**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

**FAMILY COURT**

**DOMESTIC RELATIONS BRANCH**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

)

[PLAINTIFF NAME], )

)

Plaintiff ) Case No. [YEAR] DRB [####]

v. )

) Judge [NAME]

[DEFENDANT NAME] ) ) Next hearing: [DATE]

Defendant )

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter came before the court on [DATE] for an evidentiary hearing on defendant [DEFENDANT]’s [DATE] motion to modify the parties’ custody and visitation order dated [DATE], issued by the circuit court of [JURISDICTION], [STATE] following the registration of this order in the District of Columbia. The issue before the court was custody of and visitation with [CHILD] (D.O.B. [CHILD DOB]) (“[CHILD]”).

Present at the hearing were plaintiff, [PLAINTIFF] (“[PLAINTIFF]”) and his counsel, [PLAINTIFF ATTY]; the court-appointed Guardian *ad litem* (GAL),[GAL] of [FIRM]; and the defendant, [DEFENDANT] (“[DEFENDANT]”) and her counsel, [DEFENDANT ATTY].

The court received testimony from and found credible plaintiff’s witnesses: [WITNESS] and his wife, [WITNESS’ WIFE]. The court also credits the testimony of the GAL’s witnesses: [WITNESS], who was broadly qualified as an expert in psychology and [FIRM] investigator, [INVESTIGATOR]. The court received testimony from defendant [DEFENDANT], but did not find the entirety of her testimony credible. The court credits the testimony of defendant’s witnesses, [WITNESS] and [WITNESS].

The court admitted the following documents which were labeled plaintiff’s exhibits 1 through 9:

1. Handwritten note dated [DATE];
2. Progress note regarding [CHILD]’s work;
3. [NAME OF EVALUATION], Ontario Custody Evaluation dated [DATE], written and signed by [DOCTOR], M.S.W., R.S.W. and [DOCTOR], Ph.D., C.Psych of the Family Court Assessment Service;
4. [NAME OF EVALUATION], Court Order, dated [DATE], awarding [DEFENDANT] sole custody of [CHILD] and providing for visitation between [PLAINTIFF] and [CHILD];
5. Typed note from [DEFENDANT] to [PLAINTIFF] dated [DATE] indicating that he and [CHILD] would move to [STATE] after [DATE];
6. [CHILD]’s [SCHOOL] 3rd Trimester Report Card [YEAR];
7. [CHILD]’s [SCHOOL] 1st Trimester Report Card [YEAR];
8. Department of Social Services letter and envelope dated [DATE] and addressed to [PLAINTIFF] indicating that the recent report of abuse was unfounded;
9. Unsigned, handwritten note dated [DATE] indicating that [CHILD] wished to attend [SCHOOL].

The court admitted the following documents and photos which were labeled GAL’s exhibits 1 through 66:

1. Custody Evaluation by [DOCTOR] dated [DATE];

2. – 30. Photos of [DEFENDANT]’s mother’s and step-father’s home and photos of the public school in [[CITY STATE]];

31. – 65. Photos of [PLAINTIFF]’s residence in [[CITY STATE]] including one photo of [SCHOOL];

66. Agreement for Counseling with [THERAPIST] entered into by [DEFENDANT] and [PLAINTIFF], their respective counsels, and the GAL.

The court admitted three photographs of [DEFENDANT]’s residence in Washington, D.C., which were labeled defendant’s exhibits 2 A-C. Defendant’s exhibit 1 was not admitted into evidence due to hearsay objections by the GAL and plaintiff’s counsel.

After assessing the credibility of all the witnesses, evaluating all the evidence and pleadings filed in this case, and considering the arguments of counsel, the court makes the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. This court has jurisdiction of this matter pursuant to D.C. Code § 11-1101 (1) (2001) and the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) codified in D.C. Code § 16-4602.01.
2. [PLAINTIFF] and [DEFENDANT] are the unmarried parents of [CHILD] who was born on [CHILD DOB]. [CHILD] is [AGE] ([#]) years old. [PLAINTIFF] and [DEFENDANT] were never married.
3. Prior to this court’s *Pendente Lite* custody order dated [DATE] awarding [PLAINTIFF] sole temporary physical custody of [CHILD], [CHILD] primarily resided with [HIS/HER] mother, [DEFENDANT], and had visitation with [HIS/HER] father, [PLAINTIFF]. [CHILD]’s transition to [HIS/HER] father’s primary custody was not without difficulty. [CHILD] initially refused to go to school but with the help of [HIS/HER] therapist, [THERAPIST], [HE/SHE] began attending school and [HIS/HER] tantrums and behavioral concerns decreased over time.

[PLAINTIFF] lives in [[CITY STATE]] with his wife, [STEPMOM], and [CHILD]. [STEPMOM]’s twenty-one year old son, [STEP BRO], attends college and boards there, but returns home every few months and on holidays. At [PLAINTIFF]’ home, [CHILD] has [HIS/HER] own room with [HIS/HER] personal belongings. [PLAINTIFF] makes race courses and owns his own company. *[ADDITIONAL FACTS REDACTED]*

1. [DEFENDANT] is unmarried and currently resides in a condominium in Washington, D.C. She testified that if she were to have custody of [CHILD], she would live on a temporary basis at her mother and step-father’s home in [[CITY STATE]]. As testified to by [INVESTIGATOR], an investigator from [FIRM], the grandparents’ home lacked any of [CHILD]’s personal effects and [HIS/HER] bedroom at the time of trial served as an office. [DEFENDANT] teaches figure skating at several different venues in the Washington, D.C. area.

*[ADDITIONAL FACTS REDACTED]*

1. A custody evaluation dated [DATE] was written by [DOCTOR], M.S.W., R.S.W. and [DOCTOR], Ph.D., C.Psych of the family court assessment service pursuant to a request of the [JURISDICTION] court. This evaluation was admitted into evidence in the instant matter without objection as plaintiff’s exhibit 3. The evaluation assessed [DEFENDANT], [PLAINTIFF] and his wife, [STEPMOM], and [CHILD] (who was then [AGE] years old). The assessment found that [PLAINTIFF] and [STEPMOM] are “quite able and willing to provide a good level of care and supervision and nurturing for [CHILD]. In their care, [CHILD] was found to have the freedom to be a normal, delightful, playful and active [AGE] year old [BOY/GIRL].” ([NAME OF EVALUATION] Assessment at 34).

The evaluators found that [DEFENDANT] had intentionally limited [CHILD]’s contact with [PLAINTIFF] and that further contact between [CHILD] and [HIS/HER] father would improve [HIS/HER] overall well-being:

[*ADDITIONAL FACTS REDACTED*]

The social assessment posited that [DEFENDANT]’s emotions dictated how she felt [CHILD] should relate to [HIS/HER] father:

[*ADDITIONAL FACTS REDACTED*]

The assessment observes that at the time [DEFENDANT] inappropriately involved [CHILD] in the court process:

[*ADDITIONAL FACTS REDACTED*]

The evaluators ultimately recommended joint custody and concluded that:

[*ADDITIONAL FACTS REDACTED*]

1. The instant matter is before the court on [DEFENDANT]’s [DATE] motion to modify the parties’ custody and visitation order dated [DATE] and issued by the circuit court of [JURISDICTION] County, Maryland, following the registration of this order in the District of Columbia. [DEFENDANT]’s original motion to modify sought sole legal and physical custody and to terminate [PLAINTIFF]’ visitation with [CHILD].
2. [CHILD] has been provided little consistency in [HIS/HER] education while in the care of [DEFENDANT]. [*ADDITIONAL FACTS REDACTED*]
3. [CHILD] is currently in the [GRADE LEVEL] grade at [SCHOOL] in [CITY STATE]. The school has approximately [NUMBER] students and serves kindergarten through twelfth grade. [CHILD]’s class has approximately twelve students. At the time of trial, school had just commenced but [CHILD] was reported to be doing well in school.
4. In the [SEASON] of [YEAR], prior to [DEFENDANT] withdrawing [HIM/HER] from [SCHOOL], the school counselor recommended that [CHILD] receive counseling due to [CHILD]’s behavior at school and difficulties dealing with peers. [DEFENDANT] testified to calling numerous providers but that she was unable to engage a therapist for [CHILD] until approximately five months later in [MONTH YEAR] when [HE/SHE] met with [THERAPIST] from [ORGANIZATION/PRACTICE]. [CHILD] met with this therapist on two or three occasions but did not begin seeing a therapist with regularity until [HE/SHE] moved to [CITY STATE] in [MONTH YEAR] when *pendente lite* custody was awarded to [PLAINTIFF].
5. A custody evaluation was conducted in the instant matter by Dr. [DOCTOR]. This evaluation was admitted into evidence without objection. Dr. [DOCTOR] also testified at trial over the course of two days. As part of this evaluation, Dr. [DOCTOR] met initially with [CHILD] on [DATE]. He met with [PLAINTIFF] on [DATE], and met again with [CHILD] and [HIS/HER] father on [DATE]. Dr. [DOCTOR] met with [DEFENDANT] initially on [DATE], and again on [DATE], and with [CHILD] on [DATE]. The evaluation consisted of clinical interviews, observation of the individuals, their interactions and psychological testing.

Dr. [DOCTOR] described [CHILD] as:

[*ADDITIONAL FACTS REDACTED*]

Dr. [DOCTOR] also made several observations, which he described as concerning, consistent with the [YEAR] [NAME OF EVALUATION] custody evaluation about [DEFENDANT]:

[*ADDITIONAL FACTS REDACTED*]

Also consistent with the [NAME OF EVALUATION] assessment, Dr. [DOCTOR] found that:

[*ADDITIONAL FACTS REDACTED*]

Taking into account geographical distance of the parties’ homes, Dr. [DOCTOR] recommended that [CHILD] should reside in one location throughout the year and in particular with [PLAINTIFF], which would allow [CHILD] to get to know [HIS/HER] father and also to remain in one school placement for a year. Placement with [PLAINTIFF] would also foster [CHILD]’s relationship with [HIS/HER] therapist. Dr. [DOCTOR] testified that if the parents lived in closer proximity, then joint custody might be a better option for [CHILD].

**CONCLUSIONS OF LAW**

With respect to custody of children between parents, “[t]here shall be a rebuttable presumption that joint custody is in the best interests of the child…, except in instances where a judicial officer has found by a preponderance of the evidence that an intrafamily offence…, an instance of child abuse…, an instance of child neglect…or parental kidnapping…has occurred.” D.C. Code § 16-914 (a)(2). The custody statute further provides that the best interest of the child is the court’s primary consideration and seventeen factors are enumerated to assist the court in reaching this determination. D.C. Code § 16-914 (a)(3)(A)-(Q).

Pursuant to the custody statute and based on the foregoing findings of fact, the court enters the following conclusions of law as required by D.C. Super. Ct. Dom. Rel. R. 52(a):

1. **The wishes of the child as to his or her custodian, where practicable:**

As evidenced in the custody evaluations and in [DEFENDANT]’s own testimony, the extensive history of her unilateral and inappropriate influence on [CHILD]’s opinion of [PLAINTIFF] makes it difficult to ascertain [CHILD]’s true wishes as to custody, which the court is to consider under § 16-914 (a)(3)(A). [*ADDITIONAL FACTS REDACTED*]

1. **The wishes of the child’s parents as to child custody:**

Each parent wishes to have sole physical and legal custody of [CHILD] while granting the other parent visitation rights.

1. **The interaction and interrelationship of the child with his or her parents, siblings and any other person who may emotionally or psychologically affect the child’s best interest:**

[DEFENDANT]’s persistent exclusion of [PLAINTIFF] from [CHILD]’s life should be considered when weighing § 16-914 (a)(3)(C). [*ADDITIONAL FACTS REDACTED*]

[CHILD] has a positive relationship with [HIS/HER] step-mother, [STEPMOM], and step-brother, [STEP BRO].

1. **The child’s adjustment to home, school and community:**

Pursuant to D.C. Code § 16-914 (a)(3)(D), this court must assess [CHILD]’s adjustment to home, school and community. For the first [NUMBER] years of [HIS/HER] life, [CHILD] lived with [DEFENDANT] and moved on at least five occasions. Given this instability, [CHILD] has had difficulty adjusting or establishing any real constancy or meaningful relationships in school or the community while living with [DEFENDANT] (except during summer holiday). Further, [CHILD] was home-schooled for many years and the evidence presented shows that when [CHILD] was enrolled in school, [HE/SHE] experienced difficulties and [DEFENDANT] would withdraw him.

In contrast, [PLAINTIFF] provides an opportunity for stability and for [CHILD] to adjust to a permanent home. [PLAINTIFF] has resided at the same residence since [CHILD]’s birth and [CHILD] is adjusting to [HIS/HER] new home. [HE/SHE] has a social network, attends [SCHOOL], participates in community and recreational activities, and has a good relationship with [HIS/HER] therapist.

1. **The mental and physical health of all individuals involved:**

Dr. [DOCTOR] highlighted concerns about [DEFENDANT]’s emotional health. He testified about [DEFENDANT]’s concerning behaviors during his sessions which included her labile mood, her focus on herself, her failure to redirect [CHILD]’s inappropriate behavior, her inability to censor her negative comments about [PLAINTIFF] and this case in front of [CHILD]. [DEFENDANT] herself testified that even in times of [CHILD] ’s severe emotional distress when clinicians recommended that [HE/SHE] receive therapy – for example, when she withdrew [HIM/HER] from the [SCHOOL] due to behavioral difficulties – she did not obtain a therapist for [CHILD] for approximately [NUMBER] months.

Most significantly, Dr. [DOCTOR] testified to [CHILD]’s need to individuate and develop emotionally, [HIS/HER] need for ongoing therapy, and for a supportive home that allows [HIM/HER] to do these things. The evidence has proven that only [PLAINTIFF] is willing and able to provide this environment for [CHILD].

[CHILD]’s mental and emotional health is now improving and [HIS/HER] relationship with [HIS/HER] therapist has been beneficial. Despite this, [DEFENDANT] has not supported [CHILD]’s emotional growth or the continuation of this therapeutic relationship.

[CHILD] is in good physical heath, as the testimony of [PLAINTIFF] proves. [PLAINTIFF] also testified to his own physical health, which is good. He testified that he has a health condition called [CONDITION] with a positive prognosis that does not affect his daily functioning and is treatable with medication. [PLAINTIFF] is in good mental health. Dr. [DOCTOR] detailed his concerns about [DEFENDANT]’s mental health and her need for individual therapy, especially if there is a change in custody from the status quo. [DEFENDANT] appears to be in good physical health.

1. **Evidence of an intrafamily offense as defined in D.C. Code Section 16-1001 (5):**

[DEFENDANT]’s report to the [STATE] police during [CHILD]’s visit with [PLAINTIFF] in the [SEASON] of [YEAR] resulted in the police arriving to the [PLAINTIFF SURNAME] home and finding [CHILD] “in excellent condition.” In addition, the investigation conducted by [STATE] social services resulted in an unsubstantiated finding regarding [DEFENDANT]’s allegations of abuse. The evidence presented proves that despite [DEFENDANT]’s repeated false allegations, there is, in fact, no evidence of an intrafamily offense for the Court to consider under § 16-914 (a)(3)(F).

1. **The capacity of the parents to communicate and reach shared decisions affecting the child’s welfare:**

The history of this case details an irreconcilable parental relationship laden with [DEFENDANT]’s anger and skepticism of [PLAINTIFF]. Despite [PLAINTIFF]’ desire to have a co-parenting relationship, the parties appear unable to communicate to reach shared decisions about [CHILD].

1. **The willingness of the parents to share custody:**

Closely linked to the inability of [DEFENDANT] and [PLAINTIFF] to communicate, the parties do not appear willing or able to share custody, which is relevant under § 16-914 (a)(3)(H). The court credits [PLAINTIFF]’s testimony regarding his desire to co-parent [CHILD] with [DEFENDANT].

1. **The prior involvement of each parent in the child’s life:**

The custody evaluations admitted into evidence and the testimony elicited at trial establish that [DEFENDANT] has made significant and persistent efforts to alienate [PLAINTIFF] from [CHILD]’s life. [*ADDITIONAL FACTS REDACTED*]

1. **The potential disruption of the child’s social and school life:**

According to Dr. [DOCTOR], to address [CHILD]’s immaturity and lack of socialization and [HIS/HER] enmeshed relationship with [HIS/HER] mother, [CHILD] needs the opportunity to develop into an independent, socially well-adjusted, educated, emotionally healthy young [MAN/WOMAN]. [*ADDITIONAL FACTS REDACTED*]

1. **The geographical proximity of the parental homes as this relates to the practical considerations of the child’s residential needs:**

[DEFENDANT] testified that she plans to reside temporarily in her parents’ home in [CITY STATE] and later in a home she would obtain, also in [CITY STATE], and as such there will be considerable geographic distance between the parties’ homes. [PLAINTIFF] currently resides in [CITY STATE] and he testified that [CITY STATE] is approximately 500 miles away, which would make joint physical custody, let alone frequent visitation, logistically very difficult.

1. **The demands of parental employment:**

Both [PLAINTIFF] and [DEFENDANT] are employed, and while their work may affect the amount of time they can dedicate to parenting [CHILD], employment does not significantly impact their abilities. [*ADDITIONAL FACTS REDACTED*]

1. **The age and number of children:**

[CHILD] is the only child born to [PLAINTIFF] and [DEFENDANT]. [HE/SHE] is [AGE] ([#]) years old, and with [PLAINTIFF], has [HIS/HER] first chance at stability, normalcy and independence.

1. **The sincerity of each parent’s request:**

[DEFENDANT]’s indifference to [PLAINTIFF]’s importance in [CHILD]’s life, her inability and unwillingness to permit [CHILD] to develop an independent opinion of [HIS/HER] father, her failure to adequately educate [CHILD] or secure counseling services for [HIM/HER], and her disregard for the legal system raise significant concerns about the sincerity of [DEFENDANT]’s request for custody, which is relevant under § 16-914 (a)(3)(N).

In sharp contrast, [PLAINTIFF] appears genuine in his request for custody of [CHILD]. [PLAINTIFF] testified to his persistent efforts to see his [SON/DAUGHTER] for the vast majority of [CHILD]’s life. *[ADDITIONAL FACTS REDACTED]*

1. **The parents’ ability to financially support joint custody:**

Both parties appear financially able to support a joint custody arrangement under § 16-914 (a)(3)(O). [DEFENDANT] also testified to her financial dependence on her parents to support herself and [CHILD], which is relevant under § 16-914 (a)(3)(P).

1. **The impact on Temporary Assistance for Needy Families, or Program on Work, Employment and Responsibilities, and medical assistance:**

Not applicable to this matter.

1. **The benefit to the parents:**

Both parents would benefit from a resolution of this custody dispute that serves to foster [CHILD]’s development and independence and is in [CHILD]’s best interest.

Based on the foregoing, the court concludes that [CHILD]’ best interests shall be served by sole legal and physical custody with [HIS/HER] father, [PLAINTIFF], and that [DEFENDANT] did not meet her burden to rebut the presumption of joint custody. [DEFENDANT]’s motion to modify custody is therefore denied.

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

**FAMILY COURT**

**DOMESTIC RELATIONS BRANCH**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

)

[PLAINTIFF NAME], )

)

Plaintiff ) Case No. [YEAR] DRB [####]

v. )

) Judge [NAME]

[DEFENDANT NAME] ) ) Next hearing: [DATE]

Defendant )

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

**ORDER**

Upon consideration of defendant [DEFENDANT]’s [DATE] motion to modify the parties’ custody and visitation order dated [DATE] and issued by the circuit court of [JURISDICTION] County, [STATE], and the entire record herein, it is hereby:

**ORDERED** this \_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, [YEAR], that defendant [DEFENDANT]’s motion is **DENIED** and plaintiff [PLAINTIFF], father of the minor child [CHILD] (D.O.B. [CHILD DOB]), is granted sole physical and sole legal custody of the minor child. This award of custody to the plaintiff is in the best interest of [CHILD]; and it is further

**ORDERED** that the defendant, [DEFENDANT], is granted liberal rights of visitation with [CHILD] and that the parties shall draft a mutually agreed upon visitation schedule; and it is further

**ORDERED** that [PLAINTIFF] maintain [CHILD]’s enrollment in the local public school in [CITY STATE] for the remainder of the school term; and it is further

**ORDERED** that [CHILD] may communicate with [HIS/HER] mother, [DEFENDANT], by telephone up to three times per week on [DAY], [DAY], and [DAY], but no later than [TIME]; and it is further

**ORDERED** that neither party is to discuss the litigation with [CHILD], solicit [HIS/HER] opinion about the other party or lobby or otherwise pressure the child to take a position; and it is further

**ORDERED**, preventatively, in the observation of optimum safety, that [PLAINTIFF] is to ensure that firearms are locked away and stored securely and that all ammunition is to be stored in an undisclosed location separate from all firearms; and it is further

**ORDERED** that both parties are to work together to continue [CHILD]’s counseling sessions until the therapist determines it is clinically appropriate to cease therapy and that the parents shall share the cost of said therapy.

**SO ORDERED.**

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The Honorable [JUDGE]

*Signed in Chambers*

Copies to:

[ATTY NAME], Esq.

[ADDRESS]

*Counsel for Mother*

[ATTY NAME], Esq.

[ADDRESS]

*Counsel for Father*

[GAL NAME], Esq.

[ADDRESS]

Guardian *ad Litem*