

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

2017-01579

2017-01584

2017-06311

2017-08729

In the Matter of RENEE P.-F. (Anonymous),

Respondent

v.

FRANK G. (Anonymous),

Appellant

In the Matter of FRANK G., (Anonymous),

Appellant

v.

Renee P.-F., (Anonymous) et al.,

Respondents

In the Matter of JOSPEH P., (Anonymous),
Petitioner-Respondent

v.

FRANK G. (Anonymous),
Appellant

RENEE P.-F. (Anonymous), et al.,
Respondent-Respondent

Appeal from the Family Court, Orange County

(May 30, 2018)

Before REINALDO E. RIVERA, J.P., MARK C.
DILLON, VALERIE BRATHWAITE NELSON, and
LINDA CHRISTOPHER, JJ.

In related proceedings pursuant to Family Court Act article 6, Frank G. appeals from (1) a decision of the Family Court, Orange County (Lori Currier Woods, J.), dated February 14, 2017, made after a hearing, (2) an order of the same court, also dated February 14, 2017, (3) an order of the same court dated May 10, 2017, and (4) an order of the same court dated August 2, 2017. The order dated February 14, 2017, insofar as appealed from, upon the decision dated February 14, 2017, granted Joseph P.'s petition for custody of the subject children and denied Frank G.'s petition for custody of the subject children and for permission to relocate with the subject children to Florida. The order dated May 10, 2017, insofar as

appealed from, granted that branch of Joseph P.'s motion which was for an award of an attorney's fee to the extent of directing Frank G. to pay an attorney's fee in the sum of \$25,000, and granted that branch of Renee P.-F.'s motion which was for an award of an attorney's fee to the extent of directing Frank G. to pay an attorney's fee in the sum of \$15,000. The order dated August 2, 2017, dismissed, without a hearing, Frank G.'s petition to modify the order dated February 14, 2017, so as to, inter alia, award him custody of the subject children or, in the alternative, to increase his physical access time with the subject children.

ORDERED that the appeal from the decision is dismissed, as no appeal lies from a decision (see *Schicchi v. J.A. Green Constr. Corp.*, 100 A.D.2d 509); and it is further,

ORDERED that the orders dated February 14, 2017, and May 10, 2017, are affirmed insofar as appealed from; and it is further,

ORDERED that the order dated August 2, 2017, is affirmed; and it is further,

ORDERED that one bill of costs is awarded to Joseph P.

Joseph P. (hereinafter Joseph) and Frank G. (hereinafter Frank) were domestic partners who began living together in 2009. As they desired to have children genetically related to both of them, they asked Joseph's sister, Renee P.-F. (hereinafter Renee), to act as a surrogate. Renee had previously promised her brother that she would carry a child for him after he met his life partner. Renee executed a surrogacy

contract in which she agreed to be impregnated with Frank's sperm and to terminate her parental rights in order for Joseph to adopt the child or children. In _____ 2010, Renee gave birth to fraternal twins, Giavonna and Lucciano (hereinafter together the children).

During the first four years of the children's lives, Joseph and Frank equally shared the rights and responsibilities of parenthood, although Joseph did not legally adopt the children. The children regarded both Joseph and Frank as their parents. During that period, Renee frequently saw the children. In early 2014, Joseph and Frank separated, and the children continued to reside with Frank. Even so, Joseph, acting in a parental role, visited and cared for the children on a daily basis. However, in May 2014, Frank suddenly refused to allow Joseph or Renee to have any access to the children. In December 2014, Frank moved to Florida with the children without informing Joseph or Renee, or commencing a proceeding for custody of the children.

Thereafter, Renee petitioned for custody of the children, and Joseph petitioned to be appointed guardian of the children. In March 2015, Frank petitioned for custody of the children and for permission to relocate with the children to Florida. In an order dated April 8, 2015, the Family Court denied that branch of Frank's motion which was for permission to relocate with the children to Florida. In June 2015, Joseph withdrew his guardianship petition and filed a petition for custody of the children. Frank then moved, in effect, to dismiss Joseph's custody petition on the ground, inter alia, that Joseph lacked standing under Domestic Relations Law § 70.

In an order dated August 21, 2015, the court, after a hearing, denied Frank's motion to dismiss and determined that Joseph had standing to seek custody of or physical access with the children. Frank appealed from the orders dated April 8, 2015, and August 21, 2015.

While Frank's appeals were pending before this Court, the Court of Appeals, in *Matter of Brooke S.B. v. Elizabeth A.C.C.* (28 N.Y.3d 1), overruled *Matter of Alison D. v. Virginia M.* (77 N.Y.2d 651). In *Matter of Brooke S.B.*, the Court of Appeals held that, where a partner to a biological parent "shows by clear and convincing evidence that the parties agreed to conceive a child and to raise the child together, the non-biological, non-adoptive partner has standing to seek visitation and custody under Domestic Relations Law § 70" (*Matter of Brooke S.B. v. Elizabeth A.C.C.*, 28 N.Y.3d at 13). Based upon the evidence adduced at the hearing before the Family Court and in light of *Matter of Brooke S.B.*, this Court determined that Joseph established standing to seek custody or physical access and remitted the matter to the Family Court, Orange County, for a full hearing on the custody petitions (see *Matter of Giavonna F.P.-G.* [Frank G.—Renee P.-F.], 142 A.D.3d 931; *Matter of Frank G. v. Renee P.-F.*, 142 A.D.3d 928).

On remittitur, the Family Court, after a hearing, issued an order dated February 14, 2017, upon a decision also dated February 14, 2017, inter alia, granting Joseph's petition for custody of the children and denying Frank's petition for custody of the children and for permission to relocate with the children to Florida. In an order dated May 10, 2017, the court granted that branch of Joseph's motion

which was for an award of an attorney's fee to the extent of directing Frank to pay an attorney's fee in the sum of \$25,000, and granted that branch of Renee's motion which was for an award of an attorney's fee to the extent of directing Frank to pay an attorney's fee in the sum of \$15,000. In an order dated August 2, 2017, the court dismissed, without a hearing, Frank's petition to modify the order dated February 14, 2017, so as to, inter alia, award him custody of the children. Frank appeals from the decision and the orders.

Frank argues that the Family Court improperly determined that Joseph had standing to seek custody of the children pursuant to *Matter of Brooke S.B.* (28 N.Y.3d 1). However, as stated above, on Frank's prior appeal from the order dated August 21, 2015, this Court determined that Joseph established standing to seek custody or physical access pursuant to the standard set forth in *Matter of Brooke S.B.* and remitted the matter to the Family Court, Orange County, for a full hearing on Joseph's petition for custody or visitation with the children (see *Matter of Frank G. v. Renee P.-F.*, 142 A.D.3d at 930-931). "The law of the case doctrine forecloses re-examination of issues decided on a prior appeal in the same action, absent a showing of new evidence or a change in the law" (*New York Cent. Lines, LLC v. State of New York*, 141 A.D.3d 703, 705; see *Clinkscale v. Sampson*, 104 A.D.3d 722, 723; *Wells Fargo Bank Minn., N.A. v. Perez*, 70 A.D.3d 817, 817). Here, Frank had a full and fair opportunity before the Family Court and on the prior appeal to contest the issue of Joseph's standing. Frank has neither presented new evidence that would change the determination in the prior appeal nor

demonstrated that there has been a subsequent change in the law. Under these circumstances, Frank is barred from raising the same argument again on these appeals.

“The paramount concern in any custody or visitation determination is the best interests of the child, under the totality of the circumstances” (*Matter of Boggio v. Boggio*, 96 A.D.3d 834, 835; see *Matter of Wilson v. McGlinchey*, 2 N.Y.3d 375, 380-381; *Eschbach v. Eschbach*, 56 N.Y.2d 167, 171). As this matter concerns an initial custody determination, the strict application of the factors relevant to relocation petitions (see *Matter of Tropea v. Tropea*, 87 N.Y.2d 727, 741) is not required (see *Matter of McDonald v. Thomas*, 154 A.D.3d 763, 764; *Matter of Wood v. Rago*, 135 A.D.3d 949, 950). Frank’s relocation to Florida was one factor for the Family Court to consider in determining what was in the children’s best interests (see *Matter of Wood v. Rago*, 135 A.D.3d at 950; *Matter of Santano v. Cezair*, 106 A.D.3d 1097, 1098). “[O]ne of the primary responsibilities of a custodial parent is to assure meaningful contact between the children and the noncustodial parent, and the willingness of a parent to assure such meaningful contact between the children and the other parent is a factor to be considered in making a custody determination” (*Matter of Vasquez v. Ortiz*, 77 A.D.3d 962, 962; see *Matter of Dezil v. Garlick*, 114 A.D.3d 773, 773-774; *Matter of Honeywell v. Honeywell*, 39 A.D.3d 857, 858).

Here, the Family Court’s determination that the best interests of the children would be served by an award of custody to Joseph has a sound and substantial basis in the record and will not be

disturbed. Frank's refusal to allow Joseph any contact with the children as of May 2014 and relocation with the children to Florida, without informing Joseph, constitutes willful interference with the relationship between the children and Joseph. Such conduct "is so inconsistent with the best interests of the children as to, per se, raise a strong probability that the offending party is unfit to act as a custodial parent" (*Matter of Khan-Soleil v. Rashad*, 111 A.D.3d 728, 730, quoting *Matter of Ross v. Ross*, 68 A.D.3d 878, 878; see *Matter of Lawlor v. Eder*, 106 A.D.3d 739, 740; *Matter of Purse v. Crocker*, 95 A.D.3d 1216, 1217). Although Frank attempted to excuse his conduct based upon his allegations that Joseph was engaging in risky sexual behavior, thereby endangering the children, the court concluded that Frank's allegations were not supported by credible evidence. As a result, the court properly discounted that explanation (see *Matter of Khan-Soleil v. Rashad*, 111 A.D.3d at 730; *Matter of Jones v. Pagan*, 96 A.D.3d 1058, 1058). In contrast, the record supported the court's finding that Joseph was willing to assure meaningful contact between the children and Frank.

Contrary to Frank's contentions, the awards of an attorney's fee to Joseph and Renee were not an improvident exercise of discretion in light of the parties' financial circumstances and the circumstances of this case (see *Matter of Zaydenverg v. Zaydenverg*, 151 A.D.3d 871, 872; *Matter of Feng Lucy Luo v. Yang*, 104 A.D.3d 852, 852; *Matter of Tuglu v. Crowley*, 96 A.D.3d 862, 863).

Moreover, Frank's petition to modify the custody order was properly dismissed without a hearing. A parent seeking a change of custody is not

automatically entitled to a hearing, but must make an evidentiary showing of a change in circumstances demonstrating a need for a change in custody in order to protect the child's best interests (*see Matter of Scott v. Powell*, 146 A.D.3d 964, 965; *Matter of Paulino v. Thompson*, 145 A.D.3d 726, 726-727; *Matter of Ali v. Hines*, 125 A.D.3d 851, 851; *Magee v. Magee*, 119 A.D.3d 658, 659). Here, Frank failed to make an evidentiary showing that there had been a sufficient change of circumstances between the issuance of the custody order dated February 14, 2017, and the filing of the modification petition. The unsubstantiated and conclusory allegations in his modification petition were insufficient to warrant a hearing (*see Matter of Paulino v. Thompson*, 145 A.D.3d at 726-727; *Matter of Ali v. Hines*, 125 A.D.3d at 851).

RIVERA, J.P., DILLON, BRATHWAITE NELSON
and CHRISTOPHER, JJ., concur.

AT A TERM OF THE FAMILY COURT OF THE
STATE OF NEW YORK HELD IN AND FOR THE
COUNTY OF ORANGE AT GOSHEN, NEW YORK
ON FEBRUARY 14, 2017

PRESENT: HON. LORI CORRIER WOODS, F.C.J.

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

RENEE P.,

Petitioner,

-against-

FRANK G.,

Respondent.

DECISION AND ORDER AFTER TRIAL

Feb. 14, 2017

Family File No.: 63,873

Docket No.: V-6147/6148-14

In the Matter of a Paternity Proceeding under Article

5 of the Family Court Act,

RENEE P.,

Petitioner,

-against-

FRANK G.,

Respondent.

Family File No.: 63,873

Docket No.: P-6149/6150-14

In the Matter of the Application of RENEE P.,
Petitioner, for a Writ of Habeas Corpus to bring up the
bodies of G.F.P.G. AND L.J.P.G., Minor Children, for
the Purpose of Awarding Custody of Said Minor
Children a Proceeding for Custody under Article 6 of
the Family Court Act,

Family File No.: 63,873

Docket No.: Z-874-15

In the Matter of a Proceeding for Custody under

Article 6 of the Family Court Act,

FRANK G.,

Petitioner,

-against-

RENEE P. and

JOE P.,

Respondents.

Family File No.: 63,873

Docket No.: V-1144/1145-15

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

RENEE P.,

Petitioner,

-against-

FRANK G.,

Respondent.

Family File No.: 63,873

Docket No.: V-6147/6148-14/15A

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

JOE P.,

Petitioner,

-against-

FRANK G. and

RENEE P.,

Respondents.

Family File No.: 63,873

Docket No.: V-2691/2692-15

The following petitions are currently pending before

the Court:

(1) Petition filed by Renee P. on December 23, 2014 against Frank G. for an Order (a) awarding her physical custody of G.F.P.G. (d.o.b. _____, 2010) and L.J.P.G. (d.o.b. _____, 2010) (hereinafter the “subject children”) and (b) awarding her legal fees pursuant to Domestic Relations Law Section 124(2)

(2) Petition filed by Renee P. on December 23, 2014 against Frank G. for an Order for a declaration of paternity as to the subject children and consolidating her companion custody proceeding pursuant to CPLR Section 602;

(3) Petition filed by Renee P. on March 2015 for an Order granting her application for a Writ of Habeas Corpus, pursuant to CPLR Section 7002;

(4) Petition filed by Frank G. on March 13, 2015 against Renee P. and Joe P. for an Order awarding him sole custody of the subject children with reasonable access to Joe P. and dismissing the petitions of Renee P.; an Amended Petition was filed by Frank G. on March 31, 2015 seeking an Order (a) granting him sole legal and physical custody of the subject children; (b) permitting him to relocate to Sarasota, Florida with the subject children; and (c) granting him such other and further relief as to the Court appears just and appropriate;

(5) Petition filed by Renee P. on April 15, 2015 against Frank G. for an Order granting her (a) an immediate award of sole custody of the subject children; and

(6) Petition filed by Joe P. on June 16, 2015 against Frank G., Jr., and Renee P. granting him sole custody of the subject children.

A trial of these matters was held on September 22, 2015, September 24, 2015, September 29, 2016, October 21, 2016, October 18, 2016, October 19, 2016, October 20, 2016, October 21, 2016, October 25, 2016, October 27, 2016, October 28, 2016, November 1, 2016, November 3, 2016, November 17, 2016, November 18, 2016, December 6, 2016 and December 7, 2016.¹ The following parties were present on each date: Frank G., together with his attorney(s) Michael Meth, Esq. and/or Bianca Formisano, Esq., Joe P., together with his attorney Peter Bloom, Esq., Renee P., together with her attorney Sheila O'Donnell, Esq., and the attorney for the subject children Ariana Antonelli, Esq. The Court heard testimony from the following individuals: Joe P., Renee P., Frank G., Dr. Marc S. Mednick, Ph.D., DABPS, and Andrea Massa.

The following documents were entered into evidence and have been given the weight the Court deems appropriate:

¹ On December 6, 2016 this Court communicated with Judge Stephen Walker of the 12th Judicial Circuit Court in the State of Florida pursuant to DRL Section 76 et seq., as Frank G. filed an ex parte application with the Florida Court during the pendency of the instant trial.

- (1) Surrogacy Contract P. Exhibit 1
- (2) Certificate of Birth for each of the subject children P. Exhibit 2
- (3) Birth Announcement P. Exhibit 3
- (4) Holiday cards P. Exhibit 4
- (5) Framed print P. Exhibit 5
- (6) Cards P. Exhibit 6
- (7) Photograph of Joe P. G.F.P.G.P. Exhibit 7
- (8) Photograph of Joe P. with the subject children and au pair P. Exhibit 8
- (9) Father's Day Cards P. Exhibit 9
- (10) Cards P. Exhibit 10
- (11) Artwork P. Exhibit 11
- (12) Father's Day Cards P. Exhibit 12
- (13) Framed photograph P. Exhibit 13
- (14) Personalized necklace w/ dog tags P. Exhibit 14
- (15) Framed Photograph P. Exhibit 15
- (16) Christmas card P. Exhibit 16
- (17) Correspondence from Michelle P. Ellerin, Esq., to Alison Aplin, Esq., dated June 23, 2014 P. Exhibit 17
- (18) Motion to Change Venue P. Exhibit 18
- (19) Email from Frank G. to Joe P. dated June 18, 2014 P. Exhibit 19

- (20) Email exchange between Joe P. and Frank G.
dated January 17, 2015 P. Exhibit 20
- (21) Text message exchange between Joe P. and
Frank G. P. Exhibit 21
- (22) Forensic Psychological Child Custody
Evaluation by Marc S. Mednick, Ph.D.,
DABPS, Clinical and Forensic
Psychologist P. Exhibit 23
- (23) Joe P.'s pension loan
application P. Exhibit 24
- (24) Email exchange between Joe P. and Frank
G. G. Exhibit B
- (25) Letter from Joe P. to Frank
G. G. Exhibit C
- (26) Email from Frank G. to Joe
P. G. Exhibit F
- (27) Letter from Joe P. to Frank
G. G. Exhibit I
- (28) Email exchange between Joe P. and Frank
G. G. Exhibit J
- (29) Facebook posting by Renee P. G. Exhibit N
- (30) Facebook posting by Renee P. G. Exhibit R
- (31) Medical Records of Renee P. G. Exhibit S
- (32) Facebook photo of Renee P. G. Exhibit U
- (33) Facebook photo of Renee P. G. Exhibit W
- (34) Facebook posting by Renee P. G. Exhibit X
- (35) Facebook posting and photo of Renee
P. G. Exhibit Y

- (36) Facebook posting and photo of Renee P. G. Exhibit Z
- (37) Affirmation of Teresa Grogan, Esq., dated September 29, 2014 G. Exhibit BB
- (38) Infant Log G. Exhibit FF
- (39) Emails between Joe P. and Frank G./Correspondence from Michelle P. Ellerin, Esq., dated June 23, 2014 G. Exhibit GG
- (40) Residential Lease G. Exhibit HH
- (41) Mortgage Statement G. Exhibit II
- (42) Frang G. 2014 U.S. Individual Income Tax Return G. Exhibit MM
- (43) Frank G. 2015 U.S. Individual Income Tax Return G. Exhibit NN
- (44) Text messages G. Exhibit RR
- (45) Bank Statements for Account ending in 8686 G. Exhibit SS
- (46) Bank Statements for Account ending in 8531 G. Exhibit TT
- (47) Bank Statements for Account ending in 2134 G. Exhibit UU
- (48) Bank Statements for Account ending in 1815 G. Exhibit VV
- (49) Re/Max Independent Contractor Agreement G. Exhibit WW
- (50) Responsibility Chart G. Exhibit XX
- (51) List of expenses w/ attachments G. Exhibit YY

- (52) U.S. Department of Housing and Urban
Development Settlement Statement (HUD-
1) G. Exhibit ZZ
- (53) Affidavit of Renee P. dated June 25, 2015 and
Affidavit of Sheila O'Donnel, Esq., dated June
25, 2015 G. Exhibit AAA
- (54) NYC Finance Quarterly Statement of
Account G. Exhibit BBB
- (55) Forensic Psychological Child Custody
Evaluation by Marc S. Mednick, Ph.D.,
DABPS, Clinical and Forensic
Psychologist Court Exhibit 1

As is this Court's practice, the Court has taken judicial notice of its file and of any prior Orders regarding the parties, if any. In addition, and in accordance with the practice of this Court, the parties were advised by the Court in earlier proceedings and in the Court's Part Rules that the forensic psychological evaluation prepared by Marc S. Mednick, Ph.D., DABPS, Clinical and Forensic Psychologist, which has been submitted to this Court, would be admitted into evidence pursuant to 22 NYCRR 202.16(g) in lieu of direct testimony and subject to cross examination of Dr. Mednick by any party. See *Ekstra v. Ekstra*, 49 AD3d 594 (2d Dept. 2008). The Court notes that Dr. Mednick was subpoenaed to testify during the trial and was cross examined by each parties' counsel as well by the attorney for the children. A summary of Dr. Mednick's testimony is set forth below.

By way of background, the instant matters have been pending before this Court for well over two years.

As set forth above, the first of the pending petitions was filed with this Court on December 23, 2014. Since that time the parties and their counsel have appeared before this Court on numerous occasions.

This Court conducted a standing hearing with regard to the petition filed by Joe P. on June 25, 2015. The testimony during the standing hearing established the following: that, although they never married, Frank G. and Joe P. were in a committed relationship and resided with one another from approximately 2009 through early 2014. Frank G. and Joe P. made a joint decision to have children together. Both men wanted to be genetically related to their children. Joe P's Sister, Renee P., had previously made a promise to her brother to carry a child for him when he was ready. It was agreed that Frank G. would be the sperm donor and Renee P. would donate the eggs and carry the children. The parties entered into a surrogacy contract with the understanding that Joe P. would adopt the children and Renee P. would surrender her parental rights to the children but nevertheless remain an active part of the children's lives. Renee P. became pregnant and gave birth to the subject children on _____, 2010. During the first four years of the children's lives Frank G. and Joe P. lived together with the children as a family, with both men caring for the children. The children regard both men as their parent, referring to Frank G. as "daddy" and to Joe P. as "dada". Renee P. remained an active part of the children's lives during those first four years and is known as their "Aunt Nae Nae". In early 2014 Frank G. and Joe P. separated. Notwithstanding their separation, Joe P. continued his daily routine with the children and saw them and cared for them on a daily

basis until late April 2014, when he and Frank G. had an argument and Frank G. decided that Joe P. and Renee P. would no longer see the children. Sometime in December 2014 Frank G. moved to Florida with the children. He did not give Joe P. or Renee P. prior notice of the move and cut off their access to the children.

In light of the testimony that was presented to the Court during the standing hearing, this Court determined that Joe P. had sufficiently demonstrated that he has standing to petition this Court for custody of the subject children. The Court granted standing to Joe P. on August 18, 2015 and scheduled the matter for a best interests hearing on the pending petitions. The Court also issued temporary Orders granting Joe P. and Renee P. contact and visitation with the children. The trial of the instant petitions commenced on September 22, 2015 and continued on September 24, 2015. Frank G. filed appeals of this Court's ruling on standing and the temporary Orders that were issued by this Court. The trial was stayed for well over one year as a result of the stays that were issued by the Appellate Division, Second Department.

During the time that the appeals were pending before the Appellate Division, and as discussed more fully below, the Court of Appeals rendered its decision in *Matter of Brooke S.B. v. Elizabeth A.C.C.*, 26 N.Y.3d 901, 2016 NY, (September 1, 2015), wherein it determined that where a partner to a biological parent shows by clear and convincing evidence that the parties agreed to conceive a child and to raise the child together, the non biological/non adoptive partner has standing to seek visitation and custody under

Domestic Relations Law §70(a).²

The Appellate Division, in taking into consideration the testimony that was given during the standing hearing and the Court of Appeals' ruling in *Matter of Brooke S.B.*, (supra) affirmed this Court's decision to grant standing to Joe P. to seek custody or visitation of the subject children. In its decision, the Appellate Division stated that Joe P. had sufficiently demonstrated by clear and convincing evidence that he and Frank G. entered into a preconception agreement to conceive the children and to raise them together as parents. The Appellate Division found that although the surrogacy contract is not enforceable as against Renee P. to deprive her of standing, it is evidence of the parties' unequivocal intention that Frank G. and Joe P. become the parents of the children. The Appellate Division further found that Frank G. and Joe P. equally shared the rights and responsibilities of parenthood and were equally regarded by the children as their parents. The matter was remitted to this Court for a full hearing on the pending petitions. See *Matter of Frank G. v. Renee P.-F.*, *Matter of Renee P.-F. v. Frank G.*, and *Matter of Joseph P. v. Frank G.*, (2016 NY Slip Op. 05946).

Testimony of Joe P.:

Joe P. testified that he is seeking custody of the subject children. He stated that he is a MTA Bridge and Tunnel Officer and has held that position for 13 ½ years. Joe P. stated that he typically leaves for work

² Prior to the *Brooke S.B.* decision, the Court of Appeals defined the term "parent" to mean solely the biological mother or biological father, or a legal parent by virtue of an adoption. See *Matter of Alison D. v. Virginia M.* (77 N.Y.2d 651).

in the morning at 5:20 AM and returns home from work at 4:15 PM. He stated that he currently lives in Monroe, NY where he rents a two bedroom apartment. He stated that he has purchased bunk beds for the second bedroom in his home so that the children have a place to sleep when they are with him. He stated that he turned 42 years old in December of 2015.

Joe P. stated that he is a gay man. He stated that he first met Frank G. in December 2008 and physically met Frank G. in January 2009. Joe P. stated that in June 2009 he moved into Frank G.'s home on Red Oak Court in Middletown, NY and stated that Frank G.'s brother T.J., lived there as well. Joe P. stated that he resided with Frank G. and T.J. in that home until November 2009.

Joe P. stated that he shared with Frank G. his strong desire to have children and advised Frank G. that his sister Renee P. was willing to have children for him. Joe P. stated that his mother passed away in 1986. He stated that he came out around that time and that his sister Renee told him that she would have children for him. Joe P. stated that sometime in 2009 he told his sister that he and Frank G. wanted to have children and asked her if she was still willing to donate her eggs for him and be his carrier, which she agreed to do.

Joe P. stated that Renee P. was impregnated via in vitro fertilization (hereinafter "IVF") and gave birth to the subject children on _____, 2010. He stated that during the time that she was pregnant he and Frank G. would visit Renee P. at her home in Staten Island, NY. He stated that they helped her with any needs that she had, such as running errands and cleaning

her house. He stated that in late fall 2009 he, Frank G., and Renee P. entered into a surrogacy agreement prepared by Frank G.'s attorney. Joe P. stated that he understood the surrogacy agreement to be the first step in the process of him adopting the children. He stated that it was the intention of both him and Frank G. that they would raise the children together and that Joe P. would adopt the children. Joe P. stated that he thought that the surrogacy agreement was valid in New York State since it was prepared by an attorney. He stated that it was not until after the children were born that he learned that it was not legal in this state.

Joe P. stated that the children were born in Staten Island on _____, 2010. He stated that he and Frank G. were present at the birth. He stated that the children were named G.F.P.G. and L.J.P.G. and stated that his surname appears in each child's name. Joe P. stated that he and Frank G. decided that the children would have both of their names. He further stated that he and Frank G. sent out birth announcements to all of their family and friends soon after the children were born.

Joe P. stated that in November 2009 he and Frank G. moved from Middletown, NY to Monroe, NY. He stated that in September 2009 he learned that Frank G. was soliciting sex on Craig's List, which resulted in a lot of arguments between the two of them. He stated that he discovered that some of the people that Frank G. had met as a result of these online contacts were from Middletown, NY. Joe P. stated that he told Frank G. that he wanted to move out of Middletown and Frank G. agreed. He stated that he and Frank G. moved into a home on Cedarcliff Road in Monroe, NY.

He stated that they chose to live in Monroe, NY because its schools are among the best in Orange County and because it would provide him with a shorter commute to work.

Joe P. stated that after the children were born he, Frank G., and the children went directly to Renee P.'s home in Staten Island. He stated that they stayed there for a few hours and then he, Frank G. and the children went to their home in Monroe, NY. Joe P. stated that he took time off from work (approximately 10 days) when the children were born and stated that he and Frank G. cared for the children around the clock. He stated that they both were responsible for feeding the children, changing their diapers, swaddling the children, and caressing the children. He stated that at the time that the children were born Frank G. mostly stayed home with the children but did go back and forth to his day spa. He stated that in the spring of that year Frank G. opened an ice cream store and started working there as well.

Joe P. stated that Frank G. solely cared for the children during the time that he (Joe P.) was working. He stated that when he returned home from work he (Joe P.) solely cared for the children while Frank G. went to work. He stated that Frank G.'s day spa closed at 9:00 PM and that sometimes Frank G. did not get home until 10:00 PM or 11:00 PM. Joe P. stated that initially the children were fed every three hours and woke often during the night for feeding and diapering. He stated that most of the time he and Frank G. would feed and change the children together during the night.

Joe P. stated that he and Frank G. hired an au pair

to reside in their home and to help care for the children when Frank G. started working full time. He stated that their first au pair, Aurora, was from Italy, and remained with the family for one year. He stated that a second au pair, Alba, who was from Spain, only stayed with the family for 6 months, at which point her services were terminated by him and Frank G. Joe P. stated that the au pairs' work day typically started around 9:00 AM. He stated that the au pair would stop working once he got home from work, at which point he would take over caring for the children. He stated that his days off from work would be the au pairs' days off as well.

Joe P. stated that the children's first pediatrician was in Middletown, NY. He stated that the next pediatrician was in Monroe, NY, which was closer to where the family lived. He stated that he and Frank G. would usually take the children to their pediatric appointments together. Joe P. stated that the children have not received their vaccinations. He stated that Frank G. was firm in his belief to not vaccinate the children for fear that the vaccinations would cause autism. Joe P. stated that he prefers for the children to be vaccinated.

Joe P. stated that he always took the children outside when he came home so that they could experience various types of weather such as rain and snow. He stated that he taught the children how to swing on the swings when they were 3 ½ years old. He stated that he played soccer, Frisbee and jump rope with the children. He further stated that he took them for bike rides and walks and hiking as well. He stated that he was very hands on with the children and that he sang with them, danced with them, bathed them,

read them bedtime stories and put them to bed. He further stated that he also cooked dinner for the children on almost a daily basis.

Joe P. stated that he and Frank G. participated in a parent/child class with the children at the Green Meadow Waldorf School in Rockland County, NY. He stated that when the children were three years old they began attending the Thevnet Montessori School in Monroe, NY. He stated that the children attended a half day program at Thevenet every Monday through Friday. Joe P. stated that either he or Frank G. would take the children to school and bring them home. He stated that he met with the children's teacher to go over their progress.

Joe P. produced various holiday cards that include pictures of the children and/or pictures of him and Frank G. together with the children. He stated that he and Frank G. sent the cards out to family and friends. He further produced a framed hand written note with the children's hand/foot imprints that Frank G. made for him as a present. Joe P. produced various birthday and Father's Day cards that he received from Frank G. and the Children. He also produced various photographs of him with the children, various art projects that the children made for him and a necklace that Frank G. gave him that says "I love my police dad" and "dada, with love, G.F.P.G. and L.J.P.G.".³ Joe P. stated that the children call him "dada" and Frank G. "daddy".

Joe P. stated that he and Frank G. resided in the home on Cedarcliff Road from November 2009 until

³ The various items referenced herein have been moved into evidence.

September 2010, at which point they, along with the children, moved to a home on Woodcock Road in Monroe, NY, which Frank G. owned. He stated that the four of them lived on Woodcock Road until February, 2014. He stated that in January 2014 Frank G. advised him that he needed time and space as he was finding himself spiritually. He stated that Frank G. advised him that he had rented the home on Woodcock Road to a tenant and that he (Frank G.) was moving with the children to a new home in New Windsor, NY. Joe P. stated that he told Frank G. that he did not want him to take the children but Frank G. told him that they had to separate if they wanted to have a chance as a family.

Joe P. stated that it was his understanding that he and Frank G. completed paperwork for him to adopt the children soon after the children were born. He stated that in late February or early March of 2020, Frank G. provided him with a residency form and signature page while they were in the home they shared on Cedarcliff Road. He stated that he provided Frank G. with a list of his residences which was to be included on the form. He further stated that he signed the signature page. Joe P. stated that his signature was not notarized and that he gave the signature page, along with the residency form to Frank G., who stated that he was going to take the papers to his attorney. Joe P. stated that he believed that the papers would be filed with the Court in Orange County. He stated that once he signed the signature page he never saw those papers again. He further stated that he has not seen any other adoption paperwork regarding his adoption of the children.

Joe P. stated that in the spring of 2020 he asked

Frank G. about the status of the adoption, to which Frank G. replied that he was waiting for a date from the Court. Joe P. stated that he made a second inquiry about the status of the adoption in the summer of 2020 and was again told by Frank G. that he was waiting for the Court to give him a date so that the adoption could be finalized. Joe P. stated that in late 2020 he asked Frank G. about the status of the adoption. He stated that Frank G. told him that he did not know whether he (Frank G.) wanted Joe P. to adopt the children. Joe P. stated that this resulted in many arguments between the two. He stated that in 2011 Frank G. advised him that he was not going to allow Joe P. to adopt the children as Frank G. was not ready to give up control. Joe P. stated that an adoption has never taken place.

Joe P. stated that he and Frank G. began living apart in February 2014. He stated that around that time he asked Frank G. who had drawn up the adoption paperwork. He stated that Frank G. advised him that J. Bach, Esq., had prepared the papers. Joe P. stated that he contacted Mr. Bach's office but never received the adoption paperwork.

Joe P. stated that in February 2014 he moved into his apartment on Kennedy Lane in Monroe, NY and Frank G. and the children moved into a home in New Windsor, NY. He stated that he continued to see the children almost daily, notwithstanding the fact that he was no longer living with them. He stated that he would go to the New Windsor home and cook dinner for the children, take them out, and put them to bed. He stated that on his days off from work he continued to take the children to school and picked them up from school as well. He stated that this continued until the

end of April 2014.

Joe P. stated that in late April 2014 he and Frank G. got into an argument over Easter Sunday. He stated that Frank G. wanted to go to his friend's house on Saturday and spend Easter Sunday with his family. Joe P. stated that he told Frank G. that he had taken Easter Sunday off of work and wanted to see the children. He stated that words were exchanged and Frank G. punched a wall and told Joe P. that if he came to the home Frank G. would call the police. He stated that Frank G. then attempted to pick up the telephone, at which point he (Joe P.) walked out.

Joe P. stated that he emailed Frank G. in order to try to connect with the children. He stated that his sister Denise emailed Frank G. as well in order to see if he and his family could see the children. He stated that Frank G. denied him and his family all access to the children. Joe P. stated that he got an attorney and a petition was filed in Richmond County, NY, which is the county where the children were born and the county in which Renee P. resided. He stated that the petition in Richmond County was withdrawn and that the decision was made to file in Orange County.

Joe P. stated that since the end of April 2014 to September 22, 2015, he has only seen the children on a handful of occasions including two sessions at Dr. Mednick's office for purposes of the evaluation and two visitations at the children's therapist Dottie Mahan's office, all of which took place at the direction of this Court.

Joe P. stated that he first visited with the children at Ms. Mahan's office on March 17, 2015 and again on March 19, 2015. He stated that Frank G. was present

for both of these visits. Joe P. produced a photograph that was taken of him and the children during the March 17, 2015 visit at Ms. Mahan's office, which has been moved into evidence. Joe P. stated that Frank G. took the photograph and framed it for him. He stated that the children were ecstatic when they first saw him on March 17, 2015. He stated that they ran up to him and were very excited. The Court notes that in the photograph Joe P. and the children are smiling and both children have their arms around Joe P.

Joe P. stated that he was scheduled to visit with the children on March 28, 2015 from 9:00 AM to 7:00 PM, as per the directive of this Court. He stated that he was only able to visit with the children on that day from noon to 5:00 PM. He stated that the morning of the visitation he contacted Frank G., who told him that the children had gotten off to a late start and that Joe P. could pick them up at 11:00 AM. Joe P. stated that the children were in Ulster County, which was nearly an hour's drive away, and that he got to where they were staying at noon.

Joe P. stated that in December 2011 he and Frank G. had been at a holiday party with some of Frank G.'s employees from the salon. He stated that when they came home he found what appeared to be cocaine in Frank G.'s cigarette box, which was located on the bathroom sink in their master bedroom. He stated that he became angry and that Frank G. said that the substance was not his. Joe P. stated that they got into a big argument and that Frank G. admitted that the substance was in fact his. Joe P. stated that he was very angry because he realized that Frank G. brought the drug into their car. He stated that he (Joe P.) had been driving that night because Frank G. had been

drinking and that if he had been pulled over it could have been the end of his career.

Joe P. stated that he did not know that the children were residing in the State of Florida until March of 2015. He stated that Frank G. never discussed the move to Florida with him. He stated that at the time the children left New York they were thriving and doing well in school.

Joe P. stated that if he is awarded custody of the children, he will take care of their daily needs. He stated that if Frank G. lives nearby, he would allow him to help and take the children to and from school if he (Joe P.) is working. He stated that he would make sure that Frank G. had the children on his days off from work and that he (Joe P.) would have the children on his days off from work. Joe P. stated that if Frank G. would not be available to care for the children while Joe P. is at work, he will hire an au pair or get a sitter. Joe P. stated that his interest is solely on the children. He stated that the children deserve to have two parents, as was intended. He stated that he would never take the children away from Frank G. or his family and that he would ensure that whoever loved the children would get to see them. Joe P. stated that he is requesting full custody so that Frank G. can never alienate the children from him again. He stated that he would make sure that Frank G. would see the children and that the children would be able to know both sides of their extended family. He stated that the children have many aunts, uncles and cousins in Staten Island who love them. Joe P. further stated that he believes that the children should be vaccinated and that they should be able to complete their religious sacraments. He stated that although

Frank G. does not deserve the children, the children deserve Frank G. because they love him. Joe P. further stated that he would provide Renee P. with access to the children and would not limit her relationship with them in any way.

Joe P. stated that his base salary is approximately \$68,000.00 per year. He stated that he is financially able to support the children, but that he does expect Frank G. to co-parent both physically and financially. Joe P. stated that if he is awarded custody he can provide health insurance to the children through the plan that he has with his employer.

On cross examination Joe P. acknowledged that he did not contact Child Protective Services or leave with the children when he found the cocaine in Frank G's cigarette box. He stated that he was home for the next two days and that Frank G was his partner and he trusted his partner to do the right thing.

Joe P. stated that he tried to start the adoption paperwork once he realized that Frank G. was not going to allow him to adopt the children. He stated that he did not try sooner because he was not going to allow him to adopt the children. He stated that he did not try sooner because he was afraid that Frank G. would not allow him to see the children and he was not prepared for that to happen. He stated that he was in an abusive relationship with Frank G. and that Frank G. would constantly threaten that he was going to take the children away from him. Joe P. stated that he is glad that he waited as long as he did, because but/for that time he had with the children when they were younger, they would not know him today. Joe P. stated that Frank G. kicked him out of their home on

two separate occasions and told him that he (Joe P.) would never see the children again if he did not leave and apologize for things that he had not done.

Joe P. stated that he began working as a Bridge and Tunnel Officer in 2002 and has held the position ever since. He stated that he has never been removed for psychiatric leave and is authorized to carry a firearm when he is both on and off duty. He stated that he safeguards money, collects money, enforces the law and conducts traffic stops. He stated that he has never been diagnosed with depression, anxiety or post traumatic stress disorder.

Joe P. stated that his sister Denise reached out to Frank G. in or around late April 2015 after Frank G. told Joe P. to get out and that he would never see the children again. Frank G. stated that he needed space and did not want to talk to Joe P. or to anyone in his family. Joe P. stated that he let some time go by and emailed Frank G. three or four weeks later in June 2015. He stated that he asked Frank G. to co-parent together as they intended to do. He stated that Frank G. responded by lashing out at him and stated that it would be a very long time before Joe P. would see the children again.

Joe P. stated that although Frank G. refers to him as a sexual deviant, it was Frank G. who was soliciting sex in 2009. Joe P. stated that in August 2009 Frank G. went to Long Island for a funeral, got a hotel room and had a threesome with individuals he solicited sex from online. He stated that Frank G. did this even though he and Frank G. were still living together and Renee P. was pregnant with the subject children. Joe P. stated that he did not leave Frank G.

even though he had cheated, and stated that Frank G. asked him not to tell anyone about what he had done. Joe P. stated that he felt embarrassed and feared that his sister would take the children away from him if she knew about what Frank G. had done.

Joe P. stated that he and Frank G. were in counseling to deal with Frank G's controlling behaviors and their trust issues. Joe P. stated that he has never solicited sex and stated that Frank G. went online and solicited sex while using Joe P's email address. Joe P. stated that he wrote apology letters to Frank G. and apologized for things that he had not done so that he could remain in the household and so that Frank G. would not take the children away from him.⁴ He stated that he wrote the letters out of fear of not seeing the children again. Joe P. stated that he was ignorant and did not realize that Frank G. was setting him up. Joe P. stated that in 2010, he rarely used his email at all. He stated that Frank G. knew his email accounts and even used Joe P's yahoo account to set up his smart phone.

Joe P. stated that on one occasion Frank G. took Joe P's cell phone and sent a text message to the landscaper wherein he wrote "Hey handsome, what's up?". Joe P. stated that he asked Frank G. why he did that and Frank G. responded that he wanted to see how the landscaper reacted to the message to determine if Joe P. was sleeping with him. Joe P. stated that he stayed in the abusive relationship because he was not ready to give up his children, and chose to remain with them instead.

⁴ The apology letters have been moved into evidence.

Joe P. stated that Frank G. was up and down in the relationship and was very hot and cold. He stated that Frank G. was on medication for depression and anxiety and that they were in counseling to deal with Frank G's ups and downs. Joe P. stated that in 2012 he was out of the home for approximately 1 – 1 ½ months, at which point he and Frank G. reconciled. Joe P. stated that he learned that he had to pick his battles with Frank G., as a fight would end up with Joe P. in the street or Frank G. punching the walls or threatening to take the children away. He stated that Frank G. always made the arguments turn around to be Joe P's fault, even if Joe P. was making a valid point. Joe P. stated that Frank G. had to have his way every single time. He stated that he is ashamed to have been in that relationship but is not that victim anymore. He denied that he solicited sex on Craig's List and denied that they were in counseling to deal with his soliciting sex or being a sexual deviant, as those were not the issues they were dealing with. Joe P. repeatedly stated that he wrote apology letters, wherein he admitted to doing things that he did not do, because Frank G. told him that if he did not do it he would not see the children again. Joe P. stated that he would have said or done anything to be with the children.

Joe P. stated that he and Frank G. would argue because Frank G. would not use Joe P's surname with the children's schools. He stated that he had no control and that he could not go to the school to add his surname because Frank G. would not allow him to adopt the children. Joe P. acknowledged that he had an affair in 2010 that went on into January 2011 with an ex boyfriend. He stated that he saw his ex

boyfriend on three occasions in the span of three months and acknowledged that Frank G. was caring for the children while he was out with his ex. Joe P. stated that he and Frank G. got into an argument in April 2015 because Frank G. would not let him see the children on Easter. He stated that the argument spiraled into other issues such as Joe P's name not being listed with the children's school and Frank G. moving out with the children. He stated that neither one of them trusted the other.

Joe P. stated that his entire pay check was given to Frank G. from 2009 to the end of 2010 or 2011 when they separated their finances. He stated that he contributed \$4,000.00 per month to the family from 2009 to 2010 and between \$2,800.00 to \$3,500.00 per month thereafter. Joe P. stated that he was the sole provider when it came to food shopping and purchasing clothing and diapers for the children. He stated that in 2014 the IRS garnished his pay check as a result of a loan that he took from his pension and failed to report. He stated that \$800.00 was garnished from his pay check each month and that the loan has since been paid off.

Joe P. stated that Frank G. purchased the home on Woodcock Road. Joe P. stated that he took a pension loan in the sum of \$19,000.00 to put down on the Woodcock Road home. He stated that Frank G. did not put down any money toward the purchase of that home. Joe P. stated that he was supposed to be named on the deed to the Woodcock Road home but Frank G. said that he (Frank G.) was going to claim bankruptcy with his businesses and could not have Joe P. on the mortgage, otherwise Frank G. would only be able to claim one half of the home's value in the bankruptcy.

He stated that Frank G. would only be able to claim one half of the home's value in the bankruptcy. He stated that Frank G. told him that he would add Joe P's name later, but ultimately failed to do so. Joe P. stated that he learned that Frank G's home on Red Oak Court in Middletown, NY was being foreclosed on. He stated that overall Frank G. has had three homes go into foreclosure, two in Middletown, NY and one in Monroe, NY.

Joe P. acknowledged that he and Frank G. engaged in sexual relations during the time in which the instant petitions were pending before this Court. He stated that he and Frank G. met at a diner after court to try to reach a resolution. He stated that Frank G. told him that he would allow Joe P. to adopt the children if Joe P. agreed that Frank G. could return to the State of Florida with the children. Joe P. stated that he and Frank G. engaged in sexual relations that night even though Frank G. has a fiancé and is engaged to be married. He stated that he believes Frank G. was trying to once again manipulate him. Joe P. stated that Frank G. put an application on his (Joe P's) cell without Joe P's knowledge that would allow Frank G. to control Joe P's phone. Joe P. stated that he contacted Verizon and changed his device so that he could not be hacked again.

Joe P. stated that he and Frank G. were present in the hospital when Renee P. signed the extra judicial consent forms and stated that she signed the forms voluntarily so that he and Frank G. could adopt the children. Joe P. stated that initially Frank G. was not named on the children's birth certificates. He stated that Frank G. manipulated Renee P. and stated that he needed to be named on the birth certificates in

order for the adoption to take place. He stated that Renee P. amended the birth certificates so as to include Frank G's name. He stated that Renee P. was not under the impression that she was terminating her rights to the children, but rather was signing a release so that Joe P. and Frank G. could adopt them.

Joe P. stated that in 2014 he inquired of Frank G. as to who had prepared the adoption paperwork. He stated that he was advised that J. Bach, Esq., had prepared the papers. Joe P. stated that he contacted the attorney's office and was told that the papers were in archive. He stated that he called again but did not receive a call back. Joe P. stated that he believed that the adoption papers had been filed in 2010 based upon the statements that Frank G. made.

Joe P. stated that when the surrogacy agreement was signed, it was his understanding that Renee P. would be the children's aunt, and that the children would never be taken away from her. He stated that when the children started school, they would be told where they came from and that Renee P. is their mom, but had them for dada, for her love for her brother, so that he could have children and so that the children would know their roots. He stated that it was never the intention to hide that from the children. Joe P. stated that although the children are now in school, they have never been told the truth about where they came from.

Joe P. stated that Renee P. was not paid anything to carry the children. He stated that Renee P. has four biological children in addition to the subject children – daughters Lana, Lena, Laura and Amber. Joe P. stated that prior to when his contact with the subject

children stopped, they had a loving relationship with Renee P. and her daughters.

Joe P. stated that the subject children were born in _____ 2010 and that during that first year Renee P. saw them frequently. He stated that she would come to see the children in Monroe and that he and Frank G. would bring the children to see her and the rest of the P. family on Staten Island. Joe P. stated that in 2010 he and Frank G. celebrated Easter at home and the P. family came to visit. He stated that Renee P. came to visit for Father's Day that year and that he and Frank G. took the children to Staten Island for Christmas Eve that same year. Joe P. stated that during that year Renee P. purchased clothing and toys for the children. He further stated that she would prepare meals for the children and would care for the children when he and Frank G. had to go out. Joe P. stated that during the first year, 2010, he observed Renee P. play with the children, hold the children, cuddle with and kiss the children, feed the children, change the children, bathe the children and put the children to bed.

Joe P. stated that in 2011 Renee P. continued to see the children at least once a month. He further stated that he would also take the children to his sister Denise's house on Staten Island during which times Renee P. would be present. He stated that in 2011 Renee P. came to Orange County to celebrate the holidays and stated that he, Frank G. and the children would always spend Christmas Eve with the P. family on Staten Island. He stated that in 2011 Renee P. continued to purchase clothing and toys for the children and cared for them as she did in 2010.

Joe P. stated that Renee P. did not see the children quite as often in 2012 because of conflicting schedules. She did however see the children every couple of months. He stated that he, Frank G. and the children spent Christmas Eve 2012 with the P. family on Staten Island.

Joe P. stated that Renee P. would come to the children's birthday parties in order to celebrate with them. He stated that their first birthday party was held in Monroe and Renee P. was there. He stated that he and Frank G. had separate parties for the children for their second birthdays and that his party for the children was held at his sister Denise's house on Staten Island.

Joe P. stated that in 2013 Renee P. saw the children every couple of months, as she had in 2012. He stated that as the children got older, she began dancing with them and playing more with them. He stated that on one occasion Renee P. made pizza with the children. Joe P. stated that Renee P. got along with Frank G.

Joe P. stated that the children were ecstatic when they saw Renee P. at Dr. Mednick's office and gave her hugs and kisses. Joe P. elaborated on what took place on March 28, 2015, when he was scheduled to have Court Ordered visitation with the children from 9:00 AM to 7:00 PM. He stated that he called Frank G. early that morning but Frank G. did not get back to him until 8:30 AM. He stated that Frank G. advised him that the children had just woken up and that Joe P. had waited too long to touch base with him (Frank G.) Joe P. stated that he advised Frank G. that he had sent him a text message the night before to confirm

the Court Ordered visitation, which Frank G. was aware of. Joe P. stated that he told Frank G. that he would come to pick up the children and feed them breakfast once they were with him. He stated that Frank G. had told him no, and that he (Frank G.) would get the children ready and feed them breakfast. Joe P. stated that he had no choice but to say yes and go along with it.

Joe P. stated that in preparation for his visitation with the children he purchased a bunk bed for the children and food for the visit. He stated that thereafter he was Ordered by this Court to have visitation with the children every Wednesday from 4:30 PM to 6:30 PM for a dinner visit and every weekend that he was off he was to have the children from Friday night to Sunday. Joe P. stated that he did not see the children the following Wednesday notwithstanding the Order of this Court. He stated that he sent a text message to Frank G. but Frank G. did not respond. He stated that he did not see the children the Wednesday after that and did not have his weekend visitation with the children. He stated that he sent text messages to Frank G. leading up to the Wednesday and weekend visitation but Frank G. did not respond.

Regarding the night he met Frank G. at the diner, Joe P. stated that Frank G. was trying to persuade him to agree to the children in Florida. Joe P. stated that Frank G. offered to allow him to adopt the children and to fly Joe P. out to Florida once a month if he agreed to the relocation. Joe P. stated that he told Frank G. that he would not agree to the relocation as he cannot have a bond with the children if they are residing in Florida. He stated that Frank G. told him

that he still cares for him and still thinks about him. Joe P. stated that a few nights before, Frank G. sent him a video of the two of them engaging in a sexual act. Joe P. stated that he was vulnerable that night at the diner and allowed Frank G. to seduce him. He acknowledged that it was a mistake and that he cannot take it back.

Joe P. stated that Frank G. was constantly in search of spiritual guides and had a counselor whom he would meditate with. He stated that he loved it when Frank G. was happy because it made him happy. He stated that he hated it when Frank G. was unhappy because it would lead to arguments. Joe P. stated that both he and Frank G. were raised as Roman Catholics. He stated that he considers himself to be a Christian and reads bible verses. Joe P. stated that he wanted the children to be christened in church. He stated that Frank G. did not want this and arguments ensued. He stated that ultimately Frank G. agreed to christening on the condition that no family members would attend.

Frank G. Joe P. stated that in the latter part of 2014 both he and Frank G. were represented by counsel. He stated that although various letter went back and forth between the attorneys, there was never any mention of Frank G. moving the children to the State of Florida. Joe P. stated that during the time that he lived with Frank G. Joe P. wanted to take the children to Florida to visit Joe P's father, but Frank G. said no, because he did not want the children to fly.

Joe P. stated that during the months of January and February of 2015 he was not aware of where the children were living. He stated that it was not until

he received a letter from Frank G.'s attorney in March 2015 that he learned that Frank G. had moved with the children to Florida. He stated that it was not until he was in Court on March 16, 2015 that he learned of Frank G's Florida address and that Frank G. had a fiancé. Joe P. stated that since moving to Florida, Frank G. has failed to notify him about any aspect of the children's lives including their health.

Joe P. stated that during the time that he and Frank G. were together he would give his pay check to Frank G., who would pay the bills. He stated that eventually Frank G's aunt would pay the bills using his pay check. Joe P. stated that he sent the children two boxes of clothing, one for each child in May 2014. He stated that Frank G. sent him an email advising that he had sent the clothing back to the store.

Joe P. stated that his relationship with Frank G. was abusive in that he (Joe P.) had no control. He stated that Frank G. always told him what to do and when to do it. He stated that there were times when Frank G. did not allow him to take the children to Staten Island or to take the children to the supermarket or to Home Depot because he (Frank G.) did not want them to be around crowds of people. He further stated that prior to the April 2015 argument, Frank G. took the children away from him on two separate occasions, once for a week and once for a few days because they were arguing or because Frank G. did not like something that Joe P. had done.

Joe P. stated that his biggest concern has been that the children are not vaccinated, which would result in arguments between him and Frank G. He stated that on one occasion at the preschool, he noticed a nail

sticking up on the outside deck are. He stated that he became concerned because the children had not received a tetanus shot.

Joe P. stated that he and Frank G. discussed what would happen if they broke up. He stated that they agreed to have a house for the children where the children would stay, and where he and Frank G. would move in and out of. He stated that when Frank G. moved out in February 2014 they did not discuss this prior agreement. Joe P. stated that he felt as though he was on pins and needles and was afraid to bring anything up for fear that Frank G. would stop him from seeing the children.

Joe P. stated that during their relationship he and Frank G. took quite a few vacations with the children. He stated that they went to the Jersey Shore, Long Beach Island, Delaware and to Upstate NY. He stated that he, Frank G. and the children spent holidays together either in their home in Monroe, NY or visiting various family members.

Joe P. stated that Frank G. first accused him of soliciting sex on the internet in 2012. He stated that Frank G. showed him emails that were purportedly sent from his (Joe P's) email address. Joe P. stated that at that time, there were four computers in the home that they shared, two of which were Frank G's computers. He stated that although he had access to Frank G's home office, he could not access Frank G's computers because they were password protected. He stated that he and Frank G. shared the other computers but never shared email accounts.

Joe P. stated that during the time that the appeals were pending before the Appellate Division, he had no

contact with the children from September 24, 2015 until July 29, 2016, when this Court granted him one week of vacation time with the children. He stated that during that time he purchased clothing and toys for the children, which he kept at his home so that Frank G. could not return them to the stores. Joe P. stated that his one week vacation time with the children was amazing and somewhat like an out of life experience that this was the first time that he was seeing the children outside of a therapist or evaluator's office in 2 ½ years.

Joe P. stated that this Court granted him facetime calls with the children. He stated that Frank G. would be very intrusive with these calls, often time distracting the children, feeding them snacks or telling the children what to say. He stated that on many occasions the children would look to Frank G. before answering a question. He stated that there were several times when the device that the children were using to see him was pointed at the ceiling so that he could not see the children. He stated that during a call on October 11, 2016 Frank G. became irate and ended the call when Joe P. told the child L.J.P.G. that he would see him the next day. Joe P. stated that when the children were spending time with him, Frank G. would tell them about things he was going to do while they were away with Joe P., such as going swimming with friends, or attending a sand castle building contest. He stated that on another occasion Frank G. repeatedly asked the child G.F.P.G. if she had been medicated. Joe P. stated that on one occasion the child L.J.P.G. was playing a hand held game during the call. Joe P. did acknowledge that his calls with the children were often longer than the

10 minutes that were allotted for by the court. He further acknowledged that he never missed a call with the children.

Joe P. stated that he has now learned that the children only use G. as their surname. He stated that when the children were born, they were always known as "P.G." and that this continued until Frank G. registered them for school. Joe P. stated that although he and Frank G. were not able to continue with their couples counseling, he (Joe P.) continues to see the therapist on an individual basis in order to help him cope with the separation from the children, the court proceedings, Frank G.'s controlling behavior and the emotional abuse that he endured during his relationship with Frank G.

Joe P. stated that if permitted he would adopt the children immediately. He stated that Renee P. is willing to consent to the adoption. He stated that he wants the children to know where they came from, as they have a very loving story. He stated that both he and Frank G. wanted the children out of love and that his sister fulfilled a promise that she made to him many years ago, before he ever met Frank G., so that he could have children that were genetically related to him. During cross examination Joe P. stated that his sister donated her eggs and carried the children for him and not for Frank G., who was merely the sperm donor.

Joe P. stated that during the week that he had vacation with the children they spent a couple of nights at his sister Denise's home in Staten Island. He stated that he slept on the couch and that the children slept on air mattresses. He stated that he has

appropriate living arrangements for the children and that he will arrange for child care during the hours that he is at work. He stated that he gets two days off a week, generally Saturday and Sunday, and has 25 vacation days.

Joe P. stated that he never paid child support but did contribute financially to the family. He stated that he contributed to the children's tuition at Thevenet and that he paid the electric bill and the car bills. He stated that he gave his pay check to Frank G. to cover other household expense. Joe P. stated that Frank G. did not make the mortgage payments on the family's home and lost the home to foreclosure.

Joe P. stated that he has changed the passwords on his email accounts to ensure that they are not hacked anymore. He further stated that he has arranged for a double verification process, wherein he must enter a code in order to access his accounts from another computer.

Joe P. stated that he moved out of the family home in the spring of 2012 for approximately two to four weeks after arguing with Frank G. He acknowledged that Frank G. was the primary care taker for the children during the time that he was out of the house but denied that he did not talk to the children for two weeks. He stated that he continued to contribute to household expenses during the time that he was not there. He paid for his vehicle, Frank G's vehicle and the insurance for the vehicles directly from his pay check and would give the remaining money to Frank G.

Joe P. stated that Frank G's vehicle went into default because he (Joe P) had stopped making

payments due to financial difficulties that he and Frank G. were experiencing. He denied that the vehicle was repossessed and stated that it never left their possession. Joe P. stated that he made the necessary payment and avoided a repossession. He further stated that when the time came to return Frank G's vehicle at the end of the lease, he (Joe P.) had to pay for wear and tear on the vehicle as well as for the overage of miles.

Joe P. acknowledged that the Guardianship petition that he filed with this Court and subsequently withdrew made no mention of an abusive relationship between him and Frank G. He stated that during the time that Renee P. was pregnant, she was on disability and placed on bed rest as she could not work. Joe P. stated that during this time he and Frank G. paid her mortgage and picked up her expenses. However, he stated that she was never paid to carry the children.

Joe P. stated that he owned a condominium on Staten Island prior to meeting Frank G. He stated that once he moved in with Frank G., Frank G. posted a listing on Craig's List and found a tenant to live in the condominium. He stated that there came a time when Frank G. told him that they had to stop making the mortgage payments on the condominium so that they could live off the rental income. The condominium was lost to foreclosure in 2014.

Joe P. stated that when he first moved in with Frank G. in 2009, they got a joint bank account together at Provident Bank. He stated that his paychecks were directly deposited into the joint account each month and that his paychecks totaled

between \$3,500.00 to \$5,000.00 per month. He stated that Frank G. was responsible for paying the bills with the money in the joint account. He stated that the rental income from the condominium went into the joint account. Joe P. stated that they had put about \$300.00 per month in positive cash flow from the condominium after collecting the rent and paying the expenses. He stated that Frank G. remodified the loan on the condominium, completed the paper work and signed Joe P's name to it.

Joe P. stated that he and Frank G. moved to Monroe, NY in or around December 2009, at which point they rented a home on Cedarcliff Road. He stated that Frank G. was able to to rent his home on Scotchtown Road in Middletown, NY to a tenant who had the option to buy. He stated that the tenant paid Frank G. \$10,000.00 up front and paid the monthly rent thereafter. He stated that the Middletown home went into foreclosure because Frank G. was not making the mortgage payments notwithstanding the fact that he had been receiving rental income on the home for approximately 1 ½ to 2 years. Joe P. stated that Frank G. also lost his home on Wickham Avenue to foreclosure because he was not paying the mortgage even though the home was rented to a tenant. He further stated that the strip mall that Frank G. owned at one point in time was also lost to foreclosure.

Joe P. stated that the parties moved from a rental home on Cedarcliff Road in Monroe, NY to a home on Woodcock Road in Monroe, NY. He stated that although he took out a pension loan in the sum of \$19,000.00 to help finance the home, it was Frank G. alone who was named on the mortgage and deed. Joe P. stated that he has paid off the entire pension loan

as well as the \$3,000.00 in taxes in relation thereto. He stated that the home on Woodcock Road also went into foreclosure.

Joe P. stated that he continue to pay for the vehicles and for the insurance for the vehicles during the time that the parties lived in the home on Woodcock Road. He further stated that he paid for the majority of the food expenses and for the oil and electric bills. He stated that he was also giving Frank G. cash each month in the range of \$300.00 to \$600.00. He stated that he was not aware that Frank G. was not paying the mortgage on the Woodcock Road home until 1 ½ years later when he was served with paperwork. Joe P. stated that Frank G. would never express a fixed amount when asked how much money he earned. He stated that Frank G. would often say that he earned different amounts each month.

Testimony of Renee P.:

Renee P. stated that she is the mother of the subject children. She stated that he mother passed away approximately 20 years ago and that it was around that same time, prior to her passing, that Joe P. told his mother that he is gay. Renee P. stated that she promised Joe P. that she would have children for him when he was ready. She stated that in 2009 Joe P. told her that he was vested in his career, was stable in his life and was ready to have children. She stated that she was 38 years old at the time and that she met Frank G. soon thereafter.

Renee P. stated that the parties tried a home pregnancy kit to impregnate her, which did not work, and instead went ahead with IVF. She stated that three eggs were inserted into her and that she became

pregnant with triplets. She stated that she lost baby C during the pregnancy and gave birth to the subject children on _____, 2010 in Richmond University Hospital in Staten Island, NY. She stated that Joe P., Frank G. and her friend Maria were present for the birth of the children that initially, she was the only individual named on the children's respective birth certificates, as Frank G. was, in her opinion, just a sperm donor.

Renee P. stated that there came a time when the birth certificates were changed to include Frank G. as the father. She stated that approximately three months after the children were born Frank G. contacted her and told her that he needed to be added to the birth certificates in order for him and Joe P. to be able to move forward with the adoption. She stated that she spoke with her brother, who told her that Frank G. had to be on the birth certificates so that both biological parents could consent to the adoption. She stated that she complied and the birth certificates were amended to include Frank G. She stated that thereafter she did not hear anything about the adoption process despite her inquiries. She stated that she was assured by both Joe P. and Frank G. that the papers had been submitted and that they were just waiting to hear back from the Court. She stated that it was not until around the time that Frank G. and Joe P. broke up that she learned that the adoption was not going to go through, as Frank G. was not comfortable letting Joe P. adopt the children.

Renee P. stated that she visited the children often during the four years that Joe P. lived with the children and with Frank G. She stated that during that time she would visit with the children in Orange

County or on Staten Island and face timed with them at least 4 or 5 times a week. She stated that during her time with the children she observed Joe P. to be the care taker of the children. She stated that he sang to them, played with them, bathed them and put them to bed. She stated that Frank G. had the same role.

Renee P. stated that when Joe P. was around Frank G., Joe P.'s demeanor would change. She stated that if she and Joe P. were sitting on the couch together, Joe P. would sink into the couch when Frank G. arrived home from work. She stated that she observed their relationship to be one that was very controlling. By way of example, she stated that Frank G. would decide when the family had to leave, even if Joe P. was not yet ready to leave. She further stated that Frank G. controlled how long she spoke with the children on facetime and also controlled where Joe P. could and could not take the children. She stated that Joe P. appeared afraid to speak when Frank G. was present, only saying "Okay Frankie, okay Frankie". Renee P. stated that she is fine if Joe P. is awarded full custody of the children because she knows that she will have open access to the children. She stated that she is seeking full custody of the children if her brother does not get custody.

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Renee P. stated that she has two brothers and three sisters and that they are all very close. She stated that one of her brothers lives on Long Island and that with the exception of Joe P., the rest of the siblings reside on Staten Island. She stated that many of her family members, including cousins, nieces and nephews also live on Staten Island. Renee P. stated

that she has four other children in addition to the subject children: daughters Lena (age 23), who is an EMT, Leah (age 20), who is in college studying Forensic Science, Laura (age 21), who works in a salon and Amber (age 13), who attends school. She stated that her daughters would play and spend time with the subject children. She stated that they would practice tumbling together and would watch movies together. She further stated that they went pumpkin picking together and on vacation together. Renee P. stated that the subject children spent time with their extended family members during the holiday celebrations and on weekends.

Renee P. stated that on one occasion Joe P. called her and advised that the child Lucca was sick. She stated that she made Lucca her chicken noodle soup, brought it to him, and then went to work. She stated that she had bathed the children and has put them to bed. She further stated that she has fed them meals and purchased gifts, food and clothing for them. Renee P. stated that she has never considered herself to be a surrogate and that she is the children's biological mother. She stated that she was at the children's first, second and third birthday parties but was unable to attend their fourth birthday party because Frank G. changed the date of the party to a day when she was working. Renee P. denied that she did not speak to her brother during the first year of the children's lives and denied that she wanted to be their godmother, stating that it would not make sense for her to be the godmother as she is their mother. She also stated that she is not Catholic. Renee P. stated that the children know her to be their aunt but that she, Joe P. and Frank G. agreed that the children would be told that

she is their mother when they started school at approximately age 4. She stated that when that time came the children disappeared.

Renee P. stated that her daughters have a facebook page. She stated that although they are on her facebook page, they cannot see her wall unless she tags them in a photo. She stated that the subject children had a facebook page that was through Frank G.. She stated that aside from the Court Ordered visitations, she last saw the children after Easter in 2014. She stated that no one in her family had access to the children through facebook after April 2014 as Frank G. cut them off. She stated that they were no longer able to see photos of the children and did not know where the children were or if they were okay. She stated that she reached out to Frank G. via email, advising that she wanted to see her children. She stated that he sent her his attorney's information and told her that everything should be referred to his attorney. She stated that Frank G. did not advise her that he would be moving the children to Florida. She stated that it was not until litigation was commenced and a process server found him that she learned that Frank G. and the children were residing in the state of Florida.

On cross examination, Renee P. acknowledged that she had to cancel a visitation at her home with the children because there was too much fighting and drama in her home. She denied that her boyfriend Michael Parker ever put his hands on her daughter Laura and stated that Mr. Parker and Laura, who was 16 years old at the time, got into an argument and one of her neighbors called the police as a result of the yelling. She acknowledged that Mr. Parker used drugs

and was convicted a crime years before she met him.

Renee P. stated that in or around June 8, 2013 she and Mr. Parker were going through a break up and got into an argument. She stated that he was supposed to come to her house with a police officer to get his belongings and instead arrived without an officer. She stated that Mr. Parker called the police and told them that she had taken his pills. She stated that the police arrived and she went to the hospital and a result thereof. She stated that she did not ingest any of Mr. Parker's pills but rather, took his pills away from him. She stated that she was released from the hospital within two hours of her arrival once her blood test results came back. She further stated that she does not drink or use drugs. Upon further questioning she acknowledged that she drinks in moderation. When presented with pictures of her from her facebook page, Renee P. stated that she finds the pictures to be funny and notes that there were no children present when the pictures were taken. She stated that although she may be rough around the edges, she has a good heart.

Renee P. stated that she signed the extra judicial consent forms for the adoption while she was in the hospital shortly after having given birth to the subject children. She stated that she signed the forms solely for the purpose of allowing the adoption to proceed. She denied that she terminated her rights to the children in signing the forms and stated that she signed the forms on the condition that the adoption was to go forward.

Renee P. stated that it is not possible to co-parent with Frank G., as has been proven by his actions. She

stated that no one can ever give back to her or to Joe P. the two years that they missed with the children and all of the missed holidays, birthdays, mother's and father's days. Renee P. stated that she would consent to an adoption if Joe P. gets custody and has full decision making authority.

Renee P. stated that she is not a surrogate because a surrogate does not typically use her own eggs. She stated that she fulfilled a promise that she made to her brother so that he could become a father and stated that Frank G. provided the sperm. She stated that the children are in Joe P.'s bloodline and are as close to him having biological children as he can get.

Renee P. stated that approximately 2 ½ months into the pregnancy she was put on bed rest after losing Baby C as she could no longer do heavy lifting. She stated that when she did receive disability payments the payments were less than ½ of what she had been earning. She stated that Frank G. told her not to worry about her mortgage payments or her children and that everything would be taken care of. She stated that when she became pregnant with the subject children Frank G. and Joe P. told her that they would remain close by to help her out but instead they lived in Orange County and left her to care for her children on her own.

Renee P. stated that the children will have to be told that she is their mother and that she carried them for Joe P.. She stated that the children cannot live in a bubble and cannot grow up thinking that they do not have a mother or that their mother abandoned them and did not care about them. She further stated that when they get older they will see her name on their

birth certificates and will see photos of her when she was pregnant with them.

Renee P. stated that she was upset when she learned that Joe P. had slept with Frank G. during the pendency of these proceedings. She stated that she could not understand how Joe P. could do that when Frank G. had kidnapped their children for two years. She stated that when she thinks back to the time when they were together, she realizes that her brother was a victim of abuse. She stated that Joe P. would just get up and go when Frank G. said that it was time to go. She further stated that on one occasion Joe P. did not bring the children to Staten Island because Frank G., who was not at home, had told him not to take the children there. Renee P. stated that through counseling Joe P. has become a completely different person. She stated that he is able to maintain eye contact again, and is laughing again, especially when he is with the children.

Renee P. testified as to an incident that occurred one day after Court. She stated that after Court she and Mr. Parker were leaving the courthouse when Frank G. called her a derogatory term. She stated that she told him to say it to her face and that Mr. Parker then asked Frank G. if he had something to say. She stated that Frank G. is manipulative and that prior to the incident he had asked if there were cameras. She stated that on the surveillance footage it appears that Mr. Parker is attacking Frank G. but rather it was Frank G. who started the problem.

Renee P. states that although she did not get to read Dr. Mednick's report, she does not agree with his statement that Frank G. is a stellar parent. She stated

that a stellar parent is someone who puts the needs of the children first and that Frank G. has not done that. She stated that he wants to move the children to Florida so that he can have 100% control over them.

Renee P. stated that she blocked Frank G. from her facebook page years ago. When asked how he is able to download pictures from her facebook page if he is blocked, she stated that she does not know, but that he is manipulative and that is an example of what he does. She stated that she thinks it was ridiculous and inappropriate that Frank G. created a facebook account for the subject child Gia when she was only 2 or 3 years old. She stated that she has never sent any time of communication to Gia's facebook page.

Testimony of Frank G.:

Frank G. stated that he currently resides in Monroe, NY with the subject children and his fiancé Nick. He stated that they are living in a cottage and that the current living arrangements are different than what they are used to. He stated that the cottage consists of two large rooms and is approximately 1100 square feet. He stated that one of the rooms is a master bedroom and the other room is a living room/kitchen area. He stated that they have one bathroom and a fireplace. Frank G. stated that their home in Florida was 2200 square feet and consisted of three bedrooms, two baths, a yard and an in-ground pool.

Frank G. stated that he registered the children for school in Monroe, NY and that he started the process on October 11, 2016 while he was still in Florida. He stated that he completed all of the necessary paperwork and that he and Joe P. went to the school

and met with the principal together. He stated that the communication between him and Joe P. was fine while they were at the school.

Frank G. stated that he and Joe P. met online in or around December 15, 2008. He stated that they began speaking online quite often and then began speaking over the telephone. He stated that they met one another for the first time in January 2009 at IKEA in New Jersey, as Joe P. was still living on Staten Island at the time. He stated that they walked around the storm and that he went home with Joe P. that evening.

Frank G. stated that 2008 was a big year for him. He stated that he had a great career and a lot of money, but no children. He stated that he wanted to be a father and in late 2008 he reached out to an adoption agency in Rye, NY. He stated that he had already started the application process for an adoption and was working on his videos and getting referrals from friends and family members when he met Joe P.. Frank G. stated that he was up front with Joe P. about his desire to become a father. He stated that Joe P. told him that his sister was willing to be a surrogate.

Frank G. stated that he first met Renee P. on January 29, 2009 at Joe P.'s condominium on Staten Island. He stated that Renee P. told him that she had previously offered to be a surrogate for her friend and for her sister and that she had considered selling her eggs for \$7,000.00. He stated that he was grateful and excited about the opportunity to have children. He stated that by late February/early March of 2009 they were into the process of trying to get Renee P.

pregnant.

Frank G. stated that he was not aware that Joe P. had agreed that they would stay in Staten Island during the pregnancy. He stated that he was not a part of that conversation and that that was never his intention. He stated that when he first met Renee P. he found it odd that they could never go to her house. He stated that he later learned that she did not want people coming to her home because of the condition that it was in. He stated that when he did go to her home it was in disarray and there were plumbing issues, leaks in the ceiling, a bucket in the livingroom and water coming from the bathroom.

Frank G. stated that when he first met Renee P. he found her to be funny. He stated that at times he was uncomfortable around her as he found some of the things she said to be inappropriate and vulgar. He stated that the early stages of the IVF process went well but that when it came time for Renee P. to take medication and shots she started to get very angry and was difficult about getting the shots. He stated that she would state that she had four children and did not need to go through the process.

Frank G. stated that despite the many arguments between Joe P. and Renee P. ultimately went through with the IVF process. He stated that as part of the process Renee P. had to take a shot at the same time each day. He stated that the day that she had to take her last shot fell on her daughter's birthday and he and a group of the family went to a restaurant to celebrate. Frank G. stated that the time was approaching for Renee P. to take the shot. He stated that Renee P. did not want to leave the restaurant to

take the shot, which would be given to her at home. He stated that she was scheduled for egg retrieval within the next few days and that it was imperative that she take the shot on time so that her eggs would drop. He stated that this was the final step in the IVF process before the egg retrieval could take place. Frank G. stated that Renee P. had a fit and made a scene at the restaurant because she did not want to leave the party. He stated that Joe P. spoke with her and she eventually agreed to leave the restaurant.

Frank G. stated that a few days after the incident at the restaurant he and Renee P. went to the appointment for the egg retrieval. He stated that Joe P. was not able to attend the appointment. He stated that he gave a semen sample and Renee P. was inseminated. Frank G. stated that Renee P. only wanted to have one embryo implanted inside of her. He stated that he wanted at least two embryos to be implanted. He stated that she was implanted with three embryos. Frank G. stated that Renee P. was angry that Joe P. was not present at the appointment and stated that she could not believe that she had gotten herself into this mess and that she did not know what she was thinking.

Frank G. stated that sometime later they learned that Renee P. was pregnant with twins. He stated Renee P. was fuming and began screaming that she never wanted twins, did not to have a caesarean section and that she had only agreed to carry one child, not two. He stated that she was screaming and cursing as they walked back to the car and that she was sup upset that she slipped and fell.

Frank G. stated that there was never any proof

that Renee P. was carrying three embryos. He stated that early on in the pregnancy a sonogram confirmed that she was carrying twins. He stated that there did come a time when Renee P. began bleeding during the pregnancy. He stated that they called the clinic and learned that a third embryo may have detached. However, he stated that a sonogram was performed a couple of hours later and it showed that the same two embryos were there.

Frank G. stated that he would have spent between \$50,000.00 to \$60,000.00 had he gone through with the adoption process. He stated that he had no problem compensating Renee P. so that he could have children that were genetically related to him. He stated that he and Joe P. did a lot of repair work to Renee P.'s home during the pregnancy. He stated that they re-did the bathroom and the ceiling, re-carpeted, painted, purchased kitchen appliances and gutted the entire basement. He stated that he and Joe P. paid approximately \$10,000.00 for all of those renovations as part of Renee P.'s compensation. Frank G. stated that in addition to paying for the supplies and work done on her home, they also provided Renee P. with hundreds of dollars in cash.

Frank G. stated that once Renee P. was put on bed rest, Joe P. told him that they should pay all of her bills for her. He stated that Joe P. did not want to give the money directly to Renee P. because he (Joe P.) had to give her financial support in the past. He stated that he and Joe P. paid her mortgage from early on in the pregnancy to three months after the children were born. He stated that when they began making her mortgage payments, Renee P. was behind on her payments. He stated that they got her caught up on

the mortgage and paid a total of \$28,000.00 on her mortgage. Frank G. stated that in addition to being behind on her mortgage payments, Renee P. was also behind on her electric bill. He stated that they paid her gas and electric bills as well. He further stated that they paid \$600,00 per month for her cell phone plan. Frank G. stated that in addition to the financial support that she received from him and Joe P., Renee P. also received financial support from her father, who paid for her car insurance. Frank G. stated that he and Joe P. also did the monthly food shopping for Renee P.. He stated that he drove to her home and prepared meals for her and her children. He further stated that he and Joe P. also took her children school shopping and Halloween shopping. Frank G. stated that overall he and Joe P. spend about \$3,500.00 per month on Renee P.'s expenses. He acknowledged that he and Joe P. were not able to be present with Renee P. every day and acknowledged that there were times when they paid someone to shovel her drive way. Frank G. stated that toward the end of the pregnancy he and Joe P. started sleeping in the basement in Renee P.'s home so that they could be close by. He stated that she has never paid him back and that he would never take the money back.

Frank G. stated that there was never a discussion about entering into a surrogacy agreement prior to the pregnancy but as Renee P.'s behavior became erratic, he grew concerned that she would change her mind. He stated that Renee P. was upset that he and Joe P. were living in Monroe, NY and not on Staten Island. He stated that on one occasion Renee P. was arguing on the phone with Joe P. because she was upset that they were not more actively involved. He stated that

when the call ended Joe P. three the phone across the bedroom. Joe P. told him that during the argument Renee P. said that she hoped that she miscarried the children and that she was sorry that she agreed to get pregnant. Frank G. stated that it was at that point that he decided that they needed to get something in writing so that Renee P. would not have the ability to change her mind and take the children. He stated that Joe P. agreed.

Frank G. stated that the surrogacy agreement was prepared by an attorney in Orange County, NY. He stated that although he was familiar with the law firm through prior business deals, he did not know the attorney who prepared the agreement prior to the first meeting. He stated that Joe P. attended the first meeting with the attorney as well. Frank G. stated that it was his belief that the agreement was legally binding. He stated that he, Joe P. and Renee P. signed the agreement on October 7, 2010 while sitting at Renee P.'s kitchen table. He stated that no one raised any objections about the document. He stated that prior to signing the agreement Renee P. had her attorney review the agreement. He stated that the only change that Renee P. wanted was to include a provision that she would always have access to the children and would never be kept from the children. He stated that the provision was incorporated into the agreement.

Frank G. stated that Renee P. was to be considered to be an aunt to the children. He stated that the children were always going to know that they came from her, but he was unsure if she would be referred to as their biological mother. He stated that when the time comes to tell the children where they came from,

he will seek help from a child psychologist and will read books with the children. He stated that he has no problem with telling the children that Renee P. was their surrogate so long as there are no emotional or psychological issues for the children. He stated that he has already explained to the children that families are made up of different people.

Frank G. stated that there came a time when extrajudicial consents were prepared. He stated that the consents were signed three days after the children were born in the presence of a notary public. He stated that prior to the children being born, he, Joe P. and Renee P. had discussed, quite a few times, that the consents would need to be signed in order for the adoption to go forward and that in doing so Renee P. would be giving up her rights to the children. He stated that no objections were raised with regard to signing the consents.

Frank G. stated that the consents were prepared by Attorney Bach, who is also in Orange County, NY. He stated that he was referred to Mr. Back and did not know him prior to the first meeting. He stated that he and Joe P. attended the first meeting with Mr. Back. Frank G. stated that he gave the adoption paperwork to Joe P. in order for his union attorney to review it. He stated that the adoption papers were placed in a filing cabinet in his (Joe P.'s) home office in the Cedarcliff home. He stated that Joe P. knew where the papers were and had access to the filing cabinet. Frank G. stated that in early 2012 he and Joe P. were not together but as of June 2012 they were together and were living together. He stated that they discussed the adoption paperwork through the years. He stated that they split up in 2013 and that Joe P.

was given the adoption papers at the time of the split. He stated that Joe P. did not do anything with the papers.

Frank G. stated that he grew up on Long Island. He stated that his parents split up when he was two years old and that he was raised by his mother. He stated that his mother remarried and his brother and sister were born from that union. Frank G. stated that he witnessed domestic violence in his home, including seeing his mother be sexually assaulted. He stated that he was also the victim of physical abuse. Frank G. stated that he moved to Orange County when he was 25 years old and stated that he has been self employed since he was 21 years old. He worked in the baking industry and was a branch Manager for Fleet Bank. He opened an insurance company on Long Island when he was 21 years old. Frank G. stated that in 2008 he owned salons in Middletown, NY and in Rockland County. He stated that he also owned a strip mall in 2008.

Frank G. stated that he was raised as a Catholic. He stated that he does not avidly practice a religion and that he and the children to gratitudes each day, wherein they state what they are grateful for. He stated that they do a blessing every night at dinner during which they thank God for their day and for their food. He stated that he talks to the children about God and that they have books about God.

Frank G. stated that it bothers him when, during facetime calls, Joe P. and Renee P. tell the children to say their prayers and state that they are going to ask the children the following day when they prayed about. He stated that he has taught the children that

prayers are private and that they don't have to share them if they don't want to. He stated that he wished that Joe P. and Renee P. had talked to him prior to making those statements to the children.

Frank G. stated that he is more in line to practice Christian Science. He stated that he did not want the children to be baptized because he believes that the Catholic faith does not approve of gay relationships or of children born via IVF. He stated that Joe P. wanted the children to be baptized. He stated that they spoke about who the godparents would be and that Joe P. was concerned that Renee P. would explode if she was not chosen to be the godmother. Frank G. stated that he told Joe P. that if he wanted to do the baptism he could, but that Joe P. would have to organize it and plan the party. He stated that the baptism never happened. He denied that he wanted the baptism to be done in secret.

Frank G. stated that the children have received some vaccines. He stated that Joe P. and Renee P. went behind his back and allowed the children to have the Hepatitis B vaccines at the hospital even though they knew that he was against that. He stated that he does not want the children to be vaccinated because he believes that vaccines have side effects. He stated that he discussed vaccinations with the children's pediatricians and that he read the literature that they gave him. He stated that he also consulted with a holistic doctor in Rockland County. Frank G. stated that the tetanus vaccine can be given after a child has been exposed and does not have to be given to a child prior to exposure. He stated that by not having the children vaccinated he has given their immune systems a chance to grow and develop, which is why

they are so healthy today.

Frank G. stated that from January 2009 to February 2010 he and Joe P. experienced a lot of issues in their relationship. He stated that at that time Joe P. had the condominium on Staten Island, which subsequently went into foreclosure because Joe P. did not pay the mortgage. He stated that Joe P. moved in with him in July 2009. He stated that at the time he (Frank G.) resided in a bi level home in Middletown, NY. He stated that he owned the home and that his younger brother lived in the downstairs portion of the home.

Frank G. stated that he helped Joe P. find tenants for his condominium. He stated that when the tenant moved out of the condominium in 2013, Joe P. was behind on his mortgage payments. He stated that he helped Joe P. to modify his mortgage, at which point a new tenant moved into the condominium. He stated that although Joe P. received one month's rent and a security payment from the new tenant, he failed to pay the mortgage. Frank G. stated that he does not know what Joe P. spent that money on. He stated that the only expense that Joe P. paid was for Frank G.'s vehicle, a Honda Pilot. He stated that eventually Joe P. fell behind on the payments for the Honda Pilot in late 2013.

Frank G. stated that he owned many businesses and some real estate in 2009. He stated that his ex was living in Middletown and that Joe P. did not want to live in Middletown for that reason. He stated that there was no reason to leave his home in Middletown in that it had three bedrooms, two baths, a living room, kitchen and dining room, generated rental

income from the downstairs portion and would have been perfect for the children. He stated that his mother was staying in his home in Middletown for a short period of time and that Joe P. did not like that his mother and brother were living in the home. He stated that Joe P. also did not like that his (Frank G.'s) ex, who he owned a business with, lived nearby. He stated that at that time Joe P. was working on the Henry Hudson bridge and wanted to move out of Middletown so that he would have a shorter commute. Frank G. stated that he did not want to move out of Orange County because his businesses were in Orange County and he had no desire to live in any of the five boroughs.

Frank G. stated that he and Joe P. agreed to look for houses and found a home to rent in Monroe, NY. He stated that he rented his home in Middletown, NY to a tenant who had the option to buy. He stated that even though the tenant fell behind in her rent payments, he allowed her to stay in the home, hoping that she would be able to catch up and buy the home from him. He stated that eventually the home went into foreclosure. Frank G. stated that during that period of time finances became a mess and the Middletown home was not his only financial issue.

Frank G. stated that his financial hardship began in early 2011 and continued until 2014. He stated that in December 2010 he sold all of his businesses, including his salon and spa and only kept his ice cream store. He stated that he was paid approximately \$125,000.00 as a down payment for the sale of the business, but the buyer defaulted on the remaining payments. Frank G. stated that he gave the strip mall back to the lender and negotiated a deed

in lieu of foreclosure. He stated that the strip mall had \$4.5 million dollar mortgage that was interest only, and that his payments were \$25,000.00 per month. He stated that Rite Aid, a major tenant in the strip mall, vacated the premises upon the expiration of its lease and other tenants began closing up shop soon thereafter.

Frank G. stated that he and Joe P. were living together during the period of financial troubles and that both of them were employed. He stated that the \$125,000.00 that he received as a down payment, together with the remaining payments that he was to receive, would have been enough to pay for the home that he and Joe P. shared with the children. He stated that Joe P. was supposed to pay for the remaining household expenses such as the utilities and car payments. He stated that the only payments that Joe P. made were for the vehicles and on one occasion the oil bill. He stated that after he gave back the strip mall he continued to receive his salary from the ice cream store. Frank G. stated that he got his real estate license in 2012 and was actively selling real estate in Orange County by June of that year. He stated that he sold his ice cream store in 2013 for approximately \$100,000.00.

Frank G. stated that he and Joe P. had many ups and downs in their relationship and stated that infidelity and trust were major issues for them. He stated that in 2009 and 2010 money was not an issue because they were still financially sound. He stated that in November of 2009 he and Joe P. rented a home on Cedarcliff Road in Monroe, NY. He stated his mother was around a lot in 2009, which resulted in tension because Joe P. was jealous of the relationship

that he (Frank G.) had with his mother.

Frank G. stated that in January 2010, right before the children were born, he came across Joe P.'s cell phone (which was not password protected) on the bathroom sink. He stated that he saw text messages with people that he did not know and that the messages were vulgar and sexually intense. He stated that this was the first time that he saw these messages and stated that he did not confront Joe P. about them. Frank G. acknowledged that he had infidelities during his relationship with Joe P. and acknowledged that he had a one night stand during the summer of 2009. He stated that Joe P. found an email and confronted him about it. Frank G. stated that he was honest with Joe P. and Joe P. forgave him. He stated that they agreed to go to therapy together to discuss the infidelity and stated that they attend therapy once a week for approximately three months. Frank G. stated that he did not confront Joe P. about the text messages because they had already been through enough turmoil in their relationship and had just started to trust each other again. He further stated that at that point in time, he feared what Renee P. would do if he and Joe P. broke up.

Frank G. stated that in 2010, shortly after the children were born, he came across emails on Joe P.'s computer wherein Joe P. was communicating with people in a sexually inappropriate and vulgar manner. He stated that at this point in time he and Joe P. had exchanged passwords for their email accounts, which was something that they learned in a therapy session to help build trust. He stated however that on the morning that he discovered the emails, Joe P.'s emails were already open and he did not have to

enter the password. Frank G. denied that he has ever hacked into Joe P.'s computer or email accounts.

Frank G. stated that in 2010, 2012, 2013 and 2014 Joe P. admitted to him that he (Joe P.) had sent the email messages. He stated that Joe P. told him that he sent the emails every time he and Frank G. had an argument. He stated that Joe P. told him that he never hooked up with anyone and only talked to them because he was depressed and lonely. Joe P. further told him that he (Frank G.) did not pay him (Joe P.) enough attention. Frank G. stated that he was not in the habit of checking Joe P.'s email on a yearly basis. He stated that every time Joe P.'s behavior changed, or every time Joe P. said he had to work overtime and would come home late, he (Frank G.) knew what he was doing.

Frank G. stated that in 2010, the adoption did not go forward because of what was going on in his relationship with Joe P.. He stated that he was not okay with Joe P.'s behavior or with the risks that Joe P. was taking. Frank G. stated that in order for the adoption to take place, he would have had to sign a document surrendering his rights to the children so that he and Joe P. could adopt them together. He stated that he was not willing to do that knowing the types of things that Joe P. was doing. Frank G. stated that many times throughout the years he asked Joe P. to get help. He stated that they would go to therapy but Joe P. would always get back into it again. He stated that he was not aware that Joe P. had an affair in 2010 until he heard Joe P.'s testimony in this proceeding.

Frank G. stated that he has never met any of the

individuals who he claims Joe P. was communicating with via Craig's List. He stated that he confronted Joe P. about his online communications with strangers in May 2010. He stated that Joe P. denied that he had done anything wrong. He stated that he asked Joe P. to leave the home but Joe P. refused. The stated that they sat down and talked, and that Joe P. told him that he was not getting what he needed from their relationship and engaged with other people in order to achieve emotional fulfillment. Frank G. stated that in 2012 he installed an application on Joe P.'s cell phone in order to view Joe P.'s text messages. He stated that he confronted Joe P. about the text messages that he found on Joe P.'s phone, took the children and left the home. Frank G. stated that he spoke with Joe P.'s sisters about the Craig's List solicitations in 2011, 2012 and 2014.

Frank G. stated that Renee P. was the only parent named on the children's original birth certificates. He stated that he did not agree to that and did not know that she had failed to name him on the birth certificates until he received them in the mail. He stated that he was very upset that he was not named on the birth certificates. Frank G. stated that he contacted Renee P. and advised her that he is the father of the children and needed to be named on their birth certificates. He stated that he completed the required paternity paperwork and was named on the amended birth certificates.

Frank G. stated that it was always understood that he would stay home with the children once they were born. He stated that he worked from home and had a large office in the finished attic. He stated that his staff, including managers and an

assistant/bookkeeper would come to his home once or twice a week in order for him to review reports and sign pay checks.

Frank G. stated that Joe P. took one or two weeks off of work when the children were born. He stated that he (Frank G.) was the primary care taker for the children. He stated that for the first two months the children slept in bassinets on his side of the bed. He stated that he arranged a mock kitchen in his bedroom so that he had a crock pot to heat up the bottles and a refrigerator. He stated that he also set up a diaper station. Frank G. stated that each night he would get up every couple of hours to feed, change and burp the children. He stated that he also fed, burped and changed them throughout the day as well. Frank G. stated that as the children got older he arranged the downstairs for them so that they could have a lot of floor time. He stated that he was with the children every day, all day. Frank G. stated that he took the children to all of their pediatrician appointments. He stated that Joe P. only came with him to a few appointments.

Frank G. stated that when the children were born, his Aunt Eleanor came to stay with them for approximately one week and his mother was constantly there to help care for the children as well. He stated that his brother, sister, grandparents and Aunt Dina would come up to visit with the children on a regular basis. Frank G. stated that it was not uncommon to have friends or family members coming for a visit.

Frank G. stated that Renee P. came to visit the children in Monroe, NY on two occasions- one of which

was for Easter. He stated that he and Joe P. took the children to Staten Island a couple of times that year. Frank G. stated that in 2011 and 2012 Renee P. continued to have limited contact with the children. He stated that during the early years there was no facetime communication as the children were too young. He stated that in 2013 he arranged for a visit to take place at Renee P.'s home, but the visit was cancelled by Renee P. because she was having issues in her home. He stated that Renee P. did not reach out to him at all in 2014 in order to request a visit with the children or to inquire as to how the children were doing.

Frank G. stated that he received text messages from Renee P. in or around 2012 wherein she was asking him for help. He stated that he learned from Joe P. about the domestic violence that he taken place in Renee P.'s home between her and her husband. He stated that Joe P. also told him about other fights and arguments that were taking place in Renee P.'s home, including the incident that took place between Mr. Parker and Renee P.'s daughter Laura. Frank G. stated that Renee P.'s oldest daughter Lana came to stay with him and Joe P. for three or four days. He stated that Joe P. advised him that Lana wanted to get away from the domestic violence and was occurring in Renee P.'s home. Frank G. acknowledged that Joe P. never used the term "domestic violence" when describing the incidents that took place in Renee P.'s home. He did state that Joe P. told him that the police had to be called to Renee P.'s home.

Frank G. denied that he would make Joe P. leave Renee P.'s home against his (Joe P's) will. He stated that Renee P. would often say vulgar things and he

and Joe P. did not want to be around that. He stated that they would leave because of Renee P's behavior, and not because Joe P. was afraid of Frank G. Frank G. denied that he ever threatened Renee P. He stated that Joe P. never called the police on him and never filed a domestic incident report against him.

Frank G. stated that he, Joe P. and the children always spent Christmas Eve at Joe P.'s sister Denise's house. He stated that Christmas Day would be spent at home and his (Frank G.'s) family would spend the day with them. He stated that he, Joe P. and the children spent most Easters at home. Frank G. stated that Thanksgiving would be spent at home one year and at his mother's home the following year. He stated that whenever he and Joe P. held a holiday celebration at home, the P. family was always invited. He stated that with the exception of the children's first Easter, the P. family did not come to their home for the holidays despite the invitations.

Frank G. acknowledged that he created a facebook page for the children wherein he posted videos and pictures of the children. He stated that he created the facebook page with Joe P.'s consent so that members of the P. family who lived in New Jersey would be able to see pictures of the children. He stated that the facebook page was private and that only family members could view it.

Frank G. stated that Joe P.'s work hours would range from 7:00 AM to 3:00 PM, 8:00 AM to 4:00 PM or 9:00 AM to 5:00 PM. He stated that his hours shift from week to week. He stated that if Joe P. had to work overtime he would either go into work four hours earlier or he would work four hours later at the end of

the day. Frank G. stated that during the first three months of the children's lives, Joe P. worked overtime at least three or four times a week. He stated that on the days that he worked overtime, Joe P. was often too exhausted to tend to the children after work, but did help at times. Frank G. stated that during the first three months of the children's lives he prepared and maintained a log of the times that the children slept and of the times that the children were fed, changed and engaged in different activities. He stated that during the first three months of the children's lives Renee P. only came to see the children on two occasion.

Frank G. stated that the child G.F.P.G. needed physical therapy when she was approximately three months old because she had torticollis which resulted in a twisted neck. He stated that in addition, G.F.P.G. required speech therapy because her tongue muscle was not developing properly because of the torticollis. He stated that G.F.P.G.'s services continued right up until she started kindergarten. He stated that the child L.J.P.G. required speech therapy and occupational therapy. Frank G. stated that he researched service providers in the area prior to choosing one to work with the children. He stated that Joe P. was not involved in that process. He acknowledged that Joe P. was present for some of the therapy sessions that took place in the home.

Frank G. stated that he arranged for the children to have play dates with other children from their school. He stated that both he and Joe P. purchased clothing for the children. He stated that Joe P. does a lot of online shopping and would send a box of clothing for the children whenever they had a fight. Frank G.

acknowledged that he returned a box of clothes that Joe P. sent for the children to the store. He stated that the children did not need the clothing at the time. He stated that he, Joe P., and the au pair would take turns bathing the children. Frank G. stated that he alone researched what schools the children should attend as Joe P. was not involved in that process.

Frank G. stated that during the first three months of the children's lives, the household expenses were paid out of his checking account. He stated that Joe P. had his own account into which his paychecks were directly deposited. Frank G. acknowledged that during this time Joe P. was putting money toward household expenses. He stated that Joe P.'s checks would come every two weeks and would range from \$1,200.00 to \$1,600.00. Frank G. stated that during this time the household expenses totaled approximately \$6,000.00 per month, with Joe P. contributing approximately \$1,000.00 in cash. He stated that in 2011 the family lived off the \$125,000.00 that he received from the sale of his businesses and subsequently lived off the \$100,000.00 that he received when he sold the ice cream store. He stated that it was when they ran out of that money that their financial difficulties began.

Frank G. stated that he has always stayed home with the children and has generally always worked from home. He stated that in his current job as a real estate agent he only leaves the house to work when the children are in school. He acknowledged that when he owned the ice cream store he would go into work two nights a week towards the end of the season. He stated that Joe P. would care for the children on those occasions.

Frank G. stated that in 2011 he and Joe P. sought an au pair as he (Frank G.) would be going to work in early 2012. he stated that the au pair arrived in October 2012 but only stayed for six months. He stated thereafter that he and Joe P. hired people to watch the children whenever necessary, which was few and far between. Frank G. stated that Joe P. continued to work at the same job and continued to work overtime.

Frank G. stated that when the children were born in _____ 2010 he and Joe P. were renting a home on Cedercliff Road in Monroe, NY. He stated that in November 2010 they moved into a home on Woodcock Road, which Frank G. purchased. Frank G. denied that Joe P. put \$19,000.00 down toward the purchase of the home on Woodcock Road. He stated that he (Frank G.) put down 3 ½ % of the \$429,000.00 purchase price and paid the \$20,000.00 in closing costs and renovations, all of which used up a large amount of the \$125,000.00 that he received from the sale of the businesses. He stated that once he, Joe P. and the children moved into the home on Woodcock Road, the household expenses increased from \$6,000.00 per month to \$8,000.00 per month. Frank G. stated that he remained in the home on Woodcock Road until 2014, when he and the children moved to New Windsor. He stated that he obtained a tenant for the home but the home ultimately went into foreclosure. He stated that he and the children lived in New Windsor, from March 1, 2014 to December 10, 2014.

Frank G. stated that when he and Joe P. separated in 2014, Joe P. stopped putting money toward the household expenses. Frank G. stated that he alone

paid for the mortgage, food, utilities and for the children's schooling. He stated that he also paid for the au pairs, which cost \$18,000.00 per year and required a stipend \$195.00 per week. He stated that the only household expense that Joe P. covered was the vehicle expenses. Frank G. stated that the payment for his vehicle was \$599.00 per month.

Frank G. stated that in November 2013 a tow truck pulled up to the front of the house. He stated that both he and Joe P. were home and that the cars were in the garage. He stated that Joe P. advised him that he (Joe P.) had not made the car payments in a while and needed to catch up. Frank G. stated that he became very upset. He stated that Joe P. advised him that he would take care of the car situation. He stated that he decided to purchase a car of his own, for which he paid \$7,800.00. He stated that he and Joe P. returned the Honda Pilot to the dealer in Middletown.

Frank G. stated that prior to the final break up in 2014, he and Joe P. broke up in 2011 and again in 2012 because of Joe P.'s indiscretions and postings on Craig's List. He stated that the first break up was not for very long. Frank G. stated that he cared for the children during the first break up and that Joe P. would visit the children four to five times a week during that first breakup. He stated that Joe P. did not send any money for the children but did send a box of clothing. Frank G. stated that the second breakup lasted for a couple of months. He stated that initially he and the children left the home and came back when Joe P. went to stay with his sister Denise. He stated that over the course of the second breakup Joe P. visited the children approximately six times. He stated that Joe P. did not send any financial support

to him during the second breakup. Frank G. stated that he and Joe P. engaged in couples therapy and individual therapy for a period of time in an effort to work through their issues.

Frank G. stated that in November 2013 the financial issues had come to a head. He stated that not only was his vehicle almost repossessed, but Joe P.'s pay checks had decreased to almost nothing because of the tax garnishment. He stated that he advised Joe P. that the relationship was not working and that he was going to put the house up for rent and find a home for him (Frank G.) and the children to move into. Frank G. stated that rented a home in New Windsor for him and the children to reside in. Frank G. denied that he prevented Joe P. from visiting with the children in their new home in New Windsor and stated that Joe P. would visit the children approximately two times a week. He stated that the last time Joe P. saw the children was on May 5, 2014.

Frank G. stated that he received numerous letters and cards from Joe P. during the course of their relationship wherein Joe P. apologized for his actions. He stated that he never forced Joe P. to write any letters and stated that the letters came from Joe P.'s heart and were written during times when their relationship was in a bad place. Frank G. stated that in 2014 he finally reached a point where he decided that he could no longer deal with Joe P.'s actions and underlying issues. He stated that the children were getting older and that he felt that he had given Joe P. numerous opportunities to get help.

Frank G. stated that in or around May of 2014 he and Frank G. were considering a reconciliation. He

stated that Joe P. was coming to the home in New Windsor and preparing dinner on a regular basis. Frank G. stated that he then discovered that Joe P. was still engaging with strangers online. He stated that he confronted Joe P., who acknowledged that he was still talking to strangers online. Frank G. stated that he had been able to shield the children from Joe P.'s actions, but that he feared what could happen if one of the individuals that Joe P. was engaging with came across the children while they were out with Joe P. in public. He stated that he told Joe P. that he (Joe P.) needed to go to therapy in order to straighten himself out.

Frank G. stated that he did not hear from Joe P. again until approximately June 5, 2014, at which point he received an email from Joe P. He stated that he did not hear from JOe P. from July 7, 2014 to November 26, 2014. He further stated that Joe P. did not contact the children during that same period of time and did not provide any financial support for the children other than sending them a box of clothes. Frank G. stated that he received emails from Joe P. in December 2014 and January 2015. He stated that by then Joe P. had hired an attorney.

Frank G. stated that in July 2014 he appeared in Court in Richmond County, Staten Island in response to a petition that had been filed by Renee P. He stated that Renee P. ultimately withdrew her petition. He stated that a new petition was filed with this Court in or around January or February of 2015.

Frank G. stated that he and the children moved to Sarasota, Florida on December 10, 2014. He stated that in August 2014 he was working as a Real Estate

agent for Better Homes and Gardens. He stated that he was working on a new construction development project in the Town of Newburgh which consisted of 30 lots. He stated that he was earning most of his money from that project. Frank G. stated that in 2014 finances were tight as he was supporting the children and paying for all of the household expenses on his own. Frank G. stated that when he went on vacation to the beach in 2014, and when he returned, discovered that the development project that he was working on had moved in a different direction. He stated that as a result of that change he lost all of his steady income. He stated that he began to look for new construction projects in New York but that there weren't any available. Frank G. stated that he began looking for new construction projects outside of New York and learned that there were only two places that had great income potential for him - North Carolina and Florida. He stated that his aunts Dina and Vicky, who were a big part of his support system, moved out of New York and to Florida in 2014. He stated that he started looking for opportunities in Florida.

Frank G. stated that he met his fiance Nick while he was on vacation in the summer of 2014. He stated that at the time that they met Nick was working for CVS as a training store manager. He stated that Nick was the CVS for 14 years and ran many districts. He stated that Nick grew up on Long Island, where his family remains, and went to college and graduated with a four year degree. Frank G. stated that Nick was able to transfer to a CVS in Sarasota, Florida and still keep his New York salary of \$75,000.00, plus bonuses.

Frank G. stated that when he, Nick and the children moved to Florida, they rented a home for one

year. He stated that Nick purchased a home in Sarasota, Florida the following year and that his name will be added to the deed once they are married. Frank G. stated that he began working as a realtor in Florida selling mostly luxury homes. He stated that Nick continued to work for CVS until June 2016. Frank G. stated that he and Nick started two businesses in Florida which he described as being very successful. He stated that Nick got licensed in Florida and now manages one of the businesses, which purchases, renovates, rents and/or flips homes. He stated that the business has investors who give the business hard money loans to purchase the homes. He stated that he and Nick use their own money (most of which is from Frank G.'s commissions from the sale of luxury homes) to fix the homes up. He stated that he has made a lot of money selling and flipping houses in Florida and stated that New York did not have enough income opportunities for him.

Frank G. stated that prior to moving to Florida he sought advice from legal counsel. He stated that there were no Court Orders in effect at the time that he moved that would have prevented him from moving out of state with the children. He stated that at the time that he moved to Florida he had not heard from Joe P. in six months and had not heard from Renee P. for an even longer period of time. He stated that he decided to move to Florida because his support system was there and because of the tremendous income potential to allow him to become financially stable. Frank G. stated that he did not receive any financial support from Joe P. during the six months that preceded the move to Florida. He stated that he spent years trying to make his relationship with Joe P.

work, but that despite the therapy, Joe P. continued to step outside of the relationship.

Frank G. stated that around the time of December 2014 the rest of his family, including his grandparents, uncles, sister and friends were in the process of moving to Florida. He stated that his mother lives with him, Nick and the children in Florida. He stated that his home in Florida is central to all of his family and friends, and stated that his Aunt Dina and Uncle Nick live 1 hour south of where he and the children live. He stated that his sister lives 2 ½ hours away and friends Vicky, Danny, Samara and Jimmy live approximately 1 hour away.

Frank G. stated that he and the children see his family quite often in Florida. He stated that they see his Aunt Dina approximately three times a month. He stated that the children spend most of the time with his mother. Frank G. stated that the family engages in many outdoor activities in Florida. He stated that they spend time on Aunt Dina's boat, go to sand castle events at the beach and to farmer's markets. He stated that they visit the different Keys and spend time at home hosting barbecues and hanging out by the pool. He stated that if the children are made to live in New York they would only be able to see the family on their vacations. Frank G. acknowledged that his grandparents spend six months in New York each year and further acknowledged that he has family members who continue to live in Long Island.

Frank G. stated that he did not file for custody of the children upon advice of counsel. He stated that it was his understanding that Renee P. signed away her rights to the children when she signed the

extrajudicial consents for adoption. He further stated that he did not learn that the surrogacy agreement was not valid until March 2015.

Frank G. stated that in Sarasota, Florida, parents can apply to the school that they want their children to attend. He stated that acceptance is based upon proximity to the school, the number of students in the school and a timely application. Frank G. stated that both children are very bright and that their curriculum is geared toward preparing them for the gifted program. He stated that the children's grades are average or above average in every subject. Frank G. stated that the Pine View School in Sarasota, Florida is a school for gifted children and is rated number 5 in the nation. He stated that it is a publically funded school and that he hopes that the children will be able to go there. Frank G. stated that Sarasota also has schools that focus on arts, music and science. He stated that G.F.P.G. took part in drama and dance last year and that L.J.P.G. took part in drama and karate. He stated that the activities take place at the school, at the end of the day. He stated that the children's school in Orange County, NY does not suffer the same extra curricular activities as the school in Florida. He further stated that the cost of the activities in Florida are much less expensive than what they cost in New York.

Frank G. stated that realtors are paid very differently in Florida and New York. He stated that if a realtor in New York is working on a new construction project, the realtor is not paid until the house is finished, which can take six months or more. He stated that in Florida, a realtor is paid at the beginning, middle and end of the construction process.

Frank G. stated that he is in the luxury home market in Florida and earns 3% commission (or 6% if he has both sides) versus the 2 ½% or 3% that he would earn in New York. He stated that in Florida he is able to keep 95% of his commission as opposed to the 50% that he is able to keep in New York. Frank G. stated that he pays \$1,000.00 per month to be a member of a realty team in Florida. He further stated that there are more homes for sale in Florida, more luxury homes in Florida, and more people moving to Florida.

Frank G. stated that in 2014 he would drop the children to school, go into his office and work until the end of the school day, at which point he would pick up the children from school. He stated that his work hours were approximately 9:00 AM to 2:00 PM Monday through Friday. He stated that his adjusted gross income was \$61,180.00 in 2014 and \$64,810.00 in 2015. He stated that he has earned \$140,000.00 in take home pay as of September 22, 2016, which does not include \$63,000.00 that he has coming to him for the third quarter which is more than what he earned in all of 2014 when he was working in New York.

Frank G. stated that his home in Florida was purchased for \$265,000.00. He stated that he has begun to look for homes in Monroe, NY, and has found the homes in that area to cost significantly more than they do in Florida. He stated that the property taxes in Florida are approximately \$1,764.00 per year versus approximately \$12,000.00 in Monroe, NY. Frank G. stated that all of his money goes toward household expenses, which in Florida total approximately \$5,000.00 per month. He stated that his fiancée Nick pays for half of everything. Frank G. stated that if he and the children are made to stay in

New York, he will have to spend between \$600.00 to \$1,000.00 more each month just on mortgage, principal and tax payments. He stated that the cost of living is much less expensive in Florida and that the quality of life in Florida is overall better, as Florida has palm trees and beaches and is a happier place to live.

Frank G. stated that if he has to move back to New York he prefers to live in Suffolk County because it is close to the water and because Nick's family lives there. He stated that the real estate market is not as strong on Long Island as it is in Florida. He stated that he does not know about the market conditions in Westchester or in Bergren, New Jersey and stated that he is not licensed in New Jersey.

Frank G. stated that he informed his job, the children, the children's school and his attorney about his decision to move to Florida. He stated that he did not tell Joe P. about the move until February of 2015, when he responded to an email that he received from Joe P. He stated that he did not tell Joe P. about the move because he was tired of waiting around for Joe P. to get the help that he needed. He further stated that at the time of the move he had not heard from Joe P. for six months.

Frank G. denied that he moved to Florida to evade Court obligations. He stated that when he moved, the petition that was filed in Staten Island had already been withdrawn. He stated that although he did not expect for any other petitions to be filed, he advised his attorney to accept service of any newly filed petitions. He stated that his attorney ultimately accepted service of several petitions that were filed

against him, specifically, a Habeas Corpus petition, a Custody petition, a paternity petition and a Guardianship petition. He stated that he was required to return to New York for the first Court appearance in Orange County.

Frank G. stated that the first Court appearance in Orange county took place in March 2015. He stated that after the appearance concluded he met with Joe P. outside of court and told him about the children's lives in Florida. He stated that he offered to fly Joe P. to Florida in order for Joe P. to see the children's school and meet with their teachers. He stated that, in an attempt to settle the case, he discussed with Joe P. the possibility of the children remaining in Florida but coming to New York during their summer vacations. He stated that he would rent a summer house on the beach on Long Island so that the children could be close to where Joe P. works. Frank G. stated that in addition to that offer, he offered to fly Joe P. to Florida once a month to see the children and stated that the children could spend long weekends in New York. He stated that he recently offered fo fly Renee P. to Florida but that did not take place as she wanted him to pay her air fare and hotel expenses.

Frank G. stated that during his March 2015 discussion with Joe P., the topic of adoption came up. He stated that he would need to be certain that Joe P. was getting counseling so that the children would be safe. Frank G. stated that he thinks that the way Joe P. meets people is dangerous. He further stated that these individuals know Joe P.'s car, which is dangerous. Frank G. acknowledged that Joe P. never brought anyone back to their home when they lived together.

Frank G. denied that he and Joe P. slept together after the March 2015 court appearance. He stated that after the first visit in Dottie Mahan's office, Joe P. touched him inappropriately. He stated that on a separate occasion, after meeting at a diner, he and Joe P. engaged in inappropriate touching in the car. Frank G. stated that on a third occasion he arrived at Joe P.'s home to pick up the children after a visitation. He stated that Joe P. asked him to get a babysitter so that the two of them could hang out. He stated that he told Joe P. absolutely not. Frank G. acknowledged that after meeting with Joe P. at the diner, he sent a video to Joe P. of the two of them being intimate with one another.

Regarding the incident that happened in the Court parking lot, Frank G. stated that he, his aunt and his uncle were walking out of the courthouse when they saw court officers running outside. He stated that Joe P. and Mr. Parker were fighting outside of the courthouse. He stated that once the court officers cleared the situation he, his aunt and uncle proceeded to leave the building. He stated that as they walked through the parking lot they had to pass by Mr. Parker, who was in his vehicle. He stated that as he approached Mr. Parker called his name and came charging at him. Frank G. stated that he, his aunt and his uncle ran to his car. He stated that they got into their car and locked it. Frank G. stated that Mr. Parker was screaming and cursing at them. He stated that they drove to the front of the courthouse and found court officers to help handle the situation. He denied that he ever had a conversation with Renee P. in the parking lot.

Frank G. stated that if he were to stay in Florida,

he would offer liberal visitation to Joe P. He stated that Joe P. could visit whenever he wants, including weekends and vacation weeks. He stated that he (Frank G.) would bring the children to New York during summer breaks or to Joe P.'s father's house in Florida. Frank G. stated that if he brought the children to New York for the summer, he would rent a beach house on Long Island and stated that Joe P. could leave the children with him (Frank G.) at the beach house while he worked. Frank G. stated that Christmas Eve has always been a big family gathering for the P. family. He stated that he would be willing to work something out with Joe P. wherein he (Frank G.) would bring the children to New York for Christmas Eve and Christmas Day for one year and then bring them to New York after Christmas Day the following year. He stated that JOe P. would be welcome to fly to Florida for the children's birthdays.

Frank G. stated that he will agree to Joe P.'s adopting the children on the following conditions: (1) Joe P. must be healthy and stable; (2) Frank G. would have to have sole custody of the children; (3) the children would have to be safe; and (4) Frank G. would get to remain in Florida with the children. Frank G. stated that the children's safety has always been his biggest concern. He stated that although he was able to ensure that the children were not affected by Joe P.'s actions when they all lived together, he cannot do that now that they are no longer living under the same roof.

A number of bank statements were moved into evidence by Frank G.'s attorney which this Court has reviewed. Among those statements were bank statements from the joint account that he and Joe P.

opened together on May 5, 2009, which was closed on February 8, 2011. Frank G. stated that he, Joe P., and Frank G.'s bookkeeper were signatories on the joint account. He stated that they opened the joint account in order to pay Renee P.'s bills. Joe P.'s expenses for the condominium on Staten Island and to pay some household expenses on the home that they shared. Frank G. stated that Renee P.'s monthly expenses came to approximately \$3,500.00 per month. During the testimony he went through the statements from the joint bank account and pointed out which checks he claims were written to pay for Renee P.'s expenses and for the repairs to her home. The Court notes that a large majority of the checks were signed by Frank G.

Frank G. stated that Joe P.'s paychecks were directly deposited into the joint account and were usually in the range of \$1,200.00 to \$1,700.00, although some paychecks would be in the amount of \$2,000.00 if Joe P. worked overtime. Frank G. stated that Joe P.'s paychecks did not even cover his (Joe P.'s) monthly expenses, which included his cell phone bill of \$100.00, his mortgage on the condominium in Staten Island, which was \$1,520.00, a car payment of \$349.00 and credit card bills in the sum of \$500.00 to \$600.00. Frank G. stated that he maintained a separate account in his name, from which he paid expenses such as the mortgage for the home that he shared with Joe P. He stated that he would transfer funds from his personal account into the joint account in order to cover short falls each month. Frank G. pointed out these transfers while going through the joint account statements on the stand.

Frank G. denied that Joe P. paid \$19,000.00

toward the purchase of the home on Woodcock Road. He stated that he (Frank G.) took an FHA loan from Bank of America which required a down payment of 3 ½ %. He stated that although he had the money available for the down payment, the money had not been in the account for the right amount of time. Accordingly, in order to qualify for the loan, he had to get a gift from a family member. Frank G. stated that Joe P. was not a family member as they were never married. He stated that he received the money as a gift from his grandparents. Frank G. stated that Joe P. never gave him any money toward the purchase of the Woodcock Road home and stated that Joe P. already had an existing loan on his pension plan, which he refinanced in order to get more money, which Frank G. states he never saw. Frank G. stated that at the time that they decided to move in together, Joe P. was behind on his mortgage payments for the condominium and on his credit card payments. He stated that Joe P. was not named on the mortgage for the condominium and on his credit card payments. He stated that Joe P. was not named on the mortgage for the Woodcock Road house because he was behind on his mortgage payments for the condominium. Frank G. stated that there were times when he had to make deposits of \$4,000.00, \$10,000.00 or \$14,000.00 into the joint account.

Frank G. stated that Joe P. is very family oriented. He stated that Joe P. advised him that he (Joe P.) loved his mother very much and that she was a very loving and caring woman who passed away when Joe P. was 21 years old. Frank G. stated that Joe P. expressed to him that he (Joe P.) had a strained relationship with his father, who was not very

accepting of his lifestyle.

Frank G. stated that in addition to arguing with Joe P. over Joe P.'s Craig's List solicitations, they also argued over finances, especially as Frank G.'s finances started to dwindle. He further stated that they argued about the children, as he and Joe P. have completely different parenting styles. Frank G. stated that they had disagreements over Joe P. bringing gifts home for the children each day, as the children grew to expect gifts not only from him but from anyone who came to visit. He stated that L.J.P.G. had some compulsive tendencies when he was younger, similar to OCD, and stated that L.J.P.G. was afraid to get dirty or play in the mud. He stated that L.J.P.G. would not tolerate certain textures of food in his mouth or food that was messy. Frank G. stated that he and Joe P. were not on the same page when it came to encouraging the children to get dirty or to eat spaghetti with their hands, as Joe P. never wanted the children to get dirty. He stated that on one occasion, while out to dinner, Joe P. took L.J.P.G. to the bathroom. He stated that when they emerged from the bathroom L.J.P.G. was crying and Joe P. was holding L.J.P.G. outward and away from his body, as L.J.P.G. had touched the urinal.

Frank G. stated that he and Nick do not argue. He stated that if the children misbehave he and Nick give them consequences, which they decide upon together. He stated that he has been to Joe P.'s home and described it as having two bedrooms, with the children sleeping in the smaller bedroom on bunk beds. He stated that Joe P.'s home also consists of a living room, dining room, kitchen and bathroom. He stated that Joe P. has not told him what his plan for the children

will be if he (Joe P.) is awarded custody.

Frank G. stated that the children had one week vacation with Joe P. pursuant to this Court's Order. He stated that when the children returned from the week long visitation, he observed a change in their behavior. He stated that L.J.P.G. bit Nick, which was something that he had never done before, and that G.F.P.G. was behaving in a disrespectful manner. Frank G. stated that he teaches the children to be respectful and responsible. He stated that the children have responsibility and chore charts at home.

Frank G. stated that L.J.P.G. became ill during a visit with Joe P. He stated that Joe P. sent him a text message that morning advising that L.J.P.G. had a fever and asking what he should do. He stated that he told Joe P. to bring L.J.P.G. to his (Frank G.'s) home, and Nick would stay home with him. He stated that Nick was scheduled to have a job interview that day but cancelled it so that he could stay home with L.J.P.G.. He stated that Joe P. asked if he should give Tylenol to L.J.P.G. and Frank G. told him to hold off on doing that.

Frank G. stated that he disagrees with this Court's directive that the children should attend a YMCA after school program or be picked up by a third party on days that they are scheduled to be with Joe P. He stated that the children should not have to attend the Y program when he lives nearby and is available to be with the children after school. He stated that if the children are permitted to come to his home after school he can give them a snack, do their homework with them and have them ready by the time Joe P. arrives to pick them up. He stated that the children

receive no enrichment from the Y program and spend the time coloring with their friends.

Frank G. stated that pursuant to this Court's Order, Joe P. and Renee P. are permitted to speak with the children via facetime for 10 minutes a day. He stated that at times the calls last for 45 minutes to an hour, which causes the children to stay up past their 7:30 PM bedtime. Frank G. stated that in addition to the timing and duration of the calls, other issues have come up regarding the facetime calls. He stated that Renee P. makes up reasons to keep the children on the call and on one occasion passed her telephone around to everyone who was at a party with her. He stated that on other occasions she accused him of putting candy in front of the children or hanging up the phone. He also stated that she makes such statements such as "this is ridiculous" or "this is stupid" and that he has had to ask her to be mindful of what she says in front of the children. Frank G. stated that one night L.J.P.G. was not feeling well and was wrapped in a blanket on his lap. He stated that Joe P. spoke with G.F.P.G. and then requested to speak with L.J.P.G. Frank G. stated that he advised Joe P. that L.J.P.J. was sick and stated that Joe P. became annoyed with him. He stated that on another occasion Joe P. called the children and advised them that he was out on a date with a friend.

Frank G. stated that his intent from the date he signed the surrogacy agreement changed because, as a parent, he must love and protect his children. He stated that he does not believe that Joe P. or Renee P. are capable of keeping the children safe as they have unsafe lifestyles. Frank G. stated that he stopped Joe P. from coming around the children in 2014. He stated

that he told the children that dada was going to live in his own house where he was safe. He further told the children that dada was taking care of himself and that they all love him very much. He stated that he took the children to see a therapist right away in order to make sure they were okay. Frank G. stated that it was never his intention to keep JOe P. away from the children forever and stated that he just wanted him to get better. He stated that he and the children always had conversations about Joe P. Frank G. stated that he did not allow Joe P. to speak with the children over the phone because he did not know what was going to happen. He further stated that the separation between Joe P. and the children did not hurt the children emotionally.

Frank G. stated that he wants sole custody of the children. He stated that he wants to be able to continue to care for them as he has since the day they were born. He stated that he wants to have full decision making authority, particularly with regard to medical and educational decision. He further stated that he wants to be able to go home to Florida. Frank G. stated that nothing is worse to him than having to see his children every other weekend after he has been the one to take care of them for 6 ½ years on his own.

Frank G. stated that he is willing to co-parent with Joe P. He stated that the children can spend summers in New York and that he is willing to discuss matters with Joe P. prior to making a decision. Frank G. stated that he should have primary custody of the children because he has continually provided for the children and has cared for the children since the day they were born. He stated that he is able to be home with the children to do homework after school and is able to be

home with them if they are sick. He stated that he has always been the one to make the decisions regarding the children's overall health and education.

On cross examination Frank G. acknowledged that he moved to Orange County because he was dating an individual who lives there. he stated that he established commercial and residential roots in Orange County and acknowledged that his business had done very well for him financially. Frank G. acknowledged that he started to divest himself of his businesses once Renee P. became pregnant with the children. Frank G. acknowledged that he gave the strip mall back to the lender by way of a deed in lieu of foreclosure. He further acknowledged that his home on Red Oak Court was lost to foreclosure and that he did a deed in lieu of foreclosure on Wickham Avenue home. Frank G. acknowledged that he was still collecting rent on that home even though he had stopped making the mortgage payments. He also acknowledged that the home on Woodcock Road was also lost to foreclosure. Frank G. acknowledged that Joe P.'s Staten Island condominium did not go into a foreclosure until after he and Joe P. had met and moved in together. He stated that however that he helped secure a tenant for the condominium and stated that the tenant paid rent for the entire year of the lease, which would have netted a positive cash flow to Joe P. He stated that he does not know what Joe P. did with the rental income. Frank G. stated that after he divested himself of his businesses he ran a dog breeding business for a while.

Frank G. acknowledged that he was aware that his attorney had filed a motion to dismiss and/or change venue with regard to the petition filed in Richmond

County. He stated that he learned that the petition had been withdrawn. This Court, upon review of its file, notes that the petition that was filed in Richmond County was withdrawn on January 6, 2015, which is after Frank G. had already removed the children from this state. Frank G. acknowledged that in or around June 2014 he directed Joe P. to refer any questions about the children to hsi (Frank G.'s) attorney. Frank G. acknowledged that in January 2015 Joe P. sent an email inquiring about the safety of the children during a snow storm that took place in New York. He stated that he responded to the email and advised Joe P. that the children were fine. Although he acknowledged that he did not tell Joe P. that the children were living in the State of Florida, he denied that he intentionally mislead Joe P.

Frank G. acknowledged that he filed a petition in the State of florida even though the instant petitions are pending before this Court. He further acknowledged that he has filed an appeal with the New York State of Court of Appeals and stated that he is trying to keep the children in Florida until everything is worked out. Frank G. Stated that he is trying to keep the children in Florida until everything is worked out. Frank G. stated that it would not be acceptable to him if her were to stay in Florida and the children were to stay in New York with Joe P. He stated that he has been the person taking care of the children and that they should be with him. Frank G. acknowledged that he is responsible for Joe P. losing touch with the children, as it is a result of the choices that he (Frank G.) made. He acknowledged that many birthdays, holidays, and Father's DAys passed during the time that Joe P. did not have contact with the

children and acknowledged that he never had the children send a card to Joe P. He further acknowledged that he never sent Joe P. pictures of the children during that time. Frank G. acknowledged that Nick was involved in the children's lives on a daily basis during the time that Joe P. was not in contact with them.

Frank G. acknowledged that the children were excited to see Joe P. at Dotty Mahan's office in 2015. When asked if he would agree that the children are bonded with Joe P., Frank G. responded that his children have strong bonds with many people. Frank G. acknowledged that couples have arguments but denied that he ever demanded that Joe P. write him an apology letter.

Frank G. acknowledged that on March 16, 2016 this Court issued a temporary Order of Visitation wherein Joe P. was to see the children every Wednesday for two hours. He acknowledged that Joe P. never saw the children for those Wednesday visits and stated that it was because the Appellate Division had stayed this Court's Order. He stated that he did not recall denying Joe P. any Wednesday evening visits prior to when the stay went into effect. He did however acknowledge receiving numerous texts from JOe P. wherein Joe P. was trying to confirm the Wednesday visitations. This Court notes that the Appellate Division stay was not in place in March or April of 2016 when Frank G. denied Joe P. the Wednesday visits.

Frank G. acknowledged that this Court Ordered that Joe P. was to have weekend visitations with the children on a weekend when he was not working from

9:00 AM to 7:00 PM. He further acknowledged that a weekend visitation took place on one day only and was for only half of the day. He stated that Joe P. did not arrive to pick up the children until the middle of the day and stated that he did not see Joe P's text messages until 9:00 AM in the morning of the visitation.

Frank G. acknowledged that Joe P. allowed the children to speak with Frank G.'s mother via facetime during his (Joe P.'s) time with the children. When asked if he ever allowed the children to speak with Joe P. prior to the Orders of this Court, Frank G. stated that he could not recall. Frank G. acknowledged that he met Joe P. online. He further acknowledged that he met his one night stand online as well. Frank G. acknowledged that he took wellbutrin to help him quit smoking, but stayed on the medication because of its use as an antidepressant. Frank G. further acknowledged that he installed an app on Joe P.'s phone without receiving Joe P.'s permission. He stated that the app sent Joe P.'s text messages directly to Frank G.'s phone.

Frank G. stated that to his knowledge, none of Renee P.'s daughters have been arrested or have ever been the subjects of a Juvenile Delinquency or PINS petition. He acknowledged that Renee P. has never been physically violent toward him or to G.F.P.G. and L.J.P.G. Frank G. stated that he does not have any respect for Renee P. as the mother of his children. He stated that if he is awarded custody of the children, he will make sure that Renee P. is able to have facetime calls with the children. He further stated that she would be welcome to visit the children in Florida and stated that he would bring the children to New York

as well.

Frank G. stated that he stands by the statements in his petition that he does not want Renee P. to be around the children as she has a history of domestic violence in her home, spent time in an in-patient psychiatric unit and has mental health issues which remain unresolved.

He further stated that he stands by his statement, as set forth in his amended petition, that Renee P. is not fit to parent the children, nor is it in their best interest to have her as a parent in their lives, as she has never sought time with them.

Frank G. stated that he has not told the children that they will be moving to New York. He stated that the children are having some issues in school. He stated that although L.J.P.G. is doing well, G.F.P.G. is having issues with comprehension. Frank G. stated that he would love to move back to Florida. He stated that it is his hope that the children would fly to New York every other month to see Joe P. and that Joe P. would fly to Florida on the alternating months. He stated that he has taken into consideration the fact that Joe P. will not be able to attend any of the student's school events or extra curricular activities if the children live in Florida and stated that he does not know how much of an impact that would have on the children.

Frank G. stated that he met Nick in August 2014. He stated that Nick met the children in October 2014 and that they all moved to Florida together in December 2014. He stated that Nick helps to get the children ready for school and helps them with their homework after school. He stated that Nick is a good

role model for the children.

Frank G. stated that he does not know if the children are safe with Joe P. because he does not know about Joe P.'s personal life. He stated that he wants the children to be in therapy if they are going to be with Joe P. and that he, Joe P. and Nick can participate in the therapy as needed. He stated that Joe P. and Renee P. should have involvement with the children if there are no more issues and if issues from the past are gone.

Frank G. stated that there have recently been some issues between him and Joe P.. He stated that Joe P. enrolled the children in gymnastics without consulting with him first. he further stated that Joe P. allows the children to watch a television show that he (Frank G.) does not allow them to watch - Lab Rats. He stated that he told Joe P. that Lab Rats is inappropriate for children as it contains rude behavior. He stated that he later learned from Joe P. continued to allow the children to watch the program after he (Frank G.) told him that they were not allowed to watch it at home. FRank G. stated that a running/race event was taking place at the children's school and that he advised Joe P. about the event because L.J.P.G. ran in Florida. He stated that he told Joe P. that he and Nick would love to attend the event in order to see the children run. He stated that Joe P. advised him that he would think about it. Frank G. stated that an argument follows. He stated that the children ultimately did attend the event but Lucca was unable to participate as they arrived late.

On redirect examination, Frank G. stated that Joe P. brought in \$3,000.00 per month while he (Frank G.)

brought in \$20,000.00 to \$30,000.00 per month. He stated that Joe P.'s money never went toward paying his (Frank G.'s) bills or toward paying joint expenses. Frank G. stated that 2013 was the most difficult year financially. He stated that he repeatedly asked Joe P. to get a second job because he (Frank G.) was home with the children and was not able to work as they no longer had an au pair.

During his (re)cross examination. Frank G. stated that he would have liked to know that the children were enrolled in gymnastics. He acknowledged that from February 2014 to the summer of 2016 he did not allow Joe P. to have a say in any decisions that were made about the children, including where they went to school, what extracurricular activities they would be enrolled in and who their pediatrician would be.

Testimony of Dr. Marc S. Mednick. Ph.D., DABPS:

Dr. Mednick stated that he is a clinical psychologist who is licensed to practice psychology in the State of New York.⁵ Dr. Mednick stated that he was commissioned to conduct a mental health evaluation in connection with the instant proceedings. He stated that child custody evaluations entail several components, which include extensive interviewing with the children depending on their age, a review of documentation provided by the parties, discussions with collateral sources and psychological testing, which tests an individual's personality and adjustment, which relates to how people function in their lives at work, at play and

⁵ All counsel stipulated to Dr. Mednick's qualifications as an expert in the field of clinical and forensic psychology

while parenting.

Dr. Mednick stated that once he concluded the aforementioned components he reduced the essential information to a written document, which also included his professional formulations and recommendations. Dr. Mednick acknowledged that he met with Joe P.'s attorney in advance of appearing before this Court to testify for the purpose of receiving his payment in the sum of \$3,500.00. He further acknowledged that he reviewed the facts of the case with Joe P.'s attorney.

Dr. Mednick stated that during the course of the interview process, he found Joe P. to be a transparent individual. He stated that he found Frank G. to be transparent at times, but more oblique. Dr. Mednick stated that, based on his observations and the full content of the evaluation, and with the caveat of all parties remaining local and in New York, it would be great for the children to have a shared arrangement between Frank G. and Joe P., with Frank G. being the primary residential parent with liberal access to Joe P. He stated that Renee P. could get her access time with the children when they are with Joe P.. Dr. Mednick stated that Frank G. is better suited to intercede with the children on certain matters, such as school matters and securing therapists. When asked who should be the custodial parent in a situation where there is no harmony between Joe P. and Frank G., Dr. Mednick stated that if the decision was solely based on primary attachment, then Frank G. should have sole custody because of the amount of time that he had with the children versus the amount of time that they had with Joe P. He stated that if the decision was based on which party was more willing

to provide access to the other, then Joe P. should have sole custody.

Dr. Mednick stated that from a psychologist's point of view, there are two big issues when dealing with young children - attachment and willingness to co-parent. He stated that at times these issues can lead to contradictory conclusions. Dr. mednick stated that the children were 5 years old at the time of the evaluation. He stated that although one does not want to disrupt a child's attachments if they are secure and nurturing, there must also be a willingness to co-parent. Dr. Mednick stated that at the time that he conducted the evaluation, he was aware that Frank G. had made no effort to permit contact between the children and Joe P. He stated that Frank G. did not encourage contact based upon how he (Frank G.) viewed Joe P.'s lifestyle and sexual conduct, which he (Frank G.) considered to be potentially creating a dangerous situation for the children. he stated the other reason given by Frank G. for not maintaining contact between Joe P. and the children was because Joe P. had abdicated his responsibility and essentially removed himself from considerat.

Dr. Mednick stated that even if the allegations against Joe P. are true, and he did engage in the pursuit of internet sex, that alone is not a reason to deprive him of having contact with the children. He stated that an evaluator must look at whether the activity on the internet and the behavior with other people, such as meeting up for a quick hook up, impacts the children. He stated that one must consider whether the children are nearer to or exposed to the behavior, whether the children are in physical danger and whether there is a clear threat to the

children. Dr. Mednick stated that there are elements of dis-control which one may see in other aspects of life, wherein the growing aspect of sex addiction compromises one's ability to function and maintain a relationship such as, an individual who is addicted to watching pornography, repeatedly failing to show up for work and ultimately losing his job.

Dr. Mednick stated that those elements of dis-control are not present here. He stated that Joe P. is a long term employee of the MTA. He stated that there is no indication of any other part of Joe P.'s behavior that is out of control. Further, Dr. Mednick noted that the allegations were mutual in that both Joe P. and Frank G. alleged that the other had affairs or sexual liaisons during the course of their time together. He stated that with all that being said, there is no reason to deprive Joe P. of all contact with the children.

Dr. Mednick stated that Frank G. never advised him that he (Frank G.) installed an app on Joe P.'s phone without Joe P.'s permission but did state that Frank G. was the more technically savvy one in the relationship. Dr. mednick stated that if in fact Frank G. did install the salacious sexual material that he claims was done by Joe P., such an act would be indicative of sociopathic and malevolent behavior.

Dr. Mednick stated that there is a very perplexing, adn huge dichotomy in the case at hand. He stated that on one hand, Frank G. is a good parent, who is attentive, nurturing and loving. he stated that Frank G. is able to provide support to the children and has the ability to structure and organize their time, moving them through creative and imaginary play while still teaching them. He stated that in this

regard, Frank G. is a stellar parent. He stated that if, in order to create the impression that Joe P. is a sexual deviant, Frank G. installed software, that is an act of someone who is doing something with intention and in a very purposeful way. He stated that such actions are more than just bending or breaking a rule, and reflect a callous disregard for the well-being of another human being, which is sociopathic. Dr. Mednick stated that there is a huge difference between the wonderful aspects of Frank G.'s parenting and engaging in such actions.

Dr. Mednick stated that the ability to foster a relationship between the children and the other parent is an essential ingredient to serving as a primary custodial parent. He stated that if Frank G. kept the children away from Joe P. and did not allow communication between them for a period of almost 2 ½ years, that would serve as strong evidence that Frank G. is not prepared to foster a relationship between Joe P. and the children.

Dr. Mednick stated that he observed Joe P. with the children during the evaluation. He stated that the interaction between Joe P. and the children was positively gleeful. He stated that the children are wonderful children who are bright and funny. He stated that the children have a great relationship with one another while also being very different from one another. Dr. Mednick stated that the children ran to Joe P. on both days of the evaluation and called him "dada". He stated that the children were clamoring for Joe P.'s attention and displayed no evidence of fear, trepidation, hesitation or distress. He stated that they showed no signs of being sullen, withdrawn, anxious, confused or upset. He stated that this was

stunning to him in light of the length of time that the children had been away from Joe P. and stated that this response from the children was an affirmation to him of the strength of the attachment that the children had to Joe P.

Dr. Mednick stated that Joe P. demonstrated a good deal of warmth and affection toward the children and was very appropriate with them during conversation. He stated that the children would compete with one another and demanded time with Joe P., which he gave them. Dr. Mednick stated that Joe P. was able to talk with each child and fostered their play simultaneously. He stated that Joe P. knew how to teach them and directed their activity. He further stated that Joe P. knew how to play with the children and engaged them in imaginary play. He stated that he viewed Joe P.'s interactions with the children as being quite effective from a view of effective parenting.

Dr. Mednick stated that Joe P.'s relationship with the children would be in jeopardy if Frank G. were granted full custody of the children and had complete control over access. He stated that he wrote in his report that Frank G. presents himself as willing to talk to Joe P., but truly has no genuine desire to co-parent with him, and if given the opportunity, will negate or ignore Joe P.'s parental status, even if doing so is at the expense of the children.

Dr. Mednick stated that the issues of attachment versus willingness to co-parent comes into play when considering whether the children should be permitted to move to Florida and see Joe P. on an intermittent basis. He stated that he has not seen the children in 1

½ years and acknowledged that he does not know their current mental status or what their preferences are at this time. He stated that he is certain that an argument can be made that the children identify Florida as home and, because they are not there, they may desire to go back. He stated however, that if that happens, it comes at the expense of contact with Joe P. Moreover, Dr. Mednick stated that if the children are made to believe that Florida is their home, it is unfair to accept at face value what they say with regard to where home is, as the sentiment would speak more to who has their ear. Dr. Mednick stated that a mediating factor in relocation cases is the willingness of parents to co-parent. He stated that absent the willingness to co-parent, and the desire to actively encourage contact with the noncustodial parent, it is very difficult to maintain an active relationship for the long term.

Dr. Mednick stated that another factor in relocation cases is the amount of conflict that is present in a case. He stated that most people who divorce are acrimonious at first but are able to sit together at a soccer game two or three years later. He stated that the fact that he is testifying before this Court 1 ½ years after his evaluation is a testament to the amount of conflict in this case and makes it difficult to contemplate the notion that the conflict would not endure beyond these proceedings.

Dr. Mednick stated that a third risk factor in relocation deals with the development and age of the children, together with the pattern of attachments. He stated that young children need to see their parents regularly so that they can develop a sense of who they are and a connection to them. He stated that

once a child is 7 years old, that is not as much true, in that the child has a permanent unconscious and representations of the other parent. He stated that in the instant case, the children's attachment to Joe P. may not be ruined by not seeing Joe P. every day, but it could be interfered with if Frank G. does not speak to the children about Joe P., which could result in their memories of him fading. Dr. Mednick stated that determining what the contact will be and the frequency with which it takes place will become an issue. He stated that incidental contact, such as taking the children out for ice cream or to the library, or picking them up from an activity, all of which are very common parenting functions, cannot take place when one party lives in New York and the other lives in Florida. Dr. Mednick stated that as the children get older, the incidental contacts have greater meaning. He stated that the parent who is living apart from the children is absent for those incidental, and meaningful contacts, and their relationship with their child weakens as a result thereof.

During cross examination, Dr. Mednick stated that Joe P. is a passive individual. He stated that based upon his evaluation, he was able to conclude that Renee P. had a role in the children's lives up until the time when Frank G. no longer permitted contact with the children. he stated that the children regarded Renee P. well during the evaluation and that she was terrific and at all times appropriate with the children. Dr. Mednick stated that he found Renee P. to be frustrated, angry, and resentful toward Frank G. and stated that she was justified to feel that way. He stated that Renee P. can be characterized as calm, nurturing, affectionate, demonstrative, loving,

capable of terrific support and empathy. He further stated that Renee P. can be overly emotional and quick to anger, but also quick to forgive. He stated that he does not view Renee P. to be unfit and stated that the children love her persona, which is outrageous, playful and spontaneous.

Dr. Mednick stated that there will come a time when the children will have to know that they have a mother and who their mother is. He further stated that the children currently call Renee P. "Aunt Nae Nae" and stated that at some point what they call her will be an issue. Dr. Mednick stated that the child G.F.P.G. shares traits with Renee P. in terms of assertion and even aggression. He stated that G.F.P.G. is inquisitive and intelligent and may start asking questions about who her mother is in the near future. He stated that when she does ask, she should be given the truthful answer.

Dr. Mednick stated that he wrote in his report that Frank G. demonstrates no appreciation for the fact that Renee P. endured a pregnancy of the twins so that he could be a father. He further acknowledged writing that Frank G. extended no warmth toward Renee P. for the existence of the children. He stated that such disregard is the opposite of stellar parenting. Dr. Mednick stated that the children's ability to see Renee P. would be in peril if Frank G. is granted physical custody. He stated that there is no doubt in his mind that the children will have opportunities to see Renee P. if Joe P. is awarded physical custody.

Dr. Mednick stated that once the children reach the point of wanting to know about their origins, they

will face issues regarding their identity, and may have questions regarding who they are, who they will look like and who they favor in terms of personality. He stated that the children may feel a sense of confusion and must be given a great deal of latitude to do an exploration. Dr. Mednick stated that not allowing the children to discuss where they came from, or giving them a substitute narrative which is entirely negative about Joe P. and Renee P. would be antagonistic to their wellness and identity.

During cross examination, Dr. Mednick stated that maintaining a long distance relationship between New York and Florida can be done, but would depend on the willingness of the custodial parent to include the noncustodial parent in an active and purposeful way. Dr. Mednick acknowledged that Frank G. did not alienate the children from Joe P. during the first four years of the children's lives when they all lived together. He acknowledged that Frank G. was concerned about Joe P. acting out in a sexual way and exposing the children to disease or danger. He stated that Frank G. was also concerned about people knowing where the children lived and that Joe P. would discuss their relationship on the internet with potential paramours.

When asked about domestic violence between Joe P. and Frank G., Dr. Mednick stated that his response would depend on how one construes domestic violence. He stated that if domestic violence is construed as a situation where one individual is more powerful and domineering, while the other is more passive and insubordinate, then there was an aspect of domestic violence in Joe P.'s and Frank G.'s relationship. He stated that there is substance to the notion that Joe

P. was emotionally manipulated and intimidated by Frank G. Dr. Mednick stated that Frank G. presents in life with certainty. He stated that Frank G. is quick thinking, goal oriented and is able to readily express himself. He stated that Joe P. is more submissive, has greater dependency, and is more scattered in his thinking. Dr. Mednick stated that Frank G. recognized that he had more power, particularly more legal power, and set upon using that power in a decided way. He stated that Frank G.'s willingness to comply with the temporary Orders of this Court could indicate his willingness to co-parent, but could also be indicative of his willingness to comply with the Order in an effort to accomplish the end game.

Dr. Mednick stated that Frank G. exhibited malice. He stated that regardless of the issue of legal standing, which certainly motivated Frank G., there is a moral issue about acknowledging another individual's parenthood. Particularly when that individual has been acting and behaving like a parent and the plan was for them to parent together. He stated that to use the law as a way to deprive an emotional development and attachment between a child and a parent would be malicious. He stated that Frank G.'s compliance with this court's Orders via facetime calls and relocating to New York could be viewed as promising with regard to his willingness to co parent, or could be viewed as opportunistic, since Frank G. continued to litigate and appeal the Court's Orders. He stated that in his experience, an individual who is looking to settle a case peacefully and to acknowledge another's parenthood does not simultaneously litigate.

Dr. Mednick stated that the personality testing

that is done in connection with an evaluation ascertains whether there is an observable psychopathology that a person will admit to on a test. He stated that the absence of psychopathology does not mean that it is not there, as research shows that people in child custody cases can minimize their pathology, adjustment to difficulties and negative proclivities. He stated that each test has its limitations and tends to minimize personal maladjustment, such as an individual failing to report that they feel more anxious in the midst of child custody litigation. Dr. Mednick stated however, that the tests give him information as to admitted levels of pathology as well as information about personality traits. Dr. Mednick spoke about the K scale on the MMPI test and explained that it helps to see if an individual is trying to make a good impression on the test. He stated that it is not uncommon for individuals in child custody proceedings to tend to minimize their bad features and embellish the good. He stated however that the K scale measures behaviors and intentions on the MMPI test, but not necessarily in life. He acknowledged that Joe P. had some elevated k scales upon taking the MMPI, but stated that the characteristics for each scored area do not apply to each individual taking the test. Dr. Mednick also spoke about the MCMI test, which he stated is very different from the MMPI.

Dr. Mednick stated that he interviewed Nick as part of the evaluation that was ordered by this Court. He stated that he found Nick's clinical presentation to be within the normal range of emotion. He stated that Nick's thought content was fine and that his mood was congruent with the things that Dr. Mednick spoke to

him about. Dr. Mednick stated that Nick exhibited demonstrable compassion for the children. He stated that although he got the sense that the children were being raised by Frank G. and Nick, Nick was not overly intrusive and had the right mix of interpersonal boundaries.

Dr. Mednick acknowledged that Frank G. was at all times during the evaluation appropriate with the children. He stated that outside of the context of this case, Frank G.'s interactions with the children have been stellar. He stated that Frank G. does a superbly good job of interacting with, guiding, teaching and directing the children. He further stated that Frank G. plays to each child's respective strengths. Dr. Mednick stated that Frank G.'s parenting style is in line with the personality and needs of the children. He stated that the child G.F.P.G. requires firm and decisive thinking and limitations, which Frank G. provides.

Dr. Mednick stated that it would be in the best interest of the children to have lots of access to Frank G. and Joe P., and for said access to be local. He stated that in order for repair work to be done, both Frank G. and Joe P. should keep each other informed regarding matters such as the children's extracurricular activities or medical appointments, in order to regain trust. Dr. Mednick stated that Frank G. and Joe P. will need a third party intermediary to help them work through differences in opinion if they are going to reside locally and share time with the children. He stated that there should not be a lot of face to face contact between Joe P. and Frank G. in light of the dynamics of their relationship. He stated that he believes that going forward, Joe P. will defend

against being submissive by being more aggressive. He stated however that he does not believe that Joe P. will be able to sustain that as Frank G. is more relentless in pursuit of a goal.

Dr. Mednick stated that the children would have been emotionally damaged if they had continued to be kept away from Joe P. He stated that at the time of the evaluation, the children undeniably knew Joe P. as dada and viewed him as a parent. He stated that had the disconnect continued, the emotional impact from them losing Joe P. would have been like losing a parent to death and never being told how they died. Dr. Mednick stated that although facetime is great, it is a poor substitute for personal interaction and physical proximity.

Dr. Mednick stated that Joe P. is highly sensitive but emotionally available, which, in terms of child care, translates to being loving, nurturing, affectionate, demonstrative and emotionally driven. He stated that Renee P. is quick to anger, quick to calm, and highly opinionated. He stated that she has a big heart and is emotionally available. Dr. Mednick stated that Frank G. is more complex. His psychology is organized around attaining goals, which is served by his capacity to be fairly compulsive, strategic and orderly in his way of thinking. Dr. Mednick stated that Frank G. thinks transactionally and compartmentalizes his emotions. He stated that Frank G. can be hugely sensitive to criticism and defends against the criticism by becoming more self centered and by trying to take control over his environment.

Dr. Mednick stated that if indeed Frank G. was

responsible for putting the sexual material on the computer, such conduct constitutes a disqualifying act with regard to him being a custodial parent. Dr. Mednick stated that Frank G.'s consent to Joe P.'s adopting the children would signal that he acknowledges Frank P. as a parent and would be a predicate to coparenting.

Dr. Mednick stated that although he spoke with Joe P.'s attorney prior to testifying before the Court, he did not have any discussions about the case with any other counsel for the parties or with the Court.

Testimony of Andrea Massa:

Andrea Massa stated that she met Frank G. eight or nine years ago when she was a patron of his spa. She stated that through the years she and Frank G. grew to know each other better and stated that she met Joe P. after he and Frank G. began dating. She stated that Frank G. spoke highly of Joe P. during the beginning of their relationship. Ms. Massa stated that she spent time with Frank G. and the family and stated that she observed Joe P. interacting with the children. She described Joe P. as a hands-on parent. Ms. Massa stated that over time Frank G. was not as positive about the relationship. She stated that after the children were born things got progressively worse. Ms. Massa stated that in or around December 2013, Frank G. told her that he had planned a romantic night for him and Joe P. Frank G. told her that the relationship would end that night and that he was going to take the children to Long Island the following morning. She stated that Frank G. never told her anything concerning Joe P. having sexual material on

the computer.

Rebuttal Testimony of Joe P.:

Joe P. stated that he applied for the pension loan in late November 2010. He stated that the loan was issued on January 28, 2011 in the sum of \$19,000.00. He stated that the \$19,000.00 was used to pay back Frank G.'s grandparents, who loaned them the \$19,000.00 to put down on the home on Woodstock Road. He stated that they had to borrow money from Frank G.'s grandparents because of the delay in getting the funds from the pension. He denied that he made any big purchases around this time. Joe P. acknowledged that he took a prior pension loan in the sm of \$17,913.88 which he used to purchase his condominium in Staten Island, which was ultimately lost to foreclosure.

Joe P. denies that Frank G.'s vehicle was repossessed. He stated that they returned the vehicle once the lease was up. He stated that the lease was in his name even though it was Frank G.'s vehicle. Joe P. stated that he negotiated a settlement with Honda and had to pay approximately \$2,100.00 upon returning the vehicle because it was over its mileage and had a dent. He further stated that he paid approximately \$850.00 in tickets that Frank G. received while driving the vehicle.

Joe P. stated that Renee P. received disability checks during her pregnancy with the subject children. He stated that when the disability checks came in she would she would cash them at the bank and hand teh cash to Frank G. Joe P. denied that Frank G. ever handed him the adoption paperwork and stated that he would have immediately filed the

papers with the Court if he had ever received them.

Rebuttal Testimony of Frank G.:

Frank G. stated that he closed on the home on Woodcock Road in December 2010. He denied that Joe P. took a loan to help him buy the home and denied that he (Frank G.) repaid his grandparents with money from Joe P. Frank G. denied that he ever took Renee P.'s disability checks and denied that he ever took cash from her.

Rebuttal Testimony of Renee P.:

Renee P. stated that during her pregnancy she was put on bed rest and began receiving disability checks. She stated that she gave her first disability check to Frank G., who came back and told her that he was not able to cash it. She stated that she had to sign the check, bring it to her bank and cash it, at which point she gave the cash to Frank G. She stated that she went through this process which each of the disability checks that she received. Renee P. acknowledged that during this time Joe P. and Frank G. were paying some of her bills for her because she was on bed rest and was unable to work.

Court Analysis:

This Court has presided over hundreds of custody cases, none of which have been as contentious, embittered or prolonged as the case at hand. The facts of this case, which has been pending before this Court for over two years, are like none that have ever been presented before this Court, and are relatively new to the changing landscape of child custody in the State of New York. The trial of the pending petitions spanned over the course of 17 days and was delayed

for one year due to the numerous appeals that were filed by Frank G. and the subsequent stays that were issued as a result thereof. To further add to the complexities of this case, during the time in which the appeals were pending and the stays were in effect, the New York State Court of Appeals issued its decision in *Matter of Brooke S.B. v. Elizabeth A.C.C.*, 26 N.Y.3d 901 (September 1, 2015), wherein it overruled its decision in *Alison D. v. Virginia M.*, 77 N.Y.2d 651 (1991), which held that a parent was defined either through biology or through a legal adoption and that equitable estoppel would not be recognized as a means to establish parentage. In *Matter of Brooke S.B.*, the Court of Appeals acknowledged that the rule as set forth in *Alison D. v. Virginia M.*, was adverse to the best interest of a child and held that in the case of an unmarried couple who planned to have a child, the non biological/non adoptive parent can achieve standing by establishing, by clear and convincing evidence, that there was a (pre-conception) agreement to conceive and raise a child together. In light of the Court of Appeals' ruling in *Matter of Brooke S.B.*, and after taking into consideration the testimony that was heard in the standing proceeding in the instant case, the Appellate Division affirmed this Court's decision which granted standing to Joe P. one year earlier, lifted any remaining stay that were still in effect and referred the matters back to this Court for continuation of the best interest hearing. The parties have appeared before this Court on occasions too numerous to count over the past two years and during the course of the best interest hearing. In that time, this Court has had the unique opportunity to hear from the parties and to assess their credibility,

temperament and sincerity.

Although the Court has been presented with vastly different versions as to what transpired between the parties, certain facts remain undisputed. At the time that Joe P. and Frank G. met and began dating, neither of them had children. Both men preferred to have children who were genetically related to them. Joe P. facilitated the meeting between Frank G. and Renee P. and it was agreed that Frank G. would donate his sperm and Renee P. would donate her eggs and carry the children. This Court credits the testimony of Joe P. and Renee P. that described how, in agreeing to donate her eggs and carry the children, Renee P. was fulfilling a promise that she had made to her brother years ago, so that he could have children who would be genetically related to him. This Court discredits Frank G.'s claims that Renee P. was merely his surrogate and carried the children for him alone. This Court finds that but/for a promise that she made to her brother, Renee P. would have never agreed to endure IVF treatment and a twin pregnancy solely for Frank G.'s benefit.

It is undisputed that soon after reaching their agreement for conception, the parties began the process of IVF and Renee P. became pregnant with the subject children. It is undisputed that the parties entered into a surrogacy contract. This Court finds that the parties entered into the surrogacy contract with the understanding that Joe P. would adopt the children and that Renee P. would surrender her parental rights to the children but would nevertheless remain an active part of their lives. Although such contracts are not valid in the State of New York, the testimony before the Court established that an

attorney prepared the contract and that the parties believed the contract to be valid and legally binding at the time that they entered into it. This Court finds that the contract serves as evidence of the original intent of the parties, which was for Joe P. to adopt the children so that he and Frank G. could raise them together, and for Renee P. to never be cut out of their lives.

This Court finds that as the pregnancy progressed, both Frank G. and Joe P. attended medical appointments with Renee P., paid her bills as she was on disability and unable to work, paid for renovations to her home and assisted her and her children in various ways. Renee P. gave birth to the children on _____ 2010 and Joe P. and Frank G. were present for the birth. The children were given names that incorporated the names of both me, to wit: G.F.P.G. and L.J.P.G., which this Court finds to be further evidence that the intent was always for Joe P. and Frank G. to be the parents of the children and to raise the children together.

The Court finds that Joe P., Frank G. and the children lived together as a family for the first four years of the children's lives. The Court further finds that during these first four years both men were actively involved in caring and providing for the children on a daily basis as their parents. Indeed, Frank G., Joe P. and the children lived as a typical family would, sharing parenting responsibilities, milestones and celebrating special occasions together, including holidays, birthdays and family celebrations, as evidenced by the numerous holiday cards, Father's Day cards and gifts which the parties and children exchanged and which are now in evidence. The Court

further finds that the children have very strong attachments to Frank G. and to Joe P. and regard both men as their parent, referring to Frank G. as “daddy” and to Joe P. as “dada”. This Court finds that Joe P. was actively involved in the children’s lives until 2014, when Frank G. cut off all contact to the children and subsequently made the unilateral decision to remove the children from the State of New York.

The Court finds that much of the testimony revolved around Frank G.’s claims that Joe P. solicited sex online with strangers which in turn endangered the safety of the children. The Court notes that Joe P. vigorously refutes these claims and argues that Frank G. installed the sexual material on his computer. Both men admitted to cheating on one another during the course of their relationships. Indeed, Frank G. admitted that he had a one night stand with individuals that he met online. Although the parties may have engaged in indiscretions which cause the other pain throughout their relationship, this Court is not concerned with who stepped outside of the relationship and rather, is solely concerned with what is in the best interest of the children. This Court finds that there is no evidence in the record to establish that there is any truth to Frank G.’s claims that Joe P. endangered the children or that Joe P. and/or Renee P. are dangerous or harmful to the children. Upon reviewing the facts and circumstances surrounding this case, and upon reviewing the testimony and evidence that is before this Court, this Court finds that much if not all of Frank G.’s testimony was self-serving, insincere and incredible. And while this Court has no doubt that Frank G. has an immeasurable amount of love for the children, this

Court finds that his undeniable need to be in control drove him to engage in a series of selfish and destructive actions that were by no means in the best interests of the children, and which only served to promote his own interests.

Relocation to Florida:

Frank G. is requesting permission from this Court to relocate with the children to the State of Florida. His application for relocation was filed with the Court after he had already removed the children from New York State without any prior notice to the parties or without receiving the permission of any Court in the State of New York. When reviewing a custodial parent's request for permission to relocate, the court's primary focus must be on the best interests for the child. See *Matter of Steadman v. Roumer*, 81 A.D.3d 653 (2d Dept. 2011). Although each custodial parent's request for relocation must be decided on its own merits, the factors to be considered include, but are not limited to, each parent's reason for seeking or opposing the move, the quality of the relationships between the child and each parent, the impact of the move on the quantity and quality of the children's future contact with the noncustodial parent, the degree to which the lives of the custodial parent and the children may be enhanced economically, emotionally, and educationally by the move, and the feasibility of preserving the relationship between the noncustodial parent and the children through suitable visitation arrangements". See *Matter of DeCillis v. DeCillis*, 137 A.D. 3d 1122 (2d Dept. 2016). See also *Matter of Said v. Said*, 61 A.D.3d 879 (2d Dept. 2009) and *Matter of Tropea v. Tropea*, 87 N.Y.2d 727 (1996). This Court notes that it has been held that the strict

application of the aforementioned factors in not required in the context of an initial custody determination, such as in the case at hand. See *Matter of Santano v. Cezair*, 106 A.D.3d 1097 (2d Dept. 2013). Notwithstanding, this Court will consider the factors in regard to Frank G.'s request for relocation.

Reasons for/against the relocation:

Frank G. makes a number of arguments in support of his request to relocate to the State of Florida. To begin, he argues that the State of New York does not have enough income opportunities and that there is a tremendous amount of income potential for him in Florida. Frank G. stated that during the time that he lived in Florida, he worked as a realtor selling mostly luxury homes. He stated that he earned more money in Florida because realtors in Florida are paid faster and receive larger commissions as compared to realtors in New York. He stated that Florida has more luxury homes than New York and that more people are moving to Florida. Frank G. also stated that he and Nick started two businesses in Florida which are doing very well. Frank G. stated that much of his family, whom he considers to be his support system, now lives in Florida. He stated that the children enjoy spending time with his family and will not be able to do so as often if they are not permitted to relocate to Florida. Frank G. argued that the schools in Sarasota, Florida are specialized and offer more extracurricular activities. He stated that he hopes that the children will be able to attend the Pine View School, which is a school for gifted children in Sarasota, Florida. Frank G. argued that the cost of living and extracurricular activities are more expensive in New York than in Florida. He argued

that his monthly expenses will be higher if he has to live in New York. Lastly, Frank G. argued that Florida is just a happier place to live, as it has palm trees and beaches.

Joe P. and Renee P. both oppose the relocation request. They argue that New York State is the children's home state and is where the children belong. They argue that the children spent the first four years of their lives in New York until Frank G. took them away and cut off all contact. They argue that they have already missed out on a substantial amount of time with the children that they will never get back and argue that if the children reside in Florida they will not be able to be an active part of the children's lives.

This Court finds that Frank G. has failed to demonstrate how a relocation to Florida will be in the children's best interests and further finds that he has failed to establish that the children's lives will be enhanced economically, emotionally and educationally by the proposed move. Frank G. argues that New York does not have sufficient income opportunities for him. This Court finds this argument to be without merit and in fact, unavailing. By his own testimony Frank G. established that he was able to achieve much financial success in New York, particularly in Orange County. During his time in Orange County he owned several different businesses and purchased several different homes. Indeed, so successful was he with his business endeavors in New York that he was able to live off of his savings for years after the children were born. This Court finds that any financial hardship that Frank G. may have faced in Orange County was a direct result of his own

actions and poor decision making, for example: his failure to make mortgage payments on homes that he owned even though he was receiving rental income which, by his own testimony, produced a surplus for him. Frank G. claims that Florida has more luxury homes and that more people are moving to Florida, but has failed to provide the Court with any proof of these claims. This Court finds that Frank G. has many income producing opportunities in New York, as he can easily renew his real estate license in New York and can even obtain a licence in nearby New Jersey if he so chooses. What's more, Frank G. has proven that he has a knack for starting new businesses, particularly in Orange County. Frank G.s argues that the cost of living in Florida is less expensive than it is in New York, and while the Court does not dispute this fact, the Court does not find this fact to be a sufficient reason to relocate the children to Florida, especially since Joe P. will now be sharing in the cost of the children's expenses.

In further support of his relocation request, Frank G. argues that many of his family members, whom he refers to as his support system, have moved to Florida. This Court finds this argument to be superficial at best. Frank G. testified that with the exception of his mother, who lives with him in Florida (and who previously resided with him in New York), his family and friends live a minimum of one hour away from him and the children. At best the children see his family members a few times a month. And although Frank G. refers to his family as his support system for the children, he stated that he, Nick, and at times, his Mother, are the people who care for the children. He further stated that if he has to go out he

hires a babysitter to stay with the children - not his sister, or his aunt or uncles, despite the fact that he claims that he moved to Florida to be closer to his support system. Further, this Court finds that Frank G. would continue to have family support in New York, as he acknowledged that he has family members that continue to reside in New York, including his grandparents, whom he stated he is very close with. What's more, he will continue for have support from Nick , as Nick, who is originally from New York, and has family in New York, has already moved back to New York with Frank G. and the children. This Court is alarmed that Frank G. is more concerned about the children spending time with his extended family rather than with Joe P.. It is clear that Frank G. feels no remorse about the time that the children have missed with their dada and has no remorse about the time that they will continue to miss with their dada if they were to reside in Florida. This Court finds that having meaningful contact and spending more time with Joe P. is in the best interest of the children. The Court further finds that the children can continue to spend time with Frank G.'s family in Florida on long weekends and during school vacations when they are schedules to be with Frank G.. This Court will not address Frank G.'s statement that Florida is just a happier place to be because it has beaches and palm trees other than to say that such a comment only serves to show the extent to which Frank G. has trivialized and marginalized Joe P.'s role in the children's lives.

Frank G. argued that the children's lives will be enhanced educationally by living in Florida and stated that the schools in Sarasota, Florida are

specialized and offer more extracurricular activities. He stated that he hopes that the children will be able to attend the Pine View School, which is a school for gifted children in Sarasota, Florida. Once again this Court finds Frank G.'s argument to be baseless and without merit. The children currently attend the Monroe-Woodbury school district in Orange County, which is known for its high quality schools. Indeed, the testimony established that Joe P. and Frank G. moved to Monroe, NY in part because of its high quality schools. Further, Sarasota, Florida is not the only place where the children can participate in extracurricular activities. Frank G. stated that the children participated in drama, dance, cheerleading and karate while living in Florida. This Court notes that every single one of those extracurricular activities is available in Orange County. Indeed, the children have already been enrolled in a gymnastics program in Orange County. Frank G. also stated that he is hopeful that the children will be able to attend a school for the gifted. This Court notes that it has not been provided with any information indicating that either child is gifted and has been accepted into the Pine View School or any school for the gifted. Indeed, the Court has not been presented with information claiming that either child should even be enrolled in a gifted program. This Court cannot grant a request to relocate more than 1,000 miles away from Joe P. and Renee P. based upon Frank G.'s hope that one day the children will be declared to be gifted and accepted into the Pine View school.

Quality of the Relationship between the Children and each Parent:

This Court finds that a relocation to Florida would

have an extremely negative impact on Joe P.'s relationship with the children. It is clear to this Court that the children are closely bonded to both Joe P. and Frank G. and view each one as their parent. This Court finds that it would be in the best interest of the children to spend meaningful quality time with both Frank G. and Joe P. on a regular basis. The Court finds that it would be in the best interests of the children for both of their parents to play an active role in their day to day lives. This Court finds that such cannot happen if the children are living in Florida, as Joe P. will miss out on an inordinate amount of time with the children and will not be able to do the things that parents typically do with their children on a daily basis, such as giving hugs and kisses, helping them to get ready for the day, sharing meals together, helping them with their homework and bedtime routines, attending school events and extracurricular activities, and all of the many other things that parents do day in and day out with and for their children. This court further finds that a relocation would have a negative impact on Renee P.'s relationship with the children as she too, will be greatly limited in her ability to be with the children.

Impact of the Move on the Quantity and Quality of the Children's future contact with the Noncustodial parent:

This Court further finds that a relocation to Florida would greatly restrict the quantity and quality of the children's future contact with Joe P. and Renee P. During the time that the children resided in Florida, Frank G. prevented the children from having any and all contact with Joe P. and Renee P. He did not allow the children to see them, either in person or

via facetime. he did not allow the children to speak with them, or to even send them a picture or a card. Frank G. completely cut Joe P. and Renee P. out of the children's lives. Indeed, Joe P. and Renee P. did not even know the whereabouts of the children for quite some time and were prevented from having any and all contact with the children.

The testimony established that Frank G. directed Joe P. to only communicate with him via his attorney and that he threatened to call the police if Joe P. attempted to see the children. What's more, during the course of the proceeding, Frank G. has filed an appeal to every interim Order of this Court which granted Joe P. and Renee P. contact and/or time with the children. He has filed emergency petitions in the State of Florida and has gone so far as to file papers with the highest Court in the State of New York. In light of the foregoing, and in light of the efforts that Frank G. has made to keep the children away from Joe P. and Renee P., even in the midst of this hearing, this Court has great reason to believe that the quantity and quality of the children's future contact with Joe P. and Renee P. would be in jeopardy should the children be permitted to relocate to Florida. Further, this Court, having had the unique opportunity to assess the parties, finds Frank G.'s claims that he will allow the children to have regular contact with the parties if the children are permitted to relocate to Florida, to be disingenuous, insincere and completely lacking in credibility.

Frank G. stated that he did not discuss the move to Florida with Joe P. or with Renee P. because he had not heard from Joe P. for six months prior to the move. He stated that it had been even longer since he had

heard from Renee P. In making these purely self serving claims, Frank G. fails to acknowledge that Joe P. reached out to him, only for Frank G. to threaten to contact the police if Joe P. contacted him again or came to see the children. Frank G. fails to acknowledge that he directed Joe P. to address all communication to his attorney. Frank G. fails to acknowledge that Renee P. had filed a petition for custody in Richmond County and fails to acknowledge that the venue would be changed to Orange County, at the request of his attorney. Frank G. in essence would have this Court believe that Joe P. and Renee P. abandoned the children, which is simply not true. The Court does not credit Frank G.'s statements. What's more, Frank G. stated that the children did not suffer any emotional harm from the move to Florida. The Court finds that this statement by Frank G. epitomizes his inability to recognize Joe P. as a parent to the children, his refusal to allow the children to have a relationship with Joe P. in the future, and his inability to put the interests of the children before his own personal desires.

Economic, Emotional and Educational Enhancement/Feasibility of preserving the relationship with a noncustodial parent:

For the reasons set forth above, this Court finds that Frank G. has failed to establish that the children's lives will be enhanced economically, emotionally and educationally by the proposed move. Moreover, and as discussed above, this Court finds that there is little to no chance of preserving the relationship with the noncustodial parent should the relocation be permitted, as Frank G. has already proven that he is not willing to allow the children to

have a meaningful relationship with Joe P.

Overall, this Court finds that relocation to the State of Florida would not be in the children's best interests. It is clear to this Court that New York State is the children's home state. It is where the children were born and where they were raised, by their two parents, for the first four years of their lives. Most importantly, New York is where Joe P., their dada, is. This court finds that Frank G.'s unilateral decision to move to Florida and to thereafter cut off all contact with the parties, particularly to Joe P., was detrimental to the best interest of the children. This Court further finds that Frank G. has failed to establish that the children's lives will be enhanced in any way by a relocation to Florida. Moreover, this Court finds that the quality of the other parent's relationship with the children will absolutely and unquestioningly be negatively impacted by the proposed move, as would the quantity and quality of the children's future contact with the other parent. Accordingly, Frank G.'s request for permission to relocate with the children is denied.

Custody:

Each of the parties has filed for custody of the subject children. Renee P. states that although she is the biological mother of the children, she will not seek custody of the children if Joe P. is awarded custody, as she knows that Joe P. will allow her to have access to the children. She states that she will continue to fight for custody of the children if custody is awarded to Frank G., as she believes that he will continue to alienate her from the children's lives.

Frank G. argues that he is and has always been

the primary caregiver for the children. He states that he has always been the parent who has taken care of all of their needs and who has arranged for medical appointments, early intervention services, schooling and extracurricular activities, with little help from Joe P., who was too busy pursuing sex with online strangers. He states that he should be permitted to remain as the children's primary caregiver.

Joe P. denies that he pursued sex with strangers online and argues that Frank G. hacked into his computer and installed the sexual material. Joe P. argues that he was an active caregiver to the children prior to Frank G. cutting off all contact and removing the children from the State of New York. He argues that his relationship with Frank G. was one that consisted of domestic violence, wherein Frank G. was the dominant and controlling partner while he was the passive and submissive partner. Joe P. argues that Frank G. would constantly threaten to take the children away if Joe P. did not do what he (Frank G.) told him to do. He states that he lived in fear that Frank G. would act on his threats to take away the children, and states that he did everything that he could to remain in the children's lives, even if that meant confessing to accusations that he knew were not true. Joe P. argues that his bond with the children is strong despite the years that passed with little to no contact because of the large role that he held in the children's lives for the first four years of their lives. He states that he would never keep the children away from Frank G. even though Frank G. took the children away from him. He further states that he would not deny Joe P.'s access to the children and would ensure that everyone who loves the children would have

access to the children.

In making an initial custody determination the Court must consider the best interests of the child. Factors to be considered in determining the child's best interest include the quality of the home environment and the parental guidance the parent provides for the child, the ability of each parent to provide for the child, the relative fitness of the respective parents, and the effect an award of custody to one parent may have on the child's relationship with the other parent. See *Huaringa v. Camargo*, 138 A.D.3d 993 (2d Dept. 2016) and *Salvatore v. Salvatore*, 68 A.D.3d 966, 893 N.Y.S.2d 63, 2009 N.Y.Slip Op. 09452 (2d Dept. 2009); see also *Eschbach v. Eschbach*, 56 N.Y.2d 167 (1982). The Court's paramount concern in this, as in any custody dispute, is to determine, under the totality of the circumstances, what is in the best interest of the children. In that regard, this Court will analyze the aforementioned factors in relation to each parties' request for custody.

Quality of the home environment and the parental guidance the parent provides for the child:

This Court finds that all three of the parties love the children dearly and are able to provide the children with a good home environment and parental guidance. The testimony before the Court established that each of the parties has his/her own home. Renee P. currently lives in Staten Island with her daughters. Despite the allegations of domestic violence that Frank G. alleges took place in her home, the Court does not find her home to be unsuitable or unsafe for the children. Frank G. is currently residing in a small

cottage with his fiance and Nick and the children. He stated that the cottage is not the living arrangements that the children are accustomed to, as they live in a three bedroom home in Florida that had backyard and a pool. This Court fully acknowledges that the cottage is not, or was it ever intended to be, a long term dwelling place for Frank G., and although the Court is certain that Frank G. will be able to find a suitable home for the children in Orange County, the Court is concerned with regard to how long Frank G. would remain in that home, as he has a tendency to frequently change residences. Joe P. testified that he currently resides in Monroe, New York, in the same home in which he has resided since he and Frank G. broke up in 2014. The children have a bedroom in the home and sleep on bunk beds which he purchased for them.

The Court finds that although Joe P.'s home is suitable for the children, it would not be in the children's best interest to reside in her home. Accordingly, the Court must consider who, as between Frank G. and Joe P., can best provide the children with the most suitable, quality home environment. In reaching this determination the Court does not just look at the physical dwelling place in which the children will reside, as each man has a safe and suitable home for the children, but must also consider which party will be able to best provide the children with the most appropriate and stable home environment.

This Court finds that Joe P. will provide the children with the most suitable, appropriate and stable home environment. This Court finds that despite Frank G.'s claims that Joe P. has a wild and

unstable lifestyle which would endanger the children, there is no credible evidence to establish that the children are or ever have been in danger while in Joe P.'s care. Further, Joe P. has proven himself to be quite stable. Joe P. has lived in the same residence since he and Frank G. separated in 2014, whereas Frank G. has resided in four different homes and two different states within the same period of time. Joe P. lives alone and has not resided with any other individuals since breaking up with Frank G. in 2014. Frank G. allowed Nick, who the Court did not hear testimony from, to move in with him and the children within a few months of when they began dating. Joe P. has a good paying, stable job with the MTA and has held his position for over a decade. Frank G. has had a number of jobs over the years including being an insurance agent, a bank manager, a spa owner, a salon owner, an ice cream store owner, a dog groomer, and most recently, a real estate agent/house flipper. The Court has no doubt that the children will have a stable home environment with Joe P. and finds that he is best suited to provide them with a quality and stable home environment.

The Court finds that all three parties are able to give parental guidance to the children, and finds that each party has an important role to play in the children's lives. During his testimony Dr. Mednick stated that he observed all three of the parties to be appropriate and loving in their interactions with the children. Dr. Mednick spoke of how Frank G. has done a good job of organizing the children's time and providing the children with structure and support and the Court agrees that Frank G. has done well in guiding the children and arranging for their

schooling, activities and counseling. Dr. Mednick further stated that Joe P. did well at directing the children's activities and fostering their play while engaging with each child simultaneously. He further stated that Joe P.'s interactions with the children were quite effective from a view of effective parenting. The Court, having met with the children, found them to be smart, funny and very inquisitive. And while Frank G. no doubt had a part to play in the upbringing of his children, the Court cannot ignore Joe P.'s role in the children's lives and his influence upon them as well. This court, having had the opportunity to observe and hear from the parties, finds Frank G. to be a very structured individual. It cannot be denied that structure is unquestionably something that all children not only need but desire. This Court finds Joe P. to be very nurturing and loving, which is also something that all children need and desire. The Court finds that although both men have somewhat different parenting styles, it was the combination of these styles that helped the children to develop into the people that they are today.

Notwithstanding the foregoing, this Court shares the same concerns that Dr. Mednick expressed on the stand concerning Frank G. and his outright refusal to recognize Joe P. as the children's parent. This Court finds Frank G. to be a very controlling, calculating, and manipulative individual whose actions have proven that he will take extreme measures to keep the children away from both Joe P. and Renee P. Frank G. completely disregards the fact that the children view Joe P. as their parent and disregards the fact that the children would not exist were it not for Renee P. Based on the actions that Frank G. has taken both prior to

and in the midst of this hearing, the Court doubts whether he will ever be able to guide the children in accordance with what is truly in their best interest - especially when what is best for the children does not align with what is best for him.

This Court notes that there will come a time when the children will seek parental guidance from Renee P. as well. She is their biological mother and has raised four children virtually on her own. Renee P. has years of experience as a parent and can offer the children guidance from a perspective that neither Frank G. or Joe P. will ever have. This Court hopes that both men will encourage the children to seek guidance from Renee P. whenever they need it.

In light of the facts and circumstances of this case, the Court finds that Joe P. is the party who is best suited to provide the children with the parental guidance that they need. Joe P. has always made the children's best interest his priority and has at all times been guided by what was best for the children, and not himself. The Court has no doubt that he will continue to guide the children fairly and in accordance with what is best for them.

Ability of each parent to provide for the child's emotional and intellectual development:

This Court must consider which of the parties will best provide for the children's emotional and intellectual development. Renee P. has raised four children virtually on her own. The testimony before the Court established that all four of her children have done well and are successful in their own right. As set forth above, Frank G. has done well at providing the children with structure and with organizing their

time. He has also done well at providing the children with structure and with organizing their time. He has also done well in arranging for their schooling, extracurricular activities and therapy sessions. Although Frank G. did not allow Joe P. to have contact with the children when they began kindergarten or when they started attending therapy, this Court has no doubt that, based upon his involvement in their lives prior to Frank G. moving them to Florida and cutting off all contact, Joe P. would have been actively involved in such matters had the children remained in Orange County. The Court finds that each of the parties is able to provide for the children's intellectual development. Of greater concern to this Court is the parties' ability to provide for the children's emotional development.

Financial Status and Ability of Each Parent to Provide for the Children

This Court finds that Joe P. is the most financially stable party seeking custody of the children. The Court further finds that Joe P. is in the best position to provide for the children on a steady and consistent basis. Renee P. is a single mother of four. She currently resides in her home on Staten Island with her four daughters. The testimony and evidence before the Court established that during the pregnancy with the subject children, Renee P. was placed on disability and required financial assistance from Joe P. and Frank G. to pay her household expenses and to pay for and make repairs to her home. The testimony further established that prior to the pregnancy she was receiving financial assistance from her father and from Joe P. Although Renee P. is no longer on bed rest and is back to work on a full time

basis, this Court recognizes that she is a single parent to four other children, who continue to reside with her, and finds that of the parties seeking custody of the subject children, she is not best suited to financially provide for the children.

Joe P. Is a MTA bridge and tunnel officer and has held that position for 13 1/2 years. He earns approximately \$68,000 per year and resides in Monroe, New York. Prior to meeting Frank G., Joe P. owned his condominium on Staten Island. It is not disputed that the condominium was lost to foreclosure after he met and moved in with Frank G. Joe P. has proven that he is able to provide for the children. Prior to his separation from Frank G. In 2014, Joe P., in addition to caring for the children, worked a steady full-time job and contributed to the household expenses on a regular basis, virtually turning his entire paycheck over to Frank G. Joe P. saw to it that the children had everything that they needed and even paid for Frank G.'s expenses as well. Since separating from Frank G. in 2014, Joe P. has continued to work at the same job and has maintained his own residence. This court notes that during the separation Joe P. attempted to send presents such as clothing to the children, but Frank G. checked it any such gifts, even though the gifts would have been to the children's benefit. This court further notes that any financial blemishes on Joe P.'s record were as a direct result of his affiliation with Frank G and in fact, did not occur until he began dating Frank G.. For example, Joe P. was able to maintain his condominium on Staten Island for years. However, after getting involved with Frank G, the condominium went into foreclosure. Further, the tax garnishment

that was levied against Joe P., which he has since paid off, was a direct result of the \$19,000 that he borrowed from his pension so that Frank to you could purchase the home on Woodcock Road. Since separating from Frank G., Joe P.'s financial situation has not only improved, but has stabilized.

This court is quite concerned with Frank G.'s financial situation and doubts whether he will be able to not only achieve, but maintain financial stability in order to provide for the children. Based on the testimony before the court, it is evident that he is apt at changing careers and starting up a new businesses.

As stated above, he opened his own insurance agency, worked in the banking industry, became a salon owner, a spa owner, and ice cream store owner and even became the owner of a strip mall. Frank G. also started a dog grooming business and became a real estate agent both in New York and in Florida. He is currently involved in to start up a real estate companies in Florida. In addition to his many different business ventures, Frank G. purchased several different residential properties in orange county. While all of these accomplishments are commendable, the court must look deeper. For reasons known only to himself, many of Frank G.'s business ventures ultimately came to an end. Frank G. divested himself of the salons, the day spa and the ice cream store. He no longer pursued the dog grooming business and decided that he longer wanted to sell real estate in New York. In the course of a few years Frank G. lost his home on Wickham Avenue and the strip mall that he owned two deeds in lieu of foreclosure. Frank .G lost his home on Scotchtown Road to foreclosure. He lost his home on Red Oak

Court to foreclosure. He lost his home on Woodcock road to foreclosure. And what this court finds to be particularly interesting, is that Frank she lost these homes to foreclosure even though they were occupied with tenants who are paying him rent. Indeed, Frank G. testified that the rental income resulted in a monthly surplus to him and that although he continue to collect the rental income, he did not use it to pay the mortgage payments. This pattern of conduct is highly concerning to the court. Frank G. has not been able to maintain a stable job or a home for more than a few years at a time. Further, He has a string of foreclosures, deeds in lieu of foreclosure and failed businesses trailing behind him. This court is highly concerned as to Frank G.'s ability to remain financially stable.

Most recently Frank G. has taken to selling luxury homes in Florida and working on his two new start up companies, which rent and/or renovate homes and then sell them. And although Frank G. will have the square believe that he is financially stable, his financial history as set forth above indicates a series of financial failures. Indeed, Frank G. testified that he was unable to purchase a home in Florida because of his poor credit rating. Instead, he had to rely on his fiancé Nick to purchase the home for him and the children. This too is concerning to the court, as the court is uncertain as to whether Frank G. can financially provide for the children on his own or has to rely on Nick for financial support. If it's the latter, the court is concerned as to what will happen if Frank G. and Nick separate, as the testimony establish that friend she has already been on faithful to Nick. What's more, this court is concerned with regard to how

Frank G.'s latest business ventures will perform in the next two years, as he has a pattern of vesting himself of his businesses.

Overall, the court finds Frank G.'s method in handling financial transactions to be highly suspect, to say the least. By way of example, Frank G testified that at one point in time he was earning \$20,000.00 - \$30,000.00 in dollars per month. The Court cannot begin to fathom how someone who is earning said amounts each month cannot afford to pay his mortgage. The Court questions the veracity of Frank G.'s statements and the legitimacy of many of the financial transactions that he has orchestrated in the past. Accordingly, the Court finds that Frank G. is not the party best suited to establish financial stability and provide for the children.

The Relative Fitness of the Respective Parents:

This Court finds that Joe P. has demonstrated that he is the party most fit to have custody of the children. Joe P. has proven himself to be very attentive, nurturing and loving with the children. He has demonstrated that he is able to teach the children and direct their activities. Joe P. has been a good provider for the children and is best suited to provide them with a stable home environment and with the parental guidance and financial support that they need. Further, this Court finds that Joe P. is best suited to provide for the children's emotional and intellectual development. During all times throughout the instant proceedings, which have spanned over the course of 2 ½ years, Joe P. has always been guided by what was in the children's best interests, and not his

own. This Court cannot begin to fathom the distress that Joe P. has had to endure over the past two years. Notwithstanding whatever personal feelings he may have experienced, he has at all times been respectful of the children, never crossing any boundaries and never speaking negatively of others. He has consistently complied with the Orders of this Court and has been respectful of the other parties. Joe P. has stated that he would never keep the children from Frank G. or from Renee P. and the Court gives much credit to this statement. Indeed, Joe P. facilitated a conversation between the children and Frank G.'s mother during time that the children were with Joe P. notwithstanding the fact that Frank G. never so much as allowed one phone call to take place between Joe P. and the children.

This Court finds that Frank G. is not fit to have custody of the children. It has been held that one of the primary responsibilities of a custodial parent is to assure meaningful contact between the children and the noncustodial parent, and the willingness of a parent to assure such meaningful contact between the children and the other parent is a factor to be considered in making a custody determination. It has further been held that the willful interference with a noncustodial parent's right to visitation is so inconsistent with the best interests of the children as to, per se, raise a strong probability that the offending party is unfit to act as a custodial parent. See *Matter of Khan-Soleil v. Rashad*, 111 A.D.2d3d 728 (2d Dept. 2013).

To say that Frank G. has willfully interfered with and prevented meaningful contact between the children and Joe P. is a tremendous understatement.

The actions that Frank G. has taken to keep the children away from Joe P. are among the most extreme that this Court has seen with regard to parental interference. Frank G. does not dispute that the children spent the first four years of their lives living with him and Joe P. as a family. He does not dispute that the children were named after Joe P., or that he and Joe P. agreed to raise the children together. He does not dispute that Joe P. was to adopt the children or that the children know Joe P. as dada. Nonetheless Frank G. set about on a course of action to slowly assert his dominance and control over not only Joe P., but the children as well. In setting about these actions, Frank G. put his need to maintain control and distance himself from Joe P. ahead of the children's best interests.

This Court finds that Frank G. clearly recognized that as the biological father of the children, he was in a unique legal position in which to assert power, dominance and control over the parties, particularly Joe P. Whenever he and Joe P. argued, Frank G. would threaten to take the children away from Joe P. who, in turn, would give in to Frank G.'s demands, however outlandish. Frank G. clearly manipulated both Joe P. and Renee P.' with regard to the adoption of the children and the filing of papers with the Court, repeatedly stalling the process and lying to the P.'s about the status of the adoption. Time and time again Frank G. took control of the situation and manipulated scenarios so as to best position himself against the P.'s.

Although this Court is unable to say with 100% certainty who installed the sexual material on the computer, which Frank G. claims is the basis for his

decision to keep the children away from Joe P., the Court notes that Joe P. vehemently denies that he is responsible for that material. As stated above, the Court finds Joe P. to be a credible witness. The Court further notes that the testimony established that Frank G. was clearly the more technologically savvy partner in the relationship and that he admitted that he used the internet to find individuals to have sex with when he cheated on Joe P. Frank G. further admitted to installing an application on Joe P.'s cell phone, without any notice to, or permission from Joe P., in order for Frank G. to monitor Joe P.'s text messages. If in fact Frank G. did install the material on the computer, he is undoubtedly unfit to serve as the custodial parent.

Frank G.'s threats to interfere with Joe P.'s contact with the children ultimately came to fruition in 2014 when he refused to allow Frank G. to see the children and threatened to call the police if Joe P. came to see the children again. Frank G. quietly removed the children from the State of New York without any prior notice to Joe P. or to Renee P. He then refused to disclose the children's whereabouts and cut off any and all forms of communication with the children. This Court is highly alarmed at the ease with which Frank G. used the children as weapons to hurt Joe P. and to further his own interests. This Court finds that in using the children in this manner, Frank G. showed no regard for what was best for the children and only did what was best for himself. To date he has shown no remorse for his actions. To the contrary, Frank G. continues to take any and all steps to interfere with Joe P.'s contact with the children. Frank G. has refused to turn the children over on time

for Court Ordered visitations with Joe P. He has interfered with Joe P.'s facetime calls with the children and even insisted on remaining in Joe P.'s therapeutic visitation sessions with the children. Frank G. has objected to every Order that this Court has issued which granted Joe P. contact with the children and has filed an appeal of every such Order. Frank G. has even gone so far as to seek a stay of these proceedings in the Court of Appeals and to file an emergency application in the state of Florida.

This Court finds Frank G.'s actions to be abhorrent and damaging to the children, and further finds that there is absolutely no basis for these actions. Even if Frank G.'s accusations against Joe P. are true, and Joe P. did pursue sex with strangers online, such actions are not enough to deprive Joe P. of having contact with the children. JOe P. has never demonstrated characteristics of someone who has a sex addiction, such as an inability to function in life or maintain relationships. To the contrary, Joe P. has maintained steady employment at home. He has maintained a close relationship with his family and has never given up on his efforts to have a relationship with the children. Further, and assuming the allegations are true, there is no evidence that the children were ever exposed to any of these alleged sexual encounters.

As set forth above, one of the primary responsibilities of a custodial parent is to assure meaningful contact between the children and the non custodial parent. The Court has taken into consideration which party is most willing to assure that such meaningful contact between the children and the other parent takes place and finds that Joe P.

is that party. Frank G. has proven by his actions that he is not willing to allow for meaningful contact to take place between the children and JOe P. and Renee P. The Court notes that although he testified that he would indeed facilitate such contact, this Court notes that although he testified that he would indeed facilitate such contact, this Court finds said statements to be disingenuous at best, as his actions have shown that he will stop at nothing to ensure that he keeps the P.s away from the children.

This Court agrees with Dr. Mednick's statements that Frank G. has exhibited malice by using the law to deprive the children from having an emotional development and attachment to Joe P., and that regardless of the issue of legal standing, which has since been established by the Court of Appeals, there is a moral issue about refusing to acknowledge another individual's parenthood, particularly when the intention was to parent the children together and where that individual has acted and behaved as the parent, as Joe P. has done. The Court finds Frank G.'s actions to be inconsistent with the best interests of the children and finds that a strong probability has been raised that Frank G. is unfit to act as the custodial parent of the children.

The effect an Award of Custody to one Parent may have on the Child's relationship with the Other Parent:

As stated above, this Court finds that Joe P. is best suited to be the custodial parent. This Court finds that JOe P. will ensure that the children will always have meaningful contact with both Frank G. and Renee P. and that neither one will ever be cut out of the

children's lives. The Court finds that Frank G. is unfit to act as the custodial parent. The Court further finds that if Frank G. were to be granted custody of the children, he would continue to interfere with the children's contact with the noncustodial parent as he has done for over two years and is continuing to do to date.

The Court is not only alarmed by, but is also saddened by the actions that Frank G. has taken of the last two years, and finds that at no point did he act in the children's best interests. Instead, he chose to do what was most convenient for him, and in doing so, took the children away from their parent and denied them access to him for years, without ever having given them the opportunity to say goodbye. He denied the children the love that their father so desperately wanted to give them, and in doing so robbed them of memories and experiences that they will never be able to recreate.

Although this Court is not able to give back that time to Joe P. and the children, it can ensure that going forward, the children will be able to have the ability to have meaningful access to each one of the parties, as that is what is truly in their best interest. This Court finds that these children have a beautiful and unique story. They were brought into this world because they were loved by three people, not just two, who came together to make what was once a dream into a reality. Each adult played an important role in bringing the children into existence and in raising them, and as the children get older, each one of these adults will continue to play an important role in the children's lives. These relationships must be protected, cherished and respected, as that is truly

what is in the best interest of the children. This Court finds that an award of sole legal and physical custody to Joe P. is in the children's best interests. This is not a decision that this Court has made lightly. However, it has become quite apparent that this is not a situation in which a joint custody arrangement would work, as the relationship between the parties is so embattled and embittered that joint decision making is impossible. See *Grasso v. Grasso*, 51 A.D.3d 920 (2d Dept 2008).

Now, upon due deliberation and after considering the testimony and the evidence presented, and the Court having searched the statewide registry of orders of protection, the sex offender registry and the Family Court's child protective records, and having notified the parties of counsel, and the Court having considered and relied upon the results of these searches in making this decision,

Accordingly it is hereby

ADJUDGED that it would be in the best interest and needs of the minor children to have sole legal custody and sole physical custody awarded to Joe P; it is therefore ordered

ORDERED that Joe P.'s petition for custody is granted in its entirety with the exception of his request for attorney's fees, which shall be determined by this Court upon written submission of application; and it is further

ORDERED that Joe P. shall have sole legal custody and sole physical custody of the children G.F.P.G. (d.o.b. ____ 2010) and L.J.P.G. (d.o.b.

_____ 2010); and it is further

ORDERED that Joe P. shall have final decision making authority pertaining to the children including but not limited to all medical, educational and religious decisions, after full and meaningful discussion with Frank G., and it is further

ORDERED that Frank G. shall have the following parenting time with the children:

- (1) Every Wednesday after school, or, if school is not in session, at 3:00 PM, to Thursday morning at school, or, if school is not in session, to Joe P.'s home at 10:00 AM;
- (2) Commencing Friday, February 24, 2017, alternating weekends from Friday after school or, if school is not in session, at 3:00 PM to Monday morning at school, or, if school is not in session to Joe P.'s home at 10:00 AM; and it is further

ORDERED that there shall be such other and further visitation as agreed upon by the parties; and it is further

ORDERED that Renee P. shall have access to and contact with the children when the children are scheduled to be with Joe P. and as agreed upon between her and Joe P.; and it is further

ORDERED that Joe P. and Frank G. shall be entitled to reasonable contact with the children via telephone, skype or facetime, when the children are with the other party. If the children are unable to answer, the party with the children shall ensure that the children timely return the call. Such contact shall be of age-appropriate reasonable length and shall

occur sometime between 7:00 PM and 8:00 PM. The children shall be given privacy for their contact with each party and shall not have their telephone calls take place via speaker phone; and it is further

ORDERED that there shall be the following holiday parenting time:

Easter (defined as 10:00 AM to 7:00 PM) shall be with Joe P. in odd years and with Frank G. in even years;

Fourth of July (defined as noon on July 4th to noon on July 5th) shall be with Frank G. in odd years and with Joe P. in even years;

Thanksgiving (defined as after school on Wednesday before Thanksgiving Day to 7:00 PM on the Friday following Thanksgiving Day) shall be spent with Frank G. in odd years and with Joe P. in even years;

Christmas Eve (defined as noon on the Eve until noon on Christmas Day) shall be spent with Joe P. in even years and with Frank G. in odd years;

Christmas Day (defined as noon on Christmas Day until noon on December 26th) shall be with Frank G. in even years and with Joe P. in odd years;

New Year's Eve/New Year's Day (defined as noon on December 31st to noon on New Year's Day) shall be with Frank G. in even years and Joe P. in odd years;

Father's Day (10:00 AM to 7:00 PM) shall be spent with Joe P. in odd years and with Frank G. in even years;

Mother's Day (10:00 AM to 7:00 PM) shall be spent with Joe P. in even years and with Frank G. in odd years;

Any Monday holiday not otherwise specified herein shall be spent with the parent who has the children the weekend immediately preceding the holiday; and it is further

The parties shall alternate Halloween visitation which shall be defined as Halloween day from 4:00 PM until 8:30 PM, with Joe P. having Halloween parenting time with the children in all odd number years and Frank G. having Halloween parenting time with the children in all even numbered years; and it is further

ORDERED that the holiday parenting time shall supercede regularly scheduled parenting time; and it is further

ORDERED that Frank G. shall immediately provided to Joe P. the social security cards of the each child; and it is further

ORDERED that Joe P. shall add the children to his health insurance plan as provided by his employer, and it is further

ORDERED that upon receipt, Joe P. shall provide Frank G. with a current health insurance card for the children, or, if such is not available, a photocopy of the children's health insurance cards; and it is further

ORDERED that Joe P. shall keep Frank G. apprised of the provider names; and it is further

ORDERED that Joe P. and Frank G. shall each shall enjoy two (2) non-consecutive and uninterrupted weeks of vacation with the children with each providing notice of their vacation to the other thirty (30) days prior to the vacation; and it is further

ORDERED that Joe P. and Frank G. shall each provide the other with notification of all overnight trips with the children at the time that the trip is planned. A detailed itinerary shall also be provided including but not limited to, location of destination(s) with an address(es), land line phone number(s) if available, cell phone numbers, intended date of departure, intended date of return, and any other travel information if the trip involves multiple destinations. If the overnight trip involves a flight or flights, then all flight information shall be provided; and it is further

ORDERED that the parties shall enroll in the Parenting Solutions program (commonly referred to as the parent coordinator program) offered at the Dispute Resolution Center within ten (10) days from the date of this Decision and Order; and it is further

ORDERED that each party, upon enrollment in the Parenting Solutions program, shall pay a retainer of \$475.00 to the Dispute Resolution Center within ten (10) days of the date of this Order and shall split the cost thereafter; and it is further

ORDERED that the parties will take any dispute regarding the provisions of this Decision and Order and/or disputes regarding parenting time to the Parenting Solutions program and will be bound by the determination made by the program representative; and it is further

ORDERED that none of the parties herein shall make any derogatory comments about the other parties, nor shall any party allow any individual to do so in the presence of the children; and it is further

ORDERED that the parties shall comply with the Children's Bill of Rights, a copy of which is annexed hereto and made a part hereof; and it is further

ORDERED that the parties shall communicate about issues involving the children by text or email unless there is an emergency and in such case a telephone call shall be made; and it is further

ORDERED that Joe P. and Frank G. shall have access to the health, education and welfare records of the children by copy of this Order, as well as access to the children's providers; and it is further

ORDERED that Joe P. and Frank G. shall both be listed as emergency contacts with the children's providers, schools, day care, camps and/or extra curricular activities; and it is further

ORDERED that the parties shall keep one another updated as to current address and telephone number; and it is further

ORDERED that Joe P. shall ensure that the children are enrolled in counseling and that they remain in counseling until successfully discharged; and it is further

ORDERED that Joe P. shall provide Ariana Antonelli, Esq., the attorney for the children, with the name and telephone number of the children's therapist and shall provide Ms. Antonelli with any releases necessary for her to receive updates from and/or be able to communicate with the children's therapist; and it is further

ORDERED that Joe P. and Frank G. shall enroll in individual counseling/therapy within ten (10) days from the date of this Order and shall continue with

said counseling/therapy until successfully discharged;
and it is further

ORDERED that Frank G.'s request to relocate to the State of Florida is hereby denied in its entirety; and it is further

ORDERED that Frank G.'s petition for custody is hereby denied in its entirety; and it is further

ORDERED that Renee P.'s petitions for custody are hereby denied in their entirety with the exception of her request for attorneys fees, which shall be determined by this Court upon written submission of the application; and it is further

ORDERED that the paternity petition is hereby dismissed; and it is further

ORDERED that the petition for a Writ of Habeas Corpus is hereby dismissed as moot as the children have been returned to the State of New York; and it is further

ORDERED that a short form Order shall simultaneously issue herewith for presentation to any of the children's health, education and welfare providers; and it is further

ORDERED that any duly authorized police officer shall enforce this Order.

This is the Decision and Order of the Court.

Dated: February 14, 2017

Goshen, New York

Enter:

HON LORI CURRIER WOODS

FAMILY COURT JUDGE

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

APPELLATE DIVISION OF THE SUPREME
COURT OF NEW YORK, SECOND DEPARTMENT

2015-08463

Docket Nos. V-6147-14, V-6148-14, P-6149-14, P-6150-14, V-6147-14/15A, V-6148-14/15A, V-1144-15, V-1145-15, V-2691-15, V-2692-15, Z-874-15.

FRANK G.,

Appellant,

v.

RENEE P.-F., et al.,

Respondents

RENEE P.-F.,

Respondent,

v.

FRANK G.,

Appellant

JOSEPH P.,

Respondent,

v.

FRANK G., et al.,

Appellant-Respondents

(September 6, 2016)

Ordered that the order is affirmed insofar as appealed from, with costs.

According to the testimony at the hearing in this custody matter, Joseph P. (hereinafter Joseph) and Frank G. (hereinafter Frank) were domestic partners who lived together in New York State from 2009 through February 2014. As they both desired to have children genetically related to both of them, they asked Joseph's sister, Renee P.-F. (hereinafter Renee), to act as a surrogate. Renee, who had her own children, had previously promised her brother that she would carry a child for him after he met his life partner. Renee executed a surrogacy contract in which

she agreed to be impregnated with Frank's sperm and to surrender her parental rights in order for Joseph to adopt the child or children. The understanding between herself, Joseph, and Frank was that Joseph and Frank would be the parents of the children, and that she would remain a part of the children's lives. After undergoing in vitro fertilization, Renee gave birth to fraternal twins, [G.F.P.G.] and [L.J.P.G.] (hereinafter the children), in February 2010.

During the first four years of the children's lives, Joseph and Frank equally shared the rights and responsibilities of parenthood, although Joseph did not legally adopt the children. The children regarded both of them as their parents. They called Joseph "dada," and Frank "dad." During that period, Renee frequently saw the children. In early 2014, Joseph and Frank separated, and the children continued to reside with Frank. Even so, Joseph, acting in a parental role, visited and cared for the children on a daily basis. However, in May 2014, Frank suddenly refused to allow Joseph or Renee to have any access to the children. In December 2014, Frank moved to Florida with the children without informing Joseph or Renee, or seeking permission from the court.

Thereafter, Renee filed for custody of the children and for immediate access, and Joseph petitioned to be appointed guardian of the children. In June 2015, Joseph withdrew his guardianship petition, and commenced a proceeding seeking custody of the children. Frank moved, in effect, to dismiss Joseph's custody petition on the ground, inter alia, that Joseph lacked standing under Domestic Relations Law § 70. After conducting an evidentiary hearing, the Family Court denied Frank's motion in an order dated August

21, 2015. Frank appeals from that order.

Domestic Relations Law § 70 (a) provides as follows: "Where a minor child is residing within this state, either parent may apply to the supreme court for a writ of habeas corpus to have such minor child brought before such court; and on the return thereof, the court, on due consideration, may award the natural guardianship, charge and custody of such child to either parent for such time, under such regulations and restrictions, and with such provisions and directions, as the case may require, and may at any time thereafter vacate or modify such order. In all cases there shall be no prima facie right to the custody of the child in either parent, but the court shall determine solely what is for the best interest of the child, and what will best promote its welfare and happiness, and make award accordingly." The statute does not define "parent." In *Matter of Alison D. v. Virginia M.* (77 N.Y.2d 651 [1991]), the Court of Appeals supplied a definition of "parent" to mean solely the biological mother or biological father, or a legal parent by virtue of an adoption (*see id.* at 656). Nineteen years later, in *Debra H. v. Janice R.* (14 N.Y.3d 576 [2010]), facing facts similar to those in *Alison D.*, the Court of Appeals reaffirmed *Alison D.*'s holding, stating that "parentage under New York law derives from biology or adoption" (*id.* at 593).

During the pendency of this appeal, the Court of Appeals, in *Matter of Brooke S.B. v. Elizabeth A.C.C.* (___ NY3d ___, 2016 NY Slip Op 05903 [2016]), overruled *Alison D.* because, inter alia, its definition of "parent" had "become unworkable when applied to increasingly varied familial relationships" (*see id.* at ___, 2016 NY Slip Op 05903 at *2). In *Brooke S.B.*, the

Court held that, where a partner to a biological parent "shows by clear and convincing evidence that the parties agreed to conceive a child and to raise the child together, the non-biological, non-adoptive partner has standing to seek visitation and custody under Domestic Relations Law § 70" (*id.*).

Here, Joseph sufficiently demonstrated by clear and convincing evidence that he and Frank entered into a pre-conception agreement to conceive the children and to raise them together as their parents. Although the surrogacy contract is not enforceable as against Renee to deprive her of standing under Domestic Relations Law § 70 (*see* Domestic Relations Law § 124 [1]), it is evidence of the parties' unequivocal intention that Frank and Joseph become the parents of the children. Moreover, Frank and Joseph equally shared the rights and responsibilities of parenthood, and were equally regarded by the children as their parents. Therefore, Joseph established standing to seek custody or visitation under Domestic Relations Law § 70 (*see Matter of Brooke S.B. v. Elizabeth A.C.C.*, ___ NY3d ___, 2016 NY Slip Op 05903).

Accordingly, the Family Court properly denied Frank's motion, in effect, to dismiss Joseph's petition for custody of the children and properly determined that Joseph has standing to seek custody or visitation with the children. We remit the matter to the Family Court, Orange County, for a full hearing on Joseph's petition for custody or visitation with the children.

In light of our determination, we need not reach the parties' remaining contentions.

Renee P.-F., Matter of,

v.

Frank G.

Court of Appeals of New York

2018-981

December 11, 2018

Opinion

Motion for leave to appeal denied.

In the Matter of Frank G., Appellant,
v
Renee P-F. et al., Respondents. (Proceeding No. 1.)

In the Matter of Renee P-F., Respondent,
v
Frank G., Appellant. (Proceeding No. 2.)

In the Matter of Joseph P., Respondent,
v
Frank G., Appellant. (Proceeding No. 3.)

Court of Appeals of New York

2016-1024

Submitted October 24, 2016

Decided November 17, 2016

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the proceedings within the meaning of the Constitution. Motion for a stay dismissed as academic.