

No, _____

In the Supreme Court of the United States

Delbert W. Hargis Jr.- Petitioner

v.

State of New York-Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES SUPREME COURT

APPENDIX

**New York State
Respondent
New York State Attorney General
Office of the Attorney General
The Capitol Albany, NY 12224-0341**

Delbert W. Hargis Jr.
Petitioner-Pro Se
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Exhibit A

**New York State
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At a Term of the Family Court of the State of New York held in and for the County of Jefferson at Oswego, New York on July 26, 2022 and July 27, 2022.

PRESENT: Honorable Allison J. Nelson
Family Court Judge

**FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF JEFFERSON**

**In The Matter of a Proceeding for Custody under the
Article 6 of the Family Court Act**

VICTORIA PRITTY-PITCHER,
Petitioner,

-against-

**MODIFIED ORDER
OF CUSTODY**
Docket No.: V-2452-12/20Q
File No.: 164

DELBERT HARGIS and NICOLE HARGIS,
Respondents.

The above-named Petitioner having filed a Modification Petition regarding the subject child ~~Delbert Hargis~~ (d.o.b. ~~XXXXXX~~);

The following parties having appeared: Petitioner, Victoria Pritty-Pitcher, having appeared in person and being represented by Eric T. Swartz, Esq. in person; Respondent, Delbert Hargis, Jr., having appeared in person and being represent by John Hallett who appeared virtually, Esq., Nicole Hargis, having appeared virtually and being represent by Lydia Young, Esq. appeared in person and Kim Wood, Esq. appeared in person as the Attorney for the Child;

And the Court having searched the statewide registry of orders of protection, the sex offender registry and the Family Court's warrant and child protective records, and having notified the parties and for the child of the findings thereof;

And the matter having duly come on to be heard before this Court;

NOW, after examination and inquiry into the facts and circumstances of the case and after hearing the proofs and testimony offered in relation thereto, this Court finds and determines that: It is in the best interests of the child for Petitioner to have sole legal and physical custody for the reasons set forth in the Decision dated August 16, 2022.

Therefore, IT IS HEREBY,

ORDERED, that the Petitioner, Victoria Pritty-Pitcher, shall have sole legal and physical custody of the subject child, ~~Delbert Hargis~~ (d.o.b. ~~08/08/08~~); and it is further

ORDERED, that the Respondent-Father, Delbert Hargis, shall have supervised parenting time agreed upon by the parties; parenting time shall be supervised by the Petitioner-Aunt, a supervised visitation center, or third-party agreed upon by the Petitioner-Aunt and the Respondent-Father; parenting time shall occur in Jefferson County, New York, unless otherwise agreed upon by the Petitioner-Aunt in writing; and it is further

ORDERED, that the Respondent-Father shall have telephonic and/or other electronic contact with the subject child on Monday, Wednesday, and Thursday evenings at 7:30 p.m. Respondent-Father shall initiate the contact. If the Petitioner-Aunt is unable to answer, she shall return the call by 8:30 p.m.; and it is further

ORDERED, that the Respondent-Father shall have telephonic and/or other electronic contact with the subject child on her birthday, Thanksgiving, Christmas, and Father's Day for a minimum of ten(10) minutes at 7:30 p.m. if an in-person visit did not occur that day. Respondent-Father shall initiate the call. If the Petitioner-Aunt is unable to answer, she shall return the call by 8:30 p.m.; and it is further

ORDERED, that the Respondent-Father shall have such other, further, and different parenting time as the parties agree and arrange; and it is further

ORDERED, that the Respondent-Mother shall have telephonic and/or other electronic contact with the subject child a minimum of one time per week for fifteen (15) minutes as can be arranged between the Petitioner-Aunt and the Respondent-Mother; and it is further

ORDERED, that the Respondent-Mother shall have telephonic and/or other electronic contact with the subject child on her birthday, Thanksgiving, Christmas, and Mother's Day for a minimum of ten (10) minutes as can be arranged between the Petitioner-Aunt and Respondent-Mother; and it is further

ORDERED, that the Respondent-Mother shall have such other, further, and different parenting time as can be arranged between the Respondent-Mother and Petitioner-Aunt, including supervised in-person parenting time; and it is further

ORDERED, that the Respondent-Father and Petitioner Aunt shall maintain either a working email account or text-capable cellular telephone to facilitate communication; and it is further

ORDERED, that the Respondent-Mother, Respondent-Father, and Petitioner-Aunt shall not use the subject child or any third parties to convey messages to each other; and it is further

ORDERED, that the Respondent-Mother, Respondent-Father, and Petitioner-Aunt shall keep each other apprised of their address, telephone numbers, and email addresses and shall notify the others of any changes within 24 hours of the change; and it is further

ORDERED, that the Petitioner-Aunt shall keep the Respondent-Mother and Respondent-Father informed of any scheduled games, recitals, and/or performances in which the subject child is involved in; and it is further

ORDERED, that the Respondent-Mother, Respondent-Father, and Petitioner-Aunt shall keep each other apprised of any illness, accident, or other circumstances seriously affecting the health or general welfare of the subject child; and each shall promptly notify the others; and it is further

ORDERED, that the Respondent-Mother, Respondent-Father, and Petitioner-Aunt shall have unfettered access to all medical providers and records for the subject child, including but not limited to medical, dental, orthodonture, and psychological services. This order shall serve as a release for same. If additional releases are required, the parties shall sign any necessary releases to effectuate this order; and it is further

ORDERED, that the Respondent-Mother, Respondent-Father, and Petitioner-Aunt shall have unfettered access to all educational, personnel, and records for the subject child. This order shall serve as a release for same. If additional releases are required, the parties shall sign any necessary releases to effectuate this order; and it is further

ORDERED, that the Petitioner-Aunt shall keep the Respondent-Mother and Respondent-Father informed of the name and address of any school that the subject child is attending and the name and address of any physician, dentist, psychologist, psychiatrist, or other consultant or specialist attending the subject child so that each may have access to the subject child's records as outlined above; and it is further

ORDERED, that the Respondent-Mother, Respondent-Father, and Petitioner-Aunt shall ensure the subject child attends counseling until successfully, clinically discharged, and shall cooperate with the subject child's counseling including participating in sessions with the subject child if recommended by the subject child's therapist; and it is further

ORDERED, that no party shall make verbal or written disparaging remarks about the other, or allow a third party to make such disparaging remarks, in the presence of the subject child or in a manner which could be accessible to the subject child which shall include posts on social media; and it is further

ORDERED, that the parties shall not discuss proceedings or any potential proceedings with the subject child, nor allow any third party to do so; and it is further

ORDERED, that the parties shall refrain from acts, words, insinuations, or any other form of expression which would in any way tend to lessen the respect of the subject child toward any other party; and it is further

ORDERED, that Law Enforcement is authorized to assist the Petitioner-Aunt in securing custody of the subject child should same be necessary and to physically take custody of the subject child and transfer custody to the Petitioner-Aunt in furtherance of this order; and it is further

ORDERED, that recommendations from the subject child's counselor shall be considered a change in circumstances for the Respondent-Mother and Respondent-Father to seek modification of this order.

Date: August 31 2022

ENTER

ORDER ENTERED
AUG 31 2022
JEFFERSON COUNTY FAMILY COURT

Allison J. Nelson
Honorable Allison J. Nelson
Family Court Judge

PURSUANT TO §1113 OF THE FAMILY COURT ACT, AN APPEAL MUST BE TAKEN WITHIN THIRTY (30) DAYS OF RECEIPT OF THE ORDER BY APPELLANT AND COURT, THIRTY-FIVE (35) DAYS FROM THE MAILING OF THE ORDER TO THE APPELLANT BY THE CLERK OF THE COURT OR THIRTY (30) DAYS AFTER SERVICE BY A PARTY OR LAW GUARDIAN UPON THE APPELLANT, WHICHEVER IS EARLIER.

Check applicable box:

Order mailed on [specify date(s) and to whom mailed]: 8-31-22 Susan Weaver
Eric T. Swartz, Esq. X
Kimberly Wood, Esq. X
John Hallett, Esq. X
Lydia Young, Esq. X
Victoria Pritty-Pitcher, 14741 County Route 145, Sackets Harbor, NY 13685 X
Delbert Hargis, 1502 South Salisbury Ave., Spencer, NC 28159 X
Nicole Hargis, c/o Albion Cour Fac, 3595 State School Rd, Albion, Ny 14411
 Order received in court on [specify date(s) and to whom given]: _____

No, _____

In the Supreme Court of the United States

Delbert W. Hargis Jr.- Petitioner

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State of New York-Respondent

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Exhibit B

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S REME COURT OF THE S TE OF NEW YORK
Appellate Division, Fourth Judicial Department

807

CAF 22-01496

PRESENT: WHALEN, P.J., CURRAN, MONTOUR, OGDEN, AND NOWAK, JJ.

IN THE MATTER OF VICTORIA A. PRITTY-PITCHER,
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

DELBERT W. HARGIS, JR., RESPONDENT-APPELLANT,
AND NICOLE E. HARGIS, RESPONDENT-RESPONDENT.
(APPEAL NO. 1.)

D.J. & J.A. CIRANDO, PLLC, SYRACUSE (REBECCA L. KONST OF COUNSEL), FOR
RESPONDENT-APPELLANT.

THE LAW OFFICE OF DONALD A. WHITE, WEBSTER (DONALD A. WHITE OF
COUNSEL), FOR PETITIONER-RESPONDENT.

KELIANN M. ARGY, ORCHARD PARK, FOR RESPONDENT-RESPONDENT.

KIMBERLY A. WOOD, WATERTOWN, ATTORNEY FOR THE CHILD.

Appeal from an order of the Family Court, Jefferson County
(Allison J. Nelson, A.J.), entered August 31, 2022, in a proceeding
pursuant to Family Court Act article 6. The order, among other
things, found respondent Delbert W. Hargis, Jr., to be in contempt of
court.

It is hereby ORDERED that the order so appealed from is
unanimously affirmed without costs.

Memorandum: In this proceeding pursuant to Family Court Act
article 6, respondent father appeals in appeal No. 1 from an order
that, among other things, found him in contempt of court for failing
to comply with a prior order of custody and visitation (prior order)
insofar as it granted petitioner, the paternal aunt of the subject
child, visitation with the child. In appeal No. 2, the father appeals
from an order that, among other things, modified the prior order by
awarding petitioner sole legal and physical custody of the child.

In appeal No. 1, the father contends that the prior order was
improper insofar as it awarded visitation to a nonparent and that
Family Court thus erred in finding him in contempt. “[A]n appeal from
a contempt order that is jurisdictionally valid does not bring up for
review the prior order” (*Burns v Grandjean*, 210 AD3d 1467, 1475 [4th
Dept 2022]; see *Matter of North Tonawanda First v City of N.
Tonawanda*, 94 AD3d 1537, 1538 [4th Dept 2012]). “However misguided

and erroneous [the father believed] the court's order . . . [to] have been [he] was not free to disregard it and decide for himself the manner in which to proceed" (*Matter of Balter v Regan*, 63 NY2d 630, 631 [1984], cert denied 469 US 934 [1984]; see *Burns*, 210 AD3d at 1475). Inasmuch as the father does not contest the jurisdictional validity of the prior order and does not dispute that he violated the order by refusing to abide by the provisions granting visitation to petitioner, we reject his contention that the court erred in finding him in contempt.

Contrary to the father's contention in appeal No. 2, the court was not required to make a finding of extraordinary circumstances prior to addressing the merits of petitioner's amended modification petition. Although a nonparent generally lacks standing to seek custody, a nonparent may establish standing upon a showing of extraordinary circumstances (see *Matter of Byler v Byler*, 207 AD3d 1072, 1072-1073 [4th Dept 2022], lv denied 39 NY3d 901 [2022]). Here, the court determined in a prior order in this matter that petitioner established the existence of extraordinary circumstances, and that finding "cannot be revisited in a subsequent proceeding seeking to modify custody" (*Matter of Green v Green*, 139 AD3d 1384, 1385 [4th Dept 2016]; see *Matter of Van Dyke v Cole*, 121 AD3d 1584, 1585 [4th Dept 2014]).

We likewise reject the father's contention that the court erred in determining that it was in the best interests of the child to award sole legal and physical custody to petitioner. In determining whether a requested custody modification is in the best interests of the child, "the court must consider all factors that could impact the best interests of the child, including the existing custody arrangement, the current home environment, the financial status of the parties, the ability of each [party] to provide for the child's emotional and intellectual development and the wishes of the child" (*Matter of Marino v Marino*, 90 AD3d 1694, 1695 [4th Dept 2011]; see *Eschbach v Eschbach*, 56 NY2d 167, 172-173 [1982]; *Matter of Wojciulewicz v McCauley*, 166 AD3d 1489, 1490 [4th Dept 2018], lv denied 32 NY3d 918 [2019]). The court is "in the best position to evaluate the character and credibility of the witnesses" (*Matter of Nunnery v Nunnery*, 275 AD2d 986, 987 [4th Dept 2000]), and this Court will not set aside a court's determination regarding custody "unless it lacks an evidentiary basis in the record" (*Matter of Bryan K.B. v Destiny S.B.*, 43 AD3d 1448, 1449 [4th Dept 2007]; see *Matter of Nordee v Nordee*, 170 AD3d 1636, 1637 [4th Dept 2019], lv denied 33 NY3d 909 [2019]; *Matter of Hill v Rogers*, 213 AD2d 1079, 1079 [4th Dept 1995]). We conclude that the court's custody determination is supported by a sound and substantial basis in the record and should not be disturbed (see *Nordee*, 170 AD3d at 1637). Among other things, the father had absconded with the child to another state and had repeatedly interfered with petitioner's ability to see the child who she raised for the majority of the child's life. Thus, although the father and petitioner both appear on this record to be capable of caring for the child, the court, in making its custody and visitation determination, properly considered, among other factors, the father's contempt of court, his disregard for the child's relationship with a person the

child considers to be her mother, and the child's wishes.

The father's contention that the court erred in granting temporary custody to petitioner during the pendency of these proceedings is moot inasmuch as the order of temporary custody has been superseded by the order in appeal No. 2 (see *Matter of LaBella v Robertaccio*, 191 AD3d 1457, 1458-1459 [4th Dept 2021]; *Matter of Gorton v Inman*, 147 AD3d 1537, 1538 [4th Dept 2017]; *Matter of Kirkpatrick v Kirkpatrick*, 137 AD3d 1695, 1696 [4th Dept 2016]).

Respondent mother's challenge to the dismissal with prejudice of her petition seeking modification of an amended custody order is not properly before us inasmuch as the mother did not appeal from the order dismissing her petition (see *Byler*, 207 AD3d at 1076; *Matter of Timothy M.M. v Doreen R.*, 188 AD3d 1711, 1713 [4th Dept 2020]).

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State of New York

Court of Appeals

***Decided and Entered on the
twenty-third day of April, 2024***

Present, Hon. Rowan D. Wilson, *Chief Judge, presiding*

Mo. No. 2024-73

In the Matter of Victoria A. Pritty-Pitcher,
Respondent,

v.

Delbert A. Hargis, Jr.,
Appellant,
Nicole E. Hargis,
Respondent.
(App. Div. No. CAF 22-01496)

In the Matter of Victoria A. Pritty-Pitcher,
Respondent,

v.

Delbert A. Hargis, Jr.,
Appellant,
Nicole E. Hargis,
Respondent.
(App. Div. No. CAF 22-01497)

Appellant having moved for leave to appeal to the Court of Appeals in the above cause;

Upon the papers filed and due deliberation, it is

ORDERED, that the motion, insofar as it seeks leave to appeal from the Appellate Division order that affirmed Family Court's order finding appellant in contempt, is

dismissed upon the ground that the order does not finally determine the proceeding within the meaning of the Constitution; and it is further

OREDERED, that the motion for leave to appeal is otherwise denied.

Judge Troutman took no part.



Lisa LeCours
Clerk of the Court

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EXHIBIT D

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1 THE STATE OF NEW YORK
2 COUNTY OF JEFFERSON

SUPREME COURT

3 DELBERT WAYNE HARGIS, Plaintiff,

5 -against- Index # 22-0572

6 MICHELLE MARIE SCUDERI,

7 Defendant.

9 STIPULATION held on May 22, 2023 at the Jefferson
County Supreme Court, 317 Washington Street, Watertown, New
10 York 13601

11 B E F O R E : HONORABLE JAMES P. McCLUSKY,
12 Supreme Court Judge

14 A P P E A R A N C E S :

15 For the Plaintiff: DELBERT WAYNE HARGIS - PRO SE

17 For the Defendant: BROTHERTON LAW FIRM
18 120 Washinton Street, #401
19 Watertown, New York 13601
BY: JUSTIN BROTHERTON, ESQ.

20 SWARTZ LAW FIRM, P.C.
21 200 Washington Street
22 Watertown, New York 13601
BY: ERIC T. SWARTZ, ESQ.

24 Reported by: Wendy L. Barnett, RMR, CRR
25 Official Court Reporter

(Hargis v Scuderi)

1

THE COURT: Well, you are suing her, so it would be from her. I don't have any authority to make attorneys do anything on the record.

4

MR. HARGIS: I got you. Okay. Let me

6

(A short recess was taken.)

7

(Mr. Hargis comes back into the courtroom.)

8

MR. HARGIS: As long as she admits to the legal malpractice and that she should have done that and an apology, along with the 2000, I think that would be acceptable.

12

THE COURT: All right.

13

14 MR. HARGIS. But it has to be that she
15 acknowledges that she committed legal malpractice,
16 that she should have filed the appeal, that the order
17 was appealable and that she was sorry for not filing
the appeal.

18

19 THE COURT: All right. If you want to
step out and bring them in.

20

(Mr. Hargis leaves the courtroom.)

21

(There was a conference between Mr. Brotherton and
Mr. Swartz and The Court.)

23

(In open court, Mr. Hargis, Mr. Brotherton, Mr. Swartz, Michelle Scuderi are all in the courtroom now.)

25

THE COURT: Good morning. We are here

(Hargis v Scuderi)

1 on the matter of Delbert Hargis versus Michelle
2 Scuderi. You are Delbert Hargis?

3 MR. HARGIS: Yes, Your Honor.

4 THE COURT: Mr. Brotherton, you are
5 here with Michelle Scuderi?

6 MR. BROTHERTON: Yes, Your Honor.

7 THE COURT: All right. We are
8 scheduled for a trial today. It's my understanding
9 that we do have a resolution of this matter which
10 will resolve all issues surrounding this matter and
11 the allegations contained therein; is that correct?

12 MR. BROTHERTON: That is correct, Your
13 Honor. It is my understanding it will be a full
14 settlement.

15 MR. HARGIS: Yes, that is correct.

16 THE COURT: All right. It's my
17 understanding the settlement would be a \$2,000 cash
18 payment and there would be acknowledgment from
19 Ms. Scuderi that malpractice was committed when she
20 did not file the Notice of Appeal and that she could
21 have and should have filed it at that time.

22 MR. BROTHERTON: That is correct, Your
23 Honor, that's our understanding of the terms of the
24 settlement.

25 THE COURT: All right. So Ms. Scuderi,

(Hargis v Scuderi)

1 do you acknowledge that is the case?

2 MS. SCUDERI: Yes, Your Honor.

3 THE COURT: All right. Also it's my
4 understanding an apology was supposed to be part of
5 that?

6 MR. BROTHERTON: Whenever you are
7 prepared, Ms. Scuderi was going to --

8 MS. SCUDERI: Yes, Judge. I'm sorry,
9 Mr. Hargis, that I didn't feel the appeal.

10 THE COURT: Mr. Hargis, anything
11 further?

12 MR. HARGIS: Just as long as all of
13 this is in writing.

14 THE COURT: Well, it's on the record,
15 and what I was going to suggest, Mr. Brotherton, if
16 you could prepare a release to be signed when the
17 \$2,000 is transferred, and how long will that take?

18 MS. SCUDERI: Within one week, Your
19 Honor.

20 THE COURT: When that is signed, you
21 will sign a release and settlement of this matter.

22 MR. HARGIS: I won't be here in a week.
23 So how are we going to go about doing that?

24 THE COURT: Well, what I would suggest
25 then -- how long are you going to be here?

(Hargis v Scuderi)

3 THE COURT: So you will be here another
4 day or two?

5 MR. HARGIS: Yes.

6 THE COURT: Mr. Brotherton, if you can
7 draft that anyhow.

13 THE COURT: Do you know where
14 Mr. Brotherton's office is?

15 MR. HARGIS: Yes. I do

18 Is there anything further?

19 MR. HARGIS: No.

20 MR. BROTHERTON: No, Your Honor. Thank
21 you.

24 * * *

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5
6 C E R T I F I C A T I O N
7
89 I, WENDY L. BARNETT, RMR, CRR, Official Court
10 Reporter and Notary Public in the County of Jefferson,
11 State of New York, do hereby certify that the foregoing is
12 a true and accurate transcript of the proceedings held on
13 May 22, 2023.14
15
16 
17 WENDY L. BARNETT, RMR, CRR
18 Official Court Reporter
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20
21
22
23
24
25