.

Dr. Finkelstein, a psychologist with decades of experience with youth, stated, "I think there needs to be some help to [Child] to maintain her sense of security as a child."[59] The changes referenced by Dr. Finkelstein are directly related to Mother's recurrent loss of sobriety. Child is being affected by Mother's imprisonment, compounded by the lack of any cogent explanation to her about her Mother's "disappearance."

The Court finds that Father has met his burden to prove that enforcing the Current Order may result in the risk of physical and developmental harm to Child. Modification of the Current Order is appropriate.

**B. 13 Del. C. § 722(a) Best Interest Factors**

The Court conducted a full hearing on the merits, and made findings on the best interest factors in the Current Order. The Order was not appealed and the findings are binding. Those findings remain applicable to this case will not be repeated in extensive analysis. Some facts have changed and are noted in the updates below.

*1. Wishes of the Parents.*

Father seeks to change the Current Order from joint custody with final

[59] Trial Tr. at 10:14:20.

decision making authority to sole custody based upon Mother's repeated relapses making it unfeasible for joint custody to continue. Mother seeks to retain joint custody but acknowledges that she has not called Father or attempted to contact him since her incarceration in October 2025.

In the Current Order, factor one was neutral. Mother's present actions are inconsistent with her stated wishes today. Her relapses in October 2025, and her sentence of eighteen months imprisonment have changed the balance on this factor.

*Factor one now favors Father.*

2. *Wishes of the Child.*

In the Current Order, the Court noted Child's wishes that "she does not want anything to change." Despite the Court's lack of full confidence that Child's statements truly reflect her feelings, factor two was determined to be neutral. Nothing has changed with respect to the Child perspective as it relates to this custody modification petition.

*Factor two remains neutral.*

3. *Child's Relationship with the Important People in her life.*

In the Current Order, the Court noted that Child was well-bonded with Mother, Father, and both sides of her extended families. The only change in this case is the lack of contact with Mother due to her extended incarceration and the lack of information about it provided to Child. While the latter qualification is

applicable to factor six, it does not impact Child's relationship with the important people in her life. She still loves her Mother, half-sister, stepfather, Maternal Grandparents, Father, her half-brother, her stepmother, and her paternal relatives.

*Factor three remains neutral.*

*4. Child's adjustment to School, Home, and Community.*

In the Current Order, the Court found

> [Child] is well adjusted to her current school, home, and community with [Father]. At present, [Mother] does not have a stable home or established community to which V------ could be adjusted. It is possible that once [Mother] secures a long-term residence, [Child] may become adjusted to that environment; however, under the present circumstances, this factor strongly favors [Father].

At the time of the Current Order, Mother was in a rehabilitation facility with release within one month. At the time of this hearing, Mother is incarcerated until at least November 2026.

*Factor four did and does strongly favor Father.*

*5. Physical and Mental Health of all Parties and Child.*

In the Current Order, the Court found:

> [Mother] generally has good physical and mental health. However, as [Father] and [Child]'s godfather testified, she routinely relapses every nine to twelve months. She has four DUI convictions and many stays at treatment facilities but claims that no one in the courts or treatment facilities has ever recommended the Antabuse drug. Her repeated relapses and in-patient treatment paint a complex picture of an otherwise

> healthy mother who has to "disappear" on a regular basis due to alcohol.

This finding has been strengthened by Mother's post-order relapse and subsequent incarceration. Mother testified to some positive changes in her health conditions. She has not had alcohol since her incarceration and believes she will continue her sobriety post-release. She has a sponsor, a supportive husband, and a new found spiritual relationship. However, she had the same supports over Child's life but still relapsed. The Court looks to her present condition and her future outlook, with consideration of failed past recovery efforts. Each of these lead the Court to maintain its findings from the Current Order.

*Factor five continues to strongly favor Father.*

*6. Parties Fulfillment of Rights and Responsibilities as Parents*

In the Current Order, the Court found that factor six strongly favored Father. The only factual change since the Current Order is Mother's incarceration, and the lack of any information that she has given to Child about her imprisonment. Father has deferred to Mother and Maternal Grandparents to share information about Mother's whereabouts to Child. A responsible parent would find a way to discuss, in a seven-year-old's terms how actions and consequences are part of growing up. This would a positive way for Child to learn and grow from Mother's missteps. Instead, Mother and Maternal Grandmother have diverted the focus leaving the

Child with the impression that others – primarily Father, and secondarily the Court – are responsible for the loss of her contact with Mother.

*Factor six did and does strongly favor Father.*

*7. Evidence of Domestic Violence.*

There was no evidence of domestic violence noted in the Current Order and none was presented to the Court at trial on the modification petition.

*Factor seven remains neutral.*

*8. Criminal History of the Parties.*

In the Current Order, factor eight only slightly favored Father as Mother's four DUI convictions were prior to Child's birth. Mother has now been convicted and is incarcerated on her fifth DUI which occurred during Mother's custodial time. The recent conviction strengthens the concern about her ability to ensure Child's safety in her care.

*Factor eight now favors Father.*

### *C.* Conclusion on Custody Modification

No single best interest factor is dispositive, and the Court must consider all the factors as a whole. In this case, factors one, four, five, six, and eight continue to favor Father. Factors two, three, and seven are neutral. No factors favor Mother. In this modification case, factors one, six, and eight carry more weight than the others. While there was no testimony in the August 2025 hearing indicating that either

party interferes with decisions, the situation has changed since entry of the Current Order. Mother is now incarcerated and has not attempted to contact Father. Moreover, her shielding of Child from the reality of her situation makes the current arrangement unsuitable. Finally, Mother's DUI based on her intoxication during her custodial time, and her unrebutted intention to drive Child during that intoxication, argue strongly for sole custody. The Court will award Father sole legal custody.

Residential Placement has also changed as a result of Mother's predicament. While the Current Order set a schedule of custodial time for Mother, she abused the privilege and is no longer able to benefit from the award. Father shall continue to have primary residential placement. Mother's custodial time will be suspended until she is released and has established a permanent home – which may be with her husband, or may be with her parents, or may be somewhere else – so that Child will have a safe, reliable, and consistent place to share with Mother during her parenting time.

Similarly, holiday times are suspended during Mother's incarceration. Mother is reminded that she is always able to file for modification of her custodial schedule at any time, and the decision will be based on Child's best interest without the bar applicable to petitions to modify custody. She also may discuss a schedule

of custodial time, which includes holidays, with Father to reach an agreement without a Court determination.

## II. Relocation

Requests for relocation are governed by 13 Del. C. § 734, which provides as follows:

> When in the course of litigation involving custody or visitation, there is a proposed relocation of a child for a period of 60 days or more involving either a move outside the State of Delaware or a move that materially affects the current custodial and residential arrangement or order, the Court must consider the following factors:
>
> (1) The nature, quality, extent of involvement, and duration of the child's relationship with the individual proposing to relocate and with the nonrelocating individual, siblings, and other significant individuals in the child's life.
>
> (2) The age, developmental stage, needs of the child, and the likely impact the relocation will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child.
>
> (3) The feasibility of preserving the relationship between the nonrelocating individual and the child through suitable visitation arrangements, considering the logistics and financial circumstances of the parties.
>
> (4) The child's preference, taking into consideration the age and maturity of the child.
>
> (5) Whether there is an established pattern of conduct of the individual seeking the relocation, either to promote or thwart the relationship of the child and the nonrelocating individual.

(6) Whether the relocation of the child will enhance the general quality of life for both the individual seeking the relocation and the child, including financial or emotional benefit or educational opportunity.

(7) The reasons of each individual for seeking or opposing the relocation.

(8) Any other factor affecting the best interest of the child.[60]

Father seeks to relocate Child outside the State of Delaware for more than 60 days, so the Court is obligated to weigh the eight factors set out in 13 Del. C. § 734.[61] The Court will follow past Family Court decisions suggesting that "best interest of the child" as used in 13 Del. C. § 734(8) refers to the best interest factors enumerated in 13 Del. C. § 722.[62]

## ANALYSIS

As with the analysis of the best interest factors in the custody modification case, the commentary set forth below references the testimony introduced at trial. The Court considered all of the testimony as to relocation, but finds the following as credible and relevant in the analysis of the 13 Del. C. § 734 relocation factors.

---

[60] 13 *Del.C.* § 734.

[61] The Court finds, as an alternative and independent basis for the applicability of 13 Del. C. § 734, that Father's proposed relocation would "materially [affect] the current custodial and residential arrangement or order." Though the statute does not specifically define the term "materially", past decisions of this Court indicate that the distance of the proposed relocation is a significant if not dispositive consideration in the materiality inquiry. This court has found a relocation from Delaware to North Carolina to be material "[g]iven the considerable distance between [the two states]", *L.R. v. S.R.*, No. CN18-01533, 2022 WL 663333, at *1 (Del. Fam. Ct. Jan. 25, 2022).

[62] *See L.R. v. S.R.*, Del. Fam. Ct., No. CN18-01533, Coonin, J., at *8 n.2 (Jan. 25, 2022) ("The Court utilizes the best interest factors set forth in 13 Del. C. § 722" in its 13 Del. C. § 734(8) analysis).

The Court notes at the outset that the request for relocation is decided in the Child's best interest as to Mother and Father, not Father and Maternal Grandparents. There is no question that Child has a strong relationship with Maternal Grandparents, and that relationship is considered in relocation factors one and eight. As Mother's Counsel stated at trial, "I'm looking at this as a 'plus factor.' Do you know what I mean – that I am not trying to substitute anyone. I am just saying that there is this [relationship]."[63]

**A. 13 Del. C. § 734 Relocation Factors**

***1. The nature, quality, extent of involvement, and duration of the child's relationship with the individual proposing to relocate and with the nonrelocating individual, siblings, and other significant individuals in the child's life.***

Father has been the sole caretaker of Child since August 2025. Prior to the Current Order, Father and Mother had shared residential placement. Father described his positive, age-appropriate, and supportive relationship with Child. Dr. Finkelstein, who performed a bonding assessment of Child to Father, agrees. He noted that Child "felt a level of comfort and physical intimacy with her father. It also suggested that she sought contact with her father as a means of reassurance prior to commencing a novel situation."[64] Dr. Finkelstein noted that Child "described her father in caring terms and clearly showed affection for him." She

[63] Trial Tr. at 1:09:53.
[64] Mother's Ex. 1 at *5.

"also reflected a strong sense of happiness when it is time to return to her father again."[65]

Dr. Finkelstein noted in the Summary section of his bonding report that Child "exhibited a strong sense of physical safety with her father." She "touched her father, and he touched her in a manner intended to convey affection and support." He noted that Father "helped to guide her in situations where expectations were unclear." Dr. Finkelstein found that Father "helped her to feel secure enough to explore her world."[66]

In considering his key indicators of secure attachment, Dr. Finkelstein found

> [T]hey all seem to apply consistently to [Child]'s relationship with her father. He has been a consistent presence for her, and [Child{ has shown indications that he is a reliable figure for her. Though the current observations only included an array of mild emotional reactions, [Child]'s father was able to provide a safe haven for [Child] so that she could turn to him for comfort when she felt anxious or uncertain. She showed subtle signs of distress during a brief separation from him. When in his presence, she seemed to feel capable of engaging in a variety of tasks.[67]

All of these observations and opinions were possible because Dr. Finkelstein was able to observe Child with Father.

Unfortunately, he did not have the same perspective as to Mother because he did not observe her with Child. This is especially disappointing because trial was

[65] *Id.* at *8.
[66] *Id.* at *9.
[67] *Id.* at *10.

continued for three months to allow the bonding evaluation to take place. Mother described her strong relationship with Child, and Child reflected the same during her interview with the Court in August 2025.

By the date of trial, Mother had been out of touch with Child for ten months. Dr. Finkelstein was hard pressed to find an area of his report that addressed bonding between Child and Mother. Dr. Finkelstein testified, "there isn't as much in the report about that [Mother-Child bonding} because of the circumstances making it difficult to assess that."[68] He referenced a single statement by Child "on page 8, paragraph 4, on [Child's] comments about the plan to move and the consequences for her."[69] However, Dr. Finkelstein was quite clear that he was not offering an opinion on a move, stating "as I mentioned previously a few minutes ago, that I am not here to make recommendations about visitation, relocation, any of the schedules."[70]

On Child's relationships beyond her parents, Dr. Finkelstein found – as did the Court – that her bond with Maternal Grandparents is strong. This was not in doubt in the Current Order and is not in doubt following this trial. As Child stated during her Court interview ten months ago, "I just want things to be like they used to be."

[68] Trial Tr. at 10:07:48.
[69] *Id.*
[70] Trial Tr. at 9:50:08.

Dr. Finkelstein did not evaluate any bonding between Child and her stepmother or either half-sibling. He noted on cross-examination, "I think in that case, the father is the biological parent and the source of the greatest attachment. And so by assessing that relationship, in particular, I'm assessing the most significant relationship for her among that family."[71] It is understandable that he did evaluate the Child-Maternal Grandparents bond as their guardianship was *in lieu* of the Mother-Child parenting time. The Court agrees with the expert that the biological parents are the source of greatest attachment and, therefore, the most significant relationship to be evaluated.

*Factor one favors Father and relocation .*

> ***2. The age, developmental stage, needs of the child, and the likely impact the relocation will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child.***

Child is seven years old. She is smart – *very smart* – and articulate. She performs well in school and, to her credit, avoids talking about one parent to the other. It helps her preserve her identity in each family. Child explained to Father that she is excited about the move to South Carolina. She also has expressed that she will miss the closeness with Maternal Grandparents. Children are resilient and this Child is no exception. She has no special needs. The schools in South Carolina are comparable to those in Delaware. While she enjoyed her current school, with

[71] Trial Tr. at 10:00:58.

tuition paid by Maternal Grandparents, Mother is not sure whether Child would attend school in Sussex County or might continue at her current school even though neither Mother or Father can afford it. Dr. Finkelstein already noted that Father has provided, and can provide, strong emotional support for Child. He could not evaluate the same for Mother.

Child will do well in South Carolina, as she has in Delaware. The reality is that if she does not go with Father to South Carolina, she is not able to be with Mother until at least November, and when she is, it is unclear even to Mother whether she would be in Millsboro with her stepfather or in Newark with Maternal Grandparents.

*Factor two favors Father and relocation.*

3. ***The feasibility of preserving the relationship between the nonrelocating individual and the child through suitable visitation arrangements, considering the logistics and financial circumstances of the parties.***

Father wishes to move to South Carolina. He testified that it is approximately eight hours from Wilmington to his new home and shorter from Millsboro. Father proposes that Child spend half of the summers with Mother (or Maternal Grandparents), some holidays, and other time as can be arranged. He also proposes video calls to allow Child to keep in touch with relatives on Mother's side.

Mother testified that she doesn't have the funds to transport Child and that allowing Child to relocate would prevent her from seeing Child. She did not testify in response to Father's suggestion of time with her parents.

Moves of similar distance to this situation are not uncommon. In *T.A.. v. S.S.*, Judge Cooper allowed Mother to relocate to the Chicago area, twice the distance that would be involved in Father's move, where Father had an alcohol addiction and Mother had the opportunity for employment in Illinois.[72] It is fully possible to preserve the relationship between Mother and Child by eventually awarding Mother considerable time during the summers, school breaks, holidays, and additional time during the year, without incurring unreasonable costs for the parties.

*Factor three favors Father and relocation .*

***4. The child's preference, taking into consideration the age and maturity of the child.***

Child has differing preferences on relocation to each parent. She is understandably excited about the move and her new home, and equally disappointed about not seeing Maternal Grandparents often. She will miss her half-sister and Mother if relocation is granted. She will miss her half-brother and Father if relocation is denied. Child is of age-appropriate maturity and will do well under either scenario.

*Factor four is neutral and neither favors nor disfavors relocation .*

[72] *T.A. v. S.S.*, File No. CN06-01832, Case No. 09-03392, Dkt. 71 (Cooper, J., Nov. 19, 2009).

5. ***Whether there is an established pattern of conduct of the individual seeking the relocation, either to promote or thwart the relationship of the child and the nonrelocating individual.***

Father has discussed relocation with Mother for at least two years. Mother's documented text messages were supportive of Father's plan to move, and suggested that Mother and her husband also desired to move to South Carolina. However, at trial Mother claims her support was "brainstorming," equating it looking at hotels in Hawaii.[73] Mother claimed that it was her "13-year-plan" that would not occur until her children were in college.[74] The text messages introduced at trial do not support her claims at trial.

The request to relocate was transparent and discussed in advance. Father had thought through a proposed schedule for Mother to maintain contact after she is released from prison. There was no evidence to suggest that Father was attempting to thwart Mother's relationship with Child.

*Factor five favors Father and relocation .*

6. ***Whether the relocation of the child will enhance the general quality of life for both the individual seeking the relocation and the child, including financial or emotional benefit or educational opportunity.***

Child's quality of life with Father, her stepmother, and her half-brother would be enhanced by the move to South Carolina. In Delaware, Father does not have job

[73] Trial Tr. at 2:33:44.
[74] Trial Tr. at 2:36:00.

as the business where he worked has been sold. He currently is in a rented two-bedroom condominium. In South Carolina, his skills both as a heavy-equipment operator and a rehabilitation counselor would be in greater demand than in Delaware. He has purchased outright a larger home that would cost more than twice what he would need to pay in Delaware for comparable housing..

Child's quality of life with Mother is unknown at present. Her husband intends for her to live in Millsboro, and to stay at home to focus on her recovery. He is hopeful that she will improve. However, her husband also filed for custody in June 2025, but settled with Mother on strict terms requiring her sobriety which she was not able to maintain. He testified that he owes it to his daughter not to get divorced. Hopefully he is correct. Mother was less sure of her living arrangements and struggled with her plan if relocation were denied. She was unsure whether she would live in Millsboro or in Newark with Maternal Grandparents. It was clear to the Court that Mother was convinced that Father would not leave Delaware if his request to relocate were denied.[75]

*Factor six favors Father and relocation .*

[75] Father's wishes as to relocation were clarified in his response to the Court's question. As regularly occurs in relocation case cases, Counsel (and sometimes the Court) will ask the movant, "Will you move if the Court denies the request for relocation." The answer invariably is "no". This is a Hobson's Choice, not an actual option, for the movant. When the choice is move with your child or "abandon" the Child, the answer is self-evident. For this reason, this judge requests that the movant state his or her *actual* wishes before the close of testimony.

### *7. The reasons of each individual for seeking or opposing the relocation.*

Father has looked forward to the opportunity to move for the last two years. He testified to a booming employment atmosphere, spacious houses, life on the waterway, closeness to his and his wife's family, and good schools.

Mother opposes Father relocating as it would significantly reduce her opportunity to parent her daughter. She presently is facing the challenges of recovery from alcoholism, a problem that has plagued her for years. But with her newfound spiritual relationship, and the support therefrom, she is hopeful that she will be stronger. The text messages introduced at trial showed that she was supportive of a move and, at the time, she was anxious to leave the northeast for South Carolina.

Father's reasons for relocating are well-founded, thought-out, and supportable. Mother's reasons for opposing relocation are understandable, if less developed than Father's.

*Factor seven favors Father and relocation .*

### *8. Any other factor affecting the best interest of the child.*

The strongest argument for denying relocation is the negative effect that it would have on the relationship between Child and Maternal Grandparents.

*Factor eight disfavors relocation.*

**B. Conclusion on Request to Relocate**

Under the Current Order, the parties have joint legal custody. Father has primary residential placement and final decision-making authority, largely in part to address Mother's inability to maintain sobriety. Father sought sole legal custody in this modification petition and, of equal importance to Father, the ability to relocate. The Court decided earlier in this opinion that modification is appropriate and that it is in the best interest of Child for Father to have sole legal custody.

When one parent has sole legal custody, relocation is more akin to a change in the contact schedule between the child and parents. The best interest factors still apply, and the Delaware Legislature has mandated consideration of eight separate, if somewhat overlapping, relocation factors. Each of these factors are compared between the parents. Children have an interest in maintaining their relationships with the important people in their lives, and that interest is considered under relocation factors one and eight, in particular.

It is truly unfortunate that in this case the Maternal Grandparents would be so negatively impacted by relocation, but the problem is directly tied to Mother's inability to remain sober. In deciding relocation, the Court cannot prohibit a parent from moving. The question is whether the child is going with the moving parent. In this case, if relocation is denied, Maternal Grandparents would have to prove that

Child would be dependent in *both* parents' care. It is highly unlikely that they would prevail against Father under the facts elicited at this trial.

Father offered the case of *M. v. J.*[76] in support of Mother's opposition to relocation. In *M. v. J.*, the judge denied relocation where the parties had joint legal custody, Mother had moved to Boston, and "Mother's lack of compliance with prior Court orders compound[ed] the Court's concerns that granting Mother's requests would have a deleterious impact on Father's parenting time and relationship with A."[77] In analyzing the relocation factors, the *M. v. J.* judge found that allowing the child to relocate (as she already had done) was another example of Mother's history of thwarting the father-daughter relationship. This case is distinguishable from *M. v. J.* In this case, sole custody *has* been awarded, Father has not violated any court orders, and Mother has not had contact with Child in ten months.

Father also offered authority in support of his position. In the case of *Ravin v. Spears*,[78] the only binding precedent offered, the Delaware Supreme Court affirmed a Family Court decision allowing a mother to relocate to Georgia. In *Ravin*, the finding was more narrow and based on the scope of review. The Supreme Court found no abuse of discretion where the mother (who proposed moving) offered a reasonable arrangement whereby the father would have one-half of the summers,

[76] *M. v. J.*, 2025 WL 2475858 (March 5, 2025).
[77] *Id.* at *3.
[78] *Ravin v. Spears*, 224 A.3d 302 (Del. 2019).

winter break, and spring break. The Court noted that "When the determination of the facts turns on the credibility of the witnesses who testified under oath before the trial judge, this Court will not substitute its opinion for that of the trial judge."[79] Relocation cases are heavily fact dependent – arguably more so than routine custody cases. The facts found in this case are based on the credibility of the testimony of the trial witnesses, and they favor relocation.

Mother's second case, *T.P. v. A.P.*,[80] is persuasive authority from the Family Court where a mother with sole legal custody and primary residential placement requested to move to Georgia. The judge noted that "Father's involvement in the Child's life, on the other hand, has been inconsistent."[81] In *T.P.*, mother (who was seeking to relocate) was committed to ensuring the child had visitation with the father, despite the distance between Delaware and Georgia. Many of the facts in *T.G.* are similar to this case under consideration.

As previously referenced, this case is most similar to *T.A. v. S.S.* decided by Judge Cooper. In *T.A.*, the father challenged mother's request to relocate to Chicago. Father had a recurring addiction issue. Mother had remarried and sought to move with her husband more than twice the distance involved in the present case. Mother did not yet have a job in the new area, but they had located a home, searched for

[79] *Id.* at *2.
[80] *T.P. v. A.P.*, 2022 WL 22835351 (Del.Fam.Ct., Jan 25, 2022).
[81] *Id.* at *8.

schools, and proposed a contact schedule that would provide the father with time similar to Father's proposal in the current case. Judge Cooper allowed relocation and provided safeguards to ensure that the father remained sober.

This Court finds that *T.A.*, *T.P.*, and *Ravin* are closer to the facts in this case than *M. v. J.* The Family Court is required to evaluate all of the facts, apply the law, and make a decision – sometimes difficult as in this case – as to whether the relocation is in the child's best interest. All of the foregoing findings lead this Court believe that relocation *is* in Child's best interest and the request for relocation will be approved.

* * * * * *

The Court would remiss if it did not note that the presentation by both Counsel in this case was extraordinary. Each represented their clients assertively but compassionately. Cross-examination was always respectful, and closing arguments were candid and helpful. The Court appreciates, and is grateful for, the skill that they brought to this case.

## ORDER

**IT IS HEREBY ORDERED THIS 12th** day of June 2026:

1. The Petition for Custody Modification is **GRANTED.**

2. J---- S----- ("Father") is awarded **SOLE LEGAL CUSTODY** and **PRIMARY RESIDENTIAL PLACEMENT** of V------ K------- (born April 11, 2019).

3. Parenting time for J------ K------- ("Mother") is suspended during her incarceration which is expected to be on or about November 4, 2026. ***After release from incarceration,*** and unless otherwise agreed, Mother shall have V------ from the Tuesday after Father's Day through August 15th every year.

4. The parties shall share holidays as follows:

   **Mother's Day:** Mother shall have Child every Mother's Day weekend from 7:00 p.m. on the Friday before Mother's Day until 7:00 p.m. on the Monday after Mother's Day. (Father must inform V------'s school of her absence for this holiday at the start of each school year).

   **Father's Day:** Father shall have Child every Father's Day from 7:00 p.m. on the Friday before Father's Day until 8:00 a.m. on Father's Day.

   **Other Holidays:**

   a. Mother shall have Child every Easter Break from the day after school lets out until the day before school resumes.

   b. Mother shall have Child in odd-numbered years for the Thanksgiving Break from the day after school lets out until the day before school resumes.

   c. Mother shall have Child in even-numbered years for Christmas Break from the day after school lets out until the day before school resumes.

   d. Mother shall have Child in odd-numbered years from December 27th until the day before school resumes.

e. Mother shall have the extended weekends for Martin Luther King Day, President's Day, and Memorial Day.

5. Father shall be responsible for two-thirds of the cost of transportation and Mother shall be responsible for one-third of the cost of transportation for Child for contact periods with Mother.

6. The Request for Permission to Relocate is **GRANTED.**

7. J---- S----- is permitted to relocate to South Carolina with V------ K------- (born 4/11/19).

8. **Cancelling contact:** Except in emergency situations, parents must give one another at least 24 hours advance notice when canceling a contact period.

9. **Medical treatment and emergencies:** If Child becomes seriously ill or injured, each parent shall notify the other as soon as practicable. If Child becomes ill or injured during one parent's contact period, that parent shall contact the other to secure treatment unless the situation is a medical emergency.

10. **Communication:** Both parents shall be entitled to reasonable communication with Child while she is in the other parent's care (including but not limited to video calls, telephone, e-mail, mail and text messaging). Neither parent shall interfere with the communication between Child and the other parent. Neither parent shall attempt to manipulate Child during their calls.

11. **School work:** Parents shall provide time for Child to study and complete homework assignments, even if the completion of work interferes with the parents' plans for her. Both parents are responsible for providing school assignments and books to the other parent. Child must attend summer school if necessary, regardless of which parent has Child during the summer school period.

12. **Relocation:** Prior to a parent relocating their residence, consideration shall be given to the effect the relocation may have on the existing contact schedule. If the relocation may result in a change to Child's school, travel time to school, or extracurricular activities, or otherwise may adversely affect Child's best interest, the parent choosing to relocate shall obtain written approval from the other parent or a Court Order prior to relocating.

13. **Notice of change of address:** Both parents shall give written notice to the other parent immediately upon any impending change of address and/or phone number. The written notice must include the new mailing address and phone number (in the event the mailing address is a Post Office Box, the written notice must include a physical address and/or directions to the new residence), unless a restrictive order has been obtained from the Court. A copy of the notice shall also be provided to the Family Court in the appropriate county.

14. Nothing herein prevents the parties from changing this Order by mutual agreement. However, if they are not in agreement, the terms of this Order shall apply.

15. **THIS IS A FINAL ORDER ENTERED AFTER A HEARING ON THE MERITS.** Therefore, any future modifications shall be made pursuant to 13 Del. C. § 729(c).

**IT IS SO ORDERED** this 12th day of June 2026.

**THIS IS A FINAL ORDER.**

***/s/Michael W. Arrington***
Honorable Michael W. Arrington
Judge

Date of Written Order: 6/12/26
Date E-Mailed to Counsel: 6/12/26