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OPINIONS AND ORDERS

ORDER OF THE COURT OF APPEALS OF THE STATE OF NEW YORK (OCTOBER 17, 2019)

STATE OF NEW YORK
COURT OF APPEALS

IN THE MATTER OF NICOLE HAIMS,

Respondent,

v.

JOHN LEHMANN,

Appellant.

No. SSD 64

Before: Hon. Janet DIFIORE, Chief Judge, presiding.

Appellant having appealed to the Court of Appeals in the above title;

Upon the papers filed and due deliberation, it is

ORDERED, that the appeal is dismissed without costs, by the Court *sua sponte*, upon the ground that no substantial constitutional question is directly involved.

/s/ John P. Asiello
Clerk of the Court

DECISION AND ORDER OF THE NEW YORK APPELLATE DIVISION, SECOND JUDICIAL DEPARTMENT (APRIL 24, 2019)

SUPREME COURT OF THE
STATE OF NEW YORK APPELLATE DIVISION:
SECOND JUDICIAL DEPARTMENT

IN THE MATTER OF NICOLE HAIMS,

Appellant-Respondent,

v.

JOHN LEHMANN,

Respondent-Appellant.

2018-00090

(Docket No. V-11126-15)

Before: Leonard B. AUSTIN, J.P., Sheri S. ROMAN, Sylvia O. HINDS-RADIX, Linda CHRISTOPHER, JJ.

In a proceeding pursuant to Family Court Act article 6, Nicole Haims appeals, and John Lehmann cross-appeals, from an order of the Family Court, Westchester County (Rachel Hahn, J.), dated December 18, 2017. The order, insofar as appealed from, after a hearing, failed to award Nicole Haims sole legal custody of the subject child, discontinued John Lehmann's therapeutic supervised parental access with the child,

awarded John Lehmann unsupervised parental access with the child, and directed that, commencing August 31, 2018, John Lehmann's unsupervised parental access occur every weekend from Friday at 7:00 p.m. through Sunday at 7:00 p.m. The order, insofar as cross-appealed from, after a hearing, awarded the parties joint legal custody of the child and awarded Nicole Haims sole physical custody of the child.

ORDERED that the order is modified, on the law and the facts, (1) by deleting the provision thereof awarding the parties joint legal custody of the subject child, and substituting therefor a provision awarding Nicole Haims sole legal custody of the child, and (2) by deleting the provisions thereof discontinuing John Lehmann's therapeutic supervised parental access with the child, awarding John Lehmann unsupervised parental access with the child, and directing that, commencing August 31, 2018, John Lehmann's unsupervised parental access occur every weekend from Friday at 7:00 p.m. through Sunday at 7:00 p.m., and substituting therefor a provision continuing John Lehmann's therapeutic supervised parental access with the child; as so modified, the order is affirmed insofar as appealed and cross-appealed from, without costs or disbursements, and the matter is remitted to the Family Court, Westchester County, to specify a schedule for John Lehmann's continued therapeutic supervised parental access with the child forthwith.

In November 2011, the subject child was born to John Lehmann (hereinafter the father) and his then-wife, Jolie Lehmann (hereinafter the mother). The father and the mother separated in March 2013. The child resided with the mother at the marital residence except for a brief period when the child resided with

her maternal grandparents to allow for her attendance at a certain preschool.

On May 24, 2015, the mother suffered a brain aneurysm and was hospitalized. At that time, the child went to stay with the mother's sister, Nicole Haims (hereinafter the maternal aunt), the maternal aunt's husband, and their two sons. The mother subsequently died on June 9, 2015. The child continued to live with the maternal aunt and her family.

In August 2015, the maternal aunt commenced a proceeding for guardianship of the child, which subsequently was converted, on consent, to a proceeding for custody of the child. During the course of the proceeding the father had only supervised parental access with the child. In October 2017, the Family Court directed the father to begin therapeutic supervised parental access with the child. Following a hearing, in an order dated December 18, 2017, the court, inter alia, awarded the parties joint legal custody of the child with physical custody to the maternal aunt, discontinued the father's therapeutic supervised parental access with the child, awarded the father unsupervised parental access with the child, and directed that, commencing August 31, 2018, the father's unsupervised parental access occur every weekend from Friday at 7:00 p.m. through Sunday at 7:00 p.m. The maternal aunt appeals from so much of the order as failed to award her sole legal custody of the child, discontinued the father's therapeutic supervised parental access with the child, awarded the father unsupervised parental access with the child, and directed that, commencing August 31, 2018, the father's unsupervised parental access occur every weekend from Friday at 7:00 p.m. through

Sunday at 7:00 p.m. The father cross-appeals from so much of the order as awarded the parties joint legal custody of the child and awarded the maternal aunt sole physical custody of the child.

"In a custody proceeding between a parent and a nonparent, the parent has a superior right to custody that cannot be denied unless the nonparent demonstrates that the parent has relinquished that right due to surrender, abandonment, persistent neglect, unfitness, or other extraordinary circumstances" (*Matter of Williams v. Frank*, 148 A.D.3d. 815, 816; *see Matter of Bennett v. Jeffreys*, 40 NY.2d 543, 548; *Matter of Suarez v. Williams*, 26 NY.3d 440, 446; *Matter of Herrera v. Vallejo*, 107 A.D.3d 714, 714). "Only if the nonparent meets this burden does the court determine whether the best interests of the child warrant awarding custody to the nonparent" (*Matter of Herrera v. Vallejo*, 107 A.D.3d at 715; *see Matter of Suarez v. Williams*, 26 NY.3d at 446; *Matter of Bennett v. Jeffreys*, 40 NY.2d at 548; *Matter of Williams v. Frank*, 148 A.D.3d at 816).

Here, we agree with the Family Court's determination that the maternal aunt sustained her burden of demonstrating the existence of extraordinary circumstances. There was evidence before the court that, among other things, the father had abused alcohol for nearly 20 years, had a history of relapses during prior attempts to attain sobriety, and was only at the beginning stages of treatment to achieve sobriety during this most recent period of abstinence (*see Matter of Herrera v. Vallejo*, 107 A.D.3d at 715; *Matter of Rodriguez v. Delacruz-Swan*, 100 A.D.3d 1286, 1288). The court should not have awarded joint legal custody of the child to the parties given the

hostility and antagonism between them (*see Braiman v. Braiman*, 44 NY.2d 584, 589-590; *Irizarry v. Irizarry*, 115 A.D.3d 913, 914; *Matter of Wright v. Kaura*, 106 A.D.3d 751). Under the circumstances, the court should have awarded sole legal custody of the child to the maternal aunt. The award of sole physical custody of the child to the maternal aunt is in the best interests of the child and is supported by a sound and substantial basis in the record (*see Matter of Herrera v. Vallejo*, 107 A.D.3d at 715; *Matter of Barcellos v. Warren-Kidd*, 57 A.D.3d 984, 985).

The determination of parental access is entrusted to the sound discretion of the Family Court, and an award of parental access will not be disturbed unless it lacks a sound and substantial basis in the record (*see Matter of Pagan v. Gray*, 148 A.D.3d 811, 812). Here, the court's determination discontinuing the father's therapeutic supervised parental access with the child and awarding the father unsupervised parental access with the child, after only two months of therapeutic supervised parental access between the father and the child and without some mechanism in place to ensure the father's continued sobriety, lacked a sound and substantial basis in the record (*cf. Matter of Ottaviano v. Ippolito*, 132 A.D.3d 681, 683; *Matter of Castagnola v. Muller*, 105 A.D.3d 954, 955; *Matter of Thompson v. Yu-Thompson*, 41 A.D.3d 487, 488).

In light of our determination, we need not reach the maternal aunt's remaining contention.

AUSTIN, J.P., ROMAN, HINDS-RADIX and CHRISTOPHER, JJ., concur.

Enter: /s/ Aprilanne Agostino
Clerk of the Court

**DECISION AND ORDER ON MOTION,
NEW YORK APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT
(FEBRUARY 2, 2018)**

SUPREME COURT OF THE
STATE OF NEW YORK APPELLATE DIVISION:
SECOND JUDICIAL DEPARTMENT

IN THE MATTER OF NICOLE HAIMS,

Appellant,

v.

JOHN LEHMANN,

Respondent.

2018-00090

(Docket No. V-11126-15)

Before: John M. LEVENTHAL, J.P.,
Jeffrey A. COHEN, Betsy BARROS,
Valerie Brathwaite NELSON, JJ.

Motion by the appellant to stay enforcement of so much of an order of the Family Court, Westchester County, dated December 18, 2017, as discontinued the respondent's therapeutic supervised visitation with the subject child and directed that the respondent have certain unsupervised visitation, with the respondent providing transportation for his parental access,

and to direct that the respondent shall have supervised weekly visitation with the subject child, to be supervised by Benna Stober, pending hearing and determination of an appeal from the order.

Upon the papers filed in support of the motion and the papers filed in opposition and in relation thereto, it is

ORDERED that the motion is granted, and enforcement of the eleventh, twelfth, and fifteenth through fortieth decretal paragraphs of the order dated December 18, 2017, is stayed and the respondent shall continue to have supervised weekly visitation with the subject child, to be supervised by Benna Stober, pending hearing and determination of the appeal; and it is further,

ORDERED that the first through fourth decretal paragraphs of the order to show cause of this Court dated December 29, 2017, in the above-entitled matter are vacated forthwith.

LEVENTHAL, J.P., COHEN, BARROS and BRATHWAITE NELSON, JJ., concur.

ENTER:

/s/ Aprilanne Agostino
Clerk of the Court

DECISION AND ORDER
(AFTER FACT-FINDING HEARING)
OF THE FAMILY COURT OF NEW YORK,
WESTCHESTER COUNTY
(DECEMBER 18, 2017)

FAMILY COURT OF NEW YORK
WESTCHESTER COUNTY

IN THE MATTER OF A CUSTODY PROCEEDING UNDER ARTICLE 6 OF THE FAMILY COURT ACT

NICOLE HAIMS,

Petitioner,

v.

JOHN LEHMANN,

Respondent.

File No.: 143772

Docket No. V-11126-15

Before: Hon. Rachel HAHN,
Judge of the Family Court.

NOTICE: WILLFUL FAILURE TO OBEY THE TERMS AND CONDITIONS OF THIS ORDER MAY RESULT IN COMMITMENT TO JAIL FOR A TERM NOT TO EXCEED SIX MONTHS.

PROCEDURAL HISTORY

Before the Court for decision is a petition filed on August 24, 2015, by Petitioner, Nicole Haims (hereinafter "Petitioner"), against Respondent, John Lehmann (hereinafter "Respondent"), seeking an Order awarding her guardianship of the subject child, O[...] Lehmann [DOB XX/XX/2011 (hereinafter "the Child")].

The fact-finding hearing commenced on August 2, 2016, continued over the course of 14 days, and concluded on September 26, 2017. On September 26, 2017, and on consent of all counsel, the Court granted Petitioner's application to convert the guardianship petition to a custody petition. On all dates, Petitioner appeared personally with Lisa Zeiderman, Esq. and Jennifer Jackman, Esq., Respondent appeared personally with Martin Rosen, Esq., and Jo-Ann Cambareri, Esq. appeared as Attorney for the Child (hereinafter "AFC Cambareri"). Petitioner called as witnesses: 1) the Child's school teacher, Leticia Halpern; 2) family friend, Andi Warmund; 3) family friend, Christopher Reilly; 4) husband, Lowell Haims; 5) the Child's maternal grandfather, Howard Schwell; 6) family friend, Marguerite DeFonte; 7) the Child's therapist, Lauren Behrman, PhD; 8) testified on her own behalf; and called 9) Raymond Griffin, PhD, CASAC[1], as a rebuttal witness.

Respondent called as witnesses: 1) co-worker, Christopher Dunnigan; 2) psychiatrist, Gabrielle Centurion, M.D.; 3) Supervised Visitation Expert Director and Supervisor, Carmen Candelario; 4) wife, Philine Lehmann; and 5) testified on his own behalf. AFC

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[1] Credentialed Alcoholism and Substance Abuse Counselor.

Cambareri did not call any witnesses on behalf of the Child. Written summations were fully submitted by the parties and AFC Cambareri on November 15, 2017.

The parties submitted themselves for a forensic mental health evaluation with Marc Abrams, PhD, and consented to the evaluator's report coming into evidence as the Court's Exhibit 1, subject to cross examination. *See*, Order for Release of Forensic Report entered July 27, 2016 (Hahn, J); Amended Order Appointing Neutral Forensic Evaluator entered June 30, 2016 (Hahn, J); Order Appointing Neutral Forensic Evaluator entered June 9, 2016 (Hahn, J). Respondent also submitted himself to a forensic drug and alcohol evaluation with Raymond Griffin, PhD, CASAC and the parties consented to Dr. Griffin's report coming into evidence as the Court's Exhibit 2, subject to cross examination. *See, Gurewich v. Gurewich*, 43 A.D.3d 458 (2nd Dept. 2007); *see also, Cohen v. Merems*, 2 A.D.3d 663 (2nd Dept. 2003); Order for Release of Evaluation entered December 15, 2016 (Hahn, J); Amended Order for Evaluation entered May 26, 2016 (Hahn, J); Order for Evaluation entered May 26, 2016 (Hahn, J).

The Court having observed the demeanor of the witnesses and having made determinations as to their credibility, and having considered the evidence and exhibits makes a finding of extraordinary circumstances and that it is in the best interest of the Child to grant the petition to the extent stated herein based upon the following findings of fact and conclusions of law. *See, IMO Noonan et al. v. Noonan*, 109 A.D.3d 827 (2nd Dept. 2013); *IMO Brown v. Zuzierla*, 73 A.D.3d 765 (2nd Dept. 2010).

FINDINGS OF FACT

Petitioner's Case

Petitioner's Testimony

Petitioner is the maternal aunt of the Child and is married to Lowell Haims (hereinafter "Mr. Haims"). They have two sons, ages 15 and nine. Petitioner testified that the Child was born on November 25, 2011, to Respondent and Jolie Lehmann (hereinafter "the Mother") and that when the Child was born, Respondent shut down, appeared disengaged and was out of it. On May 24, 2015, Petitioner took the Child to reside with her family when the Mother suffered a brain aneurysm at the maternal grandparents' home. Petitioner, the maternal grandparents, Respondent, and Respondent's sister were present in the hospital when the Mother passed away on June 9, 2015.

On June 11, 2015, Respondent and Petitioner spoke over the telephone, and Respondent stated that he was upset with God and was concerned about how he was going to inform the Child of the Mother's passing. Respondent read Petitioner a speech over the telephone and slurred his words, repeated himself, and seemed confused. Thereafter, Petitioner spoke with her therapist about how to break the news to the Child. Petitioner made arrangements with the therapist to come to her home with the family present, when the Child would be informed of the Mother's passing. Petitioner stated that she, her husband, the maternal grandparents, Respondent and Respondent's sister were in her home on that day. Petitioner testified that Respondent arrived early with his

sister, took the Child outside of everyone's presence and told the Child the Mother passed away.

A few weeks after the Mother's passing, Petitioner smelled alcohol on Respondent and testified that he appeared sweaty, disoriented and drunk. At the funeral, she observed Respondent frantically shoveling dirt in the Mother's grave. After the funeral, Respondent was drinking at her home and appeared out of it. Petitioner decided that she would no longer serve Respondent alcohol at her home as she believed that Respondent had a history of alcoholism. Petitioner also testified that Respondent never asked for the Child to reside with him after the Mother's passing. Shortly after the funeral, Petitioner filed the instant petition.

The Child resided with Petitioner and her family during the summer of 2015 and Petitioner invited Respondent to visit with the Child at her home and on planned vacations. Petitioner testified that she facilitated the time Respondent spent with the Child at her residence by making sure he could engage the Child with crafts, toys, and in her pool. Some time in June or July 2015, Respondent moved to White Plains from Manhattan. Petitioner testified that in August 2015, Respondent came to her home to spend time with the Child and they were in her pool. When Respondent arrived, she observed him stumble and fall, and that he had no idea he was bleeding from his elbow in the pool.

The Child's maternal grandmother became ill in October 2015 and passed away in December 2015. Petitioner enrolled the Child in therapy with Dr. Behrman to assist the Child in dealing with the difficult loss of the Mother and the maternal grandmother.

Petitioner testified that the Child met with Dr. Behrman weekly and that she and Mr. Haims met with Dr. Behrman monthly. She discussed with Dr. Behrman, topics such as the Child's grief, the Child's nightmares and night terrors, and regressive behavior the Child was exhibiting after her court ordered FaceTime access with Respondent.

When the Mother passed away, Petitioner chose the Child's medical providers in Connecticut, and enrolled the Child in Country Kids Day School and thereafter Pound Ridge Elementary kindergarten classes. She testified that she ensured Respondent received information from the school regarding the Child by giving the school Respondent's information. Petitioner also testified that she informed Respondent that she hired a tutor to work with the Child on her literacy and writing skills because the Child was lagging in sight words and reading. Petitioner enrolled the Child in music, dance, and gymnastic classes. Petitioner testified she made attempts to foster the Child's relationship with Respondent by providing him with information regarding the Child's education and therapy, and prepared the Child for her supervised visits with Respondent. Petitioner acknowledged that she did not always provide him with the Child's report cards or inform him of school trips, holidays, or parent-teacher meeting bulletins, or that she enrolled the child in extracurricular activities. Petitioner stated that she only makes positive statements about Respondent and created, for the Child, a board of pictures of Respondent, the Mother, and the maternal grandmother.

Petitioner did not believe Respondent had empathy for the Child or had the ability to put the Child's

needs above his own. Petitioner stated that Respondent has yet to inquire about the Child's medical appointments, progress in therapy, enrollment in school, or about the Child's extracurricular activities. Petitioner testified that Respondent did purchase gifts for the Child and provided money for the Child without her having to ask for it. She testified to observing, on an iPad purchased by Respondent for the Child, disturbing text messages sent by Respondent to his current wife regarding a move to Ohio and seeking vengeance against Petitioner's family.

Petitioner did not inform Respondent about the guardianship petition because she was scared he would take the Child from her and acknowledged that she did not observe the acts of violence she alleged Respondent committed in her petition. Petitioner also acknowledged that she was not aware Respondent had parenting time alone with the Child after Respondent and the Mother separated. Petitioner testified that she observed Respondent act affectionately with the Child prior to his supervised visits. She testified that in order for her to feel comfortable with Respondent having unsupervised visits, he would have to show empathy for the Child, acknowledge her relationship with the Child, and make more of an effort to integrate himself in the Child's life.

Lowell Haims' Testimony

Mr. Haims is the husband of Petitioner, brother-in-law of Respondent, and maternal uncle of the Child. Mr. Haims thought Respondent had a problem with alcohol but never confronted him about it. Mr. Haims was aware that Respondent was not present at the Child's first birthday party because Respondent

was in a rehabilitation facility. Mr. Haims testified that Respondent and the Mother separated at the end of 2012, after the Child's first birthday. Mr. Haims also testified that after Respondent and the Mother separated, and before her passing, he did not observe Respondent interact with the Child very much, but was aware that Respondent spent time alone with the Child. When the Child had her third birthday party in 2014, Respondent was present, but appeared bloated, his eyes were half shut, and movements lumbered.

After the Mother passed away on June 9, 2015, Respondent signed a waiver and consented to Mr. Haims acting as administrator of the Mother's estate. Mr. Haims testified that it was Respondent's idea that the Child remain in his home for the summer of 2015, and that he, Respondent, needed to "step up." When the Child first arrived at his residence, after the Mother's passing, the Child acted babyish, would drink milk from a bottle, ate little food and would sleep between him and Petitioner because she would not sleep in her own bed. Mr. Haims also testified that after Respondent informed the Child of the Mother's passing in 2015, the Child initially reacted to the news by wondering where the Mother was and cried for approximately two weeks thereafter. Mr. Haims did not think Respondent was acting in the Child's best interest when he informed her of the Mother's passing in the manner he did.

Between June and August 2015, Respondent frequently came to Mr. Haims' home for approximately five to eight hours on a Saturday or Sunday to visit with the Child. Mr. Haims observed Respondent injure himself in his pool and testified that Respondent was

not aware that he was bleeding from his elbow. Mr. Haims testified that on many occasions when Respondent would visit with the Child, Respondent arrived seemingly intoxicated, he slurred his speech, and his movements appeared lumbered. Mr. Haims never confronted Respondent about appearing intoxicated or asked him to leave because he was afraid Respondent would take the Child from his home. Mr. Haims testified that neither he nor Petitioner felt comfortable leaving Respondent alone with the Child.

Mr. Haims testified that the Child was enrolled in therapy with Dr. Behrman because she was having a difficult time dealing with the loss of both the Mother and the maternal grandmother. Mr. Haims stated that the maternal grandparents resided in his home for approximately one and one-half months before the maternal grandmother passed away and that the Child saw the grandmother every day. Mr. Haims testified that he would convey Dr. Behrmans' thoughts and recommendations on how to aid the Child with her grief to the Respondent.

Mr. Haims believed that he and his family are best suited to provide the Child a safe and loving home environment because he and Petitioner are suitable to meet the Child's needs. Mr. Haims also believed that Respondent needs to demonstrate sobriety before he is ready to care for the Child. Mr. Haims recalled an incident when the Child was jumping on a banquette in the kitchen and Respondent told the Child to stop. Mr. Haims testified that the situation escalated when Respondent physically restrained the Child and she ran out of the room to Petitioner for comfort. Mr. Haims testified that he and Petitioner

usually discipline the Child by reasoning with her and did not see the need for physical force.

Mr. Haims testified that in 2012, Respondent had wanted him to keep a Jeep in his garage. Mr. Haims observed an unlocked rifle in the back seat of the Jeep which he put in a storage unit until he turned it over to the Pound Ridge Police Department in the fall of 2015. Mr. Haims believed that Respondent had more guns but acknowledged that he did not have any first hand knowledge.

Howard Schwell's Testimony

Howard Schwell (hereinafter "Mr. Schwell") is the maternal grandfather of the Child and father of Petitioner. Mr. Schwell testified that in or around Thanksgiving or Christmas 2012, Respondent admitted that he had a drinking problem, mostly at night, but thought it did not affect his job. Mr. Schwell also testified that Respondent told him he drank during the day, and at work, and hid liquor under his desk. In December 2012, Mr. Schwell rushed Respondent to White Plains Hospital and Respondent was diagnosed with pancreatitis. Although Mr. Schwell initially recalled that Respondent was hospitalized for three to four weeks, he later acknowledged on cross examination that the hospitalization could have been for three to four days.

The Child resided with Mr. Schwell and the maternal grandmother in White Plains in the Fall of 2014 so that the Child could attend pre-school in White Plains, and the Mother would visit with the Child during the week and on weekends. Mr. Schwell would take the Child to and from school and to the Child's activities. During the time the Child lived

with the maternal grandparents, Respondent called approximately three to four times, but never visited and was not involved in transporting the Child to or from school. When the Child returned to the Mother's residence, Mr. Schwell would visit the Child up to six times per week. Mr. Schwell testified that he observed Respondent to be under the influence of alcohol at the Child's third birthday party. He observed Respondent shaking convulsively, perspiring, and unaware of what was going on.

Mr. Schwell testified that when the Mother passed away in June 2015, Petitioner immediately stepped in to care for the Child and obtained professional help to address the Child's mental health and emotional needs. Respondent was involved in planning the funeral and Mr. Schwell and Respondent had a lot of contact regarding purchasing plots for the family and finances. Mr. Schwell testified that the Mother's passing allowed him and Respondent to bond, but events that occurred over the summer caused him concern. Mr. Schwell recalled an occurrence when he and Respondent spoke over the telephone in June 2015, and Respondent was incoherent, admitted he was drunk, and said to Mr. Schwell that it was the "last time I'm going to tell you that I drank . . . I do not want you to hold it against me in the future." Mr. Schwell had serious concerns for the Child's safety and believed the Child would be in danger if Respondent had custody of her.

Mr. Schwell recalled several incidents in July 2015 when Respondent's behavior concerned him. One was an incident in Petitioner's pool when he observed Respondent stagger into the shallow end of the pool and not realize the blood on his arm. He recalled

another incident at a restaurant called Villa Roma wherein Respondent smelled of alcohol. Mr. Schwell testified that he was also drinking alcohol that evening, and Respondent had to spend the night at Mr. Schwell's home and apologized for having an accident in the bedroom on the bedspread. He described Respondent's hygiene as deplorable. Mr. Schwell recalled another incident wherein the family visited Callicoon, New York and he and Respondent were drinking. Mr. Schwell acknowledged that although he believed Respondent was an alcoholic, he drank with Respondent.

Mr. Schwell testified that Respondent had stated that he owns a rifle and has a pistol in his apartment that is not registered, but Mr. Schwell never saw it. Mr. Schwell took the rifle to the police department but also admitted that he too, owns a rifle that is not registered.

Mr. Schwell testified that if Respondent had custody of the Child, he would not be able to sleep and would be up all night worrying about the Child's physical and emotional safety. Mr. Schwell believed that Respondent would cause the Child permanent damage. *See*, Exhibit B.

Dr. Behrman's Testimony

Dr. Lauren Behrman was qualified as an expert in early childhood and adolescent psychology. *See*, Exhibit 42. Dr. Behrman met with and has treated the Child since November 2015 and has had approximately 35 sessions with the Child. She testified that usually, Petitioner or Mr. Schwell will bring the Child to her sessions. Dr. Behrman described the Child as a little late developmentally, but vibrant, engaging, chatty,

playful, and active. Dr. Behrman testified that the Child needs a lot, but is thriving while in emotional recovery, healing from the loss of the Mother and maternal grandmother. Dr. Behrman testified that the Child worries about losing someone else, and had nightmares and bad dreams. She described the Child's sense of time as 10 days being the equivalent of 10 years.

Dr. Behrman testified that the Child is attached to Petitioner and does not initiate conversation about Respondent. Dr. Behrman stated that she exchanged emails with Respondent and met with him on approximately two occasions. Dr. Behrman testified that the first time she met with Respondent was in April 2016, after she received a letter from him and made an appointment with him immediately thereafter. When she met with Respondent, he was concerned about the Child but was not specific or detailed regarding his concerns. Dr. Berman thought Respondent lacked empathy regarding the Child. Dr. Behrman defined empathy in the context of having the ability to see the world through the eyes of the Child. Dr. Behrman also testified that Respondent told her he thought the Child would be better off with a nanny in his apartment rather than with Petitioner. During her testimony, Dr. Behrman described Petitioner as tremendously empathetic to the Child and that Petitioner expressed concern for the Child's mental health.

Dr. Behrman testified that, in her April 2016 conversation with Respondent, she suggested meeting with him monthly to help the Child deal with her loss, but Respondent did not follow through. Dr. Behrman refuted that Respondent expressed to her his inability to meet with her monthly because of

financial hardship, and that if he had, she would have worked with him. Dr. Behrman did not see Respondent again until November 2016, at his initiation, and attempted to discuss methods for him to connect and engage with the Child, and he seemed receptive. Dr. Behrman did not suggest that Respondent attend any sessions with the Child but would have if Respondent had engaged more with her.

Dr. Behrman believed that Respondent did not understand the Child's feelings of loss and that she would not thrive with him if she were separated from Petitioner. She described feeling a coldness from Respondent regarding the Child's feeling of loss of the Mother and maternal grandmother. Dr. Behrman did not feel that the Child was suffering a loss of Respondent because the Child was able to see him weekly. Dr. Behrman testified that Respondent stated to her that he believed the best outcome for the Child would be to live with him. Dr. Behrman believed that it would be difficult for the Child because she has suffered two losses already, and the Child would be devastated if she were no longer living with Petitioner. She stated "I think it would have an impact on her—the course of her development." Dr. Behrman testified that she thought it would be wonderful for Respondent to have the best relationship possible with the Child, but recommended that the parties come together without conflict. Dr. Behrman testified that it is her opinion that relationship and attachment are more important than biology.

Letitia Halpern, Andi Warmund, Christopher Reilly, and Marguerite Defonte

Letiticia Halpern (hereinafter "Ms. Halpern") was the Child's pre-school teacher in the 2015/2016 school year. Ms. Halpern testified that the Child attended school every weekday except for Wednesdays. She described the Child as initially shy, but cute, sweet, and loving. Ms. Halpern testified that Petitioner usually transported the Child to and from school. Petitioner was involved in school events, but Ms. Halpern did not reach out to Respondent to inform him of the same. Ms. Halpern acknowledged on cross examination that she had conversations with Petitioner regarding the court proceedings.

Andi Warmund (hereinafter Ms. Warmund") and Marguerite DeFonte (hereinafter "Ms. DeFonte") are friends of Petitioner and offered testimony regarding their observations of Respondent and the Child. Ms. DeFonte testified that she was working at Villa Roma in July 2015 when she observed Respondent drinking alcohol by the pool while the Child was trying to get his attention. She stated that later that evening she observed Respondent drink his and her husband's alcoholic drinks and that Respondent appeared intoxicated. *See*, Exhibit C. Ms. Warmund described the Child as sweet, funny and vivacious. Ms. Warmund testified that she was at Petitioner's residence in August 2015 and observed Respondent stagger into Petitioner's pool and that he was bleeding. Ms. Warmund described Respondent as disheveled and that his speech was slurred.

Christopher Reilly (hereinafter "Mr. Reilly") testified that he met Respondent through the Mother when she and Respondent were dating. Mr. Reilly

testified that he had a social relationship with Respondent. In the Fall of 2011 just prior to the birth of the Child, Respondent approached him for help with his drinking problem because he was having difficulty staying sober. Mr. Reilly testified that at the time, he had been sober for six months and took Respondent to an Alcoholics Anonymous (hereinafter "AA") meeting. Mr. Reilly stated that at the time of his testimony he had been sober for five and one-half years with the help of an AA sponsor. He stated that he suggested that Respondent attend AA meetings and obtain his own sponsor. Mr. Reilly also testified that the last time he saw Respondent was at the Mother's funeral and that Respondent appeared intoxicated and had difficulty walking.

Raymond Griffin-Rebuttal Testimony

Raymond Griffin, PhD, CASAC (hereinafter "Dr. Griffin") is licensed and credentialed in the field of substance abuse and addiction for the past 39 years and was qualified as an expert in the field of addiction and substance abuse. Dr. Griffin testified that he interviewed Respondent, Petitioner, Respondent's psychiatrist Dr. Centurion, and other collateral sources. Dr. Griffin spoke with Dr. Centurion on November 23, 2016 and, as of that date, Dr. Centurion stated she last saw Respondent on September 14, 2016. *See*, Exhibit 45. Dr. Griffin testified that Dr. Centurion stated she usually saw Respondent every three months, sometimes more, sometimes less. Dr. Griffin also testified that Dr. Centurion stated she informed Respondent that she had concerns about him, that an award of custody of the Child was not likely, and that Respondent had no level of attachment to the Child except a narcissistic one. Dr. Centurion stated she

informed Respondent that removing the Child from Petitioner would not be good because she did not feel Respondent could be a single parent. Dr. Griffin testified that Dr. Centurion stated she informed Respondent that psychological testing would be helpful for him.

Respondent informed Dr. Griffin that Mr. Andrew Park was Respondent's therapist and AA sponsor until Mr. Park passed away. Respondent stated that he started attending Smart Recovery one time per week and AA two to three times per week in lower Manhattan in July 2016. Dr. Griffin described Smart Recovery as an alternative program to AA which is cognitively as opposed to spiritually based where participants work through the recovery process on their own. Dr. Griffin recommended that Respondent take advantage of an intensive outpatient program and obtain a therapist because of Respondent's relapse history and Respondent's statement that he tends to isolate himself. Dr. Griffin testified that outpatient programs provide therapeutic intervention and give the patient tools to replace alcohol and that the outpatient program would benefit Respondent by providing him more insight into his behavior and thinking, and help him deal with the loss of the Mother.

Dr. Griffin stated that he tested Respondent for alcohol throughout the pendency of the fact-finding hearing and Respondent consistently tested negative, however, Respondent could have been drinking during the testing period. *See*, Exhibit H. Dr. Griffin also stated that at the time he issued his forensic report to the Court, Respondent was abstinent, but not sober. Dr. Griffin testified that Respondent suffered from late stage alcohol use disorder and that Respondent

needed significant treatment and monitoring due to his long history of alcohol abuse and relapses after attending rehabilitative programs. At the time of Dr. Griffin's testimony, Respondent had not been enrolled in therapy for nine months, saw Dr. Centurion every three months, and attended Smart Recovery and AA. Dr. Griffin testified that Respondent would not get much out of AA if he was not committed to the principles of the program by working through the 12 steps of recovery with a sponsor. Dr. Griffin also testified that a person not committed to a recovery program would have an increased risk of relapse. *See*, Court Exhibit 2.

Petitioner's Exhibits

In addition to the other exhibits admitted into evidence, the Court admitted the following exhibits into evidence on consent of all counsel.

Exhibit 38

Records from White Plains Hospital Emergency Room-Respondent was admitted from December 25, 2011 through December 29, 2011. Respondent's principal diagnosis was acute pancreatitis and secondary diagnosis was, *inter alia*, anxiety and alcohol abuse. Respondent described his alcohol use as drinking one pint of alcohol daily. Respondent was prescribed Lopressor, Xanax, and his prescription for Wellbutrin was continued.

Exhibit 40

Records from Gracie Square Hospital-Respondent was voluntarily admitted from November 9, 2012 through November 14, 2012 due to feelings of anxi-

ety. Respondent was described as having a history of depression, alcohol dependence and anxiety. Respondent admitted to drinking one-half liter of vodka daily and one-half bottle of whisky and rum daily. Respondent also admitted to drinking daily for approximately six months and at work. Respondent stated that he was required by his job to attend treatment. Respondent also stated that he had tried Antabuse and Waltrexone approximately three years prior to his admission to the hospital. Recommendations included one-to-one and group counseling, medication management and out-patient rehabilitation treatment. Respondent was discharged to a residential treatment program at Endeavor House.

Exhibit 8

Records from Endeavor House-Respondent was admitted from November 14, 2012 through December 6, 2012. Respondent admitted that he was caught drinking while at work. Respondent described drinking one-half liter of vodka daily while taking Xanax which presented problems in his marriage. Further, Respondent stated that the men on the maternal side of his family had a history of alcoholism. Respondent described his weaknesses as lack of insight and poor impulse control. Respondent stated that he attended therapy with Dr. Leslie Seiden between 2011 and 2012, but terminated the sessions because he did not believe they were helping. Respondent was diagnosed with alcohol dependence with physiological dependence and depressive disorder not otherwise specified. Recommendations for aftercare included attending a residential treatment center and alcohol/narcotic anonymous meetings, integration into a 12-step program, coping skills and therapy. Respondent's attitude

was described as indifferent and he refused aftercare assistance.

Exhibit 13

Records of Dr. Centurion-On January 14, 2013, Respondent was referred to Dr. Gabriela Centurion, M.D. by his therapist Mr. Andrew Park, PhD for a psychiatric evaluation. Respondent stated that he was discharged from a rehabilitative facility in November and that his last drink was the day prior. Respondent stated that he started drinking in college and he drank heavily daily during his stay in Iraq. Respondent stated that his alcohol use resulted in a diagnosis of pancreatitis, separation from the Mother and the Child, and that he was confronted by the partners and other associates at the firm where he was employed. Respondent also stated that he tried Alcoholics Anonymous and that he "hated it." Dr. Centurion stated that Respondent was prescribed Antabuse and that he did not take it. Dr. Centurion also described Respondent as sad, anxious, alcohol dependent and as having a depressive disorder not otherwise specified. Dr. Centurion's records date up to January 13, 2015 and relate mostly to medication management.

Exhibit 12

Records from New York Presbyterian Weill Cornell Hospital-Respondent was admitted from December 30, 2014 through January 5, 2015. Respondent was referred for a gastroenterology consult. Respondent is described to drink "at least liter of vodka daily for at least the past 3-4 years." Respondent was reported to have tried inpatient rehabilitation and refused treatment therapy. Respondent was also reported to

be going through a divorce and under financial stress due to paying for the Child's education. Respondent's prescription medications at the time were Abilify, Gabapentin, Wellbutrin and Zolpidem. The records indicate Respondent was suffering from alcohol induced pancreatitis and alcohol withdrawal. Respondent was referred to New York Presbyterian Hospital Medical Intensive Care Unit. Upon discharge from NYPH-MICU Respondent stated that he was willing to attend a short term rehabilitative program.

Exhibit 10 & 11

Records from Glenbeigh ACMC Healthcare System-Respondent admitted from January 16, 2015 through February 13, 2015. During his stay at Glenbeigh, Respondent was diagnosed with, *inter alia*, alcohol dependence, insomnia, alcohol withdrawal, and acute pancreatitis. Recommendations upon discharge were attending 90 alcoholics/narcotics anonymous meetings in 90 days, selecting a home group and sponsor within 30 days, participating in social recreational activities offered by the recovering community, and attending an intensive outpatient program. Respondent was described to be at high risk of relapse if he did not follow through completely with the recommendations and that he "did not verbalize a willingness to continue his chemical dependency treatment at a lower level of care, but did commit to AA/NA involvement as recommended."

Respondent's Case

Christopher Dunnigan

Christopher Dunnigan (hereinafter "Mr. Dunnigan") testified that he is an attorney who has worked

for the United States Security Exchange Commission (hereinafter "the SEC") for 12 years and had worked with Respondent while at the SEC and that he and Respondent were friends. Mr. Dunnigan testified that he and Respondent worked on a case together at the SEC before Respondent left his employment there. Mr. Dunnigan testified that in 2013, he made the recommendation to the SEC to re-hire Respondent even though he had not had contact with Respondent since 2012, and was not aware that Respondent had been terminated from his employment at Bracewell Guiliani, LLP (hereinafter "Bracewell"). Mr. Dunnigan testified that for the past three years, he had attended social work events with Respondent and did not observe him drink while at the events. Mr. Dunnigan claimed that he never observed Respondent under the influence, fall asleep at work or smell of alcohol. Mr. Dunnigan acknowledged on cross examination that he was not aware Respondent was diagnosed with depression, was an alcoholic, or had gone to rehabilitation facilities. Mr. Dunnigan also testified that he did not know Respondent had plans to move to Ohio. Mr. Dunnigan attended the funeral of the Mother and did not smell alcohol on Respondent or hear him slur his words. Mr. Dunnigan learned Respondent was an alcoholic from his attorney nine months prior to his testimony and Respondent never discussed his condition with him. Mr. Dunnigan also testified that he never saw Respondent with the Child aside from the day of the Mother's funeral.

Carmen Candelario

Carmen Candelario (hereinafter "Ms. Candelario") is a former detective and was trained in the administration of breathalyzers while employed at the Police

Department. In 1999 she, and two others, founded Supervised Visitation Experts (hereinafter "SVE") and she is currently the Director of the program. She testified that there are two social workers employed by SVE that provide a therapeutic component to supervised visits.

Ms. Candelario testified that, since December 3, 2015, she supervised Respondent's access with the Child. *See*, Exhibits 43 and 44. Before each supervised visit commenced, Ms. Candelario conducted a Breathalyzer test on Respondent, two tests on the occasions she believed he smelled of alcohol, and he tested negative on each occasion. However, she smelled liquor on Respondent on separate occasions including, October 16, 2015, July 19, 2016, and November 26, 2016. Ms. Candelario testified that when she confronted Respondent regarding her suspicions, Respondent stated on October 16, 2015, that he drank the week prior and, regarding November 26, 2016, Respondent stated she was smelling mouthwash. Ms. Candelario observed Respondent to have a flat affect when she mentioned the smell of alcohol on him.

Ms. Candelario described the Child as needy for attention, wanting to belong, a hoarder and having separation anxiety. Ms. Candelario also explained that when the supervised visits commenced, Respondent was not affectionate or nurturing with the Child, and that he did not tell the Child that he loved her until recently. Ms. Candelario explained that the Child expresses her love for Respondent and that she tells him she misses him. Ms. Candelario described Respondent's body language when he exchanges the Child with Petitioner as tight like he is upset and that he ignores Petitioner. Ms. Candelario testified that the

Child refers to Petitioner as "mom" and that Respondent refers to Petitioner and Mr. Haims as "aunt and uncle."

Ms. Candelario testified that the visits primarily occur at a library or Leapin' Lizards, and Respondent usually brings games, crafts, coloring books and attempts to read to the Child, but she prefers his attention. Ms. Candelario described two incidents during the visits where she had to intervene so that the Child would not be in emotional distress. One incident occurred when Respondent gave the Child a doll during the visit that he used to discuss the Mother and the Child wanted to keep the doll at the end of the visit. Respondent did not want the Child to keep the doll because he wanted to bring the doll back for another visit. Ms. Candelario testified that the Child became upset and, ultimately, Respondent let the Child keep the doll. Ms. Candelario did not believe Respondent understood the importance of the doll to the Child. The other incident occurred during a period when Respondent was having FaceTime access with the Child and Respondent brought a calendar to the visit marking the dates when he would have access with the Child, including the dates for FaceTime. Ms. Candelario stated that she had to take the calendar because the Child became anxious and obsessed over making sure she did not lose the calendar or forget the dates she was to have access with the Father. Ms. Candelario testified that Respondent did not realize that the calendar would cause the Child to be anxious.

Ms. Candelario testified that she did not think Respondent was ready for unsupervised visitation or custody of the Child. Ms. Candelario also did not think Respondent's intentions toward the Child were

sincere nor that he understood the Child's needs. Ms. Candelario believed that Respondent should go to a program for alcoholism, engage in therapy so his therapist can interact with the Child's therapist, and go to counseling with Petitioner's family to repair the relationship. Ms. Candelario stated that she made the aforementioned suggestions to Respondent approximately six times. According to Ms. Candelario, Respondent rejected the idea of engaging in family therapy because of the litigation and he did not want to go to AA because he believed that, if subpoenaed, the participants would reveal what he shared during meetings. Ms. Candelario also testified that Respondent would not contact Dr. Behrman prior to or after the commencement of trial because he claimed he did not know he was supposed to. Ms. Candelario also testified that Respondent discussed moving to Ohio because he does not have family in New York, but she believed that it would be a disaster if the Child moved from New York because she would suffer another loss.

Dr. Centurion

Gabrielle Centurion, M.D. (hereinafter "Dr. Centurion") was qualified as an expert in adult psychiatry and adult addiction. She testified that Respondent has been her patient since January 2013. Dr. Centurion could not recall whether she reviewed any of Respondent's medical history prior to or after she started treating him and did not review Mr. Park's records during his treatment of Respondent. Dr. Centurion also testified that Respondent's regular therapist, Mr. Park, passed away in either September or October of 2016. Dr. Centurion testified that Respondent is diagnosed with Depressive Disorder NOS. Dr. Centurion

also testified that Respondent suffers from alcohol addiction and that it is a medical condition. Dr. Centurion testified that in January 2016, Respondent committed to getting sober. She stated that Respondent mentioned the Child often during his sessions and that he was worried about his own health and ability to care for the Child.

Dr. Centurion testified that in February 2016, she prescribed Antabuse for Respondent. She stated that Antabuse is a medication that does not diminish the craving for alcohol, but makes a person feel ill if alcohol is consumed while on the medication. Dr. Centurion felt Antabuse was appropriate for Respondent because he started keeping his appointments, had the right motivation to commit himself to sobriety, and had increased insight into his addiction in that he acknowledged the damage alcohol did to him. She believed Antabuse would deter him from drinking. Dr. Centurion testified that there is no test to see if Respondent is taking the medication as prescribed and that there are no symptoms when a person ceases taking the medication. Dr. Centurion testified that she would not know if Respondent stopped taking the medication because she relies on what her patients report to her. She did acknowledge that if Respondent stopped taking Antabuse, it would be possible he would start drinking again and that his triggers are stressful situations.

Dr. Centurion testified that Respondent attends Smart Recovery which is a program that does not involve the belief in a higher power. Dr. Centurion stated that Smart based recovery teaches the addict to identify triggers and how to avoid relapse. Dr. Centurion testified that Respondent attended AA spo-

radically in the Fall of 2013, 2014, and beginning of 2015. Dr. Centurion testified that, at the time of her testimony, Respondent was attending Smart Recovery approximately every two to three weeks and AA every two weeks.

Dr. Centurion did not consider Respondent to be the caretaker of the Child during the first year of the Child's life because he was an active alcoholic. Dr. Centurion claimed that Respondent's partner[2] provides stability for him. Dr. Centurion also testified that Respondent would be a great parent and he appears to love the Child and did not think that Respondent would have a problem parenting the Child. Dr. Centurion testified that Respondent mentioned briefly in his sessions his anger and resentment toward Petitioner, but did not discuss moving to Ohio or looking for jobs out of state. Dr. Centurion stated that Respondent discussed the comments she made about him to Dr. Griffin and Dr. Abrams and he questioned whether she believed he was a narcissist. Dr. Centurion also testified that Respondent would probably benefit from but does not need individual therapy. Dr. Centurion's records regarding Respondent's case do not go past January 13, 2015 and she could not explain why her records were not produced after that date.

Philine Lehmann

Philine Lehmann (hereinafter "Mrs. Lehmann") is Respondent's current wife. Mrs. Lehmann and Respondent married during the course of the fact-finding hearing on July 1, 2017, and live in White

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[2] Respondent married his then-partner, Philine Vega (now Lehmann) after Dr. Centurion testified.

Plains, New York in a two bedroom two bathroom apartment. Mrs. Lemann testified that the second bedroom is furnished for the Child. Mrs. Lehmann testified that she met Respondent's parents one time, but they were not at the wedding; and that it was a private affair with Respondent, the officiant, and a photographer. She did not want Respondent's parents to stress him out.

Mrs. Lehmann testified that she has been a history teacher for the past 14 years at a Catholic high school in Bronx, New York. She also testified that she met Respondent on an online dating website on January 1, 2016, and described Respondent as kind, humble, and emotionally guarded without an ego. Mrs. Lehmann testified that a couple of weeks after they started dating, she became aware that Respondent was an alcoholic and that he had been in rehabilitation centers. She also testified that she was aware Respondent had been hospitalized before but was not aware of the reasons. Mrs. Lehmann stated that she never observed Respondent drink alcohol or drive under the influence of alcohol. Mrs. Lehman testified that when a friend had brought alcohol to the apartment, she discarded it.

Mrs. Lehmann testified that she is also aware that since February 2016, Respondent has taken Antabuse in addition to Wellbutrin and Abilify, two anti-depressant medications and met with his psychiatrist one time every three months. Mrs. Lehmann testified she does not know if Respondent drinks alcohol while taking any of his medication. Mrs. Lehmann testified that Respondent attends Smart Recovery and goes to AA meetings two times per week even though Respondent does not believe in a higher power or a

sponsor to maintain sobriety. She testified that she attended an AA meeting once to know how to help and had no concerns about Respondent relapsing. Mrs. Lehmann testified that she chose not to judge Respondent about his past and was confident that he learned from his mistakes.

Mrs. Lehmann testified that she never met or spoke with the Child and did not know the Child's emotional or physical needs. Mrs. Lehmann believed that Dr. Behrman was biased against Respondent because she wanted the Child to stay with Petitioner. Mrs. Lehmann disagreed with Dr. Behrman's recommendations but acknowledged that she does not know the Child. She testified that she took an online parenting class. Although Mrs. Lehmann initially stated that Respondent did not take a parenting skills class, on re-direct examination she claimed that she and Respondent took the class together. Mrs. Lehmann testified that she and Respondent plan to start their own family. Mrs. Lehmann testified that Respondent had a job interview for a position in Ohio but he was not offered the position and has no current plans to relocate.

Mrs. Lehmann testified that she and Respondent plan to change the Child's educational, medical, and therapeutic providers, and have no plans regarding the Child's relationship with Petitioner if Respondent obtained custody of the Child. Mrs. Lehman acknowledged that she and Respondent had discussions by way of text messages that they want to have the Child baptized even though the Mother was Jewish and that Respondent stated the baptism would be like "pissing on [the Mother's] grave." Mrs. Lehmann also recalled Responded stating over text message that he

is seeking vengeance but claimed that she did not recall the context of the conversation and that now is not the ideal time for Respondent to establish a relationship with Petitioner.

Respondent

Respondent is the father of the Child and brother-in-law of Petitioner. Respondent was born in Ohio where his parents still reside, and has an older sister. Respondent is a law school graduate and was admitted to the New York State Bar in 2005. Respondent started working at the SEC after law school and currently works there as a senior counsel.

Between November 2006 and May 2007 Respondent went to Bagdad, Iraq as a contractor for the government to assist in drafting securities law and, upon his return to the United States in 2007 or 2008, he obtained a 9mm pistol. Although he never had a carry permit, Respondent traveled across state lines with it. Respondent acknowledged that the rifle Mr. Schwell turned over to the Pound Ridge Police Department belonged to him but he kept it in the Jeep because it was broken.

Respondent was living in Virginia when he met the Mother in February 2008 through a mutual friend. Respondent and the Mother were engaged by February 2009 and he moved to New York in 2009. He and the Mother married in September 2009 and separated in February 2013. Respondent testified that when he married the Mother, he was drunk at the wedding. Respondent also testified that by 2010, he was drinking pints of Vodka and his sneaking in drinking shots of alcohol led to disputes with the Mother. Respondent stated that his drinking led to issues

with intercourse and in 2010 the Mother went through *in vitro* fertilization. Respondent testified that when the Child was born on November 25, 2011, he was awestruck. He changed her diapers, fed, bathed and swaddled her. Respondent testified that it was possible he was drinking a week after the Child was born, but he still cared for her until the week he was hospitalized during Christmas 2011 at White Plains Hospital and diagnosed with pancreatitis. *See*, Exhibit 38. Respondent also testified that he did not recall what his drinking pattern was when he cared for the Child. Respondent did not have any issues with either him or the Mother drinking in small amounts while caring for the Child so long as it was not excessive. However, Respondent could not quantify as to what he considered excessive.

Respondent testified that as early as January 2012, he resumed drinking and that he saw no problem in drinking small amounts. Respondent was working for the SEC when the Child was born and he left his employment in or around January/February 2012. Respondent testified that in February 2012, he started working for Bracewell, a private law firm, because the Child had just been born and he needed more money. Respondent had just started working at the firm and broke his foot. He worked from home the day after surgery and then went back to work. He had to be placed on pain medication for three months. He cared for the Child during the three months and did everything for the Child except walk with her when she woke up in the middle of the night. Respondent testified that he drank during his employment at Bracewell and the Child's entire first year of life except for the three months he was on pain medication

and admitted that he was found to be intoxicated at work. Respondent stated that Bracewell was not a good fit for him because of the people, type of job he had, and because he had anxiety. Between November 14, 2012 and December 9, 2012, Respondent did not care for the Child because he was admitted to Endeavor House in New Jersey and Gracie Square hospital, and as a result, he missed spending time with the Child for her first birthday and Thanksgiving. *See*, Exhibit 40. Respondent testified that he returned to work for the SEC in November 2013 and that he drank most nights after work. He also testified he continued drinking until some time in January 2016.

Respondent acknowledged that after his separation from the Mother in February 2013, he drank heavily through March/April 2013 and saw the Child almost daily but did not drink prior to spending time with the Child. Respondent testified that in March/April 2013, the Mother brought the Child to visit with him and that he and the Mother were arrested over a domestic dispute and cross temporary orders of protection were issued on behalf of each other. Respondent testified that the Administration of Children's Services became involved and Respondent was not allowed to see the Child. Respondent stated that in May 2013, the temporary order of protection issued against him was vacated and thereafter, he saw the Child five nights per week at the Mother's residence. Respondent testified that he did activities with the Child such as going to the Children's Zoo in Central Park and spent time with the Child on major holidays. Respondent claimed that he did not celebrate major holidays with

the Mother's family after the separation because he believed he was not welcome.

Respondent testified that while the Child lived with the maternal grandparents in November 2014, and after he returned to work at the SEC, he saw the Child two to three days per week and sometimes on weekends at the Mother's residence in New York City. The Child never slept at his home because "there was never a need for that" and he did not have a crib. He claimed he would spend the night at the Mother's residence up until right before the Mother's death in 2015. Respondent also testified that when the Child resided with the maternal grandparents, he was involved with the search for pre-schools.

Respondent testified that by November 2014, he moved within two blocks from the Mother's home to help care for the Child. He described the Child as a picky eater, and that the Child had a speech problem and was enrolled in speech therapy. He picked up and dropped off the Child for his access and to and from the Child's speech therapist. Respondent also testified that from December 30, 2014 through January 5, 2015, he had another alcohol related pancreatic attack and was hospitalized at Weill Cornell Medical Center.

Respondent was in the District of Columbia when the Mother suffered from a brain aneurysm on May 24, 2015. Respondent stated that Petitioner called to inform him of the news and that she had taken the Child to her residence. Respondent testified that he was concerned about what the Child saw when the Mother had the brain aneurysm. Respondent also testified that Petitioner was very respectful in allowing him to the see the Child and the Mother and that

they had worked out a schedule for him to do so while the Mother was ill.

Respondent testified that when the Mother passed away on June 9, 2015, he was involved in the funeral planning and picking plots. The entire family, including him, purchased plots and attended the Mother's funeral. Respondent pulled the Child aside at Petitioner's residence and informed her of the Mother's passing by stating that the Mother "was sick and died," that the Child was loved by all, and that she would be taken care of. Respondent wanted to be the person that informed the Child of the Mother's passing because he believed the Child would be overwhelmed with the entire family present. Respondent stated that he did not observe the Child cry upon hearing the news.

Respondent testified that between June 2015 and the end of August 2015, he visited the Child regularly on either a Saturday or Sunday. *See*, Exhibit E. Respondent also testified that on Father's Day in 2015, he went to Villa Roma for a joint birthday party held for him and Mr. Schwell and that they both consumed alcohol on the porch. Respondent refuted Ms. DeFonte's testimony that the Child was at Villa Roma on July 18, 2015 and that he ignored the Child while he was drinking by the pool. While the Child resided with Petitioner in 2015, he "nicked his elbow" in Petitioner's pool and the maternal grandmother had to bring it to his attention. Respondent testified that in August 2015, he observed the Child jumping on a bench at Petitioner's residence and that he picked up the Child to put her down, but the Child did not want to be put down and he held onto her shoulders, and then let her go.

Respondent testified that when he drank in the presence of Petitioner's family, he took care not to consume more alcohol than Mr. Schwell because he did not want the family to think he was overdoing his drinking. He did not believe that as an alcoholic, one drink was one too many because he had not entered full recovery at that point. Respondent admitted on the stand that he suffers from alcoholism and that he also has been diagnosed with depression. Respondent testified that boredom was always an issue regarding his drinking and that he did not have a lot of triggers. Respondent testified that he was a functional alcoholic; he functioned at home, work, and caring for the Child. He testified that he started attending Smart Recovery, a variation of AA, weekly in New York City on Fridays some time in 2015. He testified that Smart Recovery focuses on thought process. He also testified that he started going back to AA sometime in January 2016. Respondent testified that AA is not his program of choice because it focuses on a higher power which is not an appropriate guide to life. At the time of his testimony, he was attending AA due to convenience in time and location. Respondent's only positive attribute to AA was that there are "others going through this horrible disease and making out with a much better life," and that "gave [him] hope."

Respondent testified that in January 2013, Dr. Centurion prescribed Wellbutrin and Abilify for his depression and that in February 2016, he was prescribed Antabuse and takes it daily. He testified that between July 2015 and November 2015, he began abstaining from alcohol and committed to being sober in February 2016 because of his fear that he would lose the Child, and that he did not want to die from

the disease. Respondent testified that he will stop taking Antabuse when recommended by Dr. Centurion and that he completely relies on her advice. In July 2016, Respondent submitted himself to the Court Ordered CASAC forensic evaluation conducted by Dr. Griffin and was tested weekly through the conclusion of the fact-finding hearing. Respondent disagreed with Dr. Griffin's recommendation that he should submit himself to an intensive out-patient program in that it is "not necessary." Respondent also testified that he initially searched for another therapist after Mr. Park, his regular therapist passed away. Respondent testified that he does not discuss his depression with Dr. Centurion, and does not feel like he needs individual therapy after a conversation he had with Dr. Centurion and because he does not feel depressed anymore. At the fact-finding hearing, Respondent testified that sobriety is a mental state of mind and he considers himself to be sober because he has no desire to drink. Respondent testified that he wants to be the best husband and father he can be. Respondent admitted that his drinking negatively affected the Child.

Respondent's Saturday supervised visits with the Child commenced in November 2015 and he has only missed three visits. Respondent also had FaceTime visits with the Child one time per week between December 2016 and January 2017 and phone calls with the Child since. Respondent testified that his supervised visits primarily occurred at the Greenburgh Library, Kensico Park, the Nature Center, Leapin' Lizards or Mamaroneck Park. Respondent testified that he was in communication with Dr. Behrman between April 2016 and July 2017 and met with her

six times and emailed a few times, but that Dr. Behrman did not always respond to him. Respondent reached out to Dr. Behrman and inquired about the Child's reaction to his having FaceTime visits with her, and if the Child spoke about the Mother and maternal grandmother. Respondent testified that since March 2017, he has spoken with Dr. Behrman monthly and asked Dr. Behrman about him spending more time with the Child.

Respondent testified that since the Child moved in with Petitioner, he had many conversations with Petitioner about the Child and his desire for the Child to reside with him, and that he provided Petitioner with possible dates for the transition to take place. Respondent testified that Petitioner offered to keep the Child until he found a bigger apartment than the one he had in Manhattan. After Respondent obtained a bigger apartment in White Plains, contacted potential pre-schools, and interviewed possible sitters, he was served with the instant petition. Respondent did not deny that Petitioner's concerns regarding his drinking were rational, but testified that he has not reached out to Petitioner or made efforts to work with her because of the litigation. Respondent testified that nothing bad happened as a result of his drinking and that his drinking was not directly linked to Petitioner filing the petition against him.

Respondent testified that although he does not know who the Child's pediatrician or dentist are, he will transition the Child to new ones. Respondent also testified that he will slowly transition the Child to a new school in the White Plains school district and to a new therapist. Respondent plans to have the Child baptized because he believes she should know

both sides of her religion. Respondent testified that he has no current plans to relocate from White Plains. He had a job interview in Ohio, but he did not get the position.

Respondent did not recall making any statements regarding vengeance against Petitioner. Respondent testified that he plans to work with Petitioner to transition the Child to his custody but he also testified that he resents Petitioner and that he was angry when he stated that he was "raising a little girl who doesn't give a shit about them." Respondent testified that he will allow Petitioner to spend more time with the Child than he had during the pendency of the case and that he has no problem with the Child spending Jewish holidays with Petitioner's family. Respondent stated that it is his "God-given right" for the Child to be raised by him, the Child's surviving parent, and that he has not been found to be unfit. Respondent testified that Petitioner has not made out her case that extraordinary circumstances exist for him not to have custody of the Child. Respondent testified that if he is not awarded custody of the Child, he would want substantial parenting time with the Child and to have as much influence in her life as possible, and that he hoped that the Child could develop a good relationship with Mrs. Lehmann.

Respondent's Exhibit

In addition to the other exhibits admitted into evidence, the Court admitted the following exhibit into evidence on consent of all counsel.

Exhibit G

Truth Verification Laboratories Report and Affidavit by Stephen Laub, forensic criminologist. Respondent submitted to a hair and nail analysis on October 27, 2015. The Affidavit of Mr. Laub indicated that Respondent's hair samples were too short to test for a six month period, but were long enough to test for a three month period. The hair test results were negative. The nail samples did not meet the protocol for testing and were "insufficient to complete a forensic alcohol test."

Court Exhibit 1

Forensic Evaluation-Marc T. Abrams, PhD

On June 9, 2016, this Court issued an Order directing the parties to participate in a forensic evaluation conducted by Marc T. Abrams, Ph.D. (hereinafter "Dr. Abrams"). *See*, Order Appointing Neutral Forensic Evaluator entered June 9, 2016 (Hahn, J.). On July 26, 2016, this Court received the forensic evaluation report, released it to the parties' counsel, and admitted it into evidence as Court Exhibit 1 on consent of all counsel. *See*, Order for Release of Forensic Report entered July 27, 2016 (Hahn, J.).

Pursuant to the Forensic Evaluation Report, Dr. Abrams met with Petitioner, Respondent, the Child, and spoke with collateral sources, Mr. Haims, Mrs. Lehmann, Andrew Park, LCSW, Dr. Centurion, Dr. Behrman, and Ms. Candelario.

In his report, Dr. Abrams found Respondent to have "global capacity in the High Average Range of Intellectual Functioning. He did not exhibit any signs or symptoms of any gross, neuropsychological

deficits. Hand tremors, which appeared to be a side effect of the medications that he was on, appeared to negatively impact upon his processing speed with hand motor tasks. He did not exhibit any signs or symptoms of any psychotic or impulse control disorder. He did exhibit signs and symptoms of major depression, moderate, recurrent, with anxiety. Additionally, he met the criteria for Alcohol Abuse in Remission and Alcohol Dependence in Remission." *See*, Court Exhibit 1 at page 9.

Although Dr. Abrams found that Respondent "did not have concerns about [Petitioner] as a loving and appropriate guardian to [the Child]," Dr. Abrams also found that Respondent had a "hidden anger" toward the Mother's family and had a "hidden desire to exact 'revenge' by removing them from [the Child's] life." *See*, Court Exhibit 1 at pages 9, 10, and 12. Respondent also presented as a person "capable of thinking in a logical and sequential manner that was consistent with affect as long as he was functioning primarily in an emotionally-neutral environment." *See*, Court Exhibit 1 at page 10. Dr. Abrams also found that Respondent has an "inadequate understanding of himself. This lack of adequate personal awareness, made it more difficult for him to effectively connect with others in order best understands how to meet their needs (sic)." *See*, Court Exhibit 1 at page 11.

With regard to Respondent's interaction with the Child, Dr. Abrams found that Respondent found a way to connect with her better than he did with Dr. Abrams or other adults. Dr. Abrams also found that Respondent "appeared to have an adequate understanding of [the Child's] developmental, physical, social,

educational and emotional needs." *See*, Court Exhibit 1 at page 12.

Turning to Petitioner, Dr. Abrams found her to have "global cognitive capacity in the Average Range of Intellectual Functioning. She did not exhibit any signs or symptoms of any gross neuropsychological deficits. . . . She did not exhibit signs or symptoms of any psychotic, anxiety, or affective disorder. The level of anxiety [she did exhibit] did not meet the criteria for either an adjustment disorder with anxiety or some type of anxiety disorder." *See*, Court Exhibit 1 at page 12. Dr. Abrams found that Petitioner "appeared to be struggling with an underlying sense of anger at having to be placed in a situation of having to be a primary caretaker of her niece. She appeared to be managing this anger in an appropriate and healthy manner and there was no indication that it resulted in any 'bleed-over' into how she managing and raising [the Child] (sic)." *See*, Court Exhibit 1 at page 13.

Dr. Abrams found that Petitioner "displayed a good balance between attending to her needs and the needs of others. Her sense of esteem was closely linked to her meeting the needs of those around her and she appeared to do so in a consistent and effective manner." *See*, Court Exhibit 1 at page 13. Dr. Abrams also found that Petitioner "was capable of establishing and maintaining empathic and emotionally close relationship with others." *See*, Court Exhibit 1 at page 13.

With regard to Petitioner's interaction with the Child, Dr. Abrams found Petitioner to be "encouraging and educationally guided in her approach, utilizing age-appropriate language." *See*, Court Exhibit 1 at page 14. Dr. Abrams found Petitioner to "have an

excellent understanding of [the Child's] physical, developmental, social, educational, and emotional needs." *See*, Court Exhibit 1 at page 14. Dr. Abrams agreed with Petitioner's concerns regarding Respondent's initial involvement in the Child's life but noted that Respondent "was appropriately focused on dealing with his grief, sobriety and depression for part of the time." *See*, Court Exhibit 1 at page 14. Dr. Abrams found that there was ample evidence to support Petitioner's concerns regarding Respondents ability to parent the Child and concerns about Respondent's sobriety and mental state. Dr. Abrams recommended that Respondent needed "professional support to learn how to better parent." *See*, Court Exhibit 1 at page 14.

In his interview with the Child, Dr. Abrams found that she "appeared to function within the average range of intellectual functioning" and that she exhibited "some signs of anxiety related to attachment and separation. This was an expected finding based upon the losses that [she] had recently experienced." *See*, Court Exhibit 1 at page 15. Regarding familial relationships, the Child believed that she had "three mommies and two daddies" and that "two of her mommies died and one did not." *See*, Court Exhibit 1 at page 15. The Child "needed to feel as a member of the Haims family, which provided a sense of constancy and stability for her" but also "observed her clear love for her father." *See*, Court Exhibit 1 at page 15.

Dr. Abrams expressed the importance "for a child to have a stable, loving home environment during the early years of life. Providing [the Child] with an empathic, emotionally connected, loving vibrant home environment will be critical for her psychologic-

al/emotional development in order to give her the best chance possible to develop into a psychologically healthy, interpersonally secure and connected, and emotionally intact woman." *See,* Court Exhibit 1 at page 19. Further, Dr. Abrams found that Respondent's approach to rushing into a new relationship and the use of Antabuse to "create the family life he so desperately wanted to live" to be "problematic." In Dr. Abrams' professional opinion "when a person enters into sobriety, the person literally needs to learn to understand [himself] in the absence of alcohol. This person needs to literally relearn who this person is and is not. This person needs to learn how to own up to past, problematic behaviors and learn to recognize aspects of one's self that contribute to dysfunctional life patterns." *See*, Court Exhibit 1 at page 20.

Dr. Abrams stated that this is not an easy process and requires "extensive and sustained professional help from mental health care professionals." Dr. Abrams stated that typically, people should not engage in a serious relationship within the first year of sobriety because the person must recognize "how to establish a successful, sober loving relationship with one's self in order to know how to develop a healthy, sober, successful long-term relationship with the another person [sic]. All these changes should come before a new couple with this kind of history learns how to place one's needs and wants in abeyance in order to be able to successfully recognize and fully meet the needs of a new child." *See*, Court Exhibit 1 at page 20.

In Dr. Abrams' opinion, Respondent was "not psychologically capable of doing all that he wanted to do

in the time frame that he wanted without a significant risk of his relapsing with drinking and becoming seriously depressed." Dr. Abrams also found that it would be "profoundly irresponsible for anyone to allow [the Child] to be exposed to another major set of changes in caretakers, not even taking into account the serious psychological consequences to her for any failures on [Respondent's] part in a role as a primary caretaker." *See*, Court Exhibit 1 at page 21.

Court Exhibit 2

Forensic Chemical Dependency Evaluation-Raymond Griffin, PhD CASAC

On May 18, 2016, this Court directed Respondent to cooperate with an alcohol and substance abuse evaluation conducted by Raymond Griffin, PhD, CASAC (hereinafter "Dr. Griffin") and directed Dr. Griffin to submit a written report to the Court. *See*, Amended Order for Evaluation dated June 9, 2016 (Hahn, J). On December 14, 2016, this Court received the evaluation report, released it to the parties' counsel, and admitted it into evidence as Court Exhibit 2 on consent of all counsel. *See*, Order for Release of Evaluation entered December 15, 2016 (Hahn, J.).

Pursuant to the Evaluation Report, Dr. Griffin interviewed and tested Respondent between July 25, 2016 and December 1, 2016, and conducted collateral interviews with Petitioner, Mr. Haims, and Dr. Centurion. Dr. Griffin also reviewed records regarding Respondent's hospital and rehabilitative facilities admissions. Dr. Griffin reported that Respondent was tested throughout the pendency of the evaluation, that the tests he conducted on Respondent tested for

"any alcohol in the system for five days," and that Respondent tested negatively. *See*, Court Exhibit 2 at page 4.

According to Dr. Griffin, Respondent stated that his issues with alcohol began in college, became heavy when he went to Iraq for six months in 2006, and became heavy again when he met the Mother in 2008. *See*, Court Exhibit 2 at page 2. Dr. Griffin reported that, except for the three months in 2012 that Respondent stated he did not drink alcohol, Respondent stated that he drank heavily after the birth of the Child and his sneaking alcohol affected his marriage to the Mother. Dr. Griffin also reported Respondent stated that due to his falling asleep during a trial three times while he worked at Bracewell, "the firm intervened and sent him to his first inpatient alcohol rehab (sic) at the Endeavor House." *See*, Court Exhibit 2 at page 3.

Dr. Griffin also reported Respondent stated that in the Fall of 2014, "he was confronted by his supervisor at the SEC about his fatigue and lack of focus. In October 2014 while watching his daughter, his wife finds him asleep on the couch." *See*, Court Exhibit 2 at page 3. Dr. Griffin reported that after Respondent's discharge from Glenbeigh in 2015, Respondent stated that "he started drinking immediately but only one day a week" and that "he would never drink on the day he had visitation with his daughter." *See*, Court Exhibit 2 at page 4.

Respondent stated to Dr. Griffin that during the summer and fall after the Mother passed away, Respondent drank approximately one day per week until February 2016, when he resumed seeing Dr. Centurion and started taking Antabuse. Respondent

also stated that he would see Dr. Centurion once every three months and Mr. Park weekly and Mr. Park also served as his AA sponsor. Respondent told Dr. Griffin that he attended "AA twice a week most of the time." Dr. Griffin reported that "the frequency of Respondent's therapy was opposite the recommendations of his rehabilitative discharge plans; which recommended that he enter an intensive outpatient program, that he complete 90 meetings in 90 days in AA and that he obtain a sponsor (other than a paid therapist) and a home group." Dr. Griffin reported that Respondent has "only done this in a peripheral manner." *See*, Court Exhibit 2 at page 5.

Dr. Griffin found Respondent to be an intelligent individual "who is obviously quite capable in his work with the government" but questioned Respondent's desire to be healthy for the Child and resolve to embrace recovery." He found Respondent to be "abstinent but . . . not sober." Dr. Griffin reported his concern that Respondent, with his "psychiatric diagnosis, family trauma issues and the stress of managing a custody trial . . . had not seen his psychiatrist since early September." *See*, Court Exhibit 2 at page 6. Dr. Griffin was also concerned that Respondent's therapist, Mr. Park, had passed away in September 2016 and Respondent had "not sought a replacement therapist for himself." *See*, Court Exhibit 2 at page 6.

Dr. Griffin recommended, *inter alia*, that Respondent "remain abstinent, . . . enter and complete meaningful treatment in a licensed, intensive outpatient treatment program, . . . [and] obtain a sponsor and home group." *See*, Court Exhibit 2 at page 6.

Applicable Statutes and Case Law

It is well established that as between a natural parent and a third person, a parent may not be deprived of the custody of a child absent extraordinary circumstances including "surrender, abandonment, persisting neglect, unfitness and unfortunate or involuntary disruption of custody over an extended period of time." *See Suarez et al. v. Williams*, 26 NY.3d 440 (2015); *Matter of Male Infant L.*, 61 NY.2d 420, 426-427 (1984); *Matter of Bennett v. Jeffreys*, 40 NY.2d 543, 544 (1976); *Matter of Denise K. v. King L.*, 136 A.D.2d 833, 834 (3rd Dept. 1988); *see also, IMO Gunther v. Brown*, 148 A.D.3d 889 (2nd Dept. 2017); *IMO Cade v. Roberts,* 141 A.D.3d 583 (2nd Dept. 2016).

The Court should consider "'the length of time the child lived with the nonparent, the quality of that relationship and the length of time the biological parent allowed such custody to continue without trying to assume the primary parental role." *See, IMO Thompson v. Bray*, 148 A.D.3d 1364 (3rd Dept. 2017). In evaluating the role the parent played in the Child's life, the Court should look at the totality of the circumstances in determining the "quality and quantity of the contact between the parent and the Child and "whether the parent makes important decisions affecting the child's life, as opposed to merely providing routine care on visits." *See, Suarez* at 449 and 451.

Further, "while the child's relationship with the [non parent] is significant, extraordinary circumstances are not established merely by showing that the child has bonded psychologically with the nonparent." *See, IMO Esposito v. Shannon*, 32 A.D.3d 471 (2nd Dept. 2006); *see also, Thompson* at 1365; *Esposito* at 473.

Similarly, "a parent cannot be displaced merely because another person would do a 'better job' of raising the child." *See, IMO Bailey v. Carr*, 125 A.D.3d 853 (2nd Dept. 2015). The Court shall also consider whether the removal of the child from the non-parent would be "grave enough to threaten destruction of the child." *See, Bennett* at 550. Alcohol abuse on the part of a parent, in addition to other factors, has been deemed extraordinary circumstances. *See, Herrera v. Vallejo*, 107 A.D.3d 714, 715 (2nd Dept. 2013).

Unless and until there is a showing of extraordinary circumstances, the question of the Child's best interest simply cannot be reached by the Court. (*See, Matter of Denise K. v. King L., supra*; *IMO Zamoiski v. Centeno*, 166 A.D.2d 781 (3rd Dept. 1990). With regard to extraordinary circumstances and best interest, "while the court was required to conduct an evidentiary hearing concerning both issues . . . , and it could have conducted separate hearings . . . , it was not required to do so." *See, IMO Roseman v. Sierant*, 142 A.D.3d 1323 (4th Dept. 2016) (internal citations omitted).

It is well settled that " [parenting time] is a joint right of the noncustodial parent and of the child, and the best interests of a Child lie in [her] being nurtured and guided by both of [her] natural parents." *See, Cervera v. Bressler*, 50 A.D.3d 837 (2nd Dept. 2008) citing *Weiss v. Weiss*, 52 N.Y.2d 170, 175 (1981). "Absent extraordinary circumstances, where [parenting time] would be detrimental to the child's well-being, a noncustodial parent has a right to reasonable visitation privileges." *See, Cervera* at 839 citing *Twersky v. Twersky*, 103 A.D.2d 775 (2nd Dept. 1984). Moreover, the Family Court has jurisdiction to direct

custody and access of minor children pursuant to Family Court Act Section 651. In determining best interests, the Court must consider the totality of the circumstances *(Friederwitzer v. Friederwitzer*, 55 N.Y. 2d 89, 96) as well as assess the of credibility of the witnesses *(DiPaola v. DiPaola*, 223 A.D.2d 589 [2nd Dept 1996]). The Court must also consider "the quality of the home environment and the parental guidance the custodial parent provides for the child, the ability of each parent to provide for the child's emotional and intellectual development, the financial status and ability of each parent to provide for the child, the relative fitness of the respective parents, and the effect an award of custody to one parent might have on the child's relationship with the other parent." *See, Esposito* at 473 citing *IMO Zafran v. Zafran*, 3016 A.D.2d 468 (2nd Dept. 2003) and *IMO Miller v. Pipia*, 297 A.D.2d 362 (2nd Dept. 2002).

Regarding a parent's access with their child, a court may "direct a [parent to submit to counseling or treatment as a component of a visitation or custody order. A court may not, however, 'order that a parent undergo counseling or treatment as a condition of future visitation or reapplication for visitation rights." *See, IMO Gonzalez v. Ross*, 140 A.D.3d 869 (2nd Dept. 2016) (internal citation omitted).

The Court, in its discretion, may hold a hearing with the child to gain insight as to the child's wishes. *See, Lincoln v. Lincoln*, 24 N.Y.2d 270 (1969); *see also, Jean v. Jean*, 59 A.D.3d 599 (2nd Dept. 2009); *Eschbach v. Eschbach*, 56 N.Y.2d 167 (1982); *see also, IMO Rudy et al. v. Mazzetti*, 5 A.D.3d 777 (2nd Dept. 2004); *IMO Desroches v. Deroches*, 54 A.D.3d 1035 (2nd Dept. 2008).

CONCLUSIONS

The Court is cognizant of the fact that this family has experienced enormous losses in a short period of time. Respondent lost his wife, mother-in-law, and therapist within the span of a year-and-a-half. Petitioner lost her sister and mother within six months, and the Child lost her Mother and grandmother within six months. At the epicenter of it all, Petitioner, Respondent, and the Child lost the tie that bound them together which was the Mother.

Petitioner and Respondent have been in litigation for more than two years regarding custody of the Child. The Court has observed the demeanor of the parties and heard testimony from the parties and many witnesses. The parties did not request a *Lincoln* hearing and the Court did not conduct a *Lincoln* Hearing with the Child due to her young age. Upon review and consideration of the testimony and evidence presented to this Court, the Court finds that extraordinary circumstances exist to warrant a best interest analysis in the instant matter, and there are several compelling factors to support the granting of Petitioner's application to the extent stated herein.

The Court finds that Petitioner, Mr. Haims, and Mr. Schwell all testified credibly regarding the circumstances that caused Petitioner to file the instant petition. Respondent's actions prior to the death of the Mother and his behavior at Petitioner's home and at family functions, after the Mother's death, in addition to the documentary evidence presented, clearly show Respondent's unfitness to parent the Child when this case was filed.

Respondent has not spent significant time with the Child because he drank excessively and was unable to control his alcoholism by becoming abstinent and sober. By Respondent's own admission, he lived with the Child for approximately one year of her life and not since she was at least 16 months old. Further, Respondent rarely spent time with the Child outside the home or presence of the Mother, the maternal grandparents, or Petitioner. Respondent produced no witnesses that observed his interactions with the Child for any part of her life except for the visits supervised by Ms. Candelario. Respondent has never been the primary care taker of the child.

The Court does not find Respondent's testimony credible regarding the parenting time he spent with the Child leading up the death of the Mother, but rather finds itself serving. Respondent's testimony that he was not under the influence of alcohol when he cared for the Child is inconsistent with other evidence admitted at the fact-finding hearing indicating that Respondent drank daily, during work and after work. Respondent reported to Dr. Griffin that the Mother found him asleep on the couch when he was supposed to be watching the Child. *See*, Court Exhibit 2 at page 3. The Court finds that Respondent was not forthright with the Court regarding the amounts of alcohol he drank during the Child's first four years of life. When questioned about the amount, Respondent would not quantify the amount he drank except to state that it was all a big mistake he wished he had not made. The evidence admitted during the fact-finding, Respondent's statements to Dr. Abrams, Dr. Griffin, Dr. Centurion, and his testimony indicate that his drinking negatively affected his marriage to

the Mother. Respondent begrudgingly admitted that his drinking negatively affected his relationship with and his ability to parent the Child.

Respondent had been in and out of rehabilitation facilities and hospitals since the Child's birth with the latest admission being six months prior to the filing date of the petition. The evidence admitted at the fact-finding hearing establish that, since the birth of the Child, Respondent had been admitted to: White Plains Hospital (12/25/11-12/29/11) and diagnosed with acute pancreatitis as a result of his alcoholism; Gracie Square Hospital (11/9/12-11/14/12) diagnosed with depression, alcohol dependence, and anxiety; Endeavor House rehabilitation facility (11/14/12-12/6/12) where Respondent admitted to drinking approximately a half liter of vodka daily; New York Presbyterian Weill Cornell Hospital (12/30/14-1/5/15) and diagnosed with alcohol induced pancreatitis and alcohol withdrawal; and Glenbeigh rehabilitation facility (1/16/15-2/13/15).

Upon discharge from the rehabilitation facilities, Respondent was encouraged to attend AA meetings, 90 within the first 90 days of discharge, integrate in a 12-step program, select a home group, obtain a sponsor, enroll and engage in therapy, participate in recreational activities in the recovery community, and enroll in an intensive outpatient program. Respondent was described as "indifferent" to recommendations and his response was to refuse after care except to find an AA program, even though he testified to not believing in the tenants of AA. Respondent's failure to follow the recommendations of the rehabilitation facilities was based upon his own feeling that he could achieve sobriety on his own. Respondent has

not built up any sober support group to achieve or maintain sobriety, and that continues to date. Respondent did not produce any witness or offer any testimony that he took any responsibility, after his discharges from the hospitals or rehabilitation facilities, for his alcoholism. In fact, by his own testimony, Respondent drank immediately after each of his discharges from a rehabilitation facility. When Respondent was discharged from Glenbeigh in February 2015, he admittedly started drinking immediately after his release through January 2016, after the filing of this petition. Respondent was not in a position to have custody of the Child and had not taken appropriate steps for the Child to reside safely in his home.

At the time the petition was filed, the Child was not yet four years old, and had resided in Petitioner's home with Petitioner, Mr. Haims, and their two children for three months after the Mother's passing. During the three month period and since the filing date of the petition, Petitioner enrolled the Child in extracurricular activities, school, and in therapy with Dr. Behrman. Petitioner worked closely with Dr. Behrman to assist the Child in dealing with her grief over losing the Mother and the maternal grandmother. Petitioner implemented the coping skills recommended by Dr. Behrman for the Child to deal with her regressive behaviors, night terrors, and need for belonging. When the Child experienced educational difficulties during the school year, Petitioner arranged for the Child to have a tutor.

During the three month period the Child resided in Petitioner's household, Respondent admittedly continued to drink. Respondent offered no testimony regarding the steps he took to address his alcoholism

during the Summer of 2015. Respondent's statement to Dr. Griffin that he never drank before he spent time with the Child and Respondent's testimony that he only drank on occasion in the summer of 2015 was belied by the testimony of Petitioner, Mr. Haims, Mr. Schwell, and Ms. Warmund, that between the time of the death of the Mother and the filing date of the petition,

Respondent appeared at Petitioner's residence under the influence, staggered into the pool, and was not aware that he nicked his elbow to the extent that it started bleeding. Mr. Schwell testified to several incidents that occurred in July 2015 where he observed Respondent under the influence in and outside the presence of the Child. The Court notes that Respondent did not offer any testimony refuting Mr. Schwell's observations of his behavior or drinking during the month of July 2015.

Respondent testified that he made Petitioner aware that it was his intention to take custody of the Child before she filed the instant petition. He also testified that he was still drinking at that time. According to Respondent, he reduced his alcohol consumption during the summer of 2015, but testified to drinking through January 2016. Respondent acknowledged that although it "sounded bad," he did not see the issue with having a drink occasionally so long as it was not excessive, however, Respondent could not and would not quantify what an excessive amount would be. Respondent testified that sobriety is a mental state of mind and his testimony that he is now sober is not persuasive to this Court.

The Court does not find the testimony or records of Dr. Centurion to be credible. Dr. Centurion testified

that Respondent's former therapist, Mr. Park, referred Respondent to her for treatment in January 2013 and that she has treated him to the present. Both Respondent and Dr. Centurion testified that she sees Respondent once every two to three months. Dr. Centurion testified that her treatment of Respondent is based on his self reporting. The Court finds it troubling that she stated that she could not recall whether she reviewed his medical records and there was no indication in the records sent to the Court that she had.

Further, Dr. Centurion testified that she prescribed Respondent Antabuse in February 2016 based upon his statements regarding his commitment to becoming sober. The medication is designed to make the patient feel ill upon consuming alcohol and Respondent is prescribed to take it daily. Dr. Centurion testified that there is no way to tell if Respondent is taking the medication as prescribed.

Upon review of Dr. Centurion's records regarding her treatment of Respondent, which are only dated through to January 13, 2015, most of Respondent's appointments centered on medication management. Dr. Centurion had no explanation regarding the absence of entries past January 13, 2015, notably missing are the entries since Respondent committed to obtaining sobriety in 2016. There are no notes for the entire pendency of this case. In the entries provided to the Court, there are no remarks regarding Respondent's continued therapy for depression and anxiety. Respondent testified that he has not obtained an individual therapist since his regular therapist, Mr. Park passed away in September 2016, because he does not feel depressed anymore and does not dis-

cuss his depression with Dr. Centurion. The testimony offered by Dr. Centurion regarding Respondent's mental health was that although Respondent would benefit from individual therapy, she did not feel he needed it. Further, the Court finds that Dr. Centurion's testimony that she believed Respondent would be a great parent and that Respondent would not have a problem parenting the Child to be inconsistent with her statements to Dr. Griffin during his forensic evaluation.

Respondent did not offer any testimony rebutting Dr. Griffin's reporting of his accounts of his history of alcoholism or the circumstances leading up to the filing of the report with the Court. The Court finds Dr. Griffin's forensic report and testimony on rebuttal to be credible. Dr. Griffin testified that took notes simultaneously with his telephone conversation with Dr. Centurion for the forensic evaluation report submitted to the Court. According to Dr. Griffin, in November 2016, Dr. Centurion had concerns about Respondent having custody of the Child. Dr. Centurion did not believe that Respondent had any level of attachment to the Child except for a narcissistic one, and that removing the Child from Petitioner would not be good because she did not feel Respondent could be a single parent.

Dr. Griffin testified that he recommended Respondent take advantage of an intensive outpatient program and obtain a therapist because of Respondent's relapse history and Respondent's statement that he tends to isolate himself. However, there was no testimony from Respondent that he followed the recommendations of Dr. Griffin. Dr. Griffin continued to test Respondent throughout the pendency of the fact-finding hearing

and, although Respondent consistently tested negatively, Dr. Griffin testified that it was still possible that Respondent could have been drinking during the testing period.

Respondent was also tested for alcohol by Ms. Candelario before each of Respondent's supervised visits with the Child. In his closing, Respondent stated that he wanted the Court to find Ms. Candelario, the SVE supervisor, and his own witness, not credible. Respondent stated that the only part of Ms. Candelario's testimony that was credible was the negative results of the Breathalyzer tests she performed on him before each of his visits. Ms. Candelario is the only witness who testified to recent and consistent observation of Respondent with the Child. Her reports were admitted into evidence without objection. The Court finds Ms. Candelario's testimony credible.

Ms. Candelario testified that she smelled alcohol on Respondent on three separate occasions. Ms. Candelario stated that when she confronted Respondent with her suspicion, he stated that he drank the week prior to her smelling the alcohol in October 2015 and that she was smelling mouthwash in November 2016. Ms. Candelario testified that Respondent had a flat affect when she mentioned the smell of alcohol on him. Respondent countered by submitting the Truth Verification Laboratory report into evidence which indicated respondent was tested for alcohol on October 27, 2015. Although the results came back negative, the test only covered a three month period because Respondent's hair was too short and the nail sample was not sufficient enough to conduct a test. Moreover, and significant, Respondent admitted that he was actively drinking through January 2016.

The Court finds Ms. Candelario's testimony compelling regarding Respondent's difficulty meeting the emotional needs of the child during the visits. The Court does not discredit that Respondent's relationship with the Child has developed since the commencement of his supervised visits with the support of Ms. Candelario. However, there were specific instances where Respondent was not equipped to handle the Child's anxiety. Respondent resisted the recommendations made by Ms. Candelario to improve the relationship by making an effort with Petitioner and the Child's therapist, Dr. Behrman, to understand the Child's emotional needs because he allegedly did not know that he was supposed to. Respondent did not reach out to Dr. Behrman until several months after the filing of the petition and did not make an effort to work with Dr. Behrman until several months after the commencement of the fact-finding hearing.

Both Petitioner and Mr. Haims testified that the Child was enrolled in therapy in November 2015 to address the Child's feeling of loss over the Mother and maternal grandmother. Mr. Haims testified that he relayed Dr. Behrman's recommendations to Respondent on how to aid the Child with her grief. Respondent did not refute Mr. Haims' testimony regarding his efforts to keep him informed as to the Child's mental and emotional status and needs. Respondent did not reach out to Dr. Behrman until April 2016. Dr. Behrman testified that she discussed meeting monthly with Respondent so he could better address the Child's needs and that Respondent had not reached out to her again for another seven months. Respondent did not start to meet or speak with Dr. Behrman monthly until March 2017, three months after Dr.

Behrman testified at the fact-finding hearing regarding his lack of efforts.

Dr. Behrman testified that in her opinion, relationship and attachment are more important than biology. Dr. Behrman's understanding from her conversations with Respondent was that he was never the Child's primary caretaker and that if it were up to him, he would rather have a babysitter care for the Child while he was working rather than Petitioner. Respondent's lack of empathy for the Child led Dr. Behrman to believe that the Child would not thrive in his household if she were removed from Petitioner.

At the time Dr. Behrman testified, Respondent was not yet married to Mrs. Lehmann, but they had been dating for 10 months. Mrs. Lehmann married Respondent on July 1, 2017 and had never met the Child. Mrs. Lehmann testified that she was aware that Respondent was an alcoholic a few weeks into their relationship but chose not to ask Respondent questions regarding his relapses because she did not want to judge him about his past.

Mrs. Lehmann testified that she believed that Dr. Behrman was biased against Respondent and that if Respondent were to be granted custody of the Child, she and Respondent planned to change all of the Child's providers. The Court is concerned that neither Respondent nor Mrs. Lehmann had any specific plans regarding maintaining the Child's relationship with Petitioner. Further, both Mrs. Lehmann and Respondent acknowledge text messages regarding seeking vengeance against the Mother's family. Mrs. Lehmann claimed she could not recall the context of the conversations.

Neither party called Dr. Abrams, the forensic evaluator, as a witness to cross examine the forensic report submitted to the Court and admitted into evidence as Court Exhibit 1. Although the forensic report is over a year old, the Court gives it limited weight to the extent the findings contained therein are consistent with much of the testimony offered at the fact-finding hearing. Dr. Abrams found that Respondent entering into a relationship with Mrs. Lehmann at the same time he committed to sobriety to be problematic. Dr. Abrams wrote that an alcoholic should not engage in a relationship within the first year of sobriety and should learn "to understand himself in the absence of alcohol." *See*, Court Exhibit 1 at page 20. Dr. Abrams found that although Respondent connected with the Child better than he did with other adults, there was ample evidence to support Petitioner's concerns regarding Respondent's ability to parent the child and that Respondent should seek professional support to learn how to better parent before obtaining custody. Dr. Abrams also wrote that it would be irresponsible to change the Child's caretaker "not even taking into account the serious psychological consequences to her for any failures on [Respondent's] part in a role as primary caretaker." *See*, Court Exhibit 1 at page 21.

Respondent has not established that he sought treatment for his depression except he stated that he is taking medication for it. He is completely reliant upon Dr. Centurion, who sees him every three months to determine whether he is going to remain on the medication or is in need of individual therapy. Significantly, he is not in therapy. Mrs. Lehmann's testimony that she chose not to question Respondent regarding

his past with alcohol, her testimony that Respondent is emotionally guarded, Dr. Griffin's report that Respondent tends to isolate himself, and Respondent's testimony that he does not discuss his depression with Dr. Centurion and does not feel he needs a therapist, concerns this Court.

Respondent has not established that he has committed himself to a program to maintain sobriety. He testified to going to either Smart Recovery or AA, but does not believe in a higher power, sponsorship or the tenants of the AA program. He states that he now goes to AA because it is more convenient for him. The Court heard testimony that Respondent was not going to AA because of his fear that his statements would not be confidential and exposed during litigation and also that he did not believe in the program, and yet other testimony that he is in fact attending AA meetings. Further, there was inconsistent testimony offered by Respondent's witnesses regarding the frequency and regularity in which he attends Smart Recovery or AA.

Based on the foregoing, the Court finds that Petitioner has sustained her burden of proving extraordinary circumstances exist warranting a best interest determination. The Court finds that based on the totality of the circumstances, Respondent is unfit to be the sole custodian of the Child. Respondent, who admitted that he is an alcoholic has not sufficiently addressed his alcoholism and has never been the primary caretaker of the Child. Moreover, there was no credible testimony offered to rebut the testimony of Dr. Behrman, and also the contents of the report of Dr. Abrams which also states that changing the Child's primary caretaker from Petitioner to Respond-

ent would cause profound trauma to the Child, who has already experienced enormous loss.

The Court finds that it is in the best interest of the Child to award Petitioner physical custody of the Child. This determination is based upon Petitioner's ability to meet the Child's physical, emotional, mental, and psychological needs. Petitioner has been providing the Child a stable, consistent, and structured home environment. Respondent did not establish that he was ever the primary caretaker for the Child at any point in her life or that there would be any adverse effect to their relationship if Petitioner were awarded physical custody. In fact, there was credible testimony offered regarding Petitioner's efforts to foster the relationship between Respondent and the Child. Respondent did not offer any credible testimony that he would foster a relationship between the Child and the Mother's family.

Notwithstanding the foregoing, although the Court finds Petitioner to be the more fit and appropriate party to be awarded residential custody of the Child, the Court also finds it to be in the best interest of the Child to award the parties joint legal custody with Petitioner having final decision making authority over the Child's health, education, and general welfare matters after meaningful consultation with Respondent. Respondent shall be entitled to all information regarding the Child's health, education, and general welfare providers and records. The Court also directs that Respondent's parenting time with the Child shall graduate to unsupervised access. *See, Johnson v. Johnson*, 13 A.D.3d 678 (3rd Dept. 2004); *see also Dahgir* at 194.

The Court finds that in order for the relationship between Petitioner and Respondent to exist in a way that benefits the Child, and based upon the acrimonious relationship of the parties, the parties shall engage in family therapy. The Court also hereby directs Petitioner and Respondent to enroll and participate in family therapy with Benna Strober, Psy.D. Dr. Strober has worked with the family as a therapeutic supervisor and is already familiar with the parties.

Registry

The Court searched the statewide registry of Orders of Protection, the sex offender registry and the State's child protective records and found no results.

Accordingly it is hereby

ORDERED AND ADJUDGED, on consent, that the guardianship petition filed under G-11126-15 shall be converted to a custody petition under docket number V-11126-15; and it is further

ORDERED AND ADJUDGED, that extraordinary circumstances exist to warrant a best interest analysis; and it is further

ORDERED AND ADJUDGED, that the petition is hereby granted to the extent stated herein; and it is further

ORDERED AND ADJUDGED, that it is in the best interest of the Child, O[...] Lehmann, born XXXX, 2011, that Petitioner and Respondent shall share joint legal custody of the Child; and it is further

ORDERED AND ADJUDGED, that it is in the best interest of the Child that Petitioner shall have

residential custody of the Child subject to Respondent's right to parental access; and it is further

ORDERED, that Petitioner shall have final decision making authority on issues regarding the Child's health, education and general welfare after meaningful consultation with Respondent; and it is further

ORDERED, that Respondent shall have access to the Child's health, education, and general welfare providers and records, and Petitioner shall sign any releases necessary for Respondent's access; and it is further

ORDERED, that Respondent shall be listed as the Child's Father on all forms and designated as an emergency contact for the Child; and it is further

ORDERED, that the parties shall utilize Our Family Wizard, and keep each other informed of the Child's schedule; and it is further

ORDERED, that Petitioner shall keep Respondent informed of all appointments for the Child and Respondent shall have the option of attending the appointment(s); and it is further

ORDERED, that effective December 31, 2017, Respondent's therapeutic supervised visitation with the Child shall conclude; and it is further

ORDERED, that effective January 1, 2018, Respondent shall have unsupervised parenting time with the Child and shall be responsible for all transportation of the Child for his parental access; and it is further

ORDERED, that Respondent shall not, use, consume, possess, or be under the influence of any

illegal drugs or alcohol while in the presence of the Child; and it is further

ORDERED, that the parties shall exchange the Child curbside at Petitioner's residence for Respondent's parental access with the Child; and it is further

ORDERED, that commencing Saturday, January 6, 2018, and every Saturday through to Saturday, February 24, 2018, Respondent shall have parenting time with the Child from 12:00 p.m. through 4:00 p.m.; and it is further

ORDERED, that commencing Saturday, March 3, 2018 and every Saturday through to Saturday, April 28, 2018, Respondent shall have parenting time with the Child from 12:00 p.m. through 7:00 p.m.; and it is further

ORDERED, that commencing Friday, May 4, 2018, and every weekend through to Friday, June 29, 2018, Respondent shall have parenting time with the Child from Friday at 7:00 p.m. through Saturday at 7:00 p.m.; and it is further

ORDERED, that commencing Friday, July 6, 2018, through to Friday, August 24, 2018, Respondent shall have parenting time with the Child the first three weekends in July and the first three weekends in August from Friday at 7:00 p.m. through Sunday at 7:00 p.m.; and it is further

ORDERED, that between Friday, July 6, 2018 and Friday, August 24, 2018, Petitioner shall have two weekends with the Child, one the last weekend in July and one the last weekend in August; and it is further

ORDERED, that commencing Friday, August 31, 2018 and every weekend thereafter, Respondent shall have parenting time with the Child from Friday at 7:00 p.m. through Sunday at 7:00 p.m.; and it is further

ORDERED, that effective Friday, August 31, 2018, if the Monday following Respondent's weekend is a holiday, Respondent's parental access shall extend to Monday at 7:00 p.m.; and it is further

ORDERED, that Respondent shall have parenting time with the Child on his birthday, each year, from 11:00 a.m. through 7:00 p.m.; and it is further

ORDERED, that if Respondent is not scheduled to have parenting time with the Child on her birthday, he shall have parenting time from 11:00 a.m. to 7:00 p.m. if there is no school, or for three hours if school is in session at such time as agreed to between the parties in writing; and it is further

ORDERED, that Respondent shall ensure that the Child's homework is completed prior to the Child returning to Petitioner's residence; and it is further

ORDERED, that the parties shall alternate major holidays with the Child and the holiday and summer schedule shall supercede the regular access schedule; and it is further

ORDERED, that commencing in 2019, and odd numbered years thereafter, Respondent shall have the Child on New Year's Day from 11:00 a.m. through 7:00 p.m.; and it is further

ORDERED, that commencing in 2018 and even numbered years thereafter, Respondent shall have

the Child on July 4th from 11:00 a.m. through 7:00 p.m.; and it is further

ORDERED, that for Thanksgiving 2018 only, Respondent shall have the Child from Thursday at 7:00 p.m. through Sunday at 7:00 p.m.; and it is further

ORDERED, that commencing 2019 and odd numbered years thereafter, Respondent shall have the Child on Thanksgiving day from 11:00 a.m. through 7:00 p.m.; and it is further

ORDERED, that commencing 2018 and every year thereafter, Respondent shall have the Child on Christmas Eve and Christmas Day from December 24th after school or at 11:00 a.m. if there is no school through December 26th at 11:00 a.m.; and it is further

ORDERED, that commencing in 2018 and even numbered years thereafter, Respondent shall have the school Christmas Recess from December 26th at 11:00 a.m. through the Friday before school recommences at 7:00 p.m.; and it is further

ORDERED, that commencing 2019, and odd numbered years thereafter, Petitioner shall have the Child for the school Christmas Recess from December 26th at 11:00 a.m. through the Friday before school recommences at 7:00 p.m.; and it is further

ORDERED, that commencing 2019 and odd numbered years thereafter Petitioner shall have the Child for the school February recess, and in 2020 and even numbered years thereafter Respondent shall have the Child for the school February recess; and it is further

ORDERED, that commencing in 2019 and odd numbered years thereafter, Respondent shall have the Child for the school Spring Recess, and in 2020 and even numbered years thereafter, Petitioner shall have the Child for the school Spring recess; and it is further

ORDERED, that commencing 2019 and every year thereafter, the parties shall each have two non-consecutive weeks of summer vacation with the Child; and it is further

ORDERED, that the parties shall notify each other in writing on or before April 1st with Respondent having first choice in 2019 and odd numbered years thereafter, and Petitioner having first choice in 2020 and even numbered years thereafter; and it is further

ORDERED, that if either party travels away from their home with the Child for 24 hours or more, the traveling party shall provide the other party with 14 day written notice, and itinerary, and a landline telephone number of where the Child may be reached; and it is further

ORDERED, that if either party travels internationally with the Child, the traveling party shall provide the other party with 30 day written notice, an itinerary, and a landline telephone number of where the Child may be reached; and it is further

ORDERED, that neither party shall unreasonably withhold his or her consent for the Child to travel; and it is further

ORDERED, that Respondent shall have such other, further, or different parenting time with the

Child as mutually agreed by and between the parties in writing; and it is further

ORDERED, that the parties shall keep each other informed of their address, telephone number and email address; and it is further

ORDERED, that neither party shall move outside a 30 mile radius of where he or she currently resides absent written consent or Order from a Court of competent jurisdiction; and it is further

ORDERED, that the parties may have and shall make the Child available for reasonable and uninterrupted telephone access for 15 minutes when the Child is not in his or her care at such time as mutually agreed by and between the parties; and it is further

ORDERED, that any firearms owned or possessed by Respondent shall be licensed and registered and Respondent shall ensure that any and all firearms including but not limited to pistol, revolver, shotgun, rifle, assault weapon or the like are safely secured and out of the reach of the Child at all times while the Child is in his care; and it is further

ORDERED, that on or before January 1, 2018, the parties shall contact Benna Strober, Psy.D., 71 Smith Avenue, Mt. Kisco, NY (914) 329-5355 to schedule family therapy; and it is further

ORDERED, that neither party shall make disparaging remarks about the other party, nor allow a third person to do so within the presence of the Child; and it is further

ORDERED, that neither party shall discuss any litigation with the Child, nor allow any third person

to do so within the presence of the Child; and it is further

ORDERED, that the parties shall encourage and foster a loving, trusting, and nurturing relationship between the Child and the other party.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

PURSUANT TO SECTION 1113 OF THE FAMILY COURT ACT, AN APPEAL FROM THIS ORDER MUST BE TAKEN WITHIN 30 DAYS OF RECEIPT OF THE ORDER BY APPELLANT IN COURT, 35 DAYS FROM THE DATE OF MAILING OF THE ORDER TO APPELLANT BY THE CLERK OF COURT, OR 30 DAYS AFTER SERVICE BY A PARTY OR THE ATTORNEY FOR THE CHILD UPON THE APPELLANT, WHICHEVER IS EARLIEST.

ENTER

/s/ Hon. Rachel Hahn
Judge of the Family Court

Dated: December 18, 2017

TEMPORARY ORDER OF PROTECTION OF FAMILY COURT OF THE STATE OF NEW YORK (SEPTEMBER 2, 2015)

FAMILY COURT OF THE STATE OF NEW YORK,
COUNTY OF WESTCHESTER

In the Matter of a GUARDIANSHIP Proceeding

NICOLE HAIMS,

Petitioner,

v.

JOHN LEHMANN,

Respondent.

File #: 143772

Docket #: G-11126-15

Before: Hon. Rachel HAHN, Judge.

NOTICE: YOUR FAILURE TO OBEY THIS ORDER MAY SUBJECT YOU TO MANDATORY ARREST AND CRIMINAL PROSECUTION, WHICH MAY BE RESULT IN YOUR INCARCERATION FOR UP TO SEVEN YEARS FOR CRIMINAL CONTEMPT, AND/OR MAY SUBJECT YOU TO FAMILY COURT PROSECUTION AND INCARCERATION FOR UP TO SIX MONTHS FOR CONTEMPT OF COURT. IF YOU FAIL TO APPEAR IN COURT WHEN YOU ARE REQUIRED TO DO SO, THIS ORDER MAY BE EXTENDED IN YOUR ABSENCE AND THEN CONTINUES IN EFFECT UNTIL A NEW DATE SET BY THE COURT.

THIS ORDER OF PROTECTION WILL REMAIN IN EFFECT EVEN IF THE PROTECTED PARTY HAS, OR CONSENTS TO HAVE, CONTACT OR COMMUNICATION WITH THE PARTY AGAINST WHOM THE ORDER IS ISSUED. THIS ORDER OF PROTECTION CAN ONLY BE MODIFIED OR TERMINATED BY THE COURT. THE PROTECTED PARTY CANNOT BE HELD TO VIOLATE THIS ORDER NOR BE ARRESTED FOR VIOLATING THIS ORDER.

A petition under article 6 of the Family Court Act, having been filed on August 24, 2015 at this Court and good cause having been shown, and John Lehmann having been not present in Court.

NOW, THEREFORE, IT IS HEREBY ORDERED that John Lehmann observe the following conditions of behavior:

[02] Refrain from assault, stalking, harassment, aggravated harassment, menacing, reckless, endangerment, strangulation, criminal obstruction of breathing or circulation disorderly conduct, criminal mischief, sexual abuse, sexual misconduct, forcible touching, intimidation, threats, identity theft, grand larceny, coercion or any criminal offense against O[...] Lehmann (DOB: XX/XX/2011);

[12] Surrender any and all handguns, pistols, revolvers, rifles, shotguns and other firearms owned or possessed, including but not limited to, the following; ANY AND ALL FIREARMS and do not obtain any further guns or other firearms. Such surrender shall take place immediately, but in no event later than IMMEDIATELY UPON SERVICE OF THIS

TEMPORARY ORDER OF PROTECTION, at LOCAL POLICE DEPARTMENT.,

[99] Observe such other conditions as are necessary to further the purpose of protection; John Lehmann shall not remove the subject child O[...] Lehmann (DOB: XX/XX/2011) from the home of the petitioner.

[99] Observe such other conditions as are necessary to further the purposes of protection; John Lehmann shall have supervised visitation with the subject child O[...] Lehmann (DOB: XX/XX/2011). The petitioner shall be the supervisor for the visitation.,

It is further ordered that this temporary order of protection shall remain in force until and including September 22, 2015 but if you fail to appear in court on this date, the order may be extended and continue in effect until a new date set by Court.

ENTER

/s/ Rachel Hahn
Honorable Rachel Hahn

Dated: September 2, 2015