No. _____

In the Supreme Court of the United States

RICHARD DUCOTE, ESQ., VICTORIA MCINTYRE, ESQ., & S.S.,

Petitioners,

v.

S.B.,

Respondent.

On Petition for a Writ of Certiorari to the
Supreme Court of Pennsylvania

APPENDIX

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[J-29-2020]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

SAYLOR, C.J., BAER, TODD, DONOHUE, DOUGHERTY, WECHT, MUNDY, JJ.

S.B.	:	No. 39 WAP 2019
	:	
	:	Appeal from the Order of the
v.	:	Superior Court entered December
	:	24, 2018 at No. 753 WDA 2018,
	:	affirming the Order of the Court of
S.S.	:	Common Pleas of Allegheny County
	:	entered April 27, 2018 at No. FD-15-
	:	008183-10.
APPEAL OF: S.S., RICHARD DUCOTE,	:	
ESQUIRE, AND VICTORIA MCINTYRE,	:	ARGUED: May 27, 2020
ESQUIRE	:	

OPINION

JUSTICE BAER **DECIDED: DECEMBER 22, 2020**

In this appeal, we examine an order entered in a custody matter that places restrictions on the speech of a parent and her counsel to determine whether the order violates the right to free speech as guaranteed by the First Amendment to the United States Constitution and Article I, Section 7 of the Pennsylvania Constitution. Finding that the order restricted only the manner of speech and not the content, the Superior Court upheld the order, concluding that the restriction of speech furthered the important governmental interest of protecting the psychological well-being and the privacy of the child at the center of the custody dispute. For the reasons set forth herein, we affirm the judgment of the Superior Court.

I. Background

At the heart of this case is a protracted and contentious battle between S.B. ("Father") and S.S. ("Mother") over the custody of their son, F.B.H. ("Child"), who was born in 2006.[1] In 2007, Father adopted Child with his first wife, who died in 2008, when Child was two years old. For the next four years, Father raised Child on his own, with continued support from his first wife's extended family.

In September of 2012, Father married Mother, who adopted Child in 2013. The marital union was short-lived, as later that year, Mother and Father separated and entered into a custody agreement.[2] In June of 2015, Father filed an action seeking custody of Child, and Mother later counterclaimed for primary custody. Following a hearing on October 9, 2015, an interim custody order was entered, which expanded Father's custody time. Five days later, Mother filed a protection from abuse ("PFA") petition on behalf of herself and Child, alleging that Father had sexually abused Child. Accordingly, the trial court entered a temporary PFA order, limiting Father's contact with Child.

The trial court subsequently conducted a five-day trial to address the claims set forth in the PFA petition. Discrediting the allegations of sexual abuse, the trial court dismissed Mother's PFA petition, vacated the temporary PFA order, and granted Father supervised partial custody. On February 2, 2016, a few weeks after the trial court scheduled a custody trial for later that year, Mother filed a second PFA petition, again alleging Father's sexual abuse of Child. The trial court subsequently denied the second PFA petition.

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[1] In an effort to protect Child's identity, we set forth only those facts necessary to resolve this appeal.

[2] The precise details of the custody agreement are not relevant to this appeal.

On May 20, 2016, the trial court commenced the custody trial, which spanned over twenty-three days, and ultimately concluded on November 18, 2016. At trial, the parties presented twenty-four witnesses, including Mother, Father, Child, and Child's Guardian *ad litem*, and the trial court also admitted nearly two hundred exhibits. On December 12, 2016, the trial court entered an order, which the court amended on December 14, 2016, granting Father sole legal and physical custody of Child.[3] The orders also directed Father and Child to participate in the Family Bridges Workshop for Troubled and Alienated Parent-Child Relationships, and ordered Mother not to have any contact or partial custody with Child for a period of ninety days.

In an opinion dated December 22, 2016, the trial court explained its ruling and set forth detailed findings of fact. Relevant here, the trial court concluded that Father did not sexually abuse Child. The court reached this conclusion after evaluating Child's testimony in open court; reviewing videos of forensic interviews in which Child made detailed allegations of purported sexual abuse; reading Child's testimony in the PFA proceeding, which had been introduced into the record of the custody trial; listening to the testimony of experts who evaluated Father; and considering the testimony of witnesses who had observed the nature of the relationships between both Father and Child and Mother and Child, before and after the allegations were made. The trial court explained that the details of Child's in-court descriptions of the alleged sexual abuse were not credible and that the timing of the allegations were suspect, *i.e.*, they arose shortly after Father's partial custody time had been expanded.

To be precise, the trial court did not believe that Child deliberately lied. Rather, the court reasoned that Child may have believed that abuse occurred years earlier, but

[3] At the time the trial court entered its final custody order, it had been almost one year since Father was able to have contact with Child. *See* Trial Court Opinion, 1/30/2017, at 6.

Child's testimony contained statements that were "simply not true and which [were] contradicted by other credible evidence." Trial Court Opinion, 12/22/2016, at 7. The trial court further relied upon expert testimony, establishing that Father "is a low risk to perpetrate physical, psychological, emotional, or sexual abuse." *Id.* at 8. Finally, the trial court concluded that Mother had isolated Child from everything he knew before she adopted him, and alienated Child from Father, as well as Child's extended family. *Id.* at 53, 55.

The Superior Court affirmed the trial court's custody order in a memorandum opinion filed on October 20, 2017, holding that the record supported the trial court's findings that Mother alienated Child from Father, and that Father did not sexually abuse Child. Mother filed a petition for allowance of appeal in this Court, which we denied on February 22, 2018. *S.B. v. S.S.,* 182 A.3d 430 (Pa. 2018).

Meanwhile, on February 7, 2018, a few weeks prior to this Court's denial of allocatur in the custody matter, Mother's attorney Richard Ducote, Esquire, held a press conference on the online video-sharing platform, YOUTube, expressing Mother's fervent disagreement with the trial court's findings and orders in the custody matter. Mother has described the press conference as a means to draw "attention to child sexual abuse victims everywhere and the role of the courts in granting custody of children to their identified abusers." Brief for Appellant at 5. According to Mother, "[a]dvocates and parents from various organizations around the country gathered at the press conference to shed light upon and to educate the public about the ways that family courts nationwide have been failing child abuse victims, as well as to highlight pending legislation in the United States House of Representatives and the Pennsylvania legislature." *Id.* at 5-6.

While Child was not named during the press conference, Attorney Ducote identified Mother by name and, notably, included a link providing access to a reproduction

of Child's in-court testimony and forensic interview, during which Child sets forth detailed allegations of Father's sexual abuse, which the trial court had deemed unfounded. Mother's name is included in these documents, while Child's name is redacted and replaced by the first letter of his first name. However, Child obviously could have been identified by virtue of the disclosure of Mother's identity.

Further, on February 28, 2018, an article about the custody matter appeared in the *Pittsburgh City Paper*, quoting the identical intimate and detailed account of Child's sexual abuse allegations that were highlighted in Mother's press conference. *See* Rebecca Addison, *Children's advocates say family courts unfairly favor father, even when they're the abusers*, PITTSBURGH CITY PAPER (February 28, 2018). Although the article did not state the name of Child, Mother, or Father, it referenced Child's age, the first name of Child's best friend, and the fact that Attorney Ducote had represented the mother in the custody matter. The article asserted that the Pennsylvania Legislature was considering a bill to require additional training for court personnel in child custody cases to prevent courts from granting custody of children to fathers who abused them.

On April 19, 2018, Father filed a motion for sanctions and other relief in the trial court, seeking an order prohibiting Mother and her counsel (Richard Ducote, Esquire, and Victoria McIntyre, Esquire) from speaking publically about the case in any forum, directing them to remove any information about the case that they had posted publically or disseminated, and imposing monetary sanctions.

By order dated April 27, 2018, the trial court denied Father's motion for sanctions because there had been no court orders preventing the parties from speaking publically about the custody matter at that time, and the record had not been sealed.[4] The trial court's order, however, granted in part Father's motion for other relief, stating:

[4] The trial court record in this case remains unsealed.

It is hereby ORDERED that [Mother]; Richard Ducote, Esquire; and Victoria McIntyre, Esquire shall NOT speak publicly or communicate about this case including, but not limited to, print and broadcast media, on-line or web-based communications, or inviting the public to view existing on-line or web-based publications. The following is also ORDERED.

1. [Mother]; Richard Ducote, Esquire; and Victoria McIntyre shall NOT direct or encourage third parties to speak publicly or communicate about this case including, but not limited to, print and broadcast media, on-line or web-based communications, or inviting the public to view existing on-line or web-based publications.

2. [Mother]; Richard Ducote, Esquire; and Virginia McIntyre may provide public testimony in the State House and/or Senate and in the United States Congress and Senate about parent alienation, sexual abuse of children in general or as it relates to this case. However, in providing such testimony, they shall NOT disclose any information that would identify or tend to identify the Child. [Mother] shall NOT publically state her name, the name of the Child or [Father's] name. Attorney Ducote and Attorney McIntyre shall NOT publically refer to [Mother], the Child, or [Father] by name or in any manner that would tend to identify the aforementioned parties.

3. [Mother] and Counsel shall remove information about this case, which has been publically posted by [Mother] or Counsel, including but not limited to, the press release, the press conference on the YouTube site, the Drop Box and its contents, and other online information accessible to the public, **within twenty-four (24) hours.** [Mother] and Counsel shall download or place the aforementioned information onto a thumb drive, which shall be filed with this court.

The Oral Motion to Stay This Order of Court, made [on] behalf of [Mother] is **DENIED**.

This Order does not prohibit any party or counsel from publicly speaking or expressing an opinion about the Judge, including disclosing the entry of this Order of Court, **after** the information has been removed as set forth, above. However, such expression shall NOT contain the name of the Child or other information, which would tend to identify the Child.

Trial Court Order, 4/27/18, at 1-2 (hereinafter "gag order") (emphasis in original).

On the same day, the trial court issued extensive findings of fact in support of its order. Therein, the trial court found that because Child attended a small private school where both faculty, students, and parents were likely to know each other, the release of Mother's full name in the media identifies Child as the young boy who provided the graphic testimony about the alleged sexual abuse. Findings of Fact, 4/27/2018, at ¶ ¶12-14. The trial court found that "the disclosure of the identity of [Child] in this case is harmful and clearly not in his best interest as there is clearly the potential for curious parents, teachers and students in his school to read this information, which could subject him to undue scrutiny, ridicule and scorn." *Id.* at 15.

While the trial court indicated a willingness to support the transparency of court proceedings and the constitutional right to free speech, it recognized "the harm that thoughtless, vexatious, and vengeful speech can cause a young child caught in the middle of a high-conflict custody battle." *Id.* at 17. Under the circumstances presented, the trial court opined that the right of Child to be free from "undue scrutiny, ridicule, or scorn, outweighs the rights of Mother and her attorney to engage in thoughtless, toxic, misleading and vengeful discourse about this case."[5] *Id.* at 18. Mother and her counsel ("Appellants") filed a notice of appeal.

In their statement of matters complained of on appeal, Appellants contended that the trial court abused its discretion by entering the gag order, which they alleged constituted both a content-based speech restriction and a prior restraint on the content of speech that prohibited them from speaking publicly or communicating about the case in violation of their right to free speech under the United States and Pennsylvania

[5] The trial court additionally found that the actions of Attorney Ducote "bordered on professional misconduct." *Id.*

Constitutions.[6] The trial court strongly disagreed with Appellants' categorization of the gag order as content-based. Trial Court Opinion, 7/6/2018, at 3. Finding no case law directly on point, the trial court examined jurisprudence relating to the sealing of open records and the closure of court proceedings. The court acknowledged that while courts are presumptively open, the Juvenile Act recognizes the need to shield children from harmful public scrutiny in delinquency and dependency matters. *Id.*, at 3-4 (citing 42 Pa.C.S. § 6336(d) (providing that "the general public shall be excluded from hearings under [Chapter 63 of the Juvenile Act]") and 42 Pa.C.S. § 6308 (providing for limited public access to records relating to juvenile proceedings)).

The trial court further cited divorce hearings as another type of proceeding which courts may close to protect rights of parties upon a showing of good cause. *Id.* at 4 (citing Pa.R.C.P. 223(4) (permitting the court to enforce rules and orders to exclude the public or persons not interested in the proceedings when the court deems such exclusion to be in the interest of the public good, order or morals)).

In deciding to restrict Appellants' speech, the court indicated that it considered whether Appellants' conduct and speech tended to identify Child; whether their conduct and speech was harmful to Child; and whether Child's right to be free from undue scrutiny, ridicule and scorn outweighed Appellants' right to "engage in thoughtless, toxic, misleading, and vengeful discourse about this case." *Id.* Based on its specific findings

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[6] The First Amendment to the United States Constitution, entitled, "Religious and political freedom," provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. CONST. amend. I.

Article I, Section 7 of the Pennsylvania Constitution, entitled "Freedom of press and speech; libels," provides, in relevant part, that "[t]he free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty. . ." PA. CONST. art. I, §7.

of fact of April 27, 2018, set forth *supra,* the trial court found good cause to restrict Appellants' speech.

The Superior Court affirmed, finding that the gag order was constitutionally permissible. *S.B. v. S.S.*, 201 A.3d 774 (Pa. Super. 2018). Initially, the court recognized that Appellants' claim implicated the fundamental right to the free exercise of speech as guaranteed by the First Amendment to the United States Constitution and Article I, Section 7 of the Pennsylvania Constitution. The court observed that when the government restricts expression due to the content of the message being conveyed, the restrictions are permitted only if they pass the strict scrutiny standard, which requires the government to demonstrate that the restrictions are narrowly tailored to serve a compelling state interest. *S.B. v. S.S.*, 201 A.3d at 781 (citing *Republican Party of Minnesota v. White*, 536 U.S. 765, 775 (2002)).

The Superior Court reasoned, however, that where the government applies a content-neutral regulation to expressive conduct, the intermediate scrutiny standard set forth in *U.S. v. O'Brien*, 391 U.S. 367 (1968), applies, which justifies the regulation if: "(1) promulgation of the regulation is within the constitutional power of the government; (2) the regulation furthers an important or substantial governmental interest; (3) the governmental interest is unrelated to the suppression of free expression; and (4) the incidental restriction on First Amendment freedoms is no greater than essential to the furtherance of that interest." *S.B. v. S.S.*, 201 A.3d at 781 (citing *O'Brien*, 391 U.S. at 377). The Superior Court observed that the "princip[al] inquiry in determining content neutrality, in speech cases generally and in time, place, or manner cases in particular, is whether the government has adopted a regulation of speech because of disagreement with the message it conveys." *Id.* (citing *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)).

Interpreting the gag order's proscription as limited to any information that would identify or tend to identify Child, the Superior Court found that the gag order was content-neutral. *Id.* at 782. The court reasoned that the gag order "is not concerned with the **content** of Mother and her attorneys' speech, but instead, with the **target** of the speech, namely, Child, a juvenile whose identity and privacy the court seeks to protect." *Id.* (emphasis in original). The court further reasoned that the "power of the parent, even when linked to a free exercise clause claim, may be subject to limitation . . . if it appears that parental decisions will jeopardize the health or safety of the child, or have a potential for significant social burdens." *Id.* (citing *Shepp v. Shepp*, 906 A.2d 1165, 1173 (Pa. 2006) (internal citation omitted)).[7]

Reiterating the trial court's findings that the allegations of sexual abuse by Father were unsubstantiated and that Child suffered emotional trauma from the "strife between the parents," the Superior Court concluded that the "perpetration and magnification of that strife in the media . . . . would exacerbate the harm to Child and constitute an egregious invasion of Child's privacy." *Id.* In the Superior Court's view, the aim of the gag order was "to promote the best interests of Child by protecting his privacy and concealing his identity," while permitting ample alternative channels for Mother and her attorneys to

[7] As noted *infra*, *Shepp* involved a constitutional challenge to a custody order prohibiting a father of Mormon faith from teaching his minor child about polygamy, which is a crime in Pennsylvania. The case highlighted the tension arising between the First Amendment right to free exercise of religion and the Commonwealth's declaration of policy set forth in 23 Pa.C.S. § 5301 (repealed), to assure a reasonable and continuing contact of the child with both parents after a separation or dissolution of the marriage and a sharing of the rights and responsibilities of child-rearing by both parents when in the best interest of the child. This Court held that a court may prohibit a parent from advocating religious beliefs, which, if acted upon, would constitute a crime if it is established that the parent's conduct "would jeopardize the physical or mental health or safety of the child, or have a potential for significant social burdens." *Shepp*, 906 A.2d at 1174.

provide public testimony relating to the broader issues implicated by the custody matter. *Id.*

Finally, the Superior Court rejected Mother's contention that the gag order's terms were unconstitutionally vague or overly broad, finding instead that the order is "clear and narrowly tailored." *Id.* at 783. The court opined that "a person of ordinary intelligence would read the order to forbid exactly what Mother wanted to do: take her case to the media." *Id.* The Superior Court found that the gag order's limited restriction made clear that Mother and her counsel may not discuss anything that will harm Child. *Id.* Accordingly, the Superior Court stated, "Viewing the gag order in light of the above-referenced intermediate test applicable to content-neutral, governmental restrictions on speech, we determine that the order is constitutionally permissible." *Id.* The court further concluded that the order is "narrowly-tailored to advance a substantial government interest at stake, *i.e.*, safeguarding children from various kinds of physical and emotional harm and promoting their well-being, while remaining open to other channels of communication available to Mother and her attorneys."[8] *Id.* at 784.

We granted allocatur in this case to address the following issue:

> In a child custody case, did the Pennsylvania Superior Court err in affirming the gag order in violation of [Appellants'] rights under the First and Fourteenth Amendments to the United States Constitution and Article I, § 7 of the Pennsylvania Constitution when the order precluded the parent and attorneys from speaking publicly about the case in a manner that would identify the child involved?

S.B. v. S.S., 217 A.3d 806 (Pa. 2019).

II. The Parties' Arguments

[8] The Superior Court further reminded Attorney Ducote and Attorney MacIntyre of their ethical obligations under the Pennsylvania Rules of Professional Conduct. *Id.* at n.3.

Appellants contend that the Superior Court's affirmance of the gag order violates their constitutional rights to free speech as the order constitutes "freewheeling censorship" that prohibits them indefinitely from speaking about the case in any manner, while imposing no restrictions on Father's speech. Brief for Appellants at 9. Categorizing the gag order as both a content-based restriction and a prior restraint on speech, Appellants posit that the heightened constitutional standard of strict scrutiny must apply. They maintain that because there is no compelling state interest supporting the imposition of an indefinite and total restraint upon their speech, the gag order cannot stand.[9]

Relating to the claim that the gag order constitutes a content-based restriction on speech, Appellants' position begins with the premise that content-based restrictions require the government to satisfy the strict scrutiny standard to pass constitutional muster. Brief for Appellant at 10 (citing *Turner Broad. Sys. Inc. v. F.C.C.*, 512 U.S. 622, 642 (1994) (internal citation omitted) (holding that "[o]ur precedents thus apply the most exacting scrutiny to regulations that suppress, disadvantage, or impose differential burdens upon speech because of its content")). They contend that the gag order's plain language constitutes a total prohibition against speaking publicly about the custody case in any manner, not only in a manner that identifies Child, as held by the Superior Court.

In support of this contention, Appellants rely exclusively upon the following sentence in the order: "It is hereby ORDERED that [Mother]; Richard Ducote, Esquire; and Victoria McIntyre, Esquire shall NOT speak publicly or communicate about this case including, but not limited to, print and broadcast media, on-line or web-based communications, or inviting the public to view existing on-line or web-based publications." Trial Court Order, 4/27/2018, at 1. Ignoring the remaining text of the gag order, Appellants

[9] Appellants make no distinctions in their arguments relating to the restriction of speech of a parent in a custody proceeding, as opposed to restriction of the speech of an attorney representing a parent in that matter.

view the speech restriction as constituting a total ban on speech of a particular topic, *i.e.*, Child's custody proceeding, which, they argue, renders the regulation of speech content-based.

Concerning the prior restraint claim, Appellants assert that the gag order falls under this category as it restricts their speech prior to them uttering it, thereby rendering the gag order presumptively unconstitutional under both our state and federal charters. Recognizing that prior restraints on speech are not unconstitutional *per se*, Appellants observe that "prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights," and that a prior restraint bears a heavy presumption against its constitutional validity, which cannot be overcome here. Brief for Appellants at 10 (citing *Nebraska Press Association v. Stuart*, 427 U.S. 539, 559 (1976)). Appellants assert that the Superior Court's opinion in this case fails to discuss their claim that the gag order constitutes a prior restraint on the content of their speech. Brief for Appellant at 17.

Rather than setting forth a compelling state interest to support a prior restraint on speech or a content-based restriction on speech, Appellants contend that the lower courts "provided irrelevant and spurious 'justifications' for the gag order which are devoid of any legal significance." Brief for Appellants at 18. They acknowledge that this Court in *Shepp, supra,* observed that the Commonwealth may, in limited circumstances, infringe upon a parent's right to free speech to avoid harm to a child's welfare. Appellants submit, however, that a restriction on speech cannot occur "unless a court finds that a parent's speech is causing or will cause harm to a child's welfare." Brief for Appellant at 19. They contend that the lower courts cited no evidence that the restricted future speech would result in real harm or danger to Child. Appellants posit that a finding of harm to Child's welfare here, based upon a generalized theory that children may be harmed by the

disclosure of negative personal information during custody litigation, would abrogate parents' First Amendment protections in all custody proceedings. Further, they assert that if Child's interests were truly compromised by public speech about the custody matter, the gag order would have prohibited speech by all parties with knowledge of the case, not only the speech of Mother and her counsel.[10]

Discounting that harm would befall Child and similar children in custody matters if public speech were not, in certain circumstances, restrained, Appellants submit that federal courts have chosen to "sacrifice" First Amendment values in criminal cases where the regulated speech affected the fairness of the trial or threatened the administration of justice by influencing a jury, and not in child custody proceedings, which have no jury to taint. Brief for Appellants at 20-21. Similarly, they argue, the trial court's reliance upon children's privacy interests at risk in delinquency and dependency proceedings have little, if anything, to contribute to the First Amendment issues at play here. Appellants further assert, with little elaboration, that other state courts which have addressed gag orders in custody proceedings have found them to be unconstitutional. *Id.* at 21 n.54.

Appellants additionally argue that the gag order's terms are vague and overly broad, as it is difficult to ascertain what speech is precluded and the prohibitions restrict more speech than is necessary under the circumstances. In support of their argument, Appellants cite language in the gag order prohibiting them from "encouraging" third parties to speak publicly or communicate about this case, as well as language precluding them from speaking publicly or communicating in any manner that would "tend to" identify Child.

[10] While Appellants observe that the gag order restricts their speech and not Father's speech, they forward no claim that this fact alone invalidates the order. The essence of the trial court's ruling was that it was necessary to impose the gag order on Mother and her counsel, as they were the only trial participants taking the case to the media to the detriment of Child. This case does not involve a scenario where there was a danger of both parents disclosing intimate facts that would harm the psychological well-being and privacy interests of the child and the court restrained only the speech of one parent.

In their view, there is no clear standard by which to judge whether one's actions violate these vague mandates. Most egregiously, Appellants submit, the gag order prohibits them from publicly stating Mother's name when testifying before legislative bodies about parental alienation or sexual abuse of children in general, or as it relates to this case. They further assert that because there is no temporal limit on the speech restriction, the gag order silences their speech relating to Child's custody proceedings well beyond Child's eighteenth birthday.

In addition to their First Amendment challenge, Appellants also claim that the gag order violates Article I, Section 7, of the Pennsylvania Constitution because the Commonwealth's charter affords broader protection than the First Amendment. Brief for Appellants at 11-12 (citing *Pap's A.M. v. City of Erie*, 812 A.2d 591, 603 (Pa. 2002) (explaining that Article I, Section 7 of the Pennsylvania Constitution provides additional protections than its federal counterpart as "it guarantees not only freedom of speech and the press, but specifically affirms the 'invaluable right' to the 'free communication of thoughts and opinions,' and the right of 'every citizen' to 'speak freely' on 'any subject' so long as that liberty is not abused")).

Finally, Appellants contend that there are significant public policy considerations that mandate this Court's reversal of the gag order. *See* Brief for Appellants at 35-36, 37 (asserting that "the gag order muzzles Appellants' voices from not only the nationwide problem of family courts failing to protect sexually abused children in custody cases, but also from discussing the details of this case in light of other relevant important discourse;" and that upholding the gag order "sends a message . . . that others in a comparable position should err on the side of silence when considering speaking out, for fear of similar constitutional and financial harms").

In response, Father contends that the Superior Court did not err in affirming the trial court's carefully-tailored restriction of Appellants' speech, after concluding that the speech was harmful and dangerous to Child's psychological and emotional well-being. Initially, he highlights the factual findings made by the trial court in both the underlying custody matter, which are not at issue herein, and in the present gag order litigation, which he contends are supported by the record. Father reminds this Court that the trial court's custody decision was based upon the finding that it was not Father, but Mother who posed a danger to Child.

Father emphasizes that Mother's allegations that he sexually abused Child arose soon after an order was entered increasing his custody time with Child, and that Mother subsequently alienated Child from Father and the rest of Child's family. Brief for Appellee at 2 n.3 (citing *S.B. v. S.S.*, 74 WDA 2017 (Pa. Super. 2017), at 11-12 (stating, "The core of this custody case is not allegations of sexual abuse; it is isolation and alienation. Child's vulnerability and susceptibility to Mother's influence . . . is not lost on this Court. Our review of the record indicates that Mother has systematically engineered an isolation plan, at Child's psychological expense.")). He further reiterates that Appellants placed the story with the news media by holding an online press conference that provided access to select graphic and misleading materials, such as Child's testimony and forensic interview regarding the allegations of sexual abuse by Father, which had been deemed unfounded.[11]

[11] Acknowledging Child's specific allegations of sexual abuse against him, Father explains that Child's sexual descriptions "were delivered cheerfully by rote without suggestion of trauma, resembled not actual sex acts but a child's imagination thereof, were highly inconsistent and evolved and escalated precisely in tandem with Mother's litigation needs, [and] were delivered only after many months of isolation by Mother from all who loved [Child]." Brief for Appellee at 3 n.4. Father further asserts that Child's allegations of sexual abuse "were accompanied in evidence by an audiotape of [Child] weeping privately to Mother that he could not remember the abuse Mother insisted he had

As to the pertinent legal analysis, Father adopts the reasoning of the lower courts in this matter. While not disputing Appellants' primary contention regarding the deference afforded to the constitutionally protected right to free speech, Father takes the position that no rights, not even fundamental ones, are unconditional. Contrary to Appellants' contention that their right to free speech may not be limited at all under the circumstances presented, Father posits that the trial court acted within constitutional boundaries when imposing the narrow restrictions on Appellants' speech based upon the detailed findings of fact establishing that the challenged speech in the custody matter would expose Child to undue ridicule, scorn, and scrutiny.

In Father's view, the speech restriction focuses upon Child as the target of the speech, as opposed to the content of Appellants' message. Thus, he concludes, the restriction on speech need not be subject to the highest constitutional standard of strict scrutiny and, instead, is constitutional as it furthers the important governmental interest of safeguarding the well-being and privacy of Child, who is caught in the midst of a contentious custody proceeding.

Finally, Father submits that the gag order's terms are not vague or overly broad. He maintains that the order clearly provides that Appellants can speak publicly about the issues of parental alienation or child sexual abuse, either generally or as those topics relate to this case specifically, but may not do so in a manner that identifies Child. Similarly, Father contends, the gag order permits Appellants to express opinions about the trial court judge and the entry of the custody order in this case, so long as those expressions do not disclose Child's identity. Thus, he concludes, a person of ordinary intelligence would know that the gag order restrains only speech that identifies Child and

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endured, and Mother's assurance that he would eventually remember it if he continued to describe it." *Id.*

subjects Child to psychological harm. Accordingly, Father urges this Court to affirm the Superior Court's judgment that upheld the constitutionality of the trial court's gag order.

III. Analysis

As Appellants challenge the gag order on the ground that it violates the right to free speech as guaranteed by the state and federal constitutions, their appeal presents questions of law for which our standard of review is *de novo* and our scope of review is plenary. *Commonwealth v. Davis*, 220 A.3d 534, 540 (Pa. 2019). In conducting our inquiry, we acknowledge that "in cases raising First Amendment issues . . . an appellate court has an obligation to 'make an independent examination of the whole record' in order to make sure that 'the judgment does not constitute a forbidden intrusion on the field of free expression.'" *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1038 (1991) (internal citation omitted).

Appellants' claim clearly implicates the fundamental right to the free exercise of speech as guaranteed by the First Amendment to the United States Constitution and Article I, Section 7 of the Pennsylvania Constitution. We first examine Appellants' challenge under the United States Constitution. Ratified in 1791, the First Amendment provides, in relevant part, that Congress shall make no law "abridging the freedom of speech." U.S. CONST. AMEND. I; *Barr v. Am. Ass'n of Political Consultants*, 140 S.Ct. 2335, 2346 (2020). The First Amendment's free-speech clause is made applicable to the states through the Fourteenth Amendment. *Manhattan Cmty. Access Corp. v. Halleck*, 139 S. Ct. 1921, 1928 (2019).

It is beyond cavil that our political and cultural lives rest upon the principle, guaranteed by the First Amendment, "that each person should decide for him or herself the ideas and beliefs deserving of expression, consideration, and adherence." *Turner Broad. Sys. v. FCC*, 512 U.S. at 641. Accordingly, the First Amendment precludes the

government from restricting expression due to its message, ideas, subject matter, or content. *Police Dept. of Chicago v. Mosely*, 408 U.S. 92, 95 (1972). One's constitutional right to free speech, however, while fundamental, is not absolute. *Neb. Press Ass'n*, 427 U.S. at 570. Freedom of speech "does not comprehend the right to speak on any subject at any time." *American Communications Assn. v. Douds*, 339 U.S. 382, 394 (1950). Instead, First Amendment freedoms must be "applied in light of the special characteristics of the [relevant] environment." *Tinker v. Des Moines Indep. Community Sch. Dist.*, 393 U.S. 503, 506 (1969).

Keeping in mind these general principles, we first consider the nature of the restriction placed on Appellants' speech.

A. Nature of Speech Restriction

It is well-established that content-based restrictions on speech are presumptively unconstitutional and are subject to the strict scrutiny standard, which requires the government to prove that the restrictions are narrowly tailored to serve a compelling state interest. *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). "Government regulation of speech is content based if a law applies to a particular speech because of the topic discussed or the idea or message expressed." *Id.*

Determining whether a particular restriction on speech is content based or content neutral is not always a simple endeavor. *Turner Broad. Sys.*, 512 U.S. at 642. A restriction is content based if either the face of the regulation or the purpose of the regulation is based upon the message the speaker is conveying. *Reed*, 576 U.S. at 163-64. *See e.g.*, *Barr*, *supra* (holding that a federal statute permitting only those robocalls that relate to the collection of government debt is clearly a content-based restriction on speech because the law favors speech made for collecting government debt over political and other speech).

To the contrary, "regulations that are unrelated to the content of speech are subject to an intermediate level of scrutiny because in most cases they pose a less substantial risk of excising certain ideas or viewpoints from the public dialogue." *Turner Broad. Sys.*, 512 U.S. at 642 (internal citation omitted). A content-neutral regulation of speech passes constitutional muster if it satisfies the following four-part standard set forth by the High Court in *United States v. O'Brien, supra*: (1) the regulation was promulgated within the constitutional power of government; (2) the regulation furthers an important or substantial governmental interest; (3) the government interest is unrelated to the suppression of free expression; and (4) the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest. *United States v. O'Brien*, 391 U.S. at 377.

So long as the regulation of speech is not a means, subtle or otherwise, of exercising content preference, it is not presumed invalid. *See Turner Broad. Sys., supra* (deeming the challenged statute content neutral because the face of the statute distinguishes between speakers in the television programming market based only on the manner in which the programmers transmit their messages to viewers, not the content of the messages they carry, and the purpose for which the statute was enacted is also unrelated to content).

Restrictions on the time, place and manner of expression, whether oral, written or symbolized by conduct, are a form of a content-neutral regulation of speech. *Clark v. Community for Creative Non-Violence,* 468 U.S. 288, 293 (1984). These restrictions may make it more difficult for an individual to engage in a desired speech-related activity by targeting, *inter alia*, the means of speech or the method of communication, but they do not target the content of the message ultimately conveyed. Time, place, and manner restrictions are valid, provided that they: (1) are justified without reference to the content

of the regulated speech; (2) are narrowly tailored to serve a significant governmental interest unrelated to speech;[12] and (3) leave open ample alternative channels for communication of the information. *Id.*

The High Court has explained that "[t]he principal inquiry in determining content neutrality, in speech cases generally and in time, place, or manner cases in particular, is whether the government has adopted a regulation of speech because of disagreement with the message it conveys." *Ward,* 491 U.S. at 791 (internal citation omitted). The government's purpose of the speech restriction is the controlling consideration and, if the purpose is unrelated to the expression of content, the restriction is deemed neutral, even though the speech restriction may have an incidental effect on some speakers or messages, but not others. *Id.*

While the precise text of the two constitutional standards differ (*i.e.*, the *O'Brien* standard employed to determine whether a regulation of speech is content neutral and the specific standard applicable to time, place, and manner restrictions on speech), the High Court has clarified that the *O'Brien* standard "is little, if any, different from the standard applied to time, place, or manner restrictions." *Community for Creative Non-Violence*, 468 U.S. at 298.

Viewing the gag order in accord with this federal jurisprudence, we conclude that, when read in its entirety, the order constitutes a content-neutral restriction on the manner by which Appellants may convey their public speech, which was imposed for the exclusive

[12] The United States Supreme Court has clarified that "a regulation of the time, place, or manner of protected speech must be narrowly tailored to serve the government's legitimate, content-neutral interests but that it need not be the least restrictive or least intrusive means of doing so." *Ward v. Rock Against Racism*, 491 U.S. at 798.

purpose of protecting the psychological well-being and privacy of Child, and was not intended to, and, indeed, does not restrict Appellants' message.[13]

In this regard, we respectfully reject Appellants' contention that the gag order constitutes a total ban on all speech relating to the topic of Child's custody proceeding, as we find such contention unsupported by the order's plain text and its clearly articulated purpose. To illustrate, the gag order begins with language providing that Appellants shall not "speak publicly or communicate about this case." Trial Court Order, 4/27/18, at 1. It further provides for two additional restrictions: (1) providing that Appellants shall not "direct or encourage third parties to speak publicly or communicate about this case;" and (2) requiring Appellants to remove within twenty-four hours information publicly posted about this case. *Id.* at 1-2.

Germane to this appeal, the gag order includes additional provisions expressly permitting public speech relating to Child's custody proceeding if conveyed in a particular manner. The gag order states that Appellants may "provide public testimony in the State House and/or Senate and in the United States Congress and Senate about parent alienation, sexual abuse of children in general or as it relates to this case," so long as their speech is not conveyed in a manner that would identify Child, such as publicly stating Mother's name, or publicly referring to either parent or Child. *Id.* Finally, the gag order clarifies what speech is not proscribed. It states that the order "does not prohibit any party

[13] Respectfully, contrary to Justice Wecht's dissenting opinion, which focuses primarily upon that portion of the gag order precluding Appellants from "speak[ing] publicly or communicat[ing] about" the custody matter, our constitutional analysis is based upon consideration of the gag order in its entirety. As demonstrated throughout, the language of the gag order is nuanced uniquely and tailored to circumvent a specific manner of public speech that was found, based upon an extensive factual record, to cause imminent harm to Child, and does not discriminate based upon the content of the message conveyed. For this reason, the out-of-state cases cited by the dissenting opinion are wholly distinguishable as they involve gag orders that contain proscriptions distinct from those at issue in this appeal and circumstances unlike those presented herein.

or counsel from publicly speaking or expressing an opinion about the Judge, including disclosing the entry of this Order of Court," after the enumerated posted information has been removed and as long as Child's identity is not disclosed by the communication. *Id.* at 2.

A careful review of this language reveals that, contrary to Appellants' assertions, the gag order in no way silences them from expressing all of their views on important issues relating to the custody proceeding. Indeed, while the gag order precludes Appellants from speaking publicly about "this case," when read in context, the order affords Appellants ample opportunity to disseminate all of their thoughts into the marketplace of ideas without restriction on the content of their message. The gag order further allows Appellants to voice all of their opinions regarding issues important to them, including parental alienation, child sexual abuse, and placement of children in the custody of sexually abusive parents, and to testify about these issues before governmental bodies in an effort to remedy these vital societal concerns. The only limitation on Appellants' speech lies in the manner of communication, as they are precluded from conveying such public speech in a way that exposes Child's identity and subjects him to harm. Thus, the order does not deny Appellants the opportunity to be the catalyst for social or political change. *See Meyer v. Grant*, 486 U.S. 414, 421 (1988) (internal citation omitted) (observing that the "First Amendment was fashioned to assure unfettered exchange of ideas for the bringing about of political and social changes desired by the people").

The gag order also does not discriminate against speech relating to the trial court's actual entry of the gag order itself or speech criticizing the trial court's judgment in issuing that order. As noted, once Appellants remove from the public domain the enumerated information found to be harmful to Child, they are free to criticize the trial court's decision, assuming they do so in a manner that does not disclose Child's identity. Hence, the gag

order places no restraint on Appellants' message regarding the governmental actions that were taken in connection with Child's custody case. *See Mills v. Alabama*, 384 U.S. 214, 218 (1966) (observing that "[w]hatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that amendment was to protect the free discussion of governmental affairs").

Under these circumstances, we hold that the gag order is content neutral, as the restrictions therein were not motivated by hostility toward Appellants' message and targeted only the method of communication for the exclusive purpose of protecting the psychological well-being and privacy of Child. Accordingly, the heightened constitutional standard of strict scrutiny is inapplicable. Instead, we proceed to apply the intermediate standard of constitutional scrutiny set forth in *United States v. O'Brien, supra*, as well as the similar federal precedent applicable to restrictions placed on the time, place, and manner of speech.

B. O'Brien Factors

1. Constitutional Power of Government

The first *O'Brien* factor involves a determination of whether the regulation of speech was promulgated within the constitutional power of government. This factor requires little discussion and has scant import here as no party contends that, aside from its effect on free speech rights, protecting the interests of a child subject to a custody determination is beyond the constitutional power of the judiciary. This first factor, is, thus, clearly satisfied.

2. Furtherance of an Important or Substantial Governmental Interest

The second *O'Brien* factor requires that the speech restriction further an important or substantial governmental interest. In this appeal, determining the degree of importance of the governmental interest asserted requires the balancing of Appellants' interest in

unfettered expression of free speech against Child's interest in psychological and emotional well-being and privacy. We observe that strikingly absent from Appellants' fervent efforts to safeguard their fundamental right to free speech is any acknowledgment that the cost of exercising that right is the curtailment of Child's right to freedom from lasting psychological and emotional trauma in derogation of his overall best interests.

For the reasons set forth *infra*, we find that the trial court correctly concluded that the justifications for the speech restrictions contained in the gag order are, without question, important and substantial, and that Child's right to psychological and emotional well-being and privacy outweigh Mother and Counsel's right to free speech. *See Seattle Times v. Rhinehart*, 467 U.S. 20, 32 n.18 (1984) (providing that while litigants do not surrender their First Amendment rights at the door of the courthouse, those rights may be subordinated to other rights or interests that arise during trial).

As a general matter, it is well-settled that protecting a minor from psychological and physical harm serves an important governmental interest, in fact, in many circumstances, a compelling state interest. *See Sable Communications of Cal*, 492 U.S. 115, 126 (1989) (acknowledging that "there is a compelling interest in protecting the physical and psychological well-being of minors"); *D.P. v. G.J.P.*, 146 A.3d 204, 211 (Pa. 2016) (providing that "[b]roadly speaking, the state, acting pursuant to its *parens patriae* power, has a compelling interest in safeguarding children from various kinds of physical and emotion harm and promoting their well[-]being"); *Hiller v. Faust*, 904 A.2d 875, 886 (Pa. 2006) (providing that "the compelling state interest at issue in this case is the state's longstanding interest in protecting the health and emotional welfare of children").

This sentiment was expressed in our decision in *Shepp v. Shepp*, *supra*, which involved the constitutionality of a custody order prohibiting a father of Mormon faith from teaching his minor daughter about polygamy, which is a crime in Pennsylvania. Although

not styled as a free speech claim, the case involved the tension arising between the First Amendment right to free exercise of religion and the Commonwealth's declaration of policy set forth in 23 Pa.C.S. § 5301 (repealed), to assure a reasonable and continuing contact of the child with both parents after a separation or dissolution of the marriage and a sharing of the rights and responsibilities of child-rearing by both parents when in the best interests of the child.

Upon a review of jurisprudence relevant to a claim of free exercise of religion, this Court in *Shepp* held that a court may prohibit a parent from advocating religious beliefs, which, if acted upon, would constitute a crime, if it is established that the parent's conduct "would jeopardize the physical or mental health or safety of the child, or have a potential for significant social burdens." *Shepp*, 906 A.2d at 1174. We clarified that the "state's compelling interest to protect a child in any given case, however, is not triggered unless a court finds that a parent's speech is causing or will cause harm to a child's welfare." *Id.* at 1173.

In fact, Appellants concede that this Court observed in *Shepp* that the Commonwealth may, in limited circumstances, infringe upon a parent's right to free speech to avoid harm to a child's welfare. *See* Brief for Appellant at 19. They contend, however, that there was no demonstration of harm to Child resulting from their speech, and posit that the trial court "provided irrelevant and spurious 'justifications' for the gag order which are devoid of any legal significance." *Id*. at 18. Respectfully, we disagree completely, as the trial court's findings of harm to Child resulting from Appellant's speech were articulate, specific, and supported by the record.

In this most unusual custody case, where the hearing spanned over twenty-three days and the parties presented twenty-four witnesses and nearly two hundred exhibits, a review of the finding of harm should be considered in the context of the custody

proceeding in its entirety. Upon hearing all the evidence and evaluating the credibility of every witness, the trial court concluded that the allegations that Child was sexually abused by Father were unfounded, and that it was Mother's actions in alienating Child from Father and his extended family that caused Child substantial harm, and not the actions of Father.[14]

The impetus for issuance of the gag order was Appellants' online press conference, which contained a link to pleadings from the custody case, a transcript of Child's testimony, and a copy of Child's forensic interview, setting forth, in Child's own words, detailed allegations of sexual abuse by Father, which the trial court had found did not occur. While Child's name was not mentioned in the press conference, Mother's identity was disclosed, thereby allowing those in the community to ascertain easily the identity of Child. A few weeks later, although not identifying Child, a local paper quoted the same detailed account of Child's sexual assault allegation that had appeared in the press conference.

The sensitive nature of the information disclosed during Appellants' press conference is troubling as it reveals Child's description of what he mistakenly thought may have occurred in terms of sexual abuse by Father. The online public posting allowing the community and the world to view Child's own words regarding his most intimate thoughts and fears of parental sexual abuse would undoubtedly leave an indelible mark on an

[14] As noted, in the prior proceeding the Superior Court affirmed the order granting custody of Child to Father, holding that the record supported the trial court's finding that Mother alienated Child from Father, and that Father did not sexually abuse Child. This Court subsequently denied allocatur. Thus, we summarily reject Appellants' attempt to challenge in this appeal the finding that Father did not sexually abuse Child.

innocent twelve-year-old boy, as will the entire protracted and contentious custody battle.[15]

The trial court made specific factual findings, explaining that Appellants' quest to take the custody case to the media was particularly harmful to Child and not in his best interests because when parents, students and teachers in Child's small private school read the graphic account, it will subject Child to "undue scrutiny, ridicule, and scorn." Trial Court Opinion, 7/6/2018, at 6. While appreciating Appellants' competing First Amendment rights, the trial court recognized "the harm that thoughtless, vexatious, and vengeful speech can cause a young child caught in the middle of a high-conflict custody battle." *Id.* We concur in the trial court's assessment in this regard.

As these facts demonstrate, it would be inappropriate for this Court to conclude that Appellants' First Amendment rights render a trial court in a custody proceeding powerless to safeguard a child from threatened psychological harm stemming from the manner by which a parent delivers his or her speech. Otherwise, an innocent child in a custody proceeding could be become a public spectacle during the very judicial process that is intended to promote the child's best interests. The First Amendment does not require such a result.

Accordingly, to balance the important interests at stake, we hold that a restriction on the manner of parental speech in a custody case furthers an important governmental interest where there is a substantial likelihood that the restrained speech has harmed or will imminently harm the child. Finding that such justification has been satisfied here, we conclude that the second *O'Brien* factor has been clearly established.

3. Governmental Interest Unrelated to Suppression of Free Expression

[15] The record establishes that Child was born in 2006 and the online press conference was conducted in 2018. Thus, Child would have been about twelve years of age at the time.

We have already concluded that the justification of the gag order, to protect the psychological well-being and privacy of Child, is unrelated to the suppression of the content of Appellants' expression, thereby satisfying the third prong of the *O'Brien* standard.

4. Incidental Restriction is No Greater Than Essential

In legal parlance, this fourth prong of the *O'Brien* test (*i.e.*, that the incidental restriction on speech is no greater than is essential to the furtherance of that interest) is identified more readily by the nomenclature employed in jurisprudence discussing time, place, and manner restrictions, *i.e.*, requiring the restriction on speech to be "narrowly tailored" to serve the articulated governmental interest. *Ward*, 491 U.S. at 798.[16] Appellants contend that the gag order is not narrowly tailored, but contains overly broad terms that prohibit all speech on the topic of the Child custody proceeding.

We have already examined at length Appellants' contention in this regard, and have concluded that it is unsupported by the text and articulated purpose of the gag order. As discussed extensively throughout, although the gag order contains the restriction directing Appellants not to speak publicly about "this case," when read in context the order affords Appellants ample opportunity to disseminate their thoughts into the marketplace of ideas without restriction on the content of their message, to voice their opinions regarding issues important to them, including the societal concerns involved in this custody case and the propriety of the trial court's rulings, and to testify about these concerns before governmental bodies, as long as Appellants do so in a manner that protects Child's identity.

[16] As noted, the High Court has clarified that while a regulation of the time, place, or manner of protected speech must be narrowly tailored to serve the government's legitimate, content-neutral interests, the government need not employ "the least restrictive or least intrusive means of doing so." *Id.*

Appellants, however, offer an additional ground upon which to base a finding that the language of the order is too broad. They emphasize that the order prohibits Appellants from publicly stating Mother's name when testifying before legislative bodies about topics such as parental alienation or sexual abuse. While at first blush it may seem severe to preclude Mother from stating her name when publicly speaking about societal issues that arose in the case, the simple fact remains that public release of the identity of Mother discloses the identity of Child, undermining the essence of what the trial court was seeking to accomplish; protection of Child's psychological and emotion well-being and his privacy.

As further evidence that the gag order was narrowly crafted, we observe that the order applied only to Mother and her counsel. The trial court did not seal the record of the custody trial nor impose any prior restraints upon the press that precluded the dissemination of information relating to the custody trial. The United States Supreme Court has observed that limiting the speech of trial participants is a less restrictive alternative than imposing a prior restraint on the press itself. *See e.g. Sheppard v. Maxwell*, 384 U.S. 333, 361 (1966) (outlining less restrictive measures than imposing prior restraints on the press, including the proscription of extrajudicial statements by the parties, their counsel, witnesses, and court officials); *Nebraska Press Ass'n,* 427 U.S. at 564 (same).

Rather, the trial court took the precise action that would prevent Mother and her counsel from taking their case to the media - restricting their public speech about the custody proceeding that would identify and harm Child. As discussed at length herein, the trial court went to great lengths to narrow such restriction by leaving open ample alternatives for communication of the information Appellants wanted to express, restricting only the manner by which that speech could be conveyed, *i.e.*, refraining from

identifying Child while disseminating their message. Accordingly, we conclude that the speech restrictions contained in the gag order were narrowly tailored to further the important government interest of protecting Child.

C. Vagueness Challenge

We next address Appellants' claim that the gag order is vague because the restrictions on speech contained therein are unclear, rendering it difficult to ascertain what conduct is prohibited. First, Appellants challenge language in the order precluding them from speaking before legislative bodies in a manner that would "tend" to identify Child. Second, they posit that the language providing that they may not "encourage" third parties to speak or communicate publicly about the case is vague, as it is capable of multiple interpretations. Finally, Appellants maintain that the duration of the gag order is unclear as it sets forth no expiration date.

An unconstitutionally vague law is one that fails to give a person of ordinary intelligence fair notice that his or her contemplated conduct is forbidden by law. *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972). Restraints on speech must include "some sensible basis for distinguishing what may come in from what must stay out." *Minn. Voters Alliance v. Mansky*, 138 S.Ct. 1876, 1888 (2018). So long as the law "gives adequate warning of what activities it proscribes" and sets forth "explicit standards" for those individuals who must apply it, the law is not unconstitutionally vague. *Broadrick v. Okla.*, 413 U.S. 601, 607 (1973) (citation omitted). While it is inevitable that words contain "germs of uncertainty" and that disputes may arise over the meaning of particular terms, a law shall not be invalidated on vagueness grounds if its terms are set forth in a manner "that the ordinary person exercising ordinary common sense can sufficiently understand and comply with, without sacrifice to the public interest." *Id.* at 608.

Applying this jurisprudence to the language of the gag order, we conclude that the language is not unconstitutionally vague as it clearly informs Appellants that they may not speak publicly about the custody matter in a manner that will disclose Child's identity. Appellants' specific assertions to the contrary are unpersuasive. First, we decline to engage in a pedantic dissection of the word "tend" as used in the language of the gag order precluding Appellants from speaking publicly about the custody case in a manner that would "tend" to identify Child. As noted throughout, the trial court made clear that it was precluding only speech about the custody case communicated in manner that would identify Child.

Similarly, the preclusion against "direct[ing] or encourage[ing]" others to communicate or speak publicly about the case is clear when read in the context of other language in the order directing Appellants to remove the extensive information already posted online, which Appellants had encouraged others to view. Finally, while the gag order admittedly does not include a duration for the speech restrictions, it is undeniable that the trial court imposed the order to protect a child's interests; thus, such preclusion would continue only during the child's minority. We advise trial courts, however, to utilize precise terms of duration when drafting orders imposing restrictions on the manner of speech under circumstances where the duration of the prohibition is unclear, as such an omission could form the basis for a successful vagueness challenge.

Accordingly, we agree with the Superior Court's conclusion that a person of ordinary intelligence would read the gag order to forbid Appellants from taking this peculiar custody case to the media in a way that would harm the psychological and emotional well-being of Child. Thus, we decline to afford Appellants' relief on their vagueness challenge.

D. Article I, Section 7 of the Pennsylvania Constitution

Because we need to effectuate fully the protections contained in the state charter, we proceed to examine Appellants' claim that, even assuming that the gag order satisfies the requisites of the federal constitution, it violates Article I, Section 7 of the Pennsylvania Constitution. *See Commonwealth v. Edmunds*, 586 A.2d 887, 894 (Pa. 1991) (holding that "we are not bound by the decisions of the United States Supreme Court which interpret similar (yet distinct) federal constitutional provisions").

We acknowledge that Article I, Section 7 is an ancestor and not a stepchild of the First Amendment, and that the protections that it guarantees are firmly rooted in Pennsylvania history and experience. *Commonwealth v. Tate*, 432 A.2d 1382, 1388 (Pa. 1981). We additionally observe that in certain circumstances this Court has afforded greater protection under Article I, Section 7, than guaranteed by its federal counterpart. *See Pap's A.M., supra* (holding that a public decency ordinance that made it a summary offense to appear nude in public violates the freedom of expression provision of Article I, Section 7 of the Pennsylvania Constitution, notwithstanding that the ordinance does not violate the First Amendment).

However, Appellants have offered no meaningful argument or authority, and this Court has found none, suggesting that Article I, Section 7 requires the application of a heightened constitutional standard to a content-neutral restriction on a parent's free speech rights, as exercised during a custody proceeding where the trial court has made a specific finding that the speech harms the child's right to psychological and emotional well-being and privacy. As Appellants have failed to persuade us to the contrary, we conclude that the protections afforded by the First Amendment and Article I, Section 7 are coextensive as it relates to the particular circumstances presented by this appeal.

Accordingly, for the reasons set forth in our discussion of the First Amendment in which we examined the gag order's content-neutral restrictions pursuant to the

intermediate constitutional standard and balanced the competing interests of Appellants and Child, we respectfully find no merit to Appellants' contention under our state charter.

E. Conclusion

In summary, we reject Appellants' contentions that the gag order issued in the custody proceeding constitutes a content-based speech restriction or a prior restraint on the content of their speech. Instead, we hold that the gag order restricts only the manner of Appellants' speech and not the content. Because the speech restrictions are justified by the important governmental interest of protecting the psychological and emotional well-being of Child and the Child's privacy, and are narrowly tailored to serve that articulated governmental interest, they do not violate the First Amendment to the United States Constitution. We further conclude that the gag order is not unconstitutionally vague. Finally, we hold that the gag order does not violate Article I, Section 7 of the Pennsylvania Constitution. Thus, we affirm the judgment of the Superior Court, which upheld the constitutionality of the gag order.

Chief Justice Saylor and Justices Todd, Dougherty and Mundy join the opinion.

Chief Justice Saylor files a concurring opinion in which Justice Dougherty joins.

Justice Wecht files a dissenting opinion in which Justice Donohue joins.

[J-29-2020] [MO: Baer, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

S.B.	:	No. 39 WAP 2019
	:	
	:	Appeal from the Order of the
v.	:	Superior Court entered December
	:	24, 2018 at No. 753 WDA 2018,
	:	affirming the Order of the Court of
S.S.	:	Common Pleas of Allegheny County
	:	entered April 27, 2018 at No. FD-15-
	:	008183-10.
APPEAL OF: S.S., RICHARD DUCOTE,	:	
ESQUIRE, AND VICTORIA MCINTYRE,	:	ARGUED: May 27, 2020
ESQUIRE	:	

DISSENTING OPINION

JUSTICE WECHT **DECIDED: DECEMBER 22, 2020**

The Majority discerns no constitutional infirmity in a gag order that bars a parent and her attorneys in a contentious and ongoing custody case from "speak[ing] publicly or communicat[ing] about" that case.[1] The order that today's Majority blesses does not stop there; it even purports to prohibit the parent and her lawyers from "direct[ing] or encourag[ing] third parties to speak" about the case.[2] The gag order allows only two limited exceptions: (1) testifying before either the Pennsylvania General Assembly or the United States Congress; and (2) "expressing an opinion about the [trial] Judge."[3] Even in those two circumscribed contexts, while the parent ("Mother") and her counsel may

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1 Findings of Fact and Order of Court ("T.C.O."), 4/27/2018, at 4; R.R. at 323(a).

2 *Id.*

3 *Id.* at 5.

speak, they may not identify Mother by name, nor disclose any information that would "tend to identify" Mother's child.[4] The gag order is without any time limit whatsoever; it applies in perpetuity. No doubt, there are countries in our world where overbroad prior restraints on speech of this sort pass muster. But not here. Or so I thought, until today.

Let's be honest. Mother is no Girl Scout. There are appealing reasons why a judge might seek to limit Mother's speech and that of her attorneys. These reasons arise from the extraordinary and potentially psychologically injurious pattern of public conduct in which Mother and her attorneys ("Counsel") have engaged. But if one thing ought to be clear from American legal history, it is that we should not allow hard cases to make bad law. Certainly, most of our constitutional protections have been forged in unseemly crucibles.[5] In bestowing its constitutional imprimatur on a gag order so broad, the Majority risks erosion of core First Amendment protections.

I do not dispute the trial court's factual findings. Nor do I doubt the sincerity and good intentions that underlie the efforts by the lower courts and by today's Majority which aim to protect the child ("Child") from harmful consequences that could ensue from the Mother's speech and that of her Counsel. This is an unusual case. The testimony of a child in a custody dispute is rarely the subject of a press conference. Far more frequently, a child is harmed when a parent criticizes the other parent to the child or shares details of a divorce with a confidant in the child's presence. But regardless of the source of the

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4 *Id.*

5 Messrs. Miranda, Escobedo, and Gideon, for example, were hardly model citizens. *See Miranda v. Arizona*, 384 U.S. 436 (1966) (holding that statements will be inadmissible as a violation of the Fifth Amendment when obtained in a police interrogation without the suspect receiving warning of his or her rights); *Escobedo v. State of Ill.*, 378 U.S. 478 (1964) (holding that when a suspect is interrogated with the goal of eliciting incriminating statements and the suspect has not been warned about his or her right to remain silent, the denial of the opportunity to consult with the suspect's attorney is a violation of the Sixth Amendment); *Gideon v. Wainwright*, 372 U.S. 335 (1963) (holding that an indigent defendant in a state criminal prosecution has a right to court-appointed counsel).

harmful speech, and good intentions notwithstanding, American courts may not enter unconstitutionally overbroad, content-based gag orders at will.

The order that we examine today reads as follows:

> [Father's] Motion for Other Relief is **GRANTED** in part. It is hereby **ORDERED** that [Mother]; Richard Ducote, Esquire; and Victoria McIntyre, Esquire shall NOT speak publicly or communicate about this case including, but not limited to, print and broadcast media, on-line or web-based communications, or inviting the public to view existing on-line or web-based publications. The following is also **ORDERED**.
>
> 1. [Mother]; Richard Ducote, Esquire; and Victoria McIntyre shall NOT direct or encourage third parties to speak publicly or communicate about this case including, but not limited to, print and broadcast media, on-line or web-based communications, or inviting the public to view existing on-line or web-based publications.
> 2. [Mother]; Richard Ducote, Esquire, and Victoria McIntyre may provide public testimony in the State House and/or Senate in the United States Congress and Senate about parental alienation, sexual abuse of children in general or as it relates to this case. However, in providing such testimony, they shall NOT disclose any information that would identify or tend to identify the Child. [Mother] shall NOT publically state her name, the name of the Child, or [Father's] name. Attorney Ducote and Attorney McIntyre shall NOT publically refer to [Mother], the Child, or [Father] by name or in any manner that would tend to identify the aforementioned parties.
> 3. [Mother] and Counsel shall remove information about this case, which has been publically posted by [Mother] or Counsel, including but not limited to, the press release, the press conference on the YouTube site, the Drop Box and its contents, and other online information accessible to the public, **within twenty-four (24) hours.** [Mother] and Counsel shall download or place the aforementioned information onto a thumb drive, which shall be filed with this court.
>
> The Oral Motion to Stay This Order of Court, made on behalf of [MOTHER] is **DENIED**[.]
>
> This Order does not prohibit any party or counsel from publicly speaking or expressing an opinion about the Judge, including disclosing the entry of this Order of Court, ***after*** the information has been removed as set forth, above. However, such expression shall NOT contain the name of the Child or other information, which would tend to identify the Child.

T.C.O. at 4-5 (emphasis in the original).

The Majority maintains that this gag order "in no way silences [Mother or Counsel] from expressing all of their views on important issues relating to the custody proceeding."[6] The Majority further claims that, "when read in context, the order affords Appellants ample opportunity to disseminate all of their thoughts into the marketplace of ideas without restriction on the content of their message."[7]

I disagree. The order expressly prohibits Mother and Counsel from speaking publicly or communicating about the case. The order even provides some examples of the prohibited communication methods, and then proceeds to stress that the prohibition is not limited to those methods. The order prohibits Mother and Counsel from using a third party to communicate about the case, and requires Mother and Counsel affirmatively to remove information posted about the case. As noted, the order provides two limited exceptions to its sweeping prohibitions. Provided that Child is not identified and Mother is not named, Mother and Counsel may testify before a legislative body and may express an opinion about "the Judge." Far from affording Mother and Counsel "ample opportunity to disseminate all their thoughts into the marketplace of ideas without restriction on the content of their message,"[8] this gag order in fact closes that marketplace, barricades all but two narrow avenues of expression, and imposes substantial roadblocks even upon those outlets.

The question before us is not whether Mother's and Counsel's speech was wise or appropriate. It was neither. Holding a press conference that highlights sensitive information about Child certainly casts into doubt any claim that Mother acted in Child's

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6 Maj. Op. at 22.

7 *Id.* at 23.

8 *Id.*

best interests. Mother's conduct no doubt was a legitimate consideration as the trial court weighed the parents' claims regarding custody of Child. But the Majority fails to understand that the question before us — whether Mother's speech rights were infringed — is a separate issue. At this late date, it should no longer need to be said that First Amendment cases rarely involve speech that is pleasant, agreeable, or temperate.[9]

In the absence of relevant precedent from this Court, we might seek wisdom from other jurisdictions that have confronted similar issues. In the context of a juvenile court case, the Nebraska Court of Appeals examined a gag order that precluded the parents from discussing publicly the child's name or medical information, including treatment and diagnoses.[10] The court determined that the gag order was a prior restraint on the parents' speech and was directed at the content of that speech.[11] As such, the order was subject to "exacting scrutiny."[12] The court agreed with the juvenile court that disclosure of the child's medical information was not in the child's best interests. But "the fundamental difficulty is that the child's best interests are not the standard, nor does the juvenile court's rationale for the entry of the gag order comport with the established law allowing the lawful

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9 *See*, *e.g.*, *Cohen v. California*, 403 U.S. 15 (1971) (reviewing Cohen's conviction for disorderly conduct for wearing a jacket with "Fuck the Draft" written on the back into a courthouse); *Brandenburg v. Ohio*, 395 U.S. 444 (1969) (reviewing the conviction of a Ku Klux Klan member who, at a rally, suggested that action against the government may be required); *Whitney v. California*, 274 U.S. 357 (1927) (reviewing Whitney's criminal conviction for assisting in the organization of the California branch of the Communist Party and reading a resolution calling for a workers' revolution); *Commonwealth v. Knox*, 190 A.3d 1146 (Pa. 2018) (determining whether a rap video containing threatening lyrics was protected speech).

10 *In re T.T.*, 779 N.W.2d 602 (Neb. Ct. App. 2009).

11 *Id.* at 612, 614.

12 *Id.*

entry of a judicial order imposing a prior restraint on speech."[13] Having found no imminent harm to the child sufficient to justify a prior restraint, the court vacated the gag order.[14]

In re R.J.M.B., 133 So. 3d 335 (Miss. 2013), involved a mother who was misunderstood by an interpreter at the hospital when she gave birth to the child. As a result of the linguistic misunderstanding, the child was removed from the mother's custody for a year. When the mother and the child were reunited, the trial court entered a gag order that did not permit any of the parties to speak to the press about the case. On appeal, the Mississippi Supreme Court first noted that gag orders which restrict parties or others from publicly discussing a case "resemble prior restraints" that "suppress[] speech based on its content before the speech is uttered."[15]

The Mississippi Supreme Court recognized a split in the standard used by courts to measure the government's burden in supporting a gag order directed at attorneys or litigants. While strict scrutiny has applied to restraints against the press, some courts have applied a different test when the restraint is against attorneys or parties. For example, the United States Courts of Appeals for the Sixth, Seventh, and Ninth Circuits have applied strict scrutiny, requiring that the gagged speech "poses either a clear and present danger or a serious and imminent threat to a protected competing interest."[16] The Fourth, Fifth, and Tenth Circuits have applied a less exacting standard, such that

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13 *Id.* at 620.

14 *Id.* at 621.

15 *Id.* at 343.

16 *Id.* at 344.

participants may be restrained from speaking "if the comments present a 'reasonable' or 'substantial' likelihood of prejudicing a fair trial."[17]

The Mississippi Supreme Court concluded that applying the less stringent standard would impermissibly burden the mother's speech rights, and that the stricter "clear-and-present-danger test" applied instead.[18] The court noted that several other state courts had applied the higher standard to gag orders in cases involving children.[19,20] The lower court had not applied any such balancing test, and the Mississippi Supreme Court concluded that there was no imminent danger to any compelling state interest sufficient to justify the gag order.[21]

In *Johanson v. Eighth Judicial District*,[22] the father had filed a motion to modify a child support order, which the lower court had granted. Shortly thereafter, the father filed

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17 *Id.* The Mississippi Supreme Court reviewed *Gentile v. State Bar of Nevada*, 501 U.S. 1030 (1991), in which the Supreme Court of the United States held that a demonstration of "substantial likelihood of material prejudice" was required in order constitutionally to restrict an attorney's speech. *Gentile* involved an attorney who faced disciplinary charges after he spoke at a press conference about a criminal trial. The court noted that the Fifth Circuit had adopted this reasoning and test in allowing a gag order aimed at ensuring a fair trial. The Mississippi Supreme Court, however, rejected the application of the lesser "substantial likelihood" test because, unlike in *Gentile*, the governmental interest in ensuring a fair trial was not at stake in *In re R.J.M.B.*, which was not before a jury.

18 *Id.* at 345.

19 *Id.* (citing *In re T.T.*; *State ex rel L.M.*, 3 P.3d 1188, 1193-96 (Utah Ct. App. 2001); *In re J.S.*, 640 N.E.2d 1379, 1382 (Ill. Ct. App. 1994)).

20 *See also Baskin v. Hale*, 787 S.E.2d 785, 792 (Ga. Ct. App. 2016) (applying an "imminent danger" standard and vacating an injunction that prevented the parents and their attorneys from putting information about a custody case on any social media, website, or public medium).

21 *Id.* at 346.

22 182 P.3d 94 (Nev. 2008).

a motion to correct some clerical errors in the order because the father was concerned that the order could be used against him in his campaign for a judgeship. S*ua sponte*, the lower court entered a gag order that precluded the parties and their attorneys from disclosing any document or discussing the case with any other party or individual.[23] The mother challenged the order. The Nevada Supreme Court recognized that gag orders "preventing participants from making extrajudicial statements about their own case amount[] to a prior restraint on speech and undermine[] First Amendment rights."[24] The court adopted the Ninth Circuit's standard, which requires a clear and present danger or serious and imminent threat to a protected interest, a narrowly drawn order, and the lack of available less restrictive alternatives. The court concluded that the lower court had failed to consider whether there was any clear and present danger to a protected interest and had made no findings related to the least restrictive alternative. The court also held that the order was overbroad and was not narrowly tailored.[25] The court also noted that the gag order did not have an expiration date. Because the constitutional standard had not been met, the court concluded that the gag order violated the mother's rights.[26]

Like the courts of our sister states, Pennsylvania courts generally have applied stringent scrutiny in reviewing the lawfulness of prior restraints on speech. Because of the presumption that prior restraints are unconstitutional, the reviewing court must

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23 *Id.* at 96.

24 *Id.* at 98.

25 *See id.* at 99 (concluding that "[t]he limits of th[e] order are endless.").

26 The constitutionality of restraining parental speech in custody cases continues to be litigated around the country. *See*, *e.g.*, *Delgado v. Miller*, __ So.3d ____, 2020 WL 7050217 (Fla. Dist. Ct. App. Dec. 2, 2020) (holding that a provision of a custody order that precluded the parents from commenting about the other party's emotional or mental health or personal behavior on social media was a prior restraint that had not been found to be necessary, was not narrowly tailored, and was overbroad).

evaluate the following in determining whether such restraints are permissible: "(a) the nature and extent of the evil to be avoided, (b) whether other measures [are] likely to mitigate the effects of unrestrained publicity, and (c) how effective a restraining order [is] to prevent the threatened danger."[27] Because it perceives the order in question here to be a content-neutral restriction — a conclusion with which I disagree — today's Majority avoids this issue entirely.

The United States Court of Appeals for the Fourth Circuit has provided an instructive discussion of gag orders:

> Even among First Amendment claims, gag orders warrant a most rigorous form of review because they rest at the intersection of two disfavored forms of expressive limitations: prior restraints and content-based restrictions. Like all "court orders that actually forbid speech activities," *Alexander v. United States*, 509 U.S. 544, 550 (1993), gag orders are prior restraints. Prior restraints bear "a heavy presumption against [their] constitutional validity." *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963). Prior restraints upend core First Amendment principles because "a free society prefers to punish the few who abuse rights of speech after they break the law [rather] than to throttle them and all others beforehand." *Se. Promotions, Ltd. v. Conrad*, 420 U.S. 546, 559 (1975).
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> Similarly, gag orders are presumptively unconstitutional because they are content based. *Nat'l Inst. of Family and Life Advocates v. Becerra*, ___ U.S. ____, 138 S.Ct. 2361, 2371 (2018) (presumption against content-based restraints). Content-based restrictions target "particular speech because of the topic discussed or the idea or message expressed." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). Gag orders inherently target speech relating to pending litigation, a topic right at the core of public and community life. But the "government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Ashcroft v. ACLU*, 535 U.S. 564, 573, (2002) (internal quotation marks omitted).
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> In light of these twin presumptions, gag orders must survive strict scrutiny. *Reed*, 576 U.S. at 163 (strict scrutiny for content-based restrictions).

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[27] *Commonwealth v. Genovese*, 487 A.2d 364, 367 (Pa. Super. 1985) (citing *Nebraska Press Association v. Stuart*, 427 U.S. 539 (1976)).

In re Murphy-Brown, LLC, 907 F.3d 788, 796-97 (4th Cir. 2018) (citations modified). The perpetual gag order at issue in this case is a content-based prior restraint. As such, it must be measured by strict scrutiny. So measured, it cannot survive.

The United States Supreme Court has defined content-neutral restrictions "as those that 'are *justified* without reference to the content of the regulated speech.'"[28] Thus, they must be evaluated differently from content-based restrictions, as the latter implicate the important principle "that 'government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views.'"[29]

The High Court recently has explained:

> Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed. This commonsense meaning of the phrase "content based" requires a court to consider whether a regulation of speech "on its face" draws distinctions based on the message a speaker conveys. Some facial distinctions based on a message are obvious, defining regulated speech by particular subject matter, and others are more subtle, defining regulated speech by its function or purpose. Both are distinctions drawn based on the message a speaker conveys, and, therefore, are subject to strict scrutiny.
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> Our precedents have also recognized a separate and additional category of laws that, though facially content neutral, will be considered content-based regulations of speech: laws that cannot be justified without reference to the content of the regulated speech, or that were adopted by the government because of disagreement with the message the speech conveys. Those laws, like those that are content based on their face, must also satisfy strict scrutiny.

Reed v. Town of Gilbert, 576 U.S. 155, 163-64 (2015) (cleaned up).

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[28] *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 48-49 (1986) *(*quoting *Va. Pharmacy Bd. v. Virginia Citizens Consumer Council, Inc.,* 425 U.S. 748, 771 (1976)) (emphasis in original).

[29] *Id.* at 48-49 (quoting *Police Dept. of Chicago v. Mosley,* 408 U.S. 92, 95-96 (1972)).

We have urged a common-sense approach to determining whether a regulation is content-based or content-neutral, suggesting that it is "relevant that an obvious purpose of the ordinance was to directly burden freedom of expression itself."[30] Similarly, we have noted that, "[a]s a general matter, 'the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.' With respect to noncommercial speech, this Court has sustained content-based restrictions only in the most extraordinary circumstances."[31] In differentiating between content-based and content-neutral restrictions, this Court has held:

> If the governmental purpose in enacting the regulation is unrelated to the suppression of expression, then the regulation need only satisfy the "less stringent" four-part standard from *O'Brien.*[32] But, if the governmental interest is related to the suppression of expression, then the regulation falls outside the scope of the *O'Brien* test and must be justified under a more demanding standard.

Purple Orchid, Inc. v. Pennsylvania State Police, 813 A.2d 801, 806 (Pa. 2002) (citations omitted).

Our Superior Court has found an injunction to be content-neutral where it did "not seek to ban any subject matter from being protested" but instead sought to restrict "the excessive tactics used by the protesters, not to stifle the message itself."[33] By contrast, the Superior Court found an injunction to be content-based and unconstitutional where it prevented speech only critical of the plaintiff and was "directed against the ideas

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30 *Pap's A.M. v. City of Erie*, 812 A.2d 591, 611-12 (Pa. 2002).

31 *Ins. Adjustment Bureau v. Ins. Com'r for Com. of Pa*, 542 A.2d 1317, 1320 (Pa. 1988) (quoting *Bolger v. Youngs Drug Prods. Corp.,* 463 U.S. 60, 65 (1983)).

32 *United States v. O'Brien*, 391 U.S. 367, 377 (1968) (outlining four factors to consider when determining the constitutionality of a content-neutral speech regulation).

33 *SmithKline Beecham Corp. v. Stop Huntingdon Animal Cruelty USA*, 959 A.2d 352, 357 (Pa. Super. 2008).

expressed because of the detrimental impact which the communication of those ideas has had upon [the plaintiff]."[34]

Some of the case law distinguishing content-based restrictions from content-neutral ones has focused upon the perceived hostility to the message.[35] Hence, today's Majority focuses upon whether the trial court's order reflected hostility toward Mother's speech.[36] But this does not cover the waterfront; there are also restrictions that are deemed content-based because any common-sense reading reveals that the restriction is "based on the message a speaker conveys," such as when the restriction "defin[es] regulated speech by particular subject matter."[37] Our Court has followed this common-sense approach in determining whether or not a restriction is content-neutral.[38]

The restriction in today's case was based upon the content of speech. It was based upon a particular subject matter. It was based upon the message.[39] It was directed at the ideas expressed.[40] The first sentence of the gag order categorically bans Mother and Counsel from speaking about the custody case; the preclusion extends only to that topic and that message. This is the very essence of a content-based restriction. To

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34 *Franklin Chalfont Assocs. v. Kalikow*, 573 A.2d 550, 557 (Pa. Super. 1990).

35 *See Reed*, 576 U.S. at 164 (recognizing content-based restrictions as those "that were adopted by the government because of disagreement with the message").

36 Maj. Op. at 21 ("[T]he 'princip[al] inquiry in determining content neutrality, in speech cases generally and in time, place or manner cases in particular, is whether the government has adopted a regulation of speech because of disagreement with the message it conveys.'" (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989))).

37 *Reed*, 576 U.S. at 163.

38 *Pap's*, 912 A.2d at 611.

39 *See SmithKline Beecham Corp.*, 959 A.2d at 357.

40 *See Franklin Chalfont Assocs.*, 573 A.2d at 557.

survive, it must withstand strict scrutiny. The perceived laudability of the trial court's goal does not change the nature of this restriction.

In addition to the fact that the gag order in this case is a content-based restriction, it also is a prior restraint on speech. "The term prior restraint is used to describe administrative and judicial orders *forbidding* certain communications when issued in advance of the time that such communications are to occur."[41] Prior restraints are disfavored and are subject to heightened scrutiny. "Any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity. The Government thus carries a heavy burden of showing justification for the imposition of such a restraint."[42] In addition, the gag order before us in this case is similar to those examined in the courts of our sister states, which have characterized those orders as prior restraints or something akin to them.[43]

While prior restraints often are associated with restrictions upon the press, they arise in other situations, as well.[44] Indeed, we have distinguished prior restraints on speech from limits that may sometimes restrict press or public access to the courts when those limits are needed to protect constitutional interests such as the right to a fair trial.[45]

While no doubt a reaction to communications that Mother and Counsel have already made, the gag order before us precludes Mother and Counsel prospectively from

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41 *Alexander v. United States*, 509 U.S. 544, 550 (1993) (emphasis in original) (cleaned up).

42 *New York Times Co. v. United States*, 403 U.S. 713, 714, (1971) (cleaned up).

43 *See In re T.T.*, *In re R.J.M.B.*, *In re J.S.*, *Johanson*, *supra*.

44 *See William Goldman Theatres, Inc. v. Dana*, 173 A.2d 59, 64 (Pa. 1961) (holding that the Motion Picture Control Act was a prior restraint when the Board of Censors had to approve movies before screening).

45 *See Philadelphia Newspapers, Inc. v. Jerome*, 387 A.2d 425, 433 (Pa. 1978).

speaking about the custody case in advance of any communication that either of them might wish to make. The gag order does not simply deny access to case proceedings, as in closing the courtroom or sealing the trial court record. As a prior restraint, the gag order is subject to a presumption of constitutional invalidity and a heightened standard of review.

We have held:

> When the government restricts expression due to the content of the message being conveyed, such restrictions are allowable only if they pass the strict scrutiny test. That test is an onerous one, and demands that the government show that the restrictions are "(1) narrowly tailored to serve (2) a compelling state interest." *Republican Party of Minnesota v. White,* 536 U.S. 765, 775 (2002).

In re Condemnation by Urban Redevelopment Auth. of Pittsburgh, 913 A.2d 178, 183-84 (Pa. 2006) (citation modified). Here, the gag order is both content-based and a prior restraint. Accordingly, the Majority errs in reviewing the order under the *O'Brien*[46] factors. Instead, strict scrutiny must apply. I turn to analyze the order at issue against that exacting standard.

This Court has recognized that the protection of the health and well-being of children is a compelling state interest.[47] I do not for a minute doubt the considerable harm that Child may face as a consequence of Counsel and Mother's public campaign. Consequently, I agree that there is a compelling state interest at issue here.

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[46] *United States v. O'Brien*, 391 U.S. 367, 377 (1968) (outlining four factors to consider when determining the constitutionality of a content-neutral speech regulation).

[47] *See D.P. v. G.J.P.*, 146 A.3d 204, 211 (Pa. 2016) ("[T]he state, acting pursuant to its *parens patriae* power, has a compelling interest in safeguarding children from various kinds of physical and emotional harm and promoting their wellbeing"); *Hiller v. Fausey*, 904 A.2d 875, 886 (Pa. 2006) (finding protection of children to be a compelling state interest for the purpose of infringing upon a parent's fundamental right to raise one's children).

This does not end the inquiry. To survive strict scrutiny, the order also must be narrowly tailored. The Majority believes that this order provides ample opportunity for Mother and Counsel to express their views. I disagree. In its first sentence, the order categorically prevents Mother and Counsel from speaking or communicating about the case publicly. There are only two limited and very specific exceptions for Mother and Counsel to express their views, and Mother is precluded in all circumstances from doing so in her own name, ostensibly because this might tend to identify Child. This sweeping gag order all but precludes Mother from speaking about this case to anyone other than Counsel. Moreover, the order is not limited in time. As in *Johanson*, the restriction is essentially endless and it is anything but narrowly tailored.

That I find the order here to be impermissible is not to suggest that I consider trial courts powerless to attach consequences to speech of a potentially injurious nature. Our General Assembly has provided trial courts with a list of factors to consider in making custody decisions.[48] The trial court could have considered Mother's behavior and statements under several of those factors in determining what custody arrangement would serve Child's best interests.[49] Whether Mother's speech was in derogation of Child's best interests certainly is a legitimate consideration in determining custody, and may appropriately be invoked to limit Mother's custodial rights. But imposing tangible

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48 *See* 23 Pa.C.S. § 5328(a) (listing sixteen factors).

49 For example, Mother's public comments would be relevant to factor 8 ("The attempts of a parent to turn the child against the other parent"), factor 9 ("Which party is more likely to maintain a loving, stable, consistent and nurturing relationship with the child adequate for the child's emotional needs"), factor 10 ("Which party is more likely to attend to the daily physical, emotional, developmental, educational and special needs of the child"), factor 13 ("The level of conflict between the parties and the willingness and ability of the parties to cooperate with one another"), or factor 16 ("Any other relevant factor"). 23 Pa.C.S. § 5328 (a).

consequences upon the hours and circumstances of child custody is one thing; infringing upon, and gagging, constitutional rights of speech by prior restraint is quite another.[50]

I disagree as well with the Majority's generous conclusion that the gag order before us is not vague. The order here is both overbroad and vague. As they relate to government edicts, the doctrines of overbreadth and vagueness are as applicable to the type of order in this case as they are to statutes, regulations, or rules.

> Arising from the Fourteenth Amendment's Due Process Clause, the void-for-vagueness doctrine requires that a statute or rule under attack be sufficiently definite so that people of ordinary intelligence can understand what conduct is prohibited, and so as not to create or encourage arbitrary or discriminatory enforcement. *Hill v. Colorado,* 530 U.S. 703, 732 (2000). When a statute is purportedly vague and arguably involves constitutionally protected conduct, vagueness analysis will necessarily intertwine with overbreadth analysis. *See Hoffman Estates v. Flipside, Hoffman Estates, Inc.,* 455 U.S. 489, 494 n. 6 (1982).
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> A form of First Amendment challenge, the overbreadth doctrine prohibits an enactment, even if clearly and precisely written, from including constitutionally protected conduct within its proscriptive reach. *Grayned v. City of Rockford,* 408 U.S. 104, 114 (1972). In order to prevail on an overbreadth challenge, "the overbreadth of a statute must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep." *Broadrick v. Oklahoma,* 413 U.S. 601, 615, (1973). *See also Commonwealth v. Davidson,* 860 A.2d 575, 583 (Pa. Super. 2004) ("When the overbreadth of the statute is substantial, judged in relation to its legitimate sweep, it may not be enforced against anyone until it is narrowed to reach only activity unprotected by the constitution.").

Commonwealth v. Perreault, 930 A.2d 553, 559 n.1 (Pa. Super. 2007) (citations modified).

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[50] As the Nebraska court noted in *T.T.*, the child's best interests are not the relevant standard for determining whether a gag order unconstitutionally restricts speech. *See In re T.T.*, 779 N.W.2d at 620.

Overbreadth manifests when a substantial amount of constitutionally protected activity is swept up along with prohibitions barring unprotected activity.[51] When the restriction seeks to preclude only speech and not conduct, careful attention must be paid to the scope of the restriction so that protected speech is not chilled.[52]

Without a doubt, Mother and Counsel engage in otherwise protected activity when they speak about this case pending in our courts. As they say, this is America. The trial court could only prohibit as much speech as necessary to protect a compelling state interest, and no more. Instead, the trial court entered a sweeping order that prohibited Mother and Counsel from speaking publicly about the case except in starkly limited form and in two narrow contexts. Even in those two contexts, Mother could not identify herself. That is, she could not speak her own name. That latter restriction is breathtaking. If that is not an overly broad restriction, nothing is.

Turning to vagueness, the Majority brushes this argument aside, sculpting and applying this creative and paternalistic gloss: "a person of ordinary intelligence would read the gag order to forbid Appellants from taking this peculiar custody case to the media in a way that would harm the psychological and emotional well-being of Child."[53] If only the order was so limited.

The Majority chooses to interpret the phrase that Mother and Counsel "shall not speak publicly or communicate" about the case as precluding them from speaking to "the media." But that is by no means the only, or even the most intuitive, reading of the trial

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51 *Commonwealth v. Davidson*, 938 A.2d 198, 208 (Pa. 2007).

52 *See Broadrick*, 413 U.S. at 614 ("In such cases, it has been the judgment of the Court that the possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that protected speech of others may be muted. . . .").

53 Maj. Op. at 32.

court's prohibition. Certainly, speaking to the media would be speaking publicly about the case. But "communicate" would also bar speaking to *anyone* not connected to the case, including friends or family members. It could also reasonably be read to bar speaking about the case in any public setting. At a minimum, it certainly leaves Mother to wonder to whom she can speak, upon pain of contempt. May Mother speak to the parents of one of Child's school friends who ask about the custody case? May she tell Child's teacher about the outcome of the custody trial in order to anticipate or explain changes to Mother's involvement in the school? May she talk to a friend about the case if she suspects that the friend may share details with others? The fact that it is woefully unclear to whom Mother can or cannot speak about the case demonstrates that the order here is vague. If, as the Majority now maintains, the trial court intended only to preclude Mother from speaking to the press, then the trial court could (and presumably would) have said that. No, the trial court aimed higher and further: it completely precluded Mother from speaking "publicly" as well as "communicat[ing]" at all about its terms. The order is patently unconstitutional.[54]

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[54] The Majority simply dismisses this constitutional inquiry out of hand, avoiding the cases cited above on the rationale that the gag order at issue here is "nuanced uniquely and tailored to circumvent a specific manner of public speech." Maj. Op. at 22 n. 13. This illustrates the fundamental difference between the Majority's reading of the gag order and my own: I am reading the order that the trial court issued; the Majority is reading the order that it imagines the trial court desired. The Majority chooses to believe that, "when read in context," Mother and Counsel are able to express their views. *Id.* at 23. I do not know whose "context" this is. Indeed, while the Majority finds the order to be "nuanced" and "tailored", the Concurrence recognizes that the order "could potentially be interpreted" as restricting more than the Majority concedes. Conc. Op. at 1. The Majority's charitable view of the order is unsupported by the language of the order itself. We need only read the text of the order itelf — which precludes (with two minor exceptions) "speak[ing] publicly or communicat[ing]" about the case — to discern that the order is overbroad, vague, and a prior restraint.

The Majority acknowledges that Mother and Counsel claimed a violation of Article 1, Section 7 of the Pennsylvania Constitution as well as the First Amendment. The Majority nonetheless rejects that claim because it concludes that Mother and Counsel "have offered no meaningful argument or authority, and this Court has found none, suggesting that Article 1, Section 7 requires the application of a heightened constitutional standard to a content-neutral restriction on a parent's free speech rights."[55] On this point, too, I disagree.

Pennsylvania's Constitution preserves the right to free speech as follows:

> The printing press shall be free to every person who may undertake to examine the proceedings of the Legislature or any branch of government, and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty. No conviction shall be had in any prosecution for the publication of papers relating to the official conduct of officers or men in public capacity, or to any other matter proper for public investigation or information, where the fact that such publication was not maliciously or negligently made shall be established to the satisfaction of the jury; and in all indictments for libels the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases.

PA. CONST. art. I, § 7.

Reviewing the history of this provision, our Court has stated:

> Apart from the Fourteenth Amendment, the guarantee of free communication of thought and opinion is independently protected by our State Constitution of 1874. Article I, Section 7, P.S., thereof recognizes and declares that 'The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject, *being responsible for the abuse of that liberty*.' ([e]mphasis supplied). This provision is a direct inhibition on previous restraint of an exercise of the protected rights and was derived, *ipsissimis verbis,* from Section 7 of Article IX of our State Constitution of 1838 where, in turn, it had been taken from the Constitution of 1790. The members of the Constitutional Convention of 1790 were undoubtedly fully cognizant of

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55 Maj. Op. at 33.

> the vicissitudes and outright suppressions to which printing had theretofore been subjected in this very Colony.

William Goldman Theatres, Inc., 173 A.2d at 61 (emphasis in original).

Our Court has recognized that, in certain circumstances, the Pennsylvania Constitution provides greater protection than the First Amendment. For example, this Court has found enhanced protection for expressive conduct[56] and for commercial speech.[57] In *Pap's A.M. v. City of Erie*, 812 A.2d 591 (Pa. 2002), this Court rejected the use of intermediate scrutiny and the *O'Brien* factors when expressive conduct was at issue. Instead, we concluded that "[o]ur experience in this case convinces us of the wisdom of our observations in *Insurance Adjustment Bureau* of the perils of the intermediate scrutiny test when protected expression is at issue."[58] We later characterized *Pap's* as holding that "whenever the government acts to effect such a complete ban on a certain type of expression, strict scrutiny must be applied regardless of whether the government's action was content-based."[59]

It does not appear that our Court has addressed the question of whether Pennsylvania's Constitution provides greater protection than the United States Constitution in the particular context before us today. Given the extension of protection and heightened scrutiny that this Court has invoked in past decisions, it appears likely that our Constitution would require application of strict scrutiny to an order like the one

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56 *See Pap's*, 812 A.2d at 612; *Commonwealth v. Tate,* 495 Pa. 158, 432 A.2d 1382, 1391 (1981) (holding that political leafletting on a college campus was protected expression under Article 1, Section 7).

57 See *Commonwealth, Bureau of Prof'l & Occupational Affairs v. State Bd. of Physical Therapy,* 728 A.2d 340, 343–44 (Pa. 1999) (holding that advertising is entitled to greater protection if it is not misleading); *Ins. Adjustment Bureau,* 542 A.2d at 1324 (applying a strict scrutiny-type test to restrictions on commercial speech).

58 *Pap's*, 812 A.2d at 612.

59 *In re Condemnation by Urban Redev. Auth. of Pittsburgh,* 913 A.2d at 189.

before us. However, because I would hold that strict scrutiny applies pursuant to the First Amendment, and because I believe that the instant gag order cannot survive that test, I do not need to resolve the issue pursuant to the Pennsylvania Constitution. It can await another day.

In the meantime, we should dispense with the Majority's straw man argument that "it would be inappropriate for this Court to conclude that [Mother's] First Amendment rights render a trial court in a custody proceeding powerless to safeguard a child from threatened psychological harm stemming from the manner by which a parent delivers his or her speech."[60] The trial court was far from powerless. It merely erred in its use of that power. What does seem "inappropriate" is for this Court to give short shrift to Mother's First Amendment rights. It is not only Mother's right to free speech that is at stake here; it is everyone's. Our decision applies beyond the unusual and troubling facts of this particular case. Today's Majority licenses trial courts to enter vague and overbroad gag orders in any contentious custody case when a judge feels that a parent's speech could be deemed to cause emotional harm. Protection of children from harm is a worthy goal. It can be advanced with a scalpel, rather than a broadsword. It can never be advanced at the expense of our Constitutions and the fundamental rights that they guarantee. The order before us cannot survive strict scrutiny.[61]

I would reverse the lower courts, and I would vacate the gag order. I dissent.

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60 Maj. Op. at 28.

61 While the particular gag order before us is vague, overbroad, and unduly expansive, and accordingly cannot survive strict scrutiny, I do not suggest that all such orders entered in custody cases would meet the same fate. A more narrowly and carefully tailored order could overcome the heavy constitutional burden that prior restraints carry. I agree with the Majority that "[t]he First Amendment does not require" a trial court to shy away from protecting a child from potentially harmful speech. Maj. Op. at 28. But it must do so within the bounds of the First Amendment. Until today, I thought it was well-settled that our Constitution does not countenance gag orders that are vague, overbroad, and cannot satisfy strict scrutiny.

Justice Donohue joins this dissenting opinion.

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

S.B.	:	No. 89 WAL 2019
	:	
	:	
v.	:	Petition for Allowance of Appeal from the Order of the Superior Court
	:	
S.S.	:	
	:	
	:	
PETITION OF: S.S., RICHARD DUCOTE, ESQUIRE, AND VICTORIA MCINTYRE, ESQUIRE	:	
	:	
	:	

ORDER

PER CURIAM

AND NOW, this 11th day of September, 2019, the Petition for Allowance of Appeal is **GRANTED**. The issue, rephrased for clarity, is:

> In a child custody case, did the Pennsylvania Superior Court err in affirming the gag order in violation of Petitioners' rights under the First and Fourteenth Amendments to the United States Constitution and Article I, § 7 of the Pennsylvania Constitution when the order precluded the parent and attorneys from speaking publicly about the case in a manner that would identify the child involved?

J-A26041-18

Filed 03/04/2019

IN THE SUPERIOR COURT OF PENNSYLVANIA
WESTERN DISTRICT

S.B.	:	No. 753 WDA 2018
	:	
v.	:	
	:	
S.S.	:	
	:	
APPEAL OF: S.S., RICHARD DUCOTE, ESQUIRE, AND VICTORIA MCINTYRE, ESQUIRE	:	

ORDER

IT IS HEREBY ORDERED:

THAT the application filed January 7, 2019, requesting reargument of the decision dated December 24, 2018, is DENIED.

PER CURIAM

J-A26041-18

2018 PA Super 354

S.B.	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
S.S.	:	
APPEAL OF: S.S., RICHARD DUCOTE, ESQUIRE, AND VICTORIA MCINTYRE, ESQUIRE	:	No. 753 WDA 2018

Appeal from the Order April 27, 2018
In the Court of Common Pleas of Allegheny County Family Court at
No(s): FD-15-008183-10

BEFORE: BENDER, P.J.E., SHOGAN, J., and MURRAY, J.

OPINION BY MURRAY, J.: **FILED DECEMBER 24, 2018**

S.S. (Mother) appeals from the order prohibiting Mother and her attorneys from discussing the facts in this case with members of the news media, including but not limited to print and broadcast media, online or web-based communications, and inviting the public to view existing online or web-based publications. We affirm.

A prior panel of this Court summarized the relevant factual and procedural history of this case as follows:

> Child was born . . . in 2006. [S.B. (Father)] and his first wife . . . adopted Child in 2007, when he was six months old.[FN]1 [Father's first wife] died . . . when Child was two years old. Father continued his close relationship with [his first wife]'s extended family, and he raised Child, with their support, for the next four years. In May 2012, Father met Mother on an online dating website; they married four months later. Mother adopted Child in 2013.

> [FN] 1 [Father's first wife] was diagnosed with breast cancer in 1999 and underwent chemotherapy. She and Father wanted to start a family, and they began the adoption process in 2003. They contacted . . . an adoption agency . . . and after going through a home study . . . and meeting the [adoption agency's] requirements, the adoption was finalized in February 2007. N.T. Trial, 5/20/16, at 176-78.

The parties' relationship was short-lived; in November 2013, Mother moved out of the main house and into the guesthouse. One year later, Mother left the marital residence and moved into her own home. The parties entered into a custody agreement on November 22, 2014.

Father filed a complaint in custody on June 11, 2015; Mother counterclaimed for primary custody. On October 9, 2015, the court held a hearing and entered an interim custody order pending a custody trial. The interim order expanded Father's custodial time. Days later, Mother filed a Petition for Abuse (PFA), on behalf of herself and Child, alleging Father had sexually abused Child, and the court ordered supervision of Father's custodial periods. Over one month later, after a five-day trial, the court dismissed the PFA petition.

On January 21, 2016, the court scheduled a custody trial to be held in April of that year; on February 2, 2016, Mother filed a second PFA petition on behalf of herself and Child, again alleging Father's sexual abuse of Child.[FN]2 Senior Judge Lee J. Mazur denied the petition without a hearing and recommended the petition be presented again before the Honorable Kim Berkeley Clark, who was presiding over the custody matter. Judge Clark denied the petition without a hearing.

> [FN] 2 On February 4, 2016, Mother filed an emergency petition for special relief, indicating Child made additional disclosures of sexual abuse and that Child was refusing visits with Father. The court suspended visitation and contact between Father and Child. That same day, the court appointed Maegan Susa Filo, Guardian *ad litem* (GAL), to represent Child's best interests. On April 11, 2016, after meeting with the parties, Child, communicating with counsel for both

> parties, reviewing expert reports, GAL made several recommendations, including the following:
>
> > Child be immediately removed from Mother's care and placed with Father after attending the Family Bridges program;
> >
> > Child should be immediately reunited with [Father's first wife]'s extended family;
> >
> > Child should begin attending his former synagogue;
> >
> > Child should begin to attend his [] adoption group in which he participated previously with Father;
> >
> > Father should be granted sole legal custody of Child;
> >
> > Both Mother and Father should follow any recommendations made by Dr. McGroarty for each party's mental health therapy.
>
> Report and Recommendation of the Guardian *ad litem*, 2/4/16, at 8.

The twenty-three day custody trial commenced on May 20, 2016, and concluded on November 18, 2016. The parties presented 24 witnesses and offered 216 exhibits, 193 of which were admitted by the court, in addition to the exhibits from the PFA trial that were incorporated into the custody trial.

On December 12, 2016, Judge Clark entered her findings of fact on the record and entered an order granting Father sole legal and sole physical custody.

S.B. v. S.S., 74 WDA 2017, at *1-4 (Pa. Super. Oct. 20, 2017) (unpublished memorandum). On December 14, 2016, the trial court entered an amended custody order, but did not materially alter its award of custody in any way. Mother filed a timely appeal; this Court affirmed the trial court's order on

October 20, 2017.[1] ***Id.*** Mother filed a petition for allowance of appeal in the Pennsylvania Supreme Court, which was denied.

> On February 1, 2018, before the [Pennsylvania] Supreme Court denied allowance of appeal, a press release [was] issued announcing an upcoming press conference regarding this case.
>
> On February 7, 2018, Mother's attorney, Richard Ducote, Esquire held a press conference concerning this case and Mother's obvious disagreement with the court's findings and orders.
>
> Although the Child is not named, Mr. Ducote identifies Mother by name and included a reproduction of the child's in-court testimony and forensic interview.
>
> The press conference, which was held on YouTube, contains a link to a DropBox folder containing pleadings from the case[,] a transcript of the Child's testimony and a copy of the Child's forensic interview at Children's Hospital Child Advocacy Clinic. Mother's name is contained within these documents. The child's name is redacted except for the first letter of his first name[,] 'F.'
>
> On February 28, 2018, an article about the case appeared in the *Pittsburgh City Paper*. The article began with the graphic testimony of alleged sexual abuse by Father against the Child and contained the age of the child and the name of the Child's best friend at the time the testimony was given.

Trial Court Opinion, 7/6/18, at 5 (numbered bullets omitted).

On April 27, 2018, Father presented a motion for sanctions and other relief requesting that, based on the conduct of Mother and her attorneys, they be "immediately enjoined from discussing this case publicly in any forum" and

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[1] While Mother's appeal was pending before this Court, Mother filed an "Application for the Exercise of King's Bench Power or Extraordinary Jurisdiction" in the Pennsylvania Supreme Court on February 1, 2017. Our Supreme Court denied Mother's application by per curiam order on February 24, 2017.

"that Mother and her counsel be ordered to remove all documents relating in any way to this case from public access. . . ." Motion for Sanctions and Other Relief, 4/27/18, at ¶ 34-35. That same day, the trial court held an on-the-record hearing on Father's motion. At the conclusion of the hearing, the trial court denied Father's motion for sanctions, but granted his request to prohibit Mother and her attorneys from speaking publicly about the case in any way that could cause Child to be identified, entering the following order, in relevant part:

> 1. [Mother]; Richard Ducote, Esquire; and Victoria McIntyre shall NOT direct or encourage third parties to speak publicly or communicate about this case including, but not limited to, print and broadcast media, on-line or web-based communications, or inviting the public to view existing on-line or web-based publications.
>
> 2. [Mother]; Richard Ducote, Esquire; and Victoria McIntyre may provide public testimony in the State House and/or Senate and in the United States Congress and Senate about parental alienation, sexual abuse of children in general or as it relates to this case. However, in providing such testimony, they shall NOT disclose any information that would identify or tend to identify the Child. [Mother] shall NOT publically state her name, the name of the Child, or [Father's] name. Attorney Ducote and Attorney McIntyre shall NOT publicly refer to the [Mother], the Child, or the [Father] by name or in any manner that would tend to identify the aforementioned parties.
>
> 3. [Mother] and Counsel shall remove information about this case, which has been publically posted by [Mother] or Counsel, including but not limited to, the press release, the press conference on the YouTube site, the DropBox and its contents, and other online information accessible to the public, **within twenty-four (24) hours.** [Mother] and Counsel shall download or place the aforementioned information onto a thumb drive, which shall be filed with this court.

> The Oral Motion to Stay This Order of Court, made on behalf of [Mother] is denied.
>
> This Order does not prohibit any party or counsel from publicly speaking or expressing an opinion about the Judge, including disclosing the entry of this Order of Court, ***after*** the information has been removed as set forth above. However, such expression shall NOT contain the name of the Child or other information, which would tend to identify the Child.

Findings of Fact and Order of Court, 5/1/18, at 4-5 (emphasis in original). This timely appeal followed. Both Mother and the trial court have complied with Pennsylvania Rule of Appellate Procedure 1925.

On appeal, Mother presents a single issue for our review and consideration:

> Did the trial court legally err and abuse its discretion in granting [Father's] Motion for Sanctions and Other Relief, in part, and entering a gag order constituting a content-based restriction on speech, prohibiting [Mother], Richard Ducote, Esq., and Victoria McIntyre, Esq. from speaking publicly or communicating about this case and requiring them to remove information related to the case posted online, in violation of their rights under the First and Fourteenth Amendments to the United States Constitution and Article 1, [Section] 7 of the Pennsylvania Constitution, and without any legal or factual justification in support?

Mother's Brief at 3.

Mother contends that the gag order violates her free speech rights contained in the First Amendment of the United States Constitution and Article I, Section 7 of the Pennsylvania Constitution. She advances a four-pronged attack on the court's order, asserting that the order: (1) represents an impermissible prior restraint on protected speech; (2) represents an unlawful content-based restriction on protected speech; (3) imposes an impermissible

blanket prohibition on any remark regarding the case without demonstrating how it advances a compelling governmental interest; and (4) imposes an unconstitutionally vague and overbroad restriction on free speech.

The trial court concluded that an order prohibiting Mother and her attorneys from speaking or communicating publicly about this case was necessary to protect Child's privacy and shield him from "harmful public scrutiny." Trial Court Opinion, 7/6/18, at 3-4. In issuing its order, the trial court considered whether the conduct and speech of Mother and her attorneys: (1) tended to identify Child; (2) was harmful to Child; and (3) whether Child's right "to be free from undue scrutiny, ridicule, and scorn" outweighed the right of Mother and her attorneys to engage in public discourse. ***Id.*** at 4. Specifically, the trial court noted that Child attends a school "where teachers, parents and students are likely to know each other and that the identification of a parent would naturally identify the child." ***Id.*** at 6. The trial court found that any disclosure and release of Mother's or Father's name in the media could result in the identification of Child, and thus, the trial court concluded that good cause existed to restrict the speech of Mother and her attorneys. ***Id.***

Mother's claim implicates a fundamental right: the free exercise of speech as guaranteed by the First Amendment to the Constitution of the United States and Article I, Section 7 of the Pennsylvania Constitution. We first set forth our scope and standard of review, noting that the United States Supreme Court has stated that in reviewing First Amendment cases, appellate

courts must conduct a review of the entire record. ***See Gentile v. State Bar of Nevada***, 501 U.S. 1030 (1991); ***In re Condemnation by Urban Redevelopment Auth. Of Pittsburgh***, 913 A.2d 178, 183 (Pa. 2006). As the claim presented involves a pure question of law, our scope of review is plenary and our standard of review is *de novo*. ***Id.***

The First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech." U.S. CONST. amend. I. The First Amendment's protection is made applicable to the states through the Fourteenth Amendment. ***Id.***

> When the government restricts expression due to the content of the message being conveyed, such restrictions are allowable only if they pass the strict scrutiny test. That test is an onerous one, and demands that the government show that the restrictions are "(1) narrowly tailored to serve (2) a compelling state interest." ***Republican Party of Minnesota v. White***, 536 U.S. 765, 775 (2002).
>
> Yet, strict scrutiny is not applied simply because a plaintiff raises a claim that its freedom of expression has been curtailed. The High Court has recognized that where the governmental regulation applies a content-neutral regulation to expressive conduct, strict scrutiny is an inappropriate test to apply. ***Texas v. Johnson***, 491 U.S. 397 (1989). The test which is applied to such content-neutral regulations was first enunciated in the seminal case of ***United States v. O'Brien***, 391 U.S. 367 (1968). In ***O'Brien***, the defendant was convicted of violating a statute which criminalized the act of destroying or mutilating a draft card. The defendant had burned his Selective Service registration certificate in order to convince people to adopt his anti-war beliefs. The defendant argued that the conviction could not stand as the statute criminalizing the destruction of draft cards ran afoul of the First Amendment.
>
> In analyzing this claim, the ***O'Brien*** Court stated that where expressive and nonexpressive conduct are combined in the same

> activity, "a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitations on First Amendment freedoms." ***Id.*** at 376. The ***O'Brien*** Court decreed that such "government regulation is sufficiently justified" if:
>
> 1) Promulgation of the regulation is within the constitutional power of the government;
>
> 2) The regulation furthers an important or substantial governmental interest;
>
> 3) The governmental interest is unrelated to the suppression of free expression; and
>
> 4) The incidental restriction on First Amendment freedoms is no greater than essential to the furtherance of that interest.
>
> ***Id.*** at 377. The ***O'Brien*** Court found that all four prongs were met and thus denied the defendant relief.

In re Condemnation by Urban Redevelopment Auth. of Pittsburgh, 913 A.2d at 183–84 (parallel citations omitted); ***see also Clark v. Community for Creative Non–Violence***, 468 U.S. 288 (1984) (observing that content-neutral restrictions on speech are only valid if they are justified without reference to the content of the regulated speech, are narrowly tailored to serve a significant governmental interest unrelated to speech, and leave open ample alternative channels for communication of the information).

"The principle inquiry in determining content neutrality, in speech cases generally and in time, place, or manner cases in particular, is whether the government has adopted a regulation of speech because of disagreement with the message it conveys." ***Ward v. Rock Against Racism***, 491 U.S. 781, 791 (1989). The controlling factor in the determination is the government's

purpose in enacting the restriction. ***Id.*** A purpose that has no relation to the content of the speech is deemed neutral, even if the restriction affects some speakers or messages and not others. ***See id.***; ***see also*** 122 A.L.R. 5th 593, at Section 2 ("A regulation is content neutral when it may be justified without reference to the content of the regulated speech.").

Instantly, our careful review of the gag order reveals that the order's proscription is limited to "any information that would identify or tend to identify the Child." Findings of Fact and Order of Court, 5/1/18, at 5. As written, therefore, the order is not concerned with the **content** of Mother and her attorneys' speech, but instead, with the **target** of the speech, namely, Child, a juvenile whose identity and privacy the court seeks to protect. It is the identification of Child that triggers the application of the gag order. Accordingly, we reject Mother's claim that the order is a content-based restriction on speech and conclude, rather, that the order is content-neutral.

We also find that the order is narrowly tailored to serve a significant governmental interest. "Broadly speaking, the state, acting pursuant to its *parens patriae* power, has a compelling interest in safeguarding children from various kinds of physical and emotional harm and promoting their wellbeing."[2] ***D.P. v. G.J.P.***, 146 A.3d 204 (Pa. 2016) (citing ***Hiller v. Fausey***, 904 A.2d 875, 886 (Pa. 2006) ("The compelling state interest at issue in this case is the

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[2] "*Parens patriae*, literally 'parent of the country,' refers . . . to the role of the state as sovereign and guardian of persons under a legal disability to act for themselves such as juveniles, the insane, or the unknown." ***West Virginia v. Chas. Pfizer & Co.***, 440 F.2d 1079, 1089 (2d Cir. 1971).

state's longstanding interest in protecting the health and emotional welfare of children.")). Thus, "[t]he power of the parent, even when linked to a free exercise claim, may be subject to limitation . . . if it appears that parental decisions will jeopardize the health or safety of the child, or have a potential for significant social burdens." ***Shepp v. Shepp***, 906 A.2d 1165, 1173 (Pa. 2006) (citing ***Wisconsin v. Yoder***, 406 U.S. 205, 233–34 (1972)). "The state's compelling interest to protect a child in any given case, however, is not triggered unless a court finds that a parent's speech is causing or will cause harm to a child's welfare." ***Id.***

Here, our review of the entire voluminous record reveals that this case implicates grave issues, not the least of which is Mother's unsubstantiated but unwavering allegation of sex abuse by Father, which warrants confidentiality of the proceedings. Child has suffered emotional trauma because of the strife between the parents. ***See generally*** Trial Court Opinion & Findings of Fact, 1/31/17; N.T., 5/20/16; N.T., 5/26/16; N.T., 8/26/16; N.T., 9/2/16; N.T., 10/6/16; N.T., 11/18/16. The perpetuation and magnification of that strife in the media – particularly the internet – would exacerbate the harm to Child and constitute an egregious invasion of Child's privacy. The aim of the gag order is, as noted, to promote the best interests of Child by protecting his privacy and concealing his identity. The government's interest in preventing further emotional harm to Child is substantial.

Likewise, we find that the order leaves ample alternative channels for Mother and her attorneys to provide public testimony pertaining to the

sensitive issues in this case. The gag order does not prevent Mother and her attorneys from speaking publicly about child abuse and parental alienation generally. The order merely limits Mother and her attorneys from publishing or communicating anything that would tend to identify and harm Child. Additionally, the order does not bar the media from any of the proceedings in the case, nor does it prohibit the media from reporting on the matter. Whether any members of the media have deemed the matter newsworthy is not clear from the record. However, we note that a gag order on parties and their attorneys has been cited as an accepted less restrictive alternative to restrictions imposed directly on the media. ***See Neb. Press Ass'n v. Stuart***, 427 U.S. 539, 564 (1976).

Lastly, we conclude that Mother has failed to establish that the order is unconstitutionally vague or broad. Mother claims that the gag order "represents a total restraint upon speech of any kind." Mother's Brief at 22. Mother asserts that the gag order "muzzles [Mother's] voices [sic] from not only the nationwide problem of family courts failing to protect sexually abused children in custody cases, but also from discussing the details of this case in light of other relevant important discourse." ***Id.*** at 25. Mother suggests that the gag order "acts to chill others" in similar positions "for fear of similar constitutional and financial harms." ***Id.***

To the contrary, we find that the order is clear and narrowly tailored. As noted above, the order states:

4. [Mother]; Richard Ducote, Esquire; and Victoria McIntyre shall NOT direct or encourage third parties to speak publicly or communicate about this case including, but not limited to, print and broadcast media, on-line or web-based communications, or inviting the public to view existing on-line or web-based publications.

5. [Mother]; Richard Ducote, Esquire; and Victoria McIntyre may provide public testimony in the State House and/or Senate and in the United States Congress and Senate about parental alienation, sexual abuse of children in general or as it relates to this case. However, in providing such testimony, **they shall NOT disclose any information that would identify or tend to identify the Child.** [Mother] shall NOT publically state her name, the name of the Child, or [Father's] name. Attorney Ducote and Attorney McIntyre shall NOT publicly refer to the [Mother], the Child, or the [Father] by name or in any manner that would tend to identify the aforementioned parties.

* * *

Findings of Fact and Order of Court, 5/1/18, at 4-5 (emphasis added).

An unconstitutionally vague law is one that fails to give a person of ordinary intelligence fair notice that his or her contemplated conduct is forbidden by law and encourages arbitrary and erratic arrests and convictions. ***Papachristou v. City of Jacksonville***, 405 U.S. 156, 162 (1972). Here, we are confident that a person of ordinary intelligence would read the order to forbid exactly what Mother wanted to do: take her case to the media. The proscription in the order is limited to a specific, small group of persons intimately involved in one case and makes clear precisely what Mother and her attorneys are prohibited from discussing, *i.e.*, anything that might identify and harm Child. Accordingly, Mother's assertion that the order is unconstitutionally vague and overbroad lacks merit.

Viewing the gag order in light of the above-referenced intermediate test applicable to content-neutral, governmental restrictions on speech, we determine that the order is constitutionally permissible. The order is narrowly-tailored to advance a substantial government interest at stake, *i.e.*, safeguarding children from various kinds of physical and emotional harm and promoting their wellbeing, while remaining open to other channels of communication available to Mother and her attorneys. Accordingly, we reject Mother's constitutional challenge to the gag order in this case.[3]

Order affirmed.

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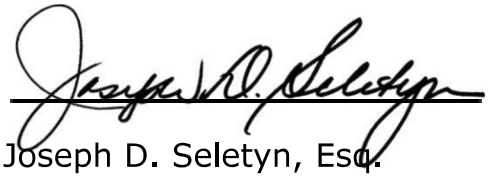
[3] We further remind Attorney Ducote and Attorney McIntyre of their ethical obligations under the Pennsylvania Rules of Professional Conduct and note that all violators of the Rules are subject to the possibility of disciplinary action. An attorney is an officer of the court, who agrees to abide by certain ethical rules before being permitted to practice law. As the Preamble to the Pennsylvania Rules of Professional Conduct provides, "A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having a special responsibility for the quality of justice." As a part of this "special responsibility," an attorney must comport him or herself in a manner that ensures fairness and justice to all parties to litigation, and may include some degree of restraint in revealing the details of a case to the general public. ***See also*** Pa. Rule of Professional Conduct 8.4(c) ("It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.").

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/24/2018

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
FAMILY DIVISION

S[redacted] B[redacted]
Plaintiff,

vs.

S[redacted] S[redacted],
Defendant.

Docket Number: FD 15-008183-010

FINDINGS OF FACT AND ORDER OF COURT

FILED BY:

HON. KIM BERKELEY CLARK

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IN THE COURT OF COMMON PLEA OF ALLEGHENY COUNTY, PENNSYLVANIA
FAMILY DIVISION

S[redacted] B[redacted], No. FD 15-008183-010
Plaintiff,

vs.

S[redacted] S[redacted],
Defendant.

FINDINGS OF FACT

AND NOW, this 27th day of April, 2018 after consideration of Plaintiff's Motion for Sanctions and Other Relief, Defendant's Opposition (and Amended Opposition) of the Motion, and argument of Counsel, I make the findings of fact set forth below.

1. Plaintiff (Father) and Defendant (Mother) are married and have one Child.

2. After a contentious 23-day custody trial, I awarded sole physical and legal custody of the Child to Father. See orders entered on December 12 and 14, 2016.

3. On March 16, 2017 I entered an order appointing an "After-Care Professional (chosen by the parties) to work with Mother on the issue of parental alienation and to being supervised partial custody with the Child. Mother never complied with this order and therefore has had not custody of the child since December 12, 2016.

4. Mother appealed and my order was affirmed by the Superior Court. Mother filed for allowance of appeal in the Pennsylvania Supreme Court, which was denied.

5. On February 1, 2018, before the Supreme Court denied allowance of appeal, a press release we issued announcing an upcoming press conference regarding this case.

6. On February 7, 2018, Mother's attorney, Richard Ducote, Esquire held a press conference concerning this case and Mother's obvious disagreement with the court's findings and orders.

7. Although the Child is not named, Mr. Ducote identifies Mother by name and included a reproduction of the child's in-court testimony and forensic interview.

8. The press conference, which was held on YouTube, contains a link to a DropBox folder containing pleadings from the case a transcript of the Child's testimony and a copy of the Child's forensic interview at Children's Hospital Child Advocacy Clinic. Mother's name is contained within these documents. The child's name is redacted except for the first letter of his first name 'F'.

9. On February 28, 2018, an article about the case appeared in the *Pittsburgh City Paper*. The article began with the graphic testimony of alleged sexual abuse by Father against the Child and contained the age of the child and the name of the Child's best friend at the time the testimony was given.

10. On April 19, 2018, Father presented a Motion for Sanctions and Other Relief, requesting that I prohibit Mother or her Counsel from publically speaking about the case in any forum, ordering Mother and her Counsel to remove any information that has be publicly posted and disseminated about the case by Mother or her Counsel, and to impose monetary sanctions against Mother and Mr. Ducote.

11. There has never been a "gag" order or any court-ordered prohibition that would prevent the parties from publically discussing this case. The record in this case has not been sealed.

12. The Child in this case attends a small private school, where teachers, parents and students are likely to know each other and that the identification of a parent would naturally identify the child.

13. Accordingly, in this case, I find that the disclosure and release of Mother's full name in the media identifies the Child in this case.

14. Because it is abundantly clear who the child in this case is, it is also clear who gave the very graphic testimony about alleged sexual abuse (or who 'F' is).

15. I find that the disclosure of the identity of the Child in this case is harmful and clearly not in his best interest as there is clearly the potential for curious parents, teachers and students in his school to read this information, which could subject him to undue scrutiny, ridicule and scorn.

16. There is no case law directly on point with respect to the imposition of a "gag" order in a custody case. The majority of the cases dealing with the restriction of speech in connection with a court case are criminal and civil cases, where the focus is upon tainting the jury or the prospective jury pool. In this case, there is no jury to taint.

17. However, while I strongly support the notion of openness of courts and the right to free speech under the Constitution, I also recognize the harm that thoughtless, vexatious, and vengeful speech can cause a young child caught in the middle of a high-conflict custody battle. I also find that the conduct of Mr. Ducote borders on professional misconduct.

18. In this case, I find that the right to a young child caught in the middle of a high-conflict custody battle to live free from undue scrutiny, ridicule, or scorn, outweighs the rights of Mother and her attorney to engage in thoughtless, toxic, misleading, and vengeful discourse about this case.

19. While it is tempting to impose monetary sanctions against Mother and her attorney, they have not violated any order of court with regard to speaking publicly about this case, and thus, are not in contempt of this court.

IN THE COURT OF COMMON PLEA OF ALLEGHENY COUNTY, PENNSYLVANIA
FAMILY DIVISION

S[redacted] B[redacted], No. FD 15-008183-010
Plaintiff,

vs.

S[redacted] S[redacted],
Defendant.

ORDER OF COURT

AND NOW, this 27th day of April 2018, after consideration of Plaintiff's Motion for Sanctions and Other Relief, Defendant's Opposition (and Amended Opposition) of the Motion, and argument of Counsel, it is hereby **ORDERED, ADJUDGED AND DECREED** that Plaintiff's Motion for monetary Sanctions is **DENIED**.

Plaintiff's Motion for Other Relief is **GRANTED** in part. It is hereby **ORDERED** that Defendant, S[redacted] S[redacted]; Richard Ducote, Esquire; and Victoria McIntyre, Esquire shall NOT speak publicly or communicate about this case including, but not limited to, print and broadcast media, on-line or web-based communications, or inviting the public to view existing on-line or web-based publications. The following is also **ORDERED**.

1. Defendant, S[redacted] S[redacted]; Richard Ducote, Esquire; and Victoria McIntyre shall NOT direct or encourage third parties to speak publicly or communicate about this case including, but not limited to, print and broadcast media, on-line or web-based communications, or inviting the public to view existing on-line or web-based publications.

2. Defendant, S[redacted] S[redacted]; Richard Ducote, Esquire; and Victoria McIntyre may provide public testimony in the State House and/or Senate and in the United States Congress and Senate about parental alienation, sexual abuse of children in general

or as it relates to this case. However, in providing such testimony, they shall NOT disclose any information that would identify or tend to identify the Child. Defendant shall NOT publically state her name, the name of the Child, or Plaintiff's name. Attorney Ducote and Attorney McIntyre shall NOT publically refer to the Defendant, the Child, or the Plaintiff by name or in any manner that would tend to identify the aforementioned parties.

3. Defendant and Counsel shall remove information about this case, which has been publically posted by Defendant or Counsel, including but not limited to, the press release, the press conference on the YouTube site, the Drop Box and its contents, and other online information accessible to the public, **within twenty-four (24) hours.** Defendant and Counsel shall download or place the aforementioned information onto a thumb drive, which shall be filed with this court.

The Oral Motion to Stay This Order of Court, made of behalf of Defendant Susan Silver, is **DENIED**

This Order does not prohibit any party or counsel from publicly speaking or expressing an opinion about the Judge, including disclosing the entry of this Order of Court, ***after*** the information has been removed as set forth, above. However, such expression shall NOT contain the name of the Child or other information, which would tend to identify the Child.

BY THE COURT:

J.

Kim Berkeley Clark, Judge

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
FAMILY DIVISION

S[redacted] B[redacted],
Plaintiff,

No. FD 15-008183-010

vs.

S[redacted] S[redacted],
Defendant.

ORDER OF COURT

AND NOW, this 19h day of April 2018, it is hereby **ORDERED** that Plaintiff's Motion for Sanctions and Other Relief is continued and taken under advisement by the court until Friday, April 27, 2018 at 10:00 A.M. A hearing and argument on Plaintiff's Motion for Sanctions and Other Relief shall be held on April 27, 2018 at 10:00 A.M. before the undersigned.

It is further **ORDERED** that while the ruling on the Motion is pending, Plaintiff, Plaintiff's Counsel, Defendant or Defendant's Counsel shall NOT publicly speak or communicate about this case including, but not limited to, print and broadcast media, on-line or web-based communications, or inviting the public to view existing on-line or web-based publications. All existing publications about the case shall remain in place to enable the Court to review the publications.

This Order does not prohibit any party or counsel from publicly speaking or expressing an opinion about the Judge, including disclosing the entry of this Order of Court.

BY THE COURT:

KBClark, J.
Kim Berkeley Clark
Judge

copies served personally upon:

Elisabeth Pride, Esquire Counsel for Plaintiff
Richard Ducote, Esquire Counsel for Defendant

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

- - - - -

S[redacted] B[redacted],
Plaintiff,
vs
S[redacted] S[redacted],
Defendant.

FAMILY DIVISION
FD No. 15-008183
CUSTODY TRIAL
DATE: May 20, 2016
Filed by:
Cheryl A. Chorba
Official Court Reporter

BEFORE:

HON. KIM BERKELEY CLARK

COUNSEL OF RECORD:

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New Kensington, PA 15068

THE COPY

CHERYL A. CHORBA, RMR, CRR

doesn't have to see you. (12:45:08).

MS. (PRIDE:) Your Honor, do you want them to wait here until F[redacted] gets into your office or do you want them to go hide now before they bring him up?

THE COURT: Maybe it would be a good idea for them to stay here. Then F[redacted] can come there. That way there's no crossing.

I'm going to turn the recorder off. Somebody remind me to turn it back on.

(Court recessed at 12:45 p.m.)

(Proceedings reconvened at 12:51 p.m.)

THE COURT: If you could stand and raise your hand. Your right hand.

(Witness sworn.)

THE COURT: Have a seat. I just am going to ask you to speak up because if you speak loud enough then we won't keep asking you to repeat yourself, and it will go a lot faster.

Any questions about his competency? I think he's testified before. I don't think I need to ask those questions.

R. Vol. 6

All right.

- - - - -

F[redacted], a witness herein, having been first duly sworn, was examined and testified as follows:

- - - - -

EXAMINATION BY THE COURT

BY THE COURT:

Q. F[redacted], would you tell me your whole name. Your full name.

A. F[redacted].

Q. How old are you, F[redacted]?

A. I'm nine.

Q. What is your birthday?

A. [redacted].

Q. So you'll be ten?

A. Yes.

Q. Where do you go to school?

A. [redacted].

Q. What grade are you in?

A. Fourth.

Q. Tell me what you like about the school. What's your favorite -- or do you like school?

A. I like school.

Q. I used to like school too.
What's your favorite thing about school?
A. Math.
Q. Math. Do you have a favorite teacher?
A. No.
Q. They're all good.
Do you have friends at school?
A. (No audible answer.)
Q. Who's your best friend at school or one of your best friends?
A. One of my best friends is Drew.
Q. Is Drew in the same grade as you are?
A. Uh-huh.
Q. Do you and Drew do things together in school?
A. Yes. One of his friends and one of my other best friends Christopher, we do things. Like last summer my mom and I got together with them. We went to Fun Fest with them, if you ever heard of that.
Q. I've heard of it, but I've never been.
A. Then after that we went to my house, and Chris and I played.
Q. What do you like to do when you're not in school?

A. I like to play with my neighbors. I like to bike. I like to run. I like to swim.
Q. Do you like to read at all?
A. Yeah. I really like to read.
Q. What kind of books to you like to read?
A. I like to read mysteries.
Q. Are you reading anything right now?
A. Right now I'm reading a book called this Book Is Not Good For You.
Q. What's that about?
A. Well, it's about a girl named Cassandra and her side-kicking friend named Max Ernest. It's weird, but he has two names. But it's his first name because his parents are divorced. His mother, well, I think his name should be Max Ernest. When Max Ernest was little. But his father said, no, that's just too Short and plain. How about Ernest?

Then they fought. And then it was threatened to put him up for adoption. So they had to -- so they named him Max Ernest.

Q. From reading some of the things, I understand that you play the piano. Is that correct?
A. Uh-huh.
Q. I play the piano too.

Do you like playing the piano?
A. Uh-huh. I call it like a get away.
Q. I know. That's so relaxing, isn't it?
So what kind of music do you like to play?
A. We're Off to See the Wizard. (Bell).
Q. Do you play any other musical instruments?
A. I play alto recorder.
Q. Okay. I used to play the Clarinet.
A. I was thinking about that. But it was either going to be Clarinet, alto recorder or trumpet.
Q. That's good.
So tell me where you live now.
A. I live in Point Breeze [redacted].
The address is [redacted].
Q. Who lives there with you?
A. My mom and I.
Q. Just the two of you?
A. Uh-huh.
Q. Do you have any pets?
A. No.
Q. I'm sorry. Go ahead.
A. I do have a goldfish that I really want, but it's at my father's house.
Q. So how long have you lived on [redacted]

[redacted]?
A. I'm not sure.
Q. Do you remember how old you were or what grade you were in in school?
A. Like a year or so.
Q. Before you lived there where did you live?
A. I lived at my father's house.
Q. Where is that located?
A. That is in Upper St. Clair. What's the address?
Q. That's okay. You don't have to tell me the address.

When you lived at your dad's house, who lived in that house?
A. Well, for most of the time my father and I, but then my mom, me, and my father.
Q. So before your mom and dad were married, your dad was married before; is that right?
A. Yes.
Q. All right. Do you remember your mom? Your first mom?
A. No.
Q. Do you remember what her name is?
A. Anne.
Q. Do you remember anything about her?

A. No. I only remember things from like DVDs and photos.
Q. So you have photos of her?
A. Yeah. And DVD of her. Pictures. Slide show. But that's at my father's house.
Q. Do you remember how old you were when your mom died?
A. No.
Q. All right. Do you remember her being sick at all?
A. Well, I mean no. Now that you mentioned it. Like when I was a smaller kid I didn't like (inaudible at audio time 12:56:52).
Q. So after your mom died -- did your mom have family? Sisters and brothers and parents?
A. Yes.
Q. Did you see them much after your mom died?
A. (No audible response.)
Q. What are their names? Can you tell me their names?
A. Her mother's name is Lori. Her father's name is Dave.
Q. Does she have some sisters?
A. Yes. Helen, Evelyn, and Stephanie.
Q. All right. After she died, how often -- let me

ask this.

Where did they live? Did they live in Pittsburgh or in Pennsylvania or did they live some other place?

A. Aunt Helen lives in -- I don't know where she lives, but she lives in Pittsburgh. I don't know the exact like location.

Q. That's okay.

A. It's like near Banksville.

Q. What about your grandparents?

A. They live in Chautauqua, New York.

Q. Have you been to Chautauqua to visit them?

A. Yes.

Q. All right. How often would you -- would your dad be the one that would take you to visit your grandparents or would your Aunt Helen?

A. My father would.

Q. Would your father take you?

A. Uh-huh.

Q. Is that what you call him? Father, not dad?

A. No. I call him dad, but I kind of regret it now. Because (inaudible at audio time 12:58:06).

Q. Okay. So when I refer to him, what would you prefer me to use?

A. S[redacted].
Q. All right. I'll call him S[redacted].
So would S[redacted] take you to visit your grandparents?
A. Yes.
Q. So how often would you go? When would you go? Would you go during the summer? Would you go for holidays? Your birthday?
A. Once or twice a month.
Q. So that was a lot; right?
A. Or like once a month.
Q. So what types of things would you do when you would go visit your grandparents?
A. We would go out to dinner. We would go boating, and I would go fishing with my grandfather. Sometimes we would go swimming in the lake. Because they have a cottage.
Q. Is that where you learned how to swim there at Chautauqua or did you learn some place else?
A. I'm not sure if it was -- I don't know where I learned to swim, but I'm pretty sure it wasn't at Chautauqua.
Q. So did you enjoy those things? Boating, fishing, and swimming?
A. Yeah.

Q. Did you do anything else?
I know that they have music up in Chautauqua. Did you ever go to any of the concerts up there?
A. We always heard them.
Q. The music. I thought it was beautiful. Was it good?
A. I guess it was okay because it put me to sleep.
Q. Well, that's good. It's relaxing.
So how long has it been since you've seen your grandparents?
A. A while.
Q. Do you miss them?
A. No.
Q. Why don't you miss them?
A. Because they don't believe me, and I don't like people who don't believe me.
Q. Why do you think they don't believe you?
A. Because once when I called my grandma, she asked me first thing if I was reading off a script, and I said no. Then I told her that you shouldn't believe what my father is telling you. It's all lies.
Then my grandma said I don't believe you. That can't be true. It's impossible for

him to lie. Then I said, no, you have to believe me. She said I'm sorry, but we disagree. Then she said good-bye and hung up.

Q. What about your Aunt Helen and your other aunts? Have you seen them?

A. No.

Q. Is it for the same reasons, that you feel that they don't believe you?

A. For the [redacted]?

Q. Uh-huh.

A. Yes. My Aunt Sue -- my mother was like saying like you could call them anytime when you feel comfortable.

Q. So who is Aunt Sue?

A. She is my aunt who is in the B[redacted] family. She's married to my father's -- to S[redacted]'s brother.

Q. Oh, okay.

A. A few weeks ago or so, like a month ago, I called them. We said that we would -- she would come over like on June 11th. We could do something.

But I told her we can do whatever, but there is only some circumstances I can't. If it's anywhere near your house or my father's

house, I can't because I don't feel comfortable. That's all.

Q. All right. So if I asked you today where you want to live, where would that be?

A. My mom's house.

Q. Why do you want to live with your mother?

A. Because there are rules. Then I can do work before play. It helps me.

Q. So when you go with S[redacted], did he not have any rules?

A. No. He tried for me not to get any work done. When I said like I want to do reading, he's like you can do that later. Then he kept putting it off until it was the end of the week, and I couldn't do it.

Q. So I think I know what you're going to say to this, but I have to ask you anyway.

Why don't you want to live with your father?

A. Because I don't believe him. He's unpredictable. I don't trust him.

Q. Are you afraid of your dad?

A. Uh-huh.

Q. Why are you afraid of him?

A. Because I've been having nightmares lately

about my father. He's been showing up in my dreams. I don't like him because I'm really scared of him.

Q. So you talked quite a bit about your dad's family, about S[redacted]'s family. His sisters, his -- or no. I'm sorry. You talked about your mother [redacted]'s family, her sisters and her parents.

You mentioned your Aunt Sue who is married to S[redacted]'s brother; is that right?

Does S[redacted] have any other brothers or sisters?

A. Uncle Paul.

Q. Did you ever spend time with them?

A. No. Because my father said that Uncle Paul was really mean and he's a liar and that it's not good for me to like be with him.

Q. What about Aunt Sue? What's her husband's name?

A. Steve.

Q. So do you spend time with Uncle Steve?

A. Not lately, but I used to.

Q. But you used to? Would you visit them at their house or would they come to your house?

A. Mostly we'd go to their house.

Q. What kinds of things would you do with Aunt Sue and Uncle Steve?
A. Well, I would feed their fish. I would play hockey with Uncle Steve.
Q. Do they have any children?
A. Yeah. They have two children, but they're -- one is married and one is --
Q. So they're adults. They're grown up?
A. Yes.
Q. Do any of your aunts and uncles have children around your age?
A. Yes. My Aunt Stephanie.
Q. So when you were seeing her, did you also see her child?
A. Children.
Q. Children. Boys? Girls?
A. One girl, two boys.
Q. So those would be your cousins then; right?
A. Yes. And my Aunt Evelyn had two girls. They're around probably like 15.
Q. So a little bit older than you are?
A. Yeah.
Q. All right. What about your mom's family? Do you know any of your mom's family?
A. Uh-huh. I know my grandma. I know my uncles.

F[redacted] - EXAM BY THE COURT 33

Q. So what's your grandmother's name?
A. Laura.
Q. And do you visit her?
A. Uh-huh.
Q. Where do you visit her? Where does she live?
A. She goes to a nursing home.
Q. Does she live in Pittsburgh or does she live some place else?
A. She lives in Cleveland.
Q. So how often do you see her?
A. I'm not sure. Probably like at most maybe like -- or at least like once every two months or something.
Q. All right. You and your mom go to Cleveland to visit her?
A. Uh-huh.
Q. You said your mom has some brothers?
A. Yes.
Q. What are their names?
A. Bruce. I was going to say Po. That's what they call him.
Q. I'm sorry. What do they call him?
A. Well, my mother says Po, but his real name is Bruce.
Q. Bruce. Okay.

A. And Mark.
Q. And Mark. Have you visited them?
A. Well, I mean I tried to visit my Uncle Po. We arranged something, but then he just (inaudible at audio time 1:05:35). He has a mental illness. He gets really anxious.
Q. How do you know he has a mental illness?
A. My mother told me that he gets real anxious around people.
Q. But how do you know that he gets anxious because he has a mental illness?
A. I'm not sure of that. I just believe my mother.
Q. So did she say that, that he has a mental illness?
A. Yes.
Q. Okay. So you said -- and there's another uncle. What's the other one's name?
A. Uncle Mark.
Q. Have you seen him?
A. (No audible response.)
Q. Do you know if they have any children?
A. I don't know.
Q. All right. Do you feel safe with your mom?
A. Uh-huh.

Q. Why does your mom make you feel safe?
A. Because I believe her. I trust her. She's predictable.
Q. All right. Do you feel safe with your dad?
A. No.
Q. Why don't you feel safe with your dad?
A. Because he's not believable. He's not trustworthy. He's unpredictable.
Q. Do you love your mom?
A. Uh-huh.
Q. All right. Do you believe your mom loves you?
A. (No audible response.)
Q. Why do you believe your mom loves you?
A. Because she acts like it. She cares about me. She helps me.
Q. Do you love your dad? It's all right to say no if you don't mean it.
A. No.
Q. Do you believe he loves you?
A. (No audible response.)
Q. So for a while you were having visits with your dad. Do you remember that? And do you remember Deputy Susie that used to be on the visits with you?
A. I wish I never knew her.

Q. I'm sorry. What did you say?
A. I wish I never knew her.
Q. Why?
A. Because she told me at one visit that UPMC killed my mother.
Q. Deputy Susie told you that UPMC killed your mother?
A. Yes. She just said when we went to (inaudible at audio time 1:08:07) she just said that UPMC killed my mother.
Q. Here's some tissue.

So I know this is hard, but I have to ask you a couple of questions.

So when you were on the visits with your dad, what types of things would the two of you do when you were having the visits that were supervised? What kinds of things would you do?

A. Well, we would usually go to Eat 'N Park. We'd go bowling.
Q. Do you like to bowl?
A. Yeah. But not with him.
Q. Are you good at it? Are you good at bowling?
A. (No audible response.)
Q. So did you have a good time when you were with

your dad on the visits?
A. I never had a good time with him.
Q. Did you sometimes take a friend with you on visits?
A. No. Once my Aunt Sue and Uncle Steve came.
Q. I'm sorry? Once who?
A. My Aunt Sue and Uncle Steve came.
Q. Did you have a good time then?
A. Yes. Because my father acted totally normal. Because he's like two people. Like he would never -- like you would never see the real him because you don't go to our house. He's two different people.

Like in like public, he's really nice. Do like whatever. Sort of look like he's totally nice. But then at home he would be pretty whatever.

Q. If someone said that you had to start visits with your father, how would that make you feel?
A. No.
Q. Would that be the same way if you had to live with your father some of the time?
A. Uh-huh.
Q. Why? Why would you not want to start visiting with your father?

A. Because I don't trust him. I don't want to be with somebody I don't trust.
Q. Why don't you trust him?
A. Because he's not honest.
Q. What if your father were to get help and he was to change? Would you then be --
A. If he was to change, but he's probably not going to accept the help.
Q. But what if he did? What if he did and he changed?
A. If he did, it depends.
Q. All right. F[redacted], do you have scars on your arms?
A. Uh-huh.
Q. Can I see them?
A. Here's one.
Q. Can you tell me what those are from, what the scars are from.
A. One night my father -- I guess he had a really bad day at work. He came into my room. He was like crouched over me. Then he started like pinching me really, really hard.
Q. So was this when you lived in the house with your father?
A. Uh-huh. He was just really mean.

Q. So you told me when I first started asking you some questions that you had some nightmares about your dad.

Can you tell me a little bit about what those nightmares were about.

A. Well, sometimes when I was dreaming, I would wake up, and I'd see my father. So like I have bunk beds. A bunk bed. There's a chair right across from there. I wake up, and he's sitting right there with blood on his arms. Then I look at the doorway, and I see blood. Then I always think that he killed my mother and wants to kidnap me.

Q. You know your father didn't kill your mother; right? You know that; right? Why do you think your father might have killed your mother?

A. I don't know. With a broken --

Q. What?

A. With a broken (inaudible at audio time 1:12:28). I don't know if he killed her, but I bet if he really wanted to he would.

Q. Do you remember when your dad married -- when S[redacted] married your mom?

A. Uh-huh.

Q. Before S[redacted] married your mom, was it just you

and S[redacted] living in the house?
A. Uh-huh.
Q. Tell me about where you slept in the house and where S[redacted] slept.
A. I slept in my bed, and he slept in my bed. But he really had his own room, but he would always sleep in mine.
Q. Every night?
A. Like almost like -- more than every other night.
Q. More than every other night.
So what happened when your dad would sleep in the bed with you?
A. Sometimes he would do things.
Q. Can you tell me some of the things that he did.
A. It's really uncomfortable.
Q. I know it is, but it's important for me to hear from you. You know, this has been going on for a while. I did get to read what you said to Judge Satler, and I saw your interview with Dr. Rua.
Everybody else keeps telling me things that you said, but I haven't heard from you. You're really the most important person in all of this, F[redacted].

A. Well, sometimes he would lay on top of me. He would like pull my pajamas down. He had these like shorty shorts on that he would go running in. They didn't need underwear.

Well, the first thing is that I was -- I acted asleep, but I was really awake when it all happened.

He would stick his penis in my butt crack. Into what I call my poop hole. He would do that many times. When under my body he would be squeezing my penis.

Sometimes I get really angry with myself because I always say that I could have stopped him.

Q. Do you understand though, F[redacted], you are a child? Do you understand that? Do you understand that none of this is your fault?

Do you believe that?

A. Sometimes.

Q. So do you remember how old you were when this first started happening?

A. I would say like a little before kindergarten.

Q. So once your dad -- once S[redacted] married your mom, where did your dad sleep? Where did S[redacted] sleep?

A. He slept in his room.

Q. Has S[redacted] ever said anything bad to you, bad or mean to you about your mom, and can you tell me what he said?

A. Well, at the visits sometimes he would tell me that my mother is a liar, that I shouldn't believe her. I should believe him and that my mother is a very bad person.

Q. Has your mom ever said any bad or mean things to you about S[redacted]?

A. Uh-uh. And also he would -- once I heard him in Chautauqua say I wish I never married S[redacted].

Q. Do you know when that was that he said this? How old you were?

A. No.

Q. Where was your mom at that time? Did she go to Chautauqua with you?

A. No. She would probably be like at home.

Q. Did she ever go to Chautauqua with you and your dad?

A. Yes. Once or twice she did.

Q. So I know you have said that you don't want to visit or have contact with your father.

Did your mother ever tell you to say that?

A. Uh-uh.

Q. Does your mother ever say anything to you about S[redacted] at this time?
A. No. What she tells me to do is to tell the truth.
Q. So who, besides your mom and what you told me today, who else did you tell about the things that your dad did, that S[redacted] did to you?
A. I told Miss Maegan.
Q. All right. That's Miss Maegan over there.
All right. Who else did you tell?
A. I told -- I forget his name now.
Dr. McGroarty. And Dr. Rua.
Q. How did you feel about speaking to Miss Maegan?
A. I did not feel comfortable.
Q. Why not?
A. Because I don't believe her. She lied to my face.
Q. What did she lie about?
A. Well, it was a home visit. She came to my house. She told my mother that I really want for her to come see my room. I didn't say that. I did not want her to even come into the house.
Q. All right. How did you feel about talking to Dr. McGroarty?

A. I didn't feel comfortable because he always challenges me and he cut me off. He acted like he didn't want to hear what I was saying.
Q. How did you feel about speaking to Dr. Rua?
A. Well, I mean it felt okay.
Q. Who is Diana Schwab? Do you remember her?
A. My therapist.
Q. But she's not your therapist anymore, is she?
A. Uh-uh.
Q. Do you remember how old you were or when you started having Diana Schwab as your therapist?
A. No.
Q. Do you remember why you had Diana Schwab as your therapist?
A. No.
Q. All right.
A. I should have never had her as my therapist because she didn't really help me. Once I told her that my father has been like really mean to me. She said, shucks, that's just life, F[redacted].
Q. Did you tell her about the things that your dad -- that S[redacted] did to you?
A. I didn't remember. I always blocked it out until one time I just had to (1:19:53). I've

never actually wanted to think about these things. It just makes me sick.

Q. So you told me that Deputy Susie told you that UPMC killed your mom. Did your mom ever say that to you?

A. (Uh-uh).

THE COURT: All right. So if we could have a moment.

You have some drawings that you wanted F[redacted] to look at?

MS. HAMMER: I do, Your Honor.

THE COURT: So I can ask you because the copies aren't that good.

MS. HAMMER: There's about four things. One is a drawing and pictures.

BY THE COURT:

Q. All right. So, F[redacted], do you know Miss Margie?

A. Yes.

Q. Who is Miss Margie?

A. She is --

Q. A lawyer? Attorney?

A. Attorney.

Q. So she asked me to show you some pictures. So I'm going to show you some pictures.

This first one.

THE COURT: Do you have copies of these?

MS. HAMMER: I think they are attached.

THE COURT: Yes. They were attached to the Motion.

MS. HAMMER: There's copies in each one, isn't there?

THE COURT: There's three copies. But I'm asking does Miss Pride --

MS. PRIDE: I don't know what you're referring to, Your Honor.

MS. HAMMER: In other words, these are all copies.

THE COURT: Right. That's what I was asking you, if you had copies.

MS. HAMMER: Yes. Yes.

THE COURT: Before I show them to her. They were attached to her Motion.

MS. HAMMER: I think they have them.

BY THE COURT:

Q. So if you could look at this. We'll call this mother's Exhibit A.

Can you tell me what this is.

A. This is a picture of what I drew in summer camp. It's called Something in the Closet.
Q. So you drew these?
A. Yes.
Q. So do you like to draw?
A. Uh-huh.
Q. Do you like other kinds of art too besides drawing?
A. Yes. I like finger-weaving.
Q. Finger-weaving?
A. It's basically your only material is scissors, some scissors and -- oh my God. I forget. Like thread. You just wrap them around your finger and then pull them off. See how long you can make it.
Q. How nice.
A. I made one for my grandma.
Q. That's nice.
A. Laura.
Q. So I'll start with this one.
What is that a drawing of?
A. That's my father.
Q. All right. So what does it show about your father? Because it's kind of abstract. So it doesn't exactly look like S[redacted].

A. Right here. He doesn't have any clothes on. He's totally naked. I drew things for his arms. Because how he pinched me, it felt like snakes just like biting me.

I drew purple hair because purple is his favorite color. I drew this because (inaudible at audio time 1:23:15) penis.

Q. All right.

A. This is my bunk bed in my mom's and my house.

Q. Okay.

A. Here's (inaudible at audio time 1:23:30).

Q. You're a pretty good artist.

THE COURT: Then did you want him to look at these photos, Miss Hammer?

MS. HAMMER: I was offering them, Your Honor -- I don't think he needs to. That's his father. I was just showing that there's a deformed knee on the picture in the first one.

THE WITNESS: On the baseball picture.

THE COURT: Oh, okay. I don't think I'm going to ask him about the photos, the drawings. Except I want to ask him about this one. The cat. Because I like this.

BY THE COURT:

Q. Is this your cat?
A. Well, my family's. Well, my mom always told me that he was a better reader than me when I was still learning to read. So everyday we had a reading session. I would dress up. I'd be like him. I'd do my orange and white-striped shirt. We would read together.
Q. Is this in your home where you live with your mom?
A. Yes. Wait. No. No. The picture of it is in the home. But this is from the log house where my mother slept at my father's house.
Q. So this is the log house. Tell me about that.
A. The log house is like an addition to the stone house.
Q. All right. Is it like in the backyard part of your house? Is this in Upper St. Clair?
A. It's connected to the stone house.
Q. Is this the house in Upper St. Clair?
A. Uh-huh.
Q. All right. So why did your mom sleep in the log house?
A. Because my father said that was the only other space. But other than that I don't know why.
Q. Thank you.

So, F[redacted], is there anything else that you'd like to tell me or anything else that you would like to ask me? Is there anything you would like to ask me or anything that you think I should know that I didn't ask you about?

A. I just have one question.

Q. What's that?

A. What's your favorite color?

Q. Well, I don't really have a favorite color anymore. When I was a little girl, young girl, pink was my favorite color. I think most girls like pink.

A. I don't know why, but when I was small my favorite color was pink.

Q. Yes. I like lots of colors. I like bright colors. But I don't really have one now.

A. Yeah. My favorite is orange.

Q. Orange is a good color.

All right. Thank you. All right. That's it.

MS. PRIDE: Your Honor, if you don't mind I'd like to go to the bathroom really quick. I can make sure they're out of sight on my way out.

PITTSBURGH
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GAMING ISSUE

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"IT'S REALLY THE SAME STORY OF THE #METOO MOVEMENT, JUST IN A MUCH MORE DIRE SETTING WHERE CHILDREN ARE AT STAKE."

PARENTAL INEQUITY

AT A CUSTODY hearing in Allegheny County on May 20, 2016, the 9-year-old boy at the center of the case took the stand and was asked a series of questions. His favorite school subject? Math. His best friend? Drew. His musical instrument of choice? The alto recorder.

But according to court transcripts, the questioning soon turned from school and music to the boy's relationship with his father. "So what happened when your dad would sleep in the bed with you?" the judge asked.

The boy answered in graphic detail.

"Well, sometimes he would lay on top of me," the boy said. "He would, like, pull my pajamas down. ... Well, the first thing is that I was — I acted asleep, but I was really awake when it all happened. He would stick his penis in my butt crack. ... He would do that many times. When under my body he would be squeezing my penis. Sometimes, I get really angry with myself, because I always say that I could have stopped him."

Children's advocates say family courts unfairly favor fathers, even when they're the abusers

{BY REBECCA ADDISON}

The 9-year-old's testimony in court that day mirrored information he disclosed earlier that year at the Pittsburgh Child Advocacy Center. In an interview with a child-advocacy specialist, the 9-year-old said his father had touched his genitals and shown him pornography on the internet.

But despite both sets of testimony, on Dec. 12, 2016, Allegheny County Common Pleas Judge Kim Clark gave the child's father sole custody, saying she didn't believe he had sexually assaulted the boy.

The child's mother has appealed the custody order all the way up to the Pennsylvania Supreme Court. Last week, the court denied her appeal.

As outrageous as this case might sound, Richard Ducote, the attorney representing the mother in this case, says instances like these are all too common.

"Everybody who works in the child-abuse field and the domestic-violence field has been very frustrated with the inability to solve this problem," says Ducote. "Family courts don't handle domestic violence and

child abuse well. They have a mentality that these are vindictive women that don't want their kids to have a relationship with the father."

Children's advocates say courts grant custody to abusive fathers all too often. They say that although the narrative that the judicial system unfairly favors mothers persists, it couldn't be farther from the truth. In an effort to address this, the Pennsylvania legislature is currently considering a bill which requires additional training for court personnel involved in custody cases.

"It's really the same story of the #metoo movement, just in a much more dire setting where children are at stake," says Joan Meier, founder of DV LEAP, a national nonprofit that works with domestic-violence survivors. "I think it would shock people to know that courts and judges are not more unbiased and objective than anyone else in our society.

"No one wants to believe that this many men are sexually abusing their children, that huge quantities of men at all class levels are doing this. Believing it's false is a lot easier than believing it's true."

At the heart of the problems around custody cases is the concept of parental-alienation syndrome. The term, coined by child psychiatrist Richard Gardner in the 1980s, describes children who have been psychologically manipulated into showing fear or hostility toward a parent and/or other family members.

Ducote has worked on hundreds of child-custody cases and says abusive parents often claim parental alienation to refute abuse allegations. He says the child-custody case he's currently working on is a clear example of the problem.

"This 9-year-old testified to the ... rape that his father was committing and to sexual fondling. This is the same testimony that in criminal cases is sufficient to support a criminal conviction beyond a reasonable doubt," says Ducote. "But in family court, it's disregarded, because the courts favor this excuse of parental-alienation syndrome. Courts say this is simply the result of the mother coaching the child to say the father's beating them, therefore the father should have custody."

Ducote says the myth that family courts unfairly favor mothers helps protect abusers. According to the Pew Research Center, the vast majority of custody cases are settled out of court, and in 70 percent of those cases, mothers end up with primary custody. But, according to a Massachusetts study from the 1980s, when fathers contest custody, they win 70 percent of the time.

"If you are an abusive and controlling man, the ultimate threat is always, 'If you leave me, I will take custody of the kids.' So, what happens in a lot of these cases is, you have these men who have tried everything they can to maintain control of their abused wives. And they can't, so they turn to the court system, and they fight for custody," says Ducote. "There are men in treatment who admit to doing this. But most judges don't understand the dynamics of domestic violence."

Rep. Tina Davis (D-Bucks County) has proposed legislation that would address this by updating court procedures for child-custody cases in which there are allegations of domestic violence or child-sexual abuse.

"It's very complicated when there's abuse," says Davis. "I've talked to a lot of women that have had this problem. Child molesters and criminals know how to get around the system and work it. In the courts, judges don't want a child to be alienated from one parent, so [the abusers] say, 'She bad-mouthed me to the child, that's parental alienation.'"

"IT'S VERY **COMPLICATED** WHEN THERE'S ABUSE."

The bill would require more training for court personnel handling custody cases and establish an evidentiary hearing to thoroughly vet allegations of abuse.

"I'm not putting judges down, but a lot of them have been there for years. They go about it the old way, and they feel that a man should still be a part of a child's life," Davis says. "There's got to be a better way of looking at cases like this. A lot of women are getting discriminated against, because they don't have the money or resources to fight in court."

A national study by Meier, a professor of clinical law at George Washington University and the founder of DV LEAP, looked at 240 child-custody cases. In those cases, alleged child-abusers won custody or unsupervised visitation with a child victim 81 percent of the time.

"What the data show is that alienation does a lot of damage when a father claims it against a mother who is claiming abuse, that it is not gender equitable, that it doesn't work the same way in reverse," says Meier. "Parental alienation is very gender biased. It does a lot more damage when a father wields it than when a mother wields it. And it does more damage when she claims abuse.

"We were not entirely expecting this, but we found very compelling data showing

CONTINUES ON PG. 08

allegations of child-sexual abuse or child abuse rebound drastically against the mother alleging them. Your risk of losing a case and losing custody go way up, if you report child abuse and particularly child-sexual abuse."

According to the U.S. Department of Health and Human Services, Administration for Children and Families, nearly 80 percent of all child deaths involve an abusive parent. Its most recent report, released in February, found more than 4,000 cases of child abuse or neglect in Pennsylvania. This represents an 18 percent increase from 2014. In these cases, 38 percent of children were physically abused, and 50 percent were sexually abused.

"What's going on out there is so disastrous and so widespread, and that's because fairly few people understand what's going on in these custody cases and what an incredible battle they are," Meier says. "We get flooded with these desperate calls for help."

Meier has been working on a larger study looking at data from more than 4,000 custody cases that she plans to release this year. And without giving too much away, she says the study is confirming much of what she has found previously.

"There's a widespread belief that men are falsely accused all the time," Meier says. "That's the impact of parental alienation, but it's also the impact of the fathers'-rights movement, and the very persistent and effective advocacy from those kinds of ideologues who are trying to convince the world that fathers are being screwed in court."

According to Meier, this has never been true. And she says it's important to get the facts out there, so that inequities in the court system don't persist.

"Our society thinks the courts are biased toward women. So, there are a lot of judges that bend over backward for fathers thinking they're moving toward equity," says Meier. "So, just getting the facts out there is really important to help judges see they're not equalizing when they prefer fathers, [but that] they're actually exacerbating inequities.

"It needs to become clear that when family courts don't take abuse claims seriously they're doing exactly what the #metoo movement is decrying: They're disbelieving true abuse, they're protecting abusers, and they're doing it in the family courts at the expense of children."

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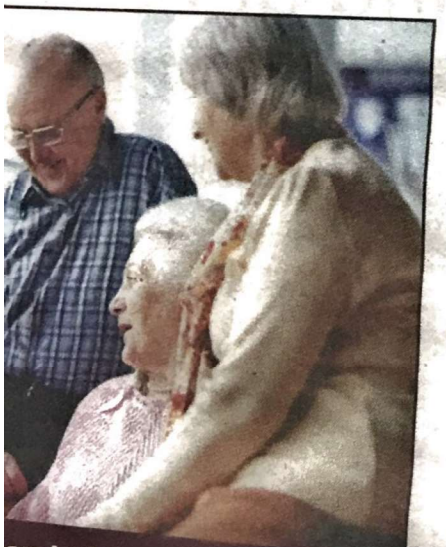

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U.S. NEWS

Jacqueline Franchetti says she did what she was supposed to do. So why did her daughter die?

"I did everything I was supposed to do. I left the abusive relationship," said Franchetti. "Kyra's murder was 100 percent preventable."

— Contested custody disputes often involve allegations of abuse. At stake is not just the rights of the parents, but potentially the life of the child. Keith Negley / for NBC News

May 13, 2021, 3:00 PM CDT

By Adiel Kaplan, Kate Snow and Eric Salzman

Jacqueline Franchetti's 2-year-old daughter Kyra loved Mickey Mouse, blowing bubbles and going fast on the slide at the park. She had just learned to roll down the hill in the backyard the day before her father, Franchetti's ex-boyfriend, Roy Rumsey, picked her up for a weeklong visit, Franchetti said. It was a court-mandated, unsupervised visit in July 2016, a few months before the trial to decide the former couple's custody case.

But the case would never go to trial and Franchetti would not see her daughter again. That week, Rumsey shot the girl, set his house on fire, then took his own life, according to police.

For a year and a half, Franchetti had been trying to warn a Long Island court that Rumsey was unstable and violent and should not be allowed unsupervised time with their daughter. But the judge granted him time alone with Kyra while they awaited the custody trial. Had her concerns been taken more seriously, Franchetti believes her daughter would be alive today.

— Jacqueline Franchetti with her daughter Kyra in 2016. Jacqueline Franchetti

"I did everything I was supposed to do. I left the abusive relationship. I came forward with as much as I possibly could," she said. "Kyra's murder was 100 percent preventable."

In the past five years, at least two dozen similar cases – in which a parent killed a child after the other parent raised concerns about abuse during a custody dispute – have made headlines across the country. There's no official government tally of these deaths and no national data on how courts handle custody cases with abuse allegations. But experts say in every state, judges have significant power in custody cases and their decisions are rarely overturned. The judges overseeing these cases, however, are often untrained in the dynamics of abuse and trauma or how to evaluate whether a child could be in danger.

"Family court isn't what you'd consider the favorite court. Lots of brand new judges wind up sitting in family courts across the country," said Judge Ramona Gonzalez, a circuit court judge in La Crosse, Wisc., and board member and former president of the National Council of Juvenile and Family Court Judges (NCJFCJ). "If you have untrained judges that don't understand the dynamics of trauma ... they will make assumptions and those assumptions will lead to decisions based on error."

Parents say family courts too often ignore allegations of violence in custody disputes

Gonzalez's organization is the leading nonprofit that trains judges about domestic violence, child abuse and trauma. It has trained more than 10,000 judges since it began doing so in 1990, but estimates it reaches a tiny fraction of the judges that should receive training every year. Other nonprofits and some court systems also run trainings on these topics for court and legal professionals, but roughly 30,000 people work in family courts and funding for training is limited.

Around the country, family courts handle hundreds of thousands of custody cases every year. The vast majority of custody decisions are resolved between the parents without the need of court intervention. But, studies have shown those that are not can be among the most complicated and resource-intensive that courts handle, and often involve allegations of abuse. At stake is not just the rights of the parents, but potentially the life of the child.

Sometimes judges make bad calls and award custody to abusers. A 2019 study funded by the Department of Justice examined trends in 27 custody cases where an abuser was awarded unsupervised visits, joint or full custody of a child, despite allegations of child abuse. The decisions were all overturned when the allegations were later found to be valid, often after several years. In 78 percent of the cases, a primary reason for the judge's initial decision was the judge's belief that the parent who alleged abuse lacked credibility.

"When a judge makes that kind of mistake, it's not one that can be easily fixed," said Gonzalez. "For every catastrophic case that makes the paper, there are a thousand that have been just as catastrophic that haven't."

Life and death decisions

Custody disputes occupy a unique corner of the legal system. A single judge — often facing conflicting accounts, charged emotions and scant evidence — decides who a child will spend their time with and how. Most parents represent themselves, as there's no provision for a court-appointed lawyer in the vast majority of these cases and hiring one can be prohibitively expensive. The judge's decision may be aided by a custody evaluator or legal representative for the child, but many courts don't guarantee those and require parents to foot the bill for their services, which can cost thousands of dollars.

"The presumption in family court is that children need an ongoing relationship with both parents," said Peter Jaffe, academic director of the Center for Research and Education on Violence Against Women and Children at Western University in Ontario. But that doesn't work for the estimated 20 percent of separating couples with a history of domestic violence, he said.

"Unfortunately, in many of the cases that go to court, one or both of those parents may be toxic or dangerous to the children," said Jaffe, a clinical psychologist who has worked with criminal and family courts in the U.S. and Canada for five decades. "In domestic violence cases, there may need to be a whole different strategy or approach."

While domestic violence happens in all types of relationships, the most dangerous cases — those with a high potential for homicide — are relationships with male abusers and female victims. The presence of domestic violence in a custody case may mean a victim is unwilling to let their abuser spend time alone with their child. But in many family courts, parents who refuse to cooperate by sharing custody can be penalized and receive less access to their children.

Bringing up domestic violence in family court, especially if there's no record of it, can backfire to the point that women are often told not to mention abuse allegations, said Gonzalez.

"There are lawyers who will say, 'We're not going to mention the abuse because you can't corroborate it and it will impact the judge's view of your credibility on other issues,'" she said.

Often, when a parent raises concerns about domestic violence or child abuse, the other parent will counter by saying the allegation is an attempt to "alienate" the child. At that point, Gonzalez said, the focus of the case stops being on the abuse and shifts to what kind of parent the person alleging abuse is and whether they are credible.

The concept of "parental alienation" describes actions by one parent to damage the relationship a child has with the other parent. It has not gained enough scientific credibility to be recognized as an official psychological syndrome, but the

phrase comes up frequently in contested custody cases. Groups like the National Parents Organization, which advocates for equal parenting as the default in custody cases, say that despite scientific questions, no one who works on divorce and separation cases is unfamiliar with alienating behavior.

— Kyra Franchetti. Jacqueline Franchetti

"Certainly people use allegations of parental alienation strategically and falsely, but people also use allegations of abuse strategically and falsely," said Don Hubin, board chair of NPO. Hubin said his group pushes for state legislation to prioritize equal parenting in custody cases, but with exceptions if the court finds there is abuse.

Franchetti said her lawyer initially cautioned her that raising concerns over her ex's abusive behavior might damage her credibility with the court. But she took the risk, sharing the concerns in the petition for custody she and her lawyer filed and in interviews with Child Protective Services and a forensic evaluator. She said she was repeatedly told she could bring her detailed concerns about abuse up at the custody trial. Her daughter was killed three months before the trial date.

After Kyra's death, Franchetti became an activist, learning everything she could about the New York state family court system, then getting the ear of several state legislators and helping them craft bills to reform it. Her goals include mandating extensive training on domestic violence, child abuse and trauma for family court workers and increasing the qualifications for forensic evaluators in custody cases. Currently, the state has few limits on who may act as a forensic evaluator or how evaluations should be done.

"These officials are making life or death decisions every day," Franchetti said. "And without the proper skills, training and knowledge, they're going to get it wrong."

This year, three bills for sweeping reforms of New York's family court system are moving through the legislature, including one that would require forensic evaluators to be licensed psychologists, social workers or psychiatrists. Another, named for Franchetti's daughter, would create requirements for how many hours of training judges must attend before handling custody cases with abuse allegations, how organizations are approved to provide training and eight key topics for training to cover.

The New York Office of Court Administration declined to comment on the proposed legislation or Franchetti's case, as family court cases are private in New York. The office noted that the state courts run many training sessions on domestic violence and child abuse every year, and that since 2001, judges have been required to receive domestic violence training every two years.

Counterintuitive

When the movement to end domestic violence began to grow in the U.S. in the 1970s, advocates focused much of their efforts on improving how criminal courts handle family violence. It was only in more recent decades that the push expanded to bringing education on domestic violence to family courts.

"A whole system has developed around this issue as a problem in criminal court," said Jaffe. "The same system has not developed within the family court. In family court, for the most part, it's every man or woman for themselves."

In urban areas, there may be more services available for parents navigating family court, and better informed judges and custody evaluators, experts said. But it can also be luck of the draw.

Custody cases are handled differently state to state, even county to county. Court rules and judge duties vary – in large court systems, judges may serve for years in dedicated family courts, while small systems may only have a few judges seeing all civil cases, from custody disputes to traffic tickets and multi-million dollar injury claims. The differences make it difficult to track family court trends, but the same issues come up everywhere, experts said, because few places require extensive training on the dynamics of family violence for judges and court employees.

But courts should require it, said Gonzalez. Victims may be reluctant to come forward, she said, and when they do, they may have delayed months or years. They may have little to no money because they were financially controlled by their abuser. Often they are experiencing trauma, and may be depressed, anxious, overwhelmed and unsure of who to trust, which can affect how they appear in court.

Comprehensive domestic violence training covers those dynamics and more, including how domestic violence impacts children who witness it. During and immediately after a separation is the most dangerous time for victims, and if abusive behavior escalates, that can also put children at risk.

The Department of Justice puts several million dollars toward domestic violence training programs for judicial and legal professionals annually, including those run by NCJFCJ. But for every family court system to make training mandatory, NCJFCJ estimates training programs would need to get a major funding increase from federal and state governments.

'How many people?'

Two years after Franchetti lost her daughter, Kathy Sherlock's daughter Kayden was killed by her father, Jeffrey Mancuso, following a custody dispute. Sherlock had left Mancuso when Kayden was around one year old, but years later found herself in court after he filed for equal custody.

Sherlock, who lives outside Philadelphia, said she told everyone she could in the court system that she was worried for Kayden's safety if left alone with him, even showing the court a restraining order she filed to protect herself from Mancuso. During their relationship, he had been violent toward Sherlock repeatedly, she said, though out of fear, she had never filed a police report.

"How many people did I have to beg for help?" Sherlock asked. "How many people did it take? And it didn't work."

A friend filed a judicial misconduct complaint about the judge after Kayden's death, which was later dismissed by a state panel. The court's decision was, "made in compliance with Pennsylvania law and based on the facts of the case and was not appealed by either party," the Bucks County Court of Common Pleas said in a statement to NBC News on behalf of the court and judge.

Like Franchetti, Sherlock threw herself into activism after her daughter's death. The Pennsylvania legislature is now considering a bill named for Kayden, aiming to protect children from unsupervised visits with abusers and to expand judicial training.

— Kathy Sherlock with her daughter Kayden. Kathy Sherlock

The momentum from these tragedies has been building. Three years ago, the stories of Franchetti and other parents led the House of Representatives to pass a resolution that child safety should be the first priority of family courts and that it would schedule hearings on family court practices (which have not yet happened).

This year, Sherlock's congressman, Rep. Brian Fitzpatrick, R-Penn., added a federal version of Kayden's law – which would increase grant funding to states that commit to prioritizing child safety in family courts and to training judges on child abuse and domestic violence – to the Violence Against Women's Act reauthorization that passed the House in March. It's unclear if the Senate version of the bill will include Kayden's law, though advocates are pushing for it.

Other states have also begun to tackle how they handle these cases. Last year, California passed a law allowing descriptions of psychologically damaging and abusive behavior, known as coercive control, as supporting evidence in family court hearings. Colorado and Maryland are currently considering bills that would make training in domestic violence mandatory for judges and other family court personnel, and the Hawaii legislature is considering several family court reform bills.

While they advocate separately, Sherlock and Franchetti are united in their belief that more action is needed to ensure family courts around the country prioritize child safety and recognize credible claims of abuse. Both have set up organizations in their daughters' names to fund advocacy and training, and hear daily from scared parents across the country going through custody litigation.

"I have hope that things will change," said Sherlock. "I think that's the only thing that really keeps me going."

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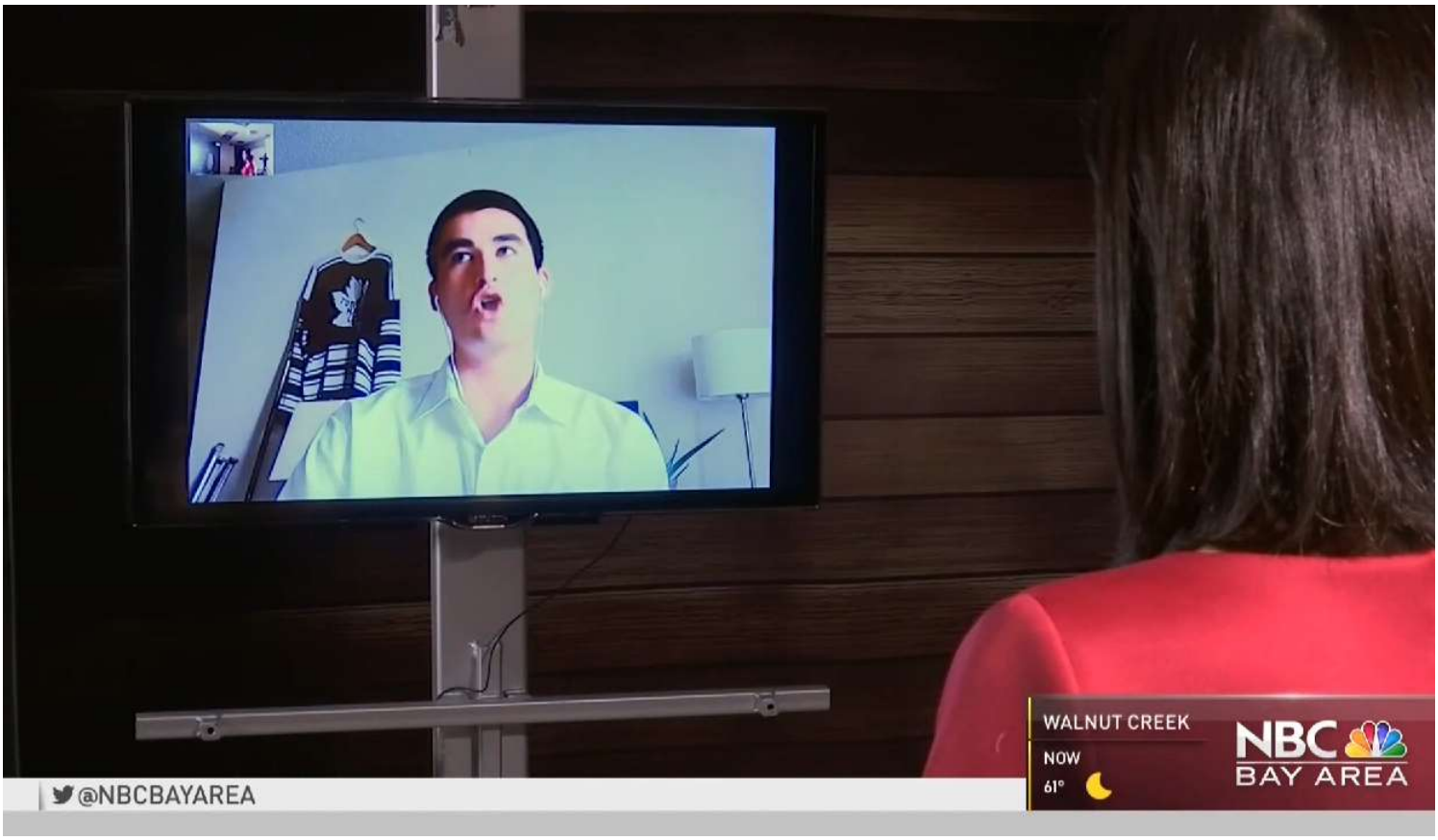
SAN FRANCISCO

No Oversight for Programs Advertising They Reconnect Children with 'Alienated' Parents

By Vicky Nguyen, Rachel Witte, Anthony Rutanashoodech and Mark Villareal and Michael Horn • Published November 2, 2018 • Updated on November 5, 2018 at 3:43 pm



NOTE: This story was updated on 11/5/2018ф include comments from Samantha's father Scott.

Three young adults who attended a Bay Area-based reunification workshop as children say the costly program doesn't work, and they're worried about the lack of oversight for a program of this kind.

The workshop, Family Bridges, is one of the oldest and most widely used reunification programs in the United States and Canada. It claims to reconnect children with an estranged parent after divorce.

While most divorce cases are resolved outside of a courtroom, in extreme custody battles — sometimes called "parental alienation" cases — a family court judge has the power to order children to attend these reunification workshops.

The three young adults who attended Family Bridges as children say they don't want other kids to have to go through what they went through.

Out of respect for each family's privacy, NBC Bay Area is referring to the young adults by their first names only.

"I do not want this to happen to a single other person," said Arianna, a 19-year-old from Seattle. In her case, a judge found her dad was alienating Arianna and her younger sister from their mother.

"This is the first time I've had a voice," said Leo, a 24-year-old from Toronto. The judge in his case wrote that since his parents' separation, Leo was "increasingly alienated from his mother by the words and conduct of his father."

"I haven't been the same since that program," said Samantha, a 19-year-old from Saskatoon in Canada. The judge in Samantha's case found that her mother was alienating Samantha and her younger brother from their father.

After contentious custody fights between their parents, each of the young adults says they wound up preferring to spend most of their time with one parent over the other.

In each case, a judge ruled the preferred parent was alienating the child from the other parent. As part of a court order, the children attended Family Bridges with their so-called "alienated parent" and were required to cut off all contact with their so-called favored parent for 90 days, a requirement of the Family Bridges program.

All three young people deny any parental alienation took place in their cases.

Each attended the four-day Family Bridges workshop, which is led by multiple psychologists and social workers.

"I feel like I was robbed of all of my childhood when I was 12," Leo said. He's a 2017 National Lacrosse League champion who now runs a business teaching the sport in Canada. He said he was astonished to learn his experience at Family Bridges matched so closely with Arianna and Samantha, young women he's never met.

"You can't force somebody into a relationship," said Arianna. "You just can't."

Arianna was 17 when she attended Family Bridges. She said she and her little sister were taken by a private transport company from a Seattle courtroom to meet their mother at the workshop held in a hotel in Southern California.

Invoices obtained by the Investigative Unit show the workshop cost nearly $40,000, including hotel and transport fees.

"Honestly the prices of this program are ridiculous," Samantha said. She was also 17 when she attended Family Bridges in Toronto with her brother, who was 14 at the time. Their father wanted to re-connect with them and a judge ruled in his favor.

"These programs, it felt like they were using literal fear tactics," she said. "They were just repeating information over and over. They didn't let us say anything about our real feelings or opinions."

Leo was 13 when he attended the program in a hotel in San Francisco with his mother. He said he was taken from the courtroom directly into her custody and did not see his father for more than a year after the

judge ruled his father had alienated Leo from his mother.

"I was sitting at my friend's house after school eating Kraft dinner downstairs in his basement watching 'One Tree Hill' and there was a knock on the door," Leo said, "I went upstairs; there was a cop standing at the door."

Like Arianna and Sam, Leo said he was taken by police to be reunited with the "alienated" parent after a court order.

"I sat in the cop car until the court case was over where I met the judge. What he told me [was] I'm going to go live with my mother now," he said.

Psychologist Randy Rand, who runs Family Bridges, did not respond to any requests for comment. His psychology license has been inactive since 2009 when the California Board of Psychology brought unrelated disciplinary action against him for "unprofessional conduct, gross negligence, and dishonesty." The board placed him on probation for five years. He appealed in 2012 but was denied. Records show his license remains inactive.

Because Family Bridges operates as an educational, not psychological, workshop, it is not under any state oversight.

"These programs the way they are right now do not, do not work," Samantha said.

Quantifying how often families are ordered to reunification workshops like Family Bridges is difficult to do, because many courts do not keep track.

NBC Bay Area reached out to the family courts in all nine Bay Area counties to find out whether they send children to these programs and how they track the outcomes.

Sonoma County did not respond to multiple requests for information.

Marin, Napa and San Francisco counties said they have not ordered families to these programs.

Alameda, Contra Costa, San Mateo, Santa Clara and Solano counties said they don't know how many children they've sent to reunification programs like Family Bridges, nor do they track the outcomes.

"You should never be forced to be put in one of these programs," Leo said. "The court system needs to rethink its strategies."

None of the judges involved would speak about Arianna, Samantha or Leo's cases.

"If we substituted fondling the child's genitals for alienation, would we permit contact if the parents said I'm going to continue to do it?" said Linda Gottlieb, a New York licensed therapist and social worker who runs a reunification program called Turning Points for Families.

"Psychological child abuse is at least as damaging, if not more so, than physical abuse and even some sexual abuse," Gottlieb said.

12:38

Therapist Answers Questions about Parental Alienation

She said Turning Points shares the Family Bridges principle of no contact with the so-called alienating parent for 90 days.

Gottlieb has collected data from the 40 children who have gone through her program. Her data shows 32 of those 40 children remain connected to their so-called estranged parent after completing the program. Nine children have a relationship with both parents since completing the program. Gottlieb says the children who failed to remain connected with their so-called estranged parent are those cases where the

90-day no contact period was lifted and the so-called alienating parent was still "engaging in alienating strategies."

NBC Bay Area reached out to the parents who took Arianna and Leo to Family Bridges. They declined to speak with us about their experiences.

Samantha's father Scott contacted NBC Bay Area and said he believes Family Bridges worked to re-connect him with his son, but indicated they are not a cure-all for everyone.

"These programs are the last option. Everything else has been tried and failed. There is nothing else left to try. It is drastic and tough. It's better than the alternative. I've lived both. I'm convinced I would not have any relationship with my kids at all if not for that program," Scott said. "It breaks my heart it didn't work for Sam but it worked for my son."

He welcomes oversight of the programs, "Bring it on."

Court records show Arianna's court-appointed guardian testified her younger sister made "amazing progress" after the "intervention."

But Arianna filed for emancipation and went back to live with her father after she completed the Family Bridges program.

Samantha, who left the program early, was separated from her mother for several months until a "no contact" order from the court was eventually lifted.

Arianna said she hasn't had any contact with her sister for two years.

Samantha said she lost contact with her younger brother for four years.

Scott told NBC Bay Area he encouraged his son to contact Sam after their four year separation and they re-connected this summer.

Scott said he is hopeful that he and Sam will be able to form a relationship again in the future.

Meanwhile, Samantha hopes speaking out about her experience can bring healing and hope for others going through a similar situation.

"I want to share my story so that anyone that has gone through this knows they're not alone," she said.

If you have a tip for the Investigative Unit email Vicky@nbcbayarea.com or theunit@nbcbayarea.com or call 888-996-TIPS.

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Judge seeks to reunite dad, kids who were sentenced to camp

L.L. Brasier Detroit Free Press

Published 11:44 p.m. ET Aug. 10, 2015 | **Updated 8:40 a.m. ET Aug. 11, 2015**

Kids once detained in custody battle to undergo intense therapy to reunite with dad.

Case made headlines when judge put kids in detention for turning dad down for lunch.

Special team expected to spend several days with family to help reunify dad, kids.

Critics question whether parental alienation is a legitimate syndrome.

When three Bloomfield Hills kids, caught up in a bitter custody feud, refused to have lunch with their estranged father, a frustrated family court judge found them in contempt and sent them to detention, a move that made national headlines.

Now the judge is poised to try a new — and some say controversial — tack, ordering the family into a days-long intensive intervention, perhaps with live-in therapists.

Oakland County Family Court Judge Lisa Gorcyca is expected to order the Tsimhoni children, ages 14, 10 and 9, into a “reunification program” to help heal their relationship with their father, Omer Tsimhoni. He and the children’s mother, Maya Tsimhoni, divorced in 2011 and have been involved in vicious litigation since.

The mother has physical custody. The father lived in Israel, but has since returned to Michigan, where he is employed as an engineer.

The intensive therapy is designed to treat “parental alienation,” a term coined 20 years ago by a family therapist who noticed some children displayed extreme behaviors in high-conflict divorces, developing unnatural aversions against one parent, the result of the other parent’s attempts to sabotage the relationship.

Proponents of the therapy say it can reunite families and save children from a lifetime of emotional pain. Its critics say it is too often used to force children to interact with parents who may be abusive or neglectful.

Both views are on full display in the thousands of pages of documents filed since the Tsimhoni divorce began in 2009.

“While father continues to scream ‘parental alienation’ as he is well aware of the fact this court is sensitive to the claim, it will minimize his abominable actions throughout the demise of the parties marriage, through out the divorce, as well as his post judgment antics,” attorneys for Maya Tsimhoni said in 2013 court filings. “While it would make the adults feel better if children would simply put their angst against their father aside and pretend to have a wonderful time with their father, this is simply not going to happen as the wounds created by the father run too deep for this to occur.”

Maya Tsimhoni says Omer Tsimhoni was “verbally and physically abusive” toward her in front of the children during the ill-fated marriage.

Omer Tsimhoni, who has since remarried, says his ex-wife has been engaged in a years-long campaign to estrange him from his children and has harmed them in the process. When a therapist examined the children, Maya Tsimhoni sought to have the therapist disqualified from the case, one more example, Omer Tsimhoni argued, of her dysfunction.

“It’s obvious after a review of the court file that mother has no use for any mental health professional. She doesn’t want the court to be aware of the horrendous tactics she has engaged in to the detriment of her children,” his attorneys wrote in a 2013 motion. “If parental alienation were a crime, mother would surely be charged and found guilty.”

The judge released the children from the juvenile detention center in July and sent them to a summer camp, where they remain. The camp ends in mid-August. The judge is expected to order the reunification therapy upon release.

A hearing is set for Wednesday on the matter.

Costly therapy

Reunification therapy, which can cost up to $40,000, is offered by only a handful of agencies in North America, including one in Canada. Gorcyca has issued a gag order, prohibiting anyone associated with the case from talking to the press.

And the children’s attorney, William Lansat, asked last week that his recommendation for which program to use be kept under seal, saying the case is “a high-conflict, big media exposure case with much social media.” Any attention, he argued in his motion, would hamper the therapy.

It appears Gorcyca already tried once to order the family into an intensive reunification program. In April, she ordered that the family participate in Family Bridges, a program

created by Dr. Richard Warshak, a clinical professor of psychiatry at the University of Texas Southwestern Medical Center and noted expert on parental alienation in divorce cases.

Court records say Family Bridges was “unable to accommodate” the family but does not say why. And Warshak, likely because of the gag order, is not saying.

“As you can tell from my website, normally I welcome speaking with the media about psychology topics, including parental alienation and its remedies,” Warshak said in an e-mail to the Free Press seeking an interview. “However I cannot speak with you for your piece regarding the case you mentioned.”

The judge is now considering sending the family to Families Moving Forward, a Toronto-based program similar to Family Bridges, staffed with psychologists and clinical social workers skilled in handling family conflict. The program bills itself as a “multi-day intervention with separated families when children resist contact with a parent.”

Those who run similar programs, and experts on high-conflict divorces, say the method generally works well when children are severely alienated from a parent, oftentimes at the instigation and encouragement of the other parent during and after a divorce.

“It’s really to gently recalibrate the child’s beliefs about the targeted parent, by exposing them to a safe environment to let that kid open his or her heart to that parent,” said Dr. Amy J.L. Baker, a psychologist and researcher who has been studying parental alienation for decades. She is the author of several books, including “Co-parenting with a Toxic Ex” and “The High Conflict Custody Battle.”

“There is no shaming or name-calling or anything like that,” Baker said. “There is a great emphasis on face-saving, and giving the kids the skills they need to resist the strategies of the other parent. These programs can be very, very promising. I’ve spoken to people who have been through them who found them incredibly helpful.”

In the Tsimhoni case, the judge, court-ordered psychologists and the children’s attorney, William Lansat, say the mother has worked to hamper the relationship between the children and their father.

Lansat, in court, has been particularly frustrated with the mother. “If this man fell out of an airplane coming over here (from Israel to visit the children), I think she would be delighted,” he told the judge during a particularly contentious hearing in 2013.

The mother has denied the accusations, but court records show she has violated court orders regarding parenting during the lengthy litigation. In April, the judge sent Maya Tsimhoni to

jail for one day following a series of botched visitations.

How it works

Regardless of what program is used, the experts will have their work cut out for them. According to court records and recent testimony, the children will not speak to their father, and when forced into the same room, will put their heads down to avoid looking at him. Such behavior is not uncommon in cases of severe alienation.

The program works like this:

The father and children will spend three to five days together, with the therapists, which can include social workers and psychologists, trained to diffuse high-conflict relationships and open up communication. The mother may or may not be there, depending on which program is used. There are informational videos, games, activities, discussions and group exercises. It is not clear if the therapy will take place in the Bloomfield Hills home the children currently share with their mother, or some other place. Some programs hold sessions at vacation resorts.

Family Bridges, on its website, describes the program as “entertaining, benign, non-confrontational, and presented in a manner that reflects the child’s emotional needs and capabilities,” and helps them “correct distorted perceptions” about the targeted parent, using information “commonly provided in basic psychology and sociology courses.”

The trick, therapists say, is to create a new environment and new ways for the family to talk to each other.

Dr. Rebecca Bailey, a clinical and forensic psychologist, founded Transitioning Families and runs programs in Sonoma, Calif., and Miami. She says she sees almost immediate improvement the first day, particularly if family members are working on a project together, like cooking dinner.

“You get people in the kitchen, you can get them talking,” she said. Her program in Miami, called Stable Paths, includes several horses, to be used in equine therapy. The family stays nearby but works with the horses on-site.

Soon, family members are focused on the horses — and not their own pain — opening the door for communication. Like Family Bridges, the parent who was encouraging the alienation does not usually attend.

“Sometimes, the favored parent has to get out of the picture,” she said. Some programs recommend that the favored parent be kept from the children for several months following the

intensive therapy.

Some skeptics

But not all experts are as hopeful. And some question the validity of the diagnosis of “parental alienation.”

“I would say I’m coming at it from a child’s perspective,” said Dr. Annelies Hagemeister, a licensed social worker and professor at Minnesota State University, Mankato, who has studied the matter. “There’s lots of domestic violence out there, and it’s greatly underreported. I get concerned when we are pathologizing the children, when we say, oh, they’re alienated, when really, it may be something going on with the parents.”

And she is skeptical of intensive therapy, noting that parental alienation syndrome is not listed in the Diagnostic and Statistical Manual for Mental Disorders, considered the bible in the mental health community.

“I can’t speak to their efficacy, but they are providing therapeutic intervention for something that is not considered an actual disorder,” she said. “That gives me a lot of trepidation.”

Jennifer Roark, a professor of social work at Utah State University and an expert on domestic violence, said research shows that true parental alienation is rare and authorities should be concerned when children say they have witnessed domestic violence. One of the Tsimhoni children has said in court he saw his father shove his mother.

“When we have a 14-year-old say, ‘I saw Dad do this,’ it seems to me that’s what needs to be investigated, not the alienation,” she said. “On the surface, these children appear to be self-confident and well-adjusted, so maybe we should be listening to the kids.”

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NEW YORK

I-Team: NJ Brother, Sister Rip ‘Alienating' Divorce Program That Tore Them From Father for Years

"I can't forget that day. It's never going to leave my brain," sister Ana said

By **Pei-Sze Cheng** • Published December 26, 2018 • Updated on December 26, 2018 at 6:28 pm

Programs intended to help children reconnect with an estranged parent after divorce may not be successful. Pei-Sze Cheng reports.

What to Know

An NJ brother and sister are ripping a family reunification program that tore them apart from their father after a messy divorce in 2011

The program sent them all the way to California; they weren't allowed to have any contact with the "alienating" parent

Though an appellate court eventually reversed the judge's 2011 decision, he lost his kids for three years; it was devastating for them all

Ana and her brother Alex were hopeful the morning they had their court hearing.

The Westfield, New Jersey, kids had been living with their father Adrian during their parents’ messy divorce. That day, the judge would make a ruling on custody and the children assumed they would return home with their father.

Alex, now a college student, recalls that day -- Dec. 27, 2011. He says all four of them -- he, his sister and their parents -- were called into court.

Inside the courtroom, a Union County judge found that the children had been "alienated from their mother by their father" and awarded sole custody to the mother. He ordered the children and mother to attend Family Bridges, a family reunification program all the way across the country in California.

Alex says they weren't even allowed to say goodbye to their father. Ana will never forget the experience.

"I can't forget that day," she said. "It's never going to leave my brain."

The children say officers accompanied them from the courthouse to the airport, where they boarded a plane for San Francisco.

"We were crying for sure. There was a lot of crying between Ana and I," said Alex. "We didn't know what to do."

Once in California, the children say they set up in a hotel where the Family Bridges program was held.

"They began by trying to convince us that our dad alienated us from our mom,' recalled Alex. "They tried to prove to us that it happened. We were literally laughing because we thought the whole thing was so absurd."

"It felt like manipulation 24-7," remembered Ana. "We didn't have access to any Internet and no contact with the outside world, our friends or anyone."

Other children who attended Family Bridges under court order told NBC Bay Area similar stories -- all of them taken from court to a different city where they started the program.

"These programs felt like they were using literal fear tactics. They were just repeating information over and over," said Sam, who attended Family Bridges. "They didn't let us say anything about our real feelings or opinions."

The I-Team tried to find out how often this happens in the tri-state area but was not able to because most courts do not track these cases. They also don't track the success and failure rates of the reunification programs.

Four days after arriving in California, Alex and Ana went back to New Jersey --but a court order kept them from their dad. It started off as a 90-day period.

Their father, Adrian, a college math professor, says the courts kept extending that three-month period "for no good reason."

"In the end, I was not allowed to have contact with my children for three years," Adrian said.

The judge involved in his case has since retired. He declined comment on the matter when reached by the I-Team.

The I-Team tried to interview him for this story but he declined to comment. The I-Team and NBC Bay Area tried to reach Dr. Randy Rand, the head of Family Bridges, but he did not respond to requests for comment.

Linda Gottlieb, a family therapist and licensed social worker based in Great Neck, New York, says her program "Turning Points" is similar. Like Family Bridges, hers shares the same "no-contact with the alleged alienating" parent principle and requires a 90-day no contact period.

"It's protecting the child," Gottlieb said. "The child really doesn't want to reject the other parent. It's the remedy that protects the child from abuse."

She says 40 children have gone through her $12,000-per-participant program but acknowledges only nine of those kids have relationships with both parents.

For Alex and Ana, their court experience and separation were hardly protective. They hope by telling their story, they can dissuade judges from putting others through the same. Alex says it brought him through some "dark places." His sister was there to help "bring me back up."

"Programs that require kids cut off contact with one parent are absolutely not the way to go," Ana said.

Adrian appealed the 2011 decision that took his kids away and an appellate court sided with him. The mother of his children declined the I-Team's request for comment.

The Washington Post

Magazine

They were taken from their mom to rebond with their dad. It didn't go well.

By Cara Tabachnick
May 11, 2017

Laura Jeu knew something was wrong when her mother, Sharon, returned from a custody hearing in late November 2011. Sharon Jeu simply told her four children to get ready to go see their father. But the look in her mother's eyes signaled to Laura, then 16, that this wouldn't be a typical visitation exchange in her parents' six-year custody battle.

"I could tell she had been crying," recalled Laura, a petite, dark-haired 22-year-old. As she recounted the story, she picked the frayed edge of her plaid shirt. "I knew something out of the ordinary had happened. There was no way I was getting in that car."

What Laura didn't know was that Loudoun County (Va.) Circuit Court Judge Burke McCahill had just granted her father, Raphael, temporary custody of the children so he could take them to a four-day workshop in California to repair their relationship. The judge ordered Sharon to bring the children from her home in Pennsylvania to their therapist's office in Virginia without telling them where they were ultimately going, according to the interim custody order. If Sharon couldn't get them to comply, McCahill warned, a warrant would be issued for her arrest.

"She was supposed to lie," said June Burke, a family friend, who accompanied Sharon to the court hearing. "But the children knew something was wrong."

Alarmed, the children refused to get into the car, and, Sharon recalled, not only were her children too old to be forced, she had grave concerns about their mental health. Desperate, she called a local emergency psychiatric unit, which sent on-call therapists to the house; they, too, failed to persuade the children to enter the car.

Without telling her mother, Laura recalled, she telephoned Sharon's attorney, saying she and her brothers were suicidal. The attorney called the emergency unit again, which told Sharon to bring Laura and the three boys — then 13, 12 and 9 years old — to Chambersburg Hospital in Chambersburg, Pa. Sharon and her children were in the emergency room when Raphael arrived with the custody order, a few friends and the Chambersburg police. The hospital released the children to Raphael, who got the four children into a minivan and drove them to his house. "I hugged them and told them to be strong and to have faith, while I was telling myself the same," Sharon recalled. (The hospital did not comment, citing privacy issues.)

“I was shocked at how upset and stressed and irrational the children were, and Laura in particular kept yelling, ‘He’s going to kill me,’ ” said Jeff Milrod, a friend of Raphael’s from the Church of the Holy Spirit in Leesburg, Va. “I did not understand how she could say that,” added Milrod, who described Raphael as “a kind and loving man.”

Stunned and homesick, the children remained in Raphael’s home for two weeks, the older siblings said, with occasional visits from members of the Loudoun County Sheriff’s Office and Child Protective Services. (CPS didn’t respond to requests for information.) Though neither remembers this time well, David, now 19, said there were adults and police going in and out of the house, while he and his siblings mostly sat on the couch in a daze.

The night of Dec. 14, Laura and David recalled, they were abruptly awakened by Raphael, accompanied by four burly adults. The grown-ups, from Bill Lane & Associates, a youth transport service based in San Diego, shuttled the disoriented children into cars. With little understanding of what was happening, the frightened children were separated and sent off: Laura recalled that she went with a man and a woman, while the three boys went with the other two men. After spending the rest of that night at a motel, Laura was taken to Dulles International Airport while her brothers went to Baltimore-Washington International Marshall Airport; and in the dawn of Dec. 15 they boarded flights to California. It was a bittersweet moment for children who dreamed of traveling the world, according to Laura: It was their first time on a plane.

“It made me realize how fragile we really were,” said Laura. “They could separate or take us at any point, and there was nothing we could do.”

When the children landed at San Francisco International Airport, they were met by Raphael, who, along with the transport agents, took them to the Larkspur Inn in Mill Valley, north of San Francisco, to start their reunification program. It would be almost a year before the Jeu children saw or spoke to their mother again.

Laura, David and their siblings are among a growing number of children in high-conflict divorce cases being sent — often unwillingly — to nascent and unproven “reunification” programs, which can cost tens of thousands of dollars. These workshops have sprung up in the past decade mostly to address parental alienation, a disputed disorder coined in 1985 by psychiatrist Richard Gardner that refers to a situation where a child chooses not to have a relationship with one parent because of the influence of the other parent. Opponents charge that the reunification programs, and accusations of parental alienation itself, are shams — a way for lawyers, psychologists and social workers to profit from parents in bitter custody battles, and for the more financially secure parent to gain a custodial advantage. Proponents say that parental alienation involves truly harmful psychological behaviors that should be recognized by the therapeutic community and tort law, and that reunification programs are sometimes the only way to put families back together.

Court records show that Judge McCahill was frustrated by the back-and-forth in the Jeus' long-standing custody dispute, which primarily centered on the children's unwillingness to visit their father. While he faulted both parents, he and the children's court-appointed therapist, Christopher Lane, agreed that Sharon had alienated the children from Raphael. (The judge, Lane and Raphael's former lawyer, Bruce McLaughlin, didn't respond to interview requests.) The alienation arose, the judge found, because Sharon "had an enmeshed parenting style with loose boundaries due to her needs and anxieties. … She had difficulty setting limits, and there were some parent-child role reversals."

In the fall of 2011, Raphael came up with a potential solution that made the weary judge think there was a possibility of a breakthrough: a program called Family Bridges, which Raphael had learned about from his therapist. Its premise — and that of similar services — is that if children and the alienated parent can spend uninterrupted time together without interference from the other parent, they can mend their relationship. To encourage this outcome, however, it and other programs require two controversial legal measures: The judge must award full custody to the alienated parent and must order the children to have no contact with the favored parent for 90 days after completion of the workshop.

Raphael believed he had no choice. "I was looking for an answer. I was looking for a solution. And when they recommended a program like Family Bridges, I had to look at it," he said in a recent interview. He thinks the judge agreed to the custody change because he felt "a sense of assurance knowing we were going to something like Family Bridges."

Since the workshops are privately run, and many of the programs open swiftly, the number of families who have attended is difficult to determine. (In court documents, Family Bridges founders said they have seen a rise in their attendees over the past five years.)

A Canadian research paper found that judges mandated family reunification programs in 27 percent of all family court cases where there was an allegation of alienation. While there is no similar research available in the United States, Ontario-based social worker Shely Polak, who spent five years researching U.S. and Canadian reunification programs for her dissertation, thinks the prevalence in the United States is significantly higher.

"Anyone can hang a shingle on their door," said Polak, who became interested in reunification services after starting her own, Families Moving Forward, in which both parents must attend. "It's like the Wild West out there."

In addition to the Jeus, I interviewed children or reviewed case documents from eight other custody disputes — in Michigan, the District, Seattle, Miami, New Jersey, Utah, Montana and Long Beach, Calif. — although not all families chose to go on the record. The cases occurred between 2011 and 2016, and all but one involved Family Bridges. In many of them, similar events occurred: The judge changed primary custody, transport agents scooped up the children and escorted them by plane to another state, strangers met them at hotels and instructed them to reunite with their allegedly alienated parent. They were warned

that if they tried to contact the other parent, that parent could be arrested and jailed. All have had difficulty reuniting with the parent who originally had custody.

More than 800,000 couples divorce annually in the United States, according to the Centers for Disease Control and Prevention; research has shown that more than three-quarters work out a custody agreement without court intervention. In the cases that go to court, finding a solution under the current legal standard, "the best interests of the child," can lead to frustrating motions and countermotions, and years of litigation.

There's scant gold-standard scientific research to help practitioners determine the best custody arrangement. "Like antibiotics, we are routinely prescribing something, but in this case we are not even sure it works," said University of Virginia professor Robert Emery, director of the school's Center for Children, Families and the Law.

For example, courtroom decisions are made daily based on diagnoses of parental alienation, including the cases in which children were sent to reunification workshops, despite the disagreement about its existence. The syndrome was not included in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM), which lists all psychiatric disorders, and this has created enormous uncertainty around its usage in the legal system. (The American Psychiatric Association, which makes the decisions on inclusion in the DSM, does not have an official stance on parental alienation syndrome.)

Those who support the concept of the disorder, such as William Bernet, a professor emeritus in psychiatry and behavioral sciences at Vanderbilt University School of Medicine, say there is research buttressing its existence. He cites psychologist Amy Baker's book, "Adult Children of Parental Alienation Syndrome: Breaking the Ties That Bind," based on interviews with 40 people who identified themselves as suffering from parental alienation, as an example. What's getting lost in the vitriolic battle, Bernet said, is the reality of parental alienation behaviors, which can be mitigated if addressed early in the process.

Opponents caution that there is no scientific method proving what drives a child's desire not to interact with one parent, and that research has shown many factors, such as poor parenting, abuse or reactions against constant upheaval, must be considered.

"There is just no empirical scientific evidence or way to determine if children are estranged because they were maltreated or if a favored parent turned them against the other parent," said Joan Meier, a clinical professor at George Washington University Law School and founder of the Domestic Violence Legal Empowerment and Appeals Project, which provides appellate representation in domestic violence cases.

Just as research has not definitively proved the validity of parental alienation, it has not shown that family reunification programs work. Often the workshops are billed as educational or psycho-educational, which allows them to circumvent medical regulations and oversight (they are not covered by health insurance).

The only psychologist who has evaluated Family Bridges, for example, is Texas-based Richard Warshak, who helped develop the program, served as one of its trainers and has testified in custody cases in support of sending children to the workshops, where his DVDs and books are often required materials. He has written three papers citing the efficacy of Family Bridges; one paper said 95 percent of interventions were successful, although the number dropped to 83 percent after the children returned home. (Warshak declined to be interviewed because of possible future litigation.)

By contrast, when an outside evaluation could not prove the efficacy of a program run by Overcoming Barriers, based in Massachusetts, the nonprofit decided to shutter its four-day workshop for high-conflict families.

“We really have to figure out how traumatized these kids are by their parents’ conflict,” said Overcoming Barriers’ co-founder, Peggie Ward. “But we’ve gotten to the point where the family system is so polarized … there are no nuanced decisions left.”

Laura and David Jeu said their parents’ custody battle had nothing to do with their increasing disaffection for their father (the younger children, who are minors, were not interviewed for this article). Their problems with him, they said, started long before their parents’ divorce.

Raphael, 57, who emigrated with his family from South Korea to America at age 7, grew up in Bethesda, Md., and works as a management analyst in federal government administration. Sharon, 57, was born and raised in south-central Pennsylvania and currently works in retail sales. The couple met at a church camp and married in October 1993, when both were 33. Their family of six lived outside Leesburg in Northern Virginia. Sharon home-schooled the four children, who rode their bikes and played with neighborhood friends until the evening, when their father pulled in the driveway. The family’s life revolved around work, church and, Laura and David said, Raphael’s varying mood.

David, who is tall and thin, with a penchant for mathematics and an easy smile, said his dad ruled the household with an iron fist. “He had an unpredictable nature. You weren’t certain if it was going to be a nice person that was going to take you on a bike ride or if he was going to be angry, if you were going to get slapped or hit,” he said.

In 2004, Sharon decided to take the children and leave, and in 2005, Raphael sued for visitation. The children didn’t want to see him, Sharon alleged, because Raphael had sometimes been physically abusive to her and to them. In a deposition, Raphael denied hitting Sharon or using physical force with the children, other than occasionally spanking them when they were younger and grabbing their wrists to restrain them when they were older.

“If I were abusive, [Sharon] would have tons and tons of photographs,” Raphael said recently. “We took pictures of everything. We had books filled with photographs … and I would say there are none [showing abuse].”

The case landed in the Circuit Court in Loudoun County. The judge decided on joint custody, with the children visiting their father every weekend, but the children didn't want to go.

"I would physically hold on to the seats in my mom's car; we would spend hours in the driveway refusing to get out," David said.

The children reported abusive incidents to their therapists and to the court. In court, McCahill said, "The father did use corporal punishment, and ... was rigid and controlling and, at times, there were some raging behaviors," transcripts show.

Still, the judge, who believed Sharon had her own shortcomings, allowed the visits to continue. Such an approach is not uncommon; a 2011 National Institute of Justice study conducted by Daniel Saunders at the University of Michigan found that 47 percent of evaluators still recommend unsupervised visitation even when there were reports of violence in the family.

D.C. lawyer Gregory Jacob, a partner at international law firm O'Melveny & Myers, has litigated a few pro-bono custody cases a year for nearly two decades. As such, he said, he was familiar with allegations of both domestic abuse and parental alienation; he said he believes the latter happens, though "not with anywhere near the frequency with which it is alleged as a defense by abusers."

Until Jacob took the Jeu children's case in 2012, however, he was unaware of family reunification programs. "I had never seen anything like this," he said of McCahill's order giving temporary custody of the Jeu children to Raphael and sending them to Family Bridges.

According to court documents, Family Bridges founder Randy Rand told Raphael he had to obtain the custody change and pay a $29,000 fee — excluding travel, room and board — before he and the children could start the workshop (the four-day program costs $25,000 to $40,000, paid by the parent who attends).

"The programs are basically shams. It was clear to me what they were doing was reaping massive fees by selling a custody change," said Jacob.

Once a judge switches full primary custody to one parent, Jacob said, the noncustodial parent faces an uphill battle to get the children back because courts don't like to change orders often. By the time — or if — custody is restored, the children usually will not have spoken to the other parent for at least three months.

In the Jeu case, the children didn't have contact with Sharon from December 2011 to December 2012. The judge later said that Sharon "just went off the screen." But according to Jacob, Sharon had been trying to comply with the judge's requirement that she complete a Family Bridges workshop so she could see the children again. Family Bridges would not cooperate, Jacob said, and Sharon could no longer afford a private attorney. Sharon then searched for legal help, and Jacob signed on to the case in August 2012. In

October of that year, he filed a motion to overturn the interim custody order; in December, Sharon saw the children for a few hours, and in 2013, she started having regular visitation with them.

In the other eight lawsuits reviewed for this article, all the children went more than 90 days before seeing or speaking to their favored parents, and none of the custody orders has been reversed. One case involved Hannah Mills of Michigan. She attended Family Bridges in August 2015 after custody was transferred to her father, Kurt. Then 15, she was depressed and cutting herself, she said in recent interviews. Hannah alleged that Rand told her that if she didn't stop crying she would be sent to a residential program and might never see her mother again. (It was 171 days, her mother said, until she saw Hannah.) Terrified, Hannah said, she agreed to go along, but after completion she was sent to live with her father, who was awarded permanent primary custody in September 2016. (Kurt Mills didn't respond to an interview request.)

In another case, Seattle-based Superior Court Judge Regina Cahan ordered 17-year-old Arianna Riley and her 13-year-old sister to attend Family Bridges in 2016 to reunite with their mother, Suzette. "I fell to the ground screaming, 'Don't take me, I don't consent to this,' " Arianna said, but transport agents told her the judge would put her in jail or a psychiatric unit if she didn't come with them. After completing the program, Arianna filed and won legal emancipation from her parents in August 2016. She lives with her father. Her sister is still in the custody of Suzette, who referred all questions to her attorney. Arianna and her father said they haven't seen or spoken to the younger girl since September.

After spending a sleepless night locked in hotel rooms with the transport agents, Laura and David said, the children were escorted to a stark conference room at the Larkspur Inn in Marin County on the morning of Dec. 16, 2011.

There, they said, they met three adults: Deirdre Rand, a psychologist and wife of Family Bridges founder Randy Rand; Edward Oklan, a child psychiatrist; and an assistant named Anne.

(Randy Rand, who does not have an active psychologist's license, was also there — in the capacity of administrator. The California Board of Psychology stayed Rand's license in 2009, after determining that he had failed to act impartially in one case and had testified improperly in another. Instead of challenging the revocation, Rand chose not to practice, according to court documents. Rand and the other Family Bridges personnel didn't respond to requests for comment. When reached by telephone, Deirdre Rand declined to be interviewed.)

Edward Oklan told the children they were going to learn how to interact with their father through exercises conducted in a workshop. He read them the court order, which stated their father had full custody and they were to have no contact with their mother for at least 90 days.

Laura said, "I felt like we were living in a different country. I couldn't believe that this was happening in America."

The children found the workshop alternately confusing and boring. Part of the day consisted of watching videos, including “Welcome Back, Pluto,” which, Family Bridges said, explains parental alienation and teaches children about reconciling high-conflict relationships; it was developed and is sold by Warshak. The children also watched a clip from the ABC show “Desperate Housewives,” according to court depositions, and did brainteaser puzzles, according to David, who found the program full of “meaningless tasks.”

Over the remaining three days, the children went to lunches with their dad and participated in mock family meetings. The older children said they were petrified that if they didn’t do exactly as asked they would never see their mother again, because, they claim, Rand had suggested their mother could go to jail or face serious fines if they were in contact.

On the Jeu children’s final day of the program, Oklan told them that once they were again stable in Raphael’s home, they would truly be able to repair their relationship with him, the children said.

They didn’t agree. “If anything,” said David, “Family Bridges made me angrier at my situation and more suicidal than I ever was before.”

Raphael, however, believes that Family Bridges improved his relationship with his children. “I remember baking something … and I yelled ‘Ow!’ and the kids said nothing,” he recounted recently. “After Family Bridges, when something would happen and they would ask, ‘Are you okay?’ — that’s huge from where they were.” He also cited the fact that David sent him a text a few months ago; David said he sometimes responds to Raphael’s texts with a “yes” or a “no” out of fear for his younger siblings, who are still under court order to visit their father.

After their return to Virginia, Laura said, she missed her mother but was afraid to reach out while the no-contact order was in effect. She recalled going to Rust Library in Leesburg, where she tucked a letter into the edge of a book she hoped would be checked out: The envelope read, “If this is found, please send to my mother.”

In early 2013, Jacob and his colleague David R. Dorey filed a motion to return custody of the Jeu children to their mother and prepared for a spring trial.

On March 23, 2013, before the trial, Laura turned 18.

“The day after my birthday,” she said, “I turned around and walked out.” After a week’s vacation with her mom, she lived at a neighbor’s house while finishing her senior year of high school in Loudoun County. After graduation, she returned to Greencastle, Pa., and is attending college nearby in Maryland while working at a civil engineering firm. She said she has hardly spoken to her father in the past four years and doesn’t believe she ever will have a relationship with him.

On July 23, 2013, the court ruled that Sharon and Raphael should share joint legal and physical custody of the children, with the children living with Sharon during the school year. As far as Sharon's attorneys are aware, this is the only time a court has returned custody to a favored parent following a family reunification program. Raphael still has final say over medical and educational decisions.

During his final hearing, McCahill referred back to the children's visit to Chambersburg Hospital and the police intervention and the escorts to California, and said it was "very, very troubling for me to hear, you know, how this was implemented, and I regret that. I just wish there was some way that we could turn back the clock and never have let those children experience something as traumatic as that."

The California Department of Consumer Affairs has opened a probe of Family Bridges on behalf of the Riley family. Meanwhile, Jacob and Dorey have used the Rands' depositions in the Jeu case to file complaints, on behalf of Sharon, with the California Board of Psychology. "The hope is to shed light on what actually happens during a Family Bridges program, which is light-years different from unverified anecdotal reports that Warshak and others have published in an attempt to create a market for their programs," said Jacob. "The rest is up to the licensing board."

Despite the new custody ruling, Raphael filed another motion alleging Sharon wasn't complying with the orders, representing himself. The case dragged on for another two years. In 2015, about a decade after the Jeu custody battle started, litigation ceased.

In January 2016, when David turned 18, he decided to stop seeing his father. He lives with his mother, is attending a nearby university where he is majoring in engineering, and is happy he can no longer be forced to do anything by the courts.

"I spent my whole childhood waiting for it to be over," he said.

Freelance writer Cara Tabachnick writes often about legal issues. To comment on this story, email wpmagazine@washpost.com or visit washingtonpost.com/magazine.

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Former MLB Player David Segui Desperate to Regain Children From ‘Reunification Camp’

CELEB Magazine · January 25, 2021

[Story developing]

Former Major League Baseball player **David Segui** is making a desperate plea to have his two minor children returned to him after they have been ordered by an Arizona court to attend the controversial **Family Bridges** reunification camp as part of an ongoing custody battle with their mother **Donna Moniz**.

The children have not been in school since January 5. Segui also alleges that court appointed “therapeutic interventionists” are colluding with the camp.

An Otherwise Peaceful Custody Arrangement Turned Bizarre and Bitter

In an exclusive interview with *Celeb Magazine*, sources say the trouble began May 2015, when Moniz who was estranged from Segui, made shocking child abuse allegations against her ex-husband out of the blue. The children, who were living with Segui, were removed from his custody.

Segui claims there was no warning before police arrived to remove the children, and up until then the conversations between himself and his ex were normal and peaceful.

Segui recalled that he was shocked when police arrived, and the children hid and were scared over the thought of being taken from their father.

After going to court, custody was returned to Segui when the allegations were proven satisfactorily untrue. Testimony from the therapist **Dr. Sara Petty**, hired by Moniz, proved the allegations false. When the children were being interviewed by psychologists for the court battle, there were allegations made by the children against their mother, saying they were threatened by her and her twin sister and told to lie to Dr. Petty—which Segui claims were ignored by the state of Arizona.

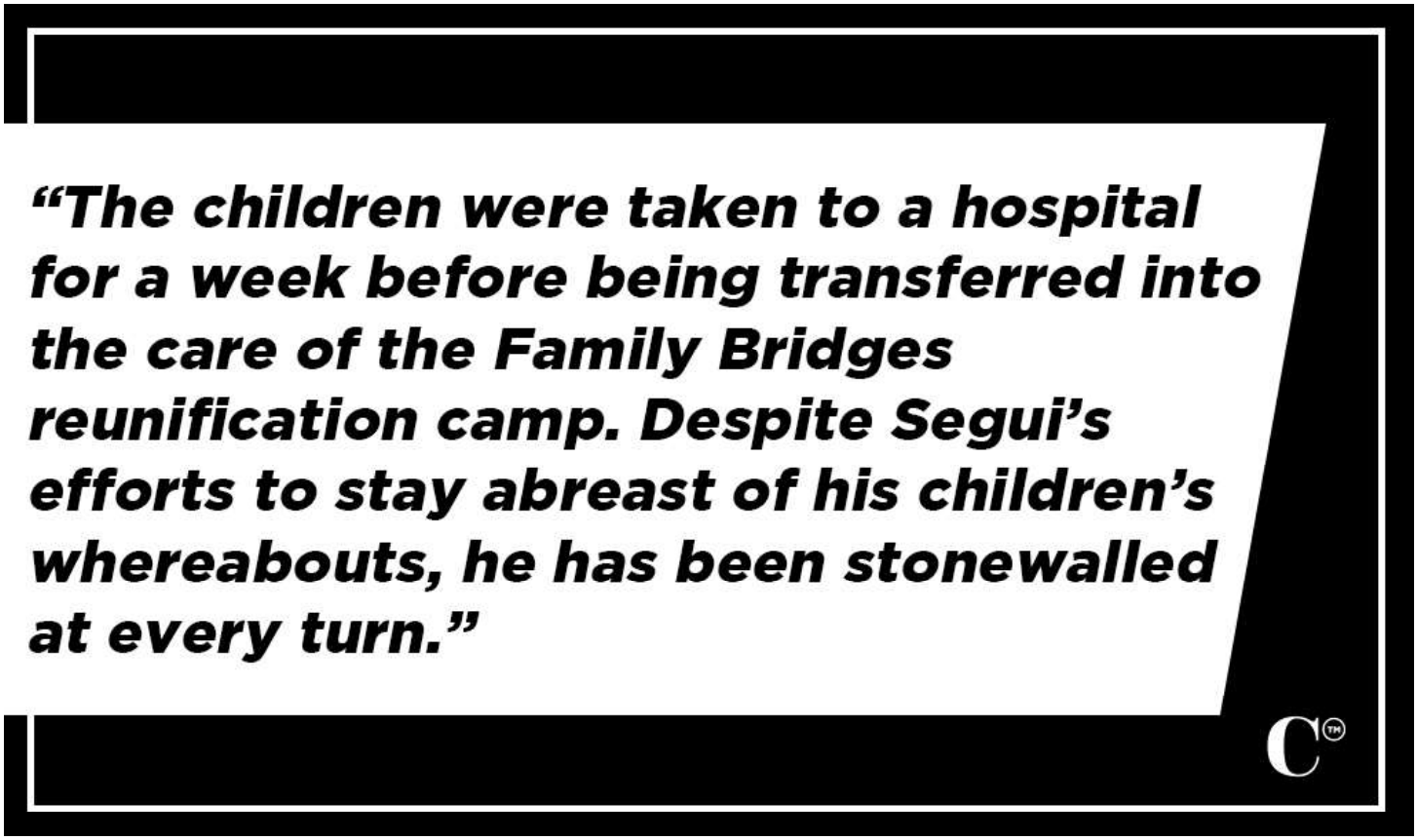
After the State Ignored the Children's Worrying Testimony, They Tried to Reunify Them With Their Mother

Even after this incident, the state of Arizona continued to award joint custody to Segui and Moniz, who were co-parenting harmoniously, with week-on, week-off transitions until 2017. There were multiple attempts at counseling to put the family back together.

In 2017, there was school incident of physical violence between one of the children and Moniz that resulted in a court order removing the children from her.

After that, the children were thriving under Segui's custody, and Moniz had been under investigation by the state for abuse—all attempts by Moniz to gain custody and visitation have been denied outright even though the claims of abuse were deemed unsubstantiated.

A Video of the Children Discussing their Mother in an Interview Raises Red Flags



In a video from 2018 claims of physical and sexual abuse are alleged by the children during an appointment with a therapist. Despite all of this, Segui says reunification efforts continued by the courts and most recently a hearing on December 22, 2020 established that another attempt would be made to do so.

Segui is Told to Bring Children to Family Bridges

However, at the end of December, Segui brought his children with him to Kansas City to visit family for the holidays. While in Kansas City, Segui received notice that someone was trying to serve him. The court order demanded an immediate transfer of custody from father to mother on January 6, 2021 for the children to participate in the Family Bridges Reunification camp. Segui alleges that the best interest attorney, appointed to represent the children who wrote up the emergency order, stated that the boys are in "immanent danger in the father's custody"—even though this attorney has never spoken to the children or the father. [A month prior the same judge signed an order saying there was no alienation.] In order to comply with the court's ruling, Segui would have to transfer custody and all decision making for a total of 95 days. Segui was also told not to inform the children, who lived in fear of being turned over to their mom's custody.

On January 6, Segui was going to deliver the children as ordered but they flew into a panic at the thought of being turned over to their mother, which resulted in them being admitted to Phoenix Children's Hospital.

The children were taken to a hospital for a week before being transferred into the care of the Family Bridges reunification camp. Despite Segui's efforts to stay abreast of his children's whereabouts, he has been stonewalled at every turn.

'Reunification Camps' are Considered Controversial

The Family Bridges reunification camp model has raised eyebrows in the past. Questions about the model were documented in a ***Washington Post* article**. *Washington Post* explains, "Opponents charge that the reunification programs, and accusations of parental alienation itself, are shams—a way for lawyers, psychologists and social workers to profit from parents in bitter custody battles, and for the more financially secure parent to gain a custodial advantage. Proponents say that parental alienation involves truly harmful psychological behaviors that should be recognized by the therapeutic community and tort law, and that reunification programs are sometimes the only way to put families back together." According to sources, the camp has no license and is operated with no state oversight. They also have no facility and "hotel hop."

Segui also alleges that the court appointed "Therapeutic Interventionist" has a personal interest in the Family Bridges camp and that there is collusion on the part of Moniz and these representatives to "brainwash" the children.*Celeb Magazine* reached out to Moniz attorneys for comment but as of publication has not received a response.

Where are Segui's Children, and What's Going to Happen?

As of January 22, Segui believes that the children are now in the custody of their mother again, although no notice has been given as to how he can regain his children after a supposed camp "aftercare" period.

Segui alleges that his ex-wife displayed narcissistic and abusive behaviors during their relationship. Well-documented incidents support his allegations that his ex-wife may not be the safest place for his children to be, but so far the county investigators and his ex-wife's attorneys have been unhelpful in the father's efforts to see his kids again.