

No. 25-5483

ORIGINAL

FILED

JUN 23 2025

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Z. G. – PETITIONER

VS.

M.C. – RESPONDENT

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

Petitioner has previously been granted leave to proceed *in forma pauperis* in the following courts:

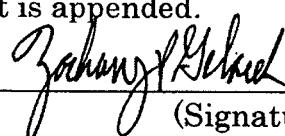
Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

Petitioner's affidavit or declaration in support of this motion is attached hereto.

Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

The appointment was made under the following provision of law: _____, or _____

a copy of the order of appointment is appended.


(Signature)

RECEIVED

AUG 27 2025

OFFICE OF THE CLERK
SUPREME COURT, U.S.

**AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, Zachary P. Gelacek, am the petitioner in the above entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions of tax or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ 0	N/A	\$ 0	N/A
Self-employment	\$ 2,303.08	N/A	\$ 2,909.96	N/A
Income from real property	\$ 0	N/A	\$ 0	N/A
Interest and dividends	\$ 0	N/A	\$ 0	N/A
Gifts	\$ 0	N/A	\$ 0	N/A
Alimony	\$ 0	N/A	\$ 0	N/A
Child Support	\$ 0	N/A	\$ 0	N/A
Retirement	\$ 0	N/A	\$ 0	N/A
Disability	\$ 0	N/A	\$ 0	N/A
Unemployment payments	\$ 0	N/A	\$ 0	N/A
Public assistance	\$ 0	N/A	\$ 0	N/A
Other: refund, savings	\$ 351.66	N/A	\$ 0	N/A
Total monthly income:	\$ 2,654.74	N/A	\$ 2,909.96	N/A

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Date of Employment	Gross monthly pay
Self (Gelacek Legal Services LLC)	310 Grant Street, Suite 2901, Pittsburgh, PA 15219	April 2021 – present	\$2,303.08 (past 12 months)

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions).

Employer	Address	Date of Employment	Gross monthly pay
-----------------	----------------	---------------------------	--------------------------

N/A

4. How much case do you and your spouse have? \$ 1,300.00

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount spouse has
Compass Savings Bank checking x2366	\$ 300	N/A
Huntington Bank		
(Gelacek Legal Services LLC operating checking account x0908)	\$ 4,551.09	N/A

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

<input type="checkbox"/> Home	<input type="checkbox"/> Other real estate
Value N/A	Value N/A
<input checked="" type="checkbox"/> Motor Vehicle #1	<input type="checkbox"/> Motor Vehicle #2
Year, make & model 2018 Subaru	Year, make & model N/A
Value \$ 3,000	Value N/A
<input type="checkbox"/> Other assets	
Description N/A	
Value N/A	

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
Monica R. Costlow	\$90,000 (restricted retirement funds)	N/A

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g., "J.S." instead of "John Smith").

Name	Relationship	Age
P.G.	Son	13
L.G.	Daughter	11

8. Estimate the average monthly expenses of your and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home mortgage payment (include lot rented for mobile home)	\$ 0	N/A
Are real estate taxes included? N/A		
Is property insurance included? N/A		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ 100	N/A
Home maintenance (repairs and upkeep)	\$ 0	N/A
Food	\$ 950	N/A
Clothing	\$ 50	N/A
Laundry and dry-cleaning	\$ 100	N/A
Medical and dental expenses	\$ 100	N/A
Transportation (not including motor vehicle payments)	\$ 60	N/A
Recreation, entertainment, newspapers, magazines, etc.	\$ 85	N/A

	You	Your spouse
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ 0	N/A
Life	\$ 0	N/A
Health	\$ 600	N/A
Motor Vehicle	\$ 0	N/A
Other: <u>N/A</u>	\$ 0	N/A
Taxes (not deducted from wages or included in mortgage payments)		
(specify): N/A	\$ 0	N/A
Installment payments		
Motor Vehicle	\$ 0	N/A
Credit card(s)	\$ 0	N/A
Department store(s)	\$ 0	N/A
Other: N/A	\$ 0	N/A
Alimony, maintenance, and support paid to others	\$ 2,100	N/A
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ 0	N/A
Other (specify): N/A	\$ 0	N/A
Total monthly expenses:	\$ 4,145	N/A

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

Yes No If yes, describe on an attached sheet

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form?

Yes No If yes, how much? N/A

If yes, state the attorney's name, address, and telephone number: N/A

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

 Yes ✓ No

If yes, how much? N/A

If yes, state the person's name, address, and telephone number: N/A

12. Provide any other information that will help explain why you cannot pay the costs of this case.

My current monthly liabilities far exceed my current monthly earnings and I therefore am insolvent. The jurist whose actions are at issue in this action also is presiding over the action in which my monthly child support obligation was set.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 22, 2025



(Signature)

No.

IN THE

Supreme Court of the United States

Z. G.,

Petitioner,

v.

M. C.,

Respondent.

On Petition For A Writ of Certiorari
To The Supreme Court of Pennsylvania

APPENDIX TO PETITION FOR WRIT OF CERTIORARI
VOLUME 1

ZACHARY GELACEK
PRO SE PETITIONER
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NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

Z. G. : IN THE SUPERIOR COURT OF
Appellant : PENNSYLVANIA
v. :
M. C. : No. 761 WDA 2024

Appeal from the Order Entered June 4, 2024
In the Court of Common Pleas of Allegheny County Family Court at
No(s): FD No. 21-007339-007

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

MEMORANDUM BY BOWES, J.:

FILED: December 30, 2024

Z.G. ("Father") appeals *pro se* from the order that denied his complaint for custody and petition for modification, and instead gave sole legal and physical custody to M.C. ("Mother"), as it relates to the parties' two minor children, with Father having supervised visitation. We affirm.

Father does not challenge the merits of the custody decision, nor whether giving Mother sole custody is in the best interests of their children. Instead, the focus of Father's appeal is how the trial court treated Father and the conditions it imposed upon Father. Accordingly, we need not delve into the specifics of the protracted and tumultuous custody battle underlying this appeal, and instead provide the following abbreviated history.

Father and Mother married in 2011, separated in 2016, and divorced in 2023. Of note, Father's substance use disorder contributed to the dissolution of the marriage and continued to be a concern "throughout the pendency of

court reiterated that it would not be considered until properly filed. Notwithstanding the court's directives, Father emailed another motion *in limine* to exclude Dr. Bliss's testimony on April 6, 2024. The court did not entertain this motion.

On April 9, 2024, the custody trial proceeded as scheduled. However, immediately prior to commencement, Father had a disagreement with court staff in the hallway outside the courtroom about who was permitted inside during the trial. This interaction was not transcribed and there is some disagreement as to what precisely occurred. From what we can discern, Father sought to have specific family members present in the courtroom as an accommodation under the Americans with Disabilities Act ("ADA") because the trial court's behavior in past hearings had caused him to suffer post-traumatic stress disorder. He also intended to have his brother appear as his attorney. The trial court determined that as of April 9, 2024, no individual had entered an appearance on behalf of Father, he had not requested an accommodation pursuant to the ADA, and the children's guardian *ad litem* ("GAL") and Mother's counsel did not consent to the participation of Father's brother as his attorney. Therefore, "[c]ourt staff informed Father that only he may be permitted in the [c]ourtroom, but his 'support person' and family members may be permitted to watch the trial via Microsoft Teams." Order, 4/10/24.

Father did not enter the courtroom that day. He was twice paged over the courthouse's intercom system, but he did not respond and did not appear

for the scheduled custody trial either in person or through Microsoft Teams. Therefore, the trial was conducted in Father's absence, with Dr. Bliss, Mother, and the GAL as the sole witnesses. The following day, the court entered an order memorializing this series of events, closing the custody record, cancelling the April 11, 2024 trial date, and indicating that a decision would be forthcoming.

The trial court issued its final custody order on May 23, 2024.¹ Therein, it granted sole legal and physical custody of the children to Mother. Father was provided supervised visitation. As conditions to that visitation, the court ordered Father to, *inter alia*, begin reunification counseling and submit to a hair follicle test seven days before the first visit. Mother and Father both filed additional motions, which the court declined to address once Father initiated this appeal. He raised thirteen issues in his Pa.R.A.P. 1925(b) concise statement of errors, which the trial court thoroughly addressed in its Rule 1925(a) opinion. In this Court, Father presents five issues for our consideration:

- I. Whether the trial court committed reversible error by permitting at trial the testimony of an expert witness who was appointed – over Father's objection – in response to a petition of Mother that was adjudicated and resolved by a trial judge who subsequently recused herself from this action because of her pre-existing social relationship with Mother[.]

¹ We quashed Father's initial appeal from the interim order entered on April 11, 2024. **See** Order, 8/5/24 (quashing appeal at 576 WDA 2024).

- II. Whether the trial court committed reversible error and/or violated Father's constitutional and statutory rights by denying Father's attorney's attempt to enter an appearance before the April 9, 2024, trial held in this matter.
- III. Whether Father's fundamental constitutional right to parent his children and participate in their upbringing, other fundamental rights of Father, and/or Father's rights under the ADA were violated by the manner in which the trial court disposed of his petition for custody in various respects.
- IV. Whether the trial court committed reversible error by virtue of the procedure through which the presiding jurist addressed Father's petitions for recusal as well as the presiding jurist's refusal to recuse herself from any further participation in this action after she made several unprofessional and entirely unwarranted accusations about Father.
- V. Whether the standard operating procedures . . . of the trial court were applied in a manner that constitutes an abuse of discretion.

Father's brief at 6-7 (capitalization altered, reordered for ease of disposition).

We review custody orders "for a gross abuse of discretion." ***Rogowski v. Kirven***, 291 A.3d 50, 60 (Pa.Super. 2023) (cleaned up). We will only find that kind of abuse "if the trial court, in reaching its conclusion, overrides or misapplies the law, or exercises judgment which is manifestly unreasonable, or reaches a conclusion that is the result of partiality, prejudice, bias, or ill-will as shown by the evidence of record." ***Id.*** (cleaned up).

As noted, Father does not challenge the substance of the custody order or the merits of the court's best-interest determination. Rather, he attacks several ancillary aspects of the underlying custody proceedings, including the custody trial and the school choice hearing, both of which he failed to attend.

In light of his non-participation, the trial court urges us to find many of Appellant's claims waived. Our Supreme Court has explained that "[i]n order to preserve an issue for appellate review, a litigant must place a timely, specific objection on the record. Issues that are not preserved by specific objection in the lower court are waived." ***Jones v. Ott***, 191 A.3d 782, 787 (Pa. 2018) (cleaned up); **see also** Pa.R.A.P. 302(a) ("Issues not raised in the trial court are waived and cannot be raised for the first time on appeal.").

With these two principles in mind, we consider Father's issues in turn to determine: (1) whether they are properly before us and, (2) if they are, whether Father is entitled to relief.

Admissibility of Expert Testimony

Beginning with the admissibility of Dr. Bliss's testimony, we observe that Father clearly did not lodge a contemporaneous objection to her testimony because he elected not to attend the custody trial. Nonetheless, Father insists that he preserved this issue through his pre-trial motion *in limine*. **See** Father's brief at 84. As explained above, the motions *in limine* that Father purported to file to exclude her testimony violated the court's case management order and its subsequent order precluding him from filing such a motion. Pennsylvania courts have long upheld the import of adhering to deadlines within case management orders: "[T]hese deadlines are far from meaningless. They are **court orders**[, and when] these deadlines are violated with impunity, . . . the abusing party must be prepared to pay the consequences." ***Kurian ex rel. Kurian v. Anisman***, 851 A.2d 152, 162

(Pa.Super. 2004) (emphasis in original). Since no motion concerning the admissibility of Dr. Bliss's testimony was properly presented to, or considered by, the trial court, no motion preserved the issue. Thus, we deem it waived.

New Attorney's Entry of Appearance

We turn next to Father's issue regarding the court's decision as to whether his brother could represent him at the custody trial. The underlying premise, that Father's brother attempted to enter an appearance as his attorney and Father objected to the rejection, is not supported by the record. At the relevant time, Father had been proceeding *pro se*. However, he maintains that on the morning of the trial, he tried to have his brother enter his appearance as his attorney of record to the court staff present in the hallway, and that he objected to the court's rejection of this request to the same staff member. **See** Father's brief at 83.

Despite his averments as to what happened off the record in the hallway, the record evidence reveals that: (1) his brother never entered a written appearance pursuant to Pa.R.C.P. 1012 or otherwise file a pleading on behalf of Father,² (2) his brother did not enter an oral appearance on the

² Rule 1012(a) denotes how to enter a written appearance, though that is not the exclusive means for entering one's appearance as the attorney of record:

Although Rule 1012 provides that an attorney "may" enter a written appearance, it does not require an attorney to do so. The comment to Rule 1012 states that "entry of a written appearance is not mandatory." Pa.R.C.P. 1012, Cmt. **See also Fleck v.**

McHugh, 361 A.2d 410, 413 (Pa.Super. 1976) (holding entry of
(Footnote Continued Next Page)

record with the trial court, and (3) Father lodged no record objection to any purported off-the-record denial of an attempted entry of appearance. Voicing disagreement with court staff off the record does not amount to either an entry of appearance or a timely, contemporaneous, on-the-record objection to a denial of such entry. Simply stated, there is nothing in the certified record for us to review as it relates to this issue. Accordingly, it is waived.

Constitutional and ADA Rights

In his third claim of error, Father presents multiple arguments that the trial court rendered a custody decision in violation of his rights guaranteed by the federal constitution and the ADA. **See** Father's brief at 105. We begin with his challenge to the school choice decision. Therein, he contends that the court's ruling, which moved the children's school closer to Mother and further from Father, "contravened [his] right to enjoy an equal parenting opportunity" and violated the ADA because he lacks a support network in the chosen school district. ***Id.*** at 109-10. Father had the opportunity to attend that hearing and voice any concerns but neglected to do so or to ask for a continuance.³ Accordingly, any challenge to the school choice proceedings

written appearance not required if pleadings provide sufficient information notifying parties where legal papers may be served).

Mazzuca v. Abreu, 310 A.3d 775, 783 (Pa.Super. 2024) (cleaned up).

³ The record indicates that Father may have missed the hearing due to his simultaneous participation in an accelerated rehabilitation disposition program for criminal charges pertaining to driving under the influence of a controlled (Footnote Continued Next Page)

has been waived for failure to first present the issue in the trial court. **See** Pa.R.A.P. 302(a).

Next, Father avers that he has a fundamental right to parent his children and that he is protected by the ADA from negative stereotypes associated with both his opioid use disorder and receipt of medication-assisted therapy. **See** Father's brief at 105-06. Specifically, he assails the court's decision regarding family therapy services as violative of his parental decision-making. The court acknowledged Father's right to parent his children, but determined that clear and convincing evidence established "that he, at times, has been a detriment to the children's safety." Trial Court Opinion, 8/5/24, at 47. After finding the issue waived because Father failed to participate in the custody trial, the court expanded thusly:

Th[e trial] court has fairly given Father the ability to participate in every proceeding and listened to both parents; Father has made the decision to either not show up in proceedings or not behave in a calm fashion. Based on Father's actions, th[e trial] court correctly placed the children with Mother, placed conditions on Father's physical custody, and disallowed him from participating in such decisions that were for the welfare of the children.

Id. Our review of the record reveals that the court conscientiously considered the particular circumstances in this case throughout its history, and did not rely upon impermissible stereotypes. Since the record belies the underpinnings of Father's claim, he is not entitled to relief.

substance. Notwithstanding the legitimacy of this other engagement, the fact remains that Father neither attended the pre-scheduled school choice hearing nor sought a continuance of that hearing based upon his criminal court obligations.

In his penultimate sub-argument, Father claims that the court abridged his free speech rights by imposing guidelines on how the parties were to communicate. **See** Father's brief at 110. Critically, Father does not elucidate **what** guidelines curtailed these rights. Therefore, he has waived any challenge in this regard for lack of development.⁴ **See Commonwealth v. Armolt**, 294 A.3d 364, 377 (Pa. 2023) ("[When an appellant] fails to develop the issue in any other meaningful fashion capable of review, that claim is waived. It is not the obligation of an appellate court to formulate an appellant's arguments for him." (cleaned up)).

Finally, Father attacks the court's requirement that he submit to hair-follicle testing as non-compliant with the ADA because it is inaccurate, invasive, and imposes an onerous financial burden. **See** Father's brief at 111-13. He insists that "[n]either Mother nor the trial court has shown any

⁴ Even if not waived, he would not be entitled to relief. In First Amendment cases, "an appellate court has an obligation to make an independent examination of the whole record in order to make sure that the judgment does not constitute a forbidden intrusion on the field of free expression." **S.B. v. S.S.**, 243 A.3d 90, 104 (Pa. 2020) (cleaned up). What we glean from the record is that the trial court required the parties to only communicate through the Our Family Wizard application. It is well-settled that "[r]estrictions on the time, place and manner of expression, whether oral, written or symbolized by conduct, are a form of a content-neutral regulation of speech." **Id.** at 105 (cleaned up). Such restrictions pass constitutional muster if they: "(1) are justified without reference to the content of the regulated speech; (2) are narrowly tailored to serve a significant governmental interest unrelated to speech; and (3) leave open ample alternative channels for communication of the information." **Id.** (cleaned up). Here, the court imposed this guideline after Mother sought relief from Father's inflammatory and threatening text and email messages. Given the context and the reasonableness of the restriction, we conclude that it withstands constitutional scrutiny.

objective evidence – which the ADA requires – that demonstrates why hair-follicle testing must be employed here rather than the urine testing that Father already submits to through his treatment program[.]” *Id.* at 113. Consequently, Father asks us to ban the trial court from forcing him to submit to any more such tests. *Id.*

Notably, Father’s concise statement set forth a single issue pertaining to the hair-follicle testing:

Whether this Court committed reversible error by subjecting Father, at Mother’s behest, to invasive, inherently-unreliable, hair-follicle testing by a purported forensic laboratory that previously had its license to conduct forensic testing revoked due to unscientific practices in which it engaged in connection with a criminal action before the Court of Common Pleas of Philadelphia County, Pennsylvania.

Pa.R.A.P. 1925(b) statement, 6/24/24, at ¶ 11. He makes no reference to the ADA nor to the urine testing. In a similar vein, his complaint about the ADA violations does not explicitly mention the hair-follicle testing. In order to find this issue preserved, we would need to extrapolate from “the conditions th[e trial c]ourt placed on Father’s exercise of physical custody of the children” as referencing the hair-follicle testing. *Id.* at ¶ 4. The court has historically imposed many such conditions, including supervised visitation, reunification counseling, random drug screens, prohibiting Father from driving the children, and restricting Father from consuming alcohol or illicit substances within twenty-four hours of his custodial time. Notably, the court did not interpret any of Father’s issues as challenging ADA complicity of the hair follicle testing.

Plainly, the argument Father presents on appeal regarding the hair-follicle testing was not presented to the trial court. Accordingly, it is waived.⁵ **See** Pa.R.A.P. 302(a).

Standard Operating Procedures

In his next issue, Father argues "that the trial court enforced its [standard operating procedures] in a manner that would inflict maximum damage to Father's position at any given time." Father's brief at 115. He does not specify which procedures were improperly enforced or which sanctions were too extreme, but rather contends summarily that the court abused its discretion because it held Father accountable for what he deemed to be merely minor deviations from the court's procedures. As such, Father waived this issue by not developing it.⁶ **See Armolt**, 294 A.3d at 377.

⁵ We note that had Father not waived this issue, he still would not be entitled to relief. The ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C.A. § 12132. The regulations interpreting this provision ensure that "charges for services violate the ADA (1) when the fee pays for services required by the ADA; and (2) when nondisabled people do not also incur the fee." **Robishaw v. The Providence Prob. Ct.**, 206 F. Supp. 3d 723, 730–31 (D.R.I. 2016) (citing 28 C.F.R. § 35.130(f)). The hair follicle testing in this case fails both requirements. It is not a service compelled by the ADA, and any individual, regardless of whether they suffer from opioid use disorder, may be required to pay for the testing if the court so orders. Accordingly, Father's ADA challenge fails.

⁶ Even if not waived, the trial court properly imposed its standard operating procedures upon Father as it would any party, whether represented by counsel or proceeding *pro se*. As our Supreme Court has explained:

(Footnote Continued Next Page)

Motion to Recuse

Finally, Father attacks the court's decision not to recuse itself in the underlying matter. He highlights several instances of court conduct in August and September 2023, upon which he based his petitions for recusal. **See** Petition for Recusal, 10/13/23, at 4-6; Father's brief at 89-90. Father argues that the trial judge's "comments not only demonstrated animus towards Father as someone who suffers from a federally-protected disability, they also reflected stereotypical beliefs about large men who suffer from mental and behavioral health issues and included comments that contained a racial component such as [the] remark that Father appeared 'flushed.'"⁷ ***Id.*** at 94-

Under Pennsylvania law, *pro se* [litigants] are subject to the same rules of procedure as are represented [litigants]. Although the courts may liberally construe materials filed by a *pro se* litigant, *pro se* status confers no special benefit upon a litigant, and a court cannot be expected to become a litigant's counsel or find more in a written *pro se* submission than is fairly conveyed in the pleading.

Commonwealth v. Blakeney, 108 A.3d 739, 766 (Pa. 2014) (cleaned up). Father, a licensed attorney, chose to represent himself at various times during the custody proceedings. He was held to the same standards as any *pro se* litigant, with or without formal legal training and practical experience. The trial court was not required to grant him any special treatment when he failed to abide by those procedures and certainly did not abuse its discretion in not granting him leniency. Further, our review of the record revealed no instances where the court imposed an outlandish sanction for Father's non-compliance.

⁷ To clarify, Father maintains that the "flushed" comment had "a definite racial component" because Father is white and the trial judge is "a woman of color[,]" "only people of certain skin tones are capable of being described as 'flushed,'" and the judge had no medical training that would otherwise enable her to opine on his appearance. **See** Father's brief at 95 n.48. If anything, we find Father's statements to have not only a racial, but a racist, component, which we vehemently condemn.

95. He insists that he presented ample evidence to demonstrate that the trial judge's impartiality may reasonably be questioned in this custody matter, and that he was entitled to a hearing to present witness testimony on his recusal request. ***Id.*** at 92, 95.

Regarding the procedure employed, it is well-settled that "recusal motions are routinely addressed in the first instance by the judge whose recusal is sought." ***Commonwealth v. Dip***, 221 A.3d 201, 208 (Pa.Super. 2019) (citation omitted). Consequently:

[I]t cannot be the case that any question of fact even remotely involving a judge's impartiality requires a separate hearing before a separate judge. Instead, the general rule is that a party seeking the recusal of a judge, at a minimum, must satisfy a burden of production and persuasion to show that the recusal claim is not frivolous. This may require the presentation of witnesses or evidence before the judge whose recusal is sought.

Id. (cleaned up). However, "where fabricated, frivolous[,] or scurrilous charges are raised against the presiding judge during the course of the proceeding, the court may summarily dismiss those objections without hearing where the judge is satisfied that the complaint is wholly without foundation." ***Id.*** at 209 (cleaned up); ***see also Commonwealth v. Cherpes***, 520 A.2d 439, 447 (Pa.Super. 1987) (rejecting outright appellant's claim that the court was required to hold an evidentiary hearing on a recusal motion).

We consider substantive challenges to the denial of a recusal motion pursuant to the following principles:

[O]ur review of a trial court's denial of a motion to recuse is exceptionally deferential. We recognize that our trial judges are

honorable, fair[,] and competent, and although we employ an abuse of discretion standard, we do so recognizing that the judge himself is best qualified to gauge his ability to preside impartially. A trial judge should grant the motion to recuse only if a doubt exists as to his or her ability to preside impartially or if impartiality can be reasonably questioned.

In order to prevail on a motion for recusal, the party seeking recusal is required to produce evidence establishing bias, prejudice[,] or unfairness which raises a substantial doubt as to the jurist's ability to preside impartially.

Int. of L.V., 209 A.3d 399, 415 (Pa.Super. 2019) (cleaned up).

Here, the court entertained Father's arguments regarding his recusal motion during a previously scheduled judicial conciliation hearing because "[i]t's very hard to get court dates in this district[.]" N.T. Conciliation, 10/16/23, at 5-6. Father argued that some of the trial judge's actions evinced "stereotypical and biased and prejudiced beliefs towards people who suffer from opioid use disorder and potentially also due to [his] gender as someone who identifies as male." ***Id.*** at 6. He averred that while similarly situated *pro se* women had been "treated with compassion and grace" for admitting to custody violations, he had been "humiliated" and "shamed in front of [his] peers in the legal community[.]" ***Id.*** at 6-7. Father further maintained that throughout the custody proceedings the judge had focused on his addiction instead of the best interests of the children.⁸ ***Id.*** at 7.

Mother's counsel wholly refuted Father's accusations, characterizing them as "untrue[,"] "impertinent[,"] and "slanderous to the court." Mother's

⁸ Tellingly, we reiterate that Father has elected not to challenge the court's best-interests analysis in this Court.

brief at 9; **see also** Answer to Petition for Recusal, at ¶ 47 ("Father's [p]etition recites offensive, impertinent, and slanderous allegations against this [c]ourt that are entirely untrue. Father's lies are not a basis for this [c]ourt to recuse itself."). The GAL added that she "ha[d] not seen any indications of bias that [she was] concerned about" and that introducing a new judge at the time Father filed the motion would not have been in the children's best interest. **See** N.T. Judicial Conciliation, 10/16/23, at 10. Ultimately, as noted, the court denied the recusal motion. It did not rule upon Father's renewed motions immediately preceding the custody trial because they were not properly filed.

Based on the foregoing, we discern no error in how the court considered Father's recusal request. The statements Father attributes to the trial judge do not appear of record and, in any event, were refuted by Mother's counsel. The certified record we have reviewed contains no evidence warranting a reasonable person to question the trial judge's impartiality in the custody proceedings. Therefore, we conclude that the trial court did not err in denying Father's recusal petition, and he is not entitled to relief on this issue.

Based on the foregoing, Father has not convinced us of any reason to disturb the court's custody order. Accordingly, we affirm.

Order affirmed.

Judgment Entered.

Benjamin D. Kohler

**Benjamin D. Kohler, Esq.
Prothonotary**

12/30/2024

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

ZACHARY GELACEK,

Plaintiff/Appellant,

v.

MONICA COSTLOW,

Defenadnt/Appellee.

**OPINION
CHILDREN'S FAST TRACK APPEAL**

No.: FD-21-007339-007
Sup. Ct. No. 761 WDA 2024

BY:

The Honorable Nicola Henry-Taylor
City-County Building, Room 712
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Pittsburgh, PA 15219

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2024 AUG-5 PM 1:52
DEPT. COURT RECORDS
CIVIL / FAMILY DIVISION
ALLEGHENY COUNTY, PENNSYLVANIA

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

ZACHARY GELACEK,
 Plaintiff/Appellant,

v.

MONICA COSTLOW,
 Defendant/Appellee.

No.: FD-21-007339-007
 Sup. Ct. No. 761 WDA 2024

OPINION

Judge Nicola Henry-Taylor

August 5, 2024

Zachary Gelacek (“Father”) appeals from an Order of Court entered on May 23, 2024.¹ The Order denied his Complaint in Custody and Petition for Modification of Custody. The Order granted sole legal custody and sole physical custody of the parties’ children, P.G. (DOB: 06/26/2012) and L.G. (DOB: 03/11/2014) (“Children”), to Monica Costlow (“Mother”), with Father having supervised visitation with the Children four (4) hours per week upon the satisfaction of the following requirements: (1) Father contact the reunification counselor to begin counseling with the Children, (2) once the reunification counselor recommends that the Children be integrated, Father would complete an eighteen (18) panel hair

¹ Father initially appealed the Interim Order of Court entered after the conclusion of trial, which indicated that findings were forthcoming. The appeal was quashed by this Honorable Court. See docket 564 WDA 2024.

follicle test within seven (7) days of the first session with the Children, and (3) Father continue mental health treatment and substance abuse treatment and provide a copy of the custody evaluator's evaluation to his providers. Visitation could be expanded upon the recommendation of the reunification counselor.

The court further ordered that Father could not file a Custody Complaint or Petition for Modification until he showed proof to the Guardian *ad Litem* (GAL) and the undersigned of his compliance with completing substance abuse treatment that addresses co-occurring disorders and following all recommendations, engaging in mental health treatment with a doctor that can prescribe medication, and completing reunification counseling.

I. Factual Background

A one (1) day custody trial was held in this matter on April 9, 2024. Plaintiff, Zachary Gelacek ("Father"), and Defendant, Monica Costlow ("Mother") are the natural parents of two (2) minor children, Peter Gelacek (DOB: 06/26/2012) and Louisa Gelacek (DOB: 03/11/2014) ("Children"), who are the subject of these proceedings. Mother presently resides in Upper St. Clair, Allegheny County, Pennsylvania with her significant other, Andrew Dittoe. Father presently resides in Ford City, Armstrong County, Pennsylvania with Paternal Grandmother and Paternal Step-Grandfather.

1. Background of the Parties

The parties are highly educated, and they met while attending law school at the University of Pittsburgh. Mother is currently employed as a Regulatory Policy Analyst with the University of Pittsburgh. Father is currently employed in a solo practitioner law practice. Father has struggled to maintain stability in his employment and housing situation due to substance use disorder. His longest job was at Reed Smith for approximately eight (8) years; however, he was fired due to difficulties functioning when his substance use increased.² The Pennsylvania Disciplinary Board has required him to address his substance use disorder through treatment. He was evicted from his apartment in December 2019 due to financial issues related to his addiction.

The parties were married on April 9, 2011, separated in May 2016 and divorced on April 19, 2023. The marriage ended, at least in part, due to Father's substance use disorder, co-occurring mental health issues, and related dysfunction. The evidence at trial reflected that Father continued to misuse substances, including, but not limited to, heroin and fentanyl after the separation and throughout the pendency of the custody case. Specifically, after the custody evaluation was

² This information was self-reported by Father to Dr. Beth Bliss, and is reflected in her custody evaluation dated May 26, 2023. In various proceedings, Father became upset when the court would ask him about the status of his law license and any possible interactions with the Disciplinary Board. Father filed multiple Petitions requesting that the undersigned recuse herself from this matter, averring that these comments showed bias against him. The Petitions were denied.

completed, Father was arrested in June 2023 for driving under the influence of fentanyl and other controlled substances. Further compounding the concerns regarding his sobriety, he tested positive in a court mandated drug test for fentanyl in October 2023.

2. History of Father's Parenting Time

With respect to parenting time with the children, Father has not had overnight custody of the children at any point since the parties' separation. As of the day of trial, Father's last parenting time occurred on or around September 30, 2023. Since that time, Father has not had any supervised visits with the Children, despite the fact that he has permission by the Court to enjoy supervised visitation. With respect to phone contact, P.G. called Father a few times in October and November 2023, and L.G. called Father on Christmas Day 2023. Father has only initiated one (1) call to the Children—a call to L.G. on her birthday. Regardless of whether the Children or Father initiates the call, the calls only last two to three (2-3) minutes in duration. Father did not send the Children any Christmas or birthday gifts. Dr. Bliss opined that Father "cannot put [the Children's] needs above his own," which may explain why Father has not had visits with the Children since October 2023. Father's objection to the fact that the Court has increased supervision and decreased the duration of the visits is more important to him than spending any time with the Children. It appears that Father has not made any fruitful attempt since that time to

remain in contact with the Children, either through in person visits or phone or video calls.

The history of Father's custody schedule, and parenting time, with the children has been tumultuous. The parties were first before the court for an Interim Relief Hearing before Hearing Officer Laura Valles. Following the Interim Relief Hearing, an Order of Court was issued on June 9, 2021. This Order directed that Father would have supervised partial physical custody with the Children every Wednesday from 4:00 p.m. to 7:30 p.m. and Saturday from 12:00 p.m. to 7:30 p.m. Father's custodial time would be supervised by Paternal Grandmother, Paternal Step-Grandfather, or a mutually agreed on third party. The Court addressed Father's substance use disorder from the onset and required Father to submit to random drug screens through Mainline Drug Testing Services and scheduled a Review Hearing before Hearing Officer Laura Valles. By consent, the parties entered into an Interim Order of Court, on September 22, 2021, and agreed that Father would continue to have supervised partial physical custody. Father was to continue with random drug screens, and Mother could request that Father undergo a hair follicle test.

On January 6, 2023, Mother submitted a Motion for Custody Evaluation. In her Motion, Mother averred that Father failed to exercise all of the visitation periods provided in the Interim Orders, and when Father did exercise his custody time, Paternal Grandmother and Paternal Step-Grandfather did not properly supervise

Father. Father continued to have supervised custody with his mother supervising until July 2023 when Mother submitted an Emergency Petition for Special Relief.

In her Emergency Petition, Mother averred that Father was arrested on June 16, 2023 and charged with 75 Pa.C.S.A. §§3802(d)(1)&(2) (relating to Driving Under the Influence of Controlled Substances). Mother stated that Father concealed this from her and has continued to drive the Children during his partial custody time. In addition, Mother averred that Father was left unsupervised during his custodial periods and that the Children have observed Father drink alcohol during his visits. Mother requested that Father's custodial periods be suspended, that his visits be supervised by Happy Child Supervision, and that Father complete a hair follicle test that covers opiates, heroin, and alcohol, among other substances. The Court issued an Interim Order on July 28, 2023, stating that Father would be prohibited from driving a vehicle with the Children present pending oral argument.

As a result of the concerns raised in Mother's Emergency Petition for Special Relief, the Court conducted an *In Camera* Interview with the Children on August 4, 2023. On August 7, 2023, the Court issued an Order directing that the Children would be registered for and attend the Upper St. Clair School District pending the School Choice Hearing. On September 15, 2023, Mother submitted another Petition for Special Relief Regarding Custody and raising some educational issues. Additionally, Mother averred that Father, Paternal Grandmother, and Paternal Step-

Grandfather screamed at, and made disrespectful comments to, the Children during Father's custodial periods, and that Father refuses to communicate through Our Family Wizard despite being ordered to do so. Mother requested that Father execute any documents for Peter's evaluation by Upper St. Clair, that his custody periods only be supervised by Happy Child Supervision, that Father and his family cease making negative and inappropriate comments to the Children about Mother, and that Father only communicate with Mother on Our Family Wizard.

On September 25, 2023, Father submitted an Answer to Mother's Petition. In his Answer, Father denies the accusations made by Mother and again claimed that his constitutional rights and his rights under the Americans with Disabilities Act. He further averred that the evaluation by Woodland Hills was suggested by staff at Sacred Heart—that Mother and Father consent to having an Individualized Education Plan completed through their home school district (which was Woodland Hills School District at the time). Father also averred that Mother has told the Children that Father and his family are mentally ill. Father requested that Mother's Petition for Special Relief be denied.

On September 26, 2023, in considering all of the above, the undersigned issued a Memorandum and Order of Court. In its Order, the Court directed that the parties follow the schedule in the September 21, 2022, Order of Court. Father was prohibited from using alcohol or illegal or non-prescribed drugs at least twenty-four

(24) hours prior to his supervised visits. Father was ordered not to transport the Children, and to submit to a hair follicle test within twenty-four (24) hours of the Order. The Order also laid out provisions for phone and video calls with the Children and for using Our Family Wizard. Father was also ordered to comply with signing all documents for the school district to meet the Children's educational needs and that he would not make negative or inappropriate comments to the Children about Mother. In addition, on October 2, 2023, the Court ordered Father and the Children to undergo reunification counseling with Inspiring Change, LLC.

On October 5, 2023, Mother submitted a Second Emergency Petition for Special Relief Regarding Custody. In this Petition, Mother averred that Father did not complete the ordered hair follicle test. Mother also averred that the GAL learned from the Children that Father left his visit to go get "energy drinks;" after Father returned, he went into a separate room, lied down on the couch, and appeared to be under the influence. Mother averred that Paternal Grandmother and Paternal Step-Grandfather did not take action regarding Father's behavior. Mother again requested that Father's custodial time be suspended.

On October 6, 2023, the Court issued an Order directing that pending the October 16, 2023, Judicial Conciliation, Father's partial physical custody would be supervised by Happy Child Supervision. As stated above, Father has not had parenting time with the children since Happy Child Supervision was designated as

the supervisor. Father has decided that he would rather not visit with the children than be supervised by Happy Child Supervision.³

3. History of Father's Conflicts with Professionals Assigned to the Case and Involved with the Courts

Father has raised concerns about inappropriate behavior regarding almost everyone involved in the case, starting with Mother, her attorney, the Co-parenting Counselors, Judge Wagner and ending with the undersigned.

a. Mother

In her Motion for Custody Evaluation, Mother had previously proposed utilizing Dr. Eric Bernstein as a custody evaluator, which Father rejected. Father suggested Dr. Arnold Sheinvold, an evaluator based in Harrisburg, which Mother rejected. At a Review Conciliation on December 19, 2022, Father refused to sign a Consent Order to allow Allegheny Forensic Associates to conduct the evaluation, claiming that their evaluations were "inadequate." Mother averred that Father was trying to circumvent the parties' prior agreements and the Family Division's procedures for appointing custody evaluators. Mother requested that the Court enter an Order directing the completion of a full custody evaluation by an evaluator at Allegheny Forensic Associates.

³ Father has previously stated that he did not want Happy Child Supervision to supervise his visits with Children because the founder of Happy Child Supervision, Susan Dzubinski Gaultieri, was a former Allegheny County Sheriff's Deputy.

In his Answer to Mother's Motion for Custody Evaluation, Father averred that his selection of Dr. Sheinvold as an evaluator was governed by the fact that Mother's work supervisor was the Dean of the University of Pittsburgh's School of Public Health and that both parties' fathers are prominent doctors in the western Pennsylvania medical community—seeming to infer that any evaluator from Allegheny County would be biased from Mother's potential connections to the aforementioned individuals. Father further claimed that Dr. Sheinvold's evaluation process is conducted in a more relaxed environment for children and is more diligent about contacting collateral sources compared to Allegheny Forensic Associates, and that Allegheny Forensic Associates is severely backlogged in cases.

Mother then submitted a Response to Father's Counter-Petition. In her Response, Mother averred that Father never proposed Dr. Sheinvold as a potential evaluator. Mother's counsel had sent Father's counsel four (4) emails concerning whether Father would agree to utilize Dr. Eric Bernstein as an evaluator, but only heard mention of Dr. Sheinvold when Father's counsel finally responded to Mother's counsel. Mother averred that there was no basis to have Allegheny Forensic Associates removed as an evaluator for this matter, and claims that Father is trying to "create a conflict where no conflict exists."

On September 12, 2023, the school psychologist was attempting to contact Father regarding his participation in P.G.'s Individual Education Plan (IEP) process.

When Father did respond, he made statements claiming that Mother was making false representations about schooling and about him. On September 20, 2023, Father sent a subsequent email with further accusations that Mother intentionally scheduled the IEP when she knew that Father had a conflict, and that Mother was “alienating” P.G.

In October 2023, when this Court ordered that Father’s visits would be supervised by Happy Child Supervision, after concerns that Paternal Grandparents were not providing adequate supervision of Father during visits, Father emailed Mother stating that he would “see her in federal court” and he “would not allow a sheriff” to supervise his visits. Father also admitted to Dr. Bliss that he has made negative statements about Mother to the Children. He told Dr. Bliss that she “has OCD” and that she wanted to divorce him. The Children would become upset when they would hear such negative comments, to the point where they would feel attacked and cry. Father did not see these statements as wrong or having a negative impact on his relationship with Mother or the Children.

b. Lynn MacBeth, Co-Parenting Coordinator

Father denied verbally abusing Lynn Macbeth during co-parenting sessions, and claimed that he ended co-parenting counseling sessions based on a letter from his physician, Dr. Michelle Barwell, stating that Ms. Macbeth’s participation “contravened ethical rules” given previous interactions with Father (which Father

did not detail in his Answer). Father also claimed that raising a negative inference about his parenting based on his medical treatment would violate the Americans with Disabilities Act and the U.S. Constitution.

The parties participated in co-parenting counseling with Lynn MacBeth for a short period of time, until Father claimed that there was a conflict of interest with Ms. MacBeth after he previously waived any conflict. The basis of his claimed conflict was that Ms. MacBeth had prior contact with him during a bar association program assisting attorneys with substance use disorder. The co-parenting sessions were discontinued by Ms. MacBeth due to Father's behavior of verbally attacking Mother and Ms. MacBeth. Ms. MacBeth was not able to regulate and control the situation sufficiently to continue sessions with the parties. Father denied verbally abusing Lynn Macbeth during co-parenting sessions, and claimed that he ended co-parenting counseling sessions based on a letter from his physician, Dr. Michelle Barwell, stating that Ms. Macbeth's participation "contravened ethical rules" given previous interactions with Father.

c. Mother's Attorney and Judge Henry-Taylor⁴

In October of 2023, father sent harassing emails to attorney McKinley stating, "I will be filing a defamation action about these allegations. I have endured enough

⁴ The undersigned combined the conflicts with Mr. McKinley's conflicts due to the fact that, other than issues raised in Father's pleadings, Father's complaints about the undersigned were addressed in his email correspondence with Mr. McKinley.

abuse at your hands..." Father further stated that "[t]his will be addressed in a Dragonetti action forthcoming in Armstrong County...please also know that I plan to file a motion for Judge Henry Taylor to recuse herself in the near future. I also plan to file complaints against her with the Pennsylvania Supreme Court and the Department of Justice's Office of Civil Rights..."

Father further went on to state that her actions and comments in the last several custody hearings have violated his rights under multiple federal laws and are no different in substance of quality than those of another judge who had left the bench due to allegations of making racists comments. He stated that he was notifying the attorney due to the inappropriate use of an Emergency Motion, claiming: "I have a busy law practice and I do not have time to deal with another emergency motion on top of all of the other filings currently due. This filing is another step in a campaign intended to harass and intimidate me from enforcing my constitutionally-guaranteed rights to parent my children," as well as retaliation for notifying the Upper Saint Clair School District of [Mother's] prior actions in this matter."

Father's demand included all communications "to and by Mother, her paramour, her parents, and anyone else working on his or her respective behalf or as her or her respective behalves [sic] or as his or her respective agents...any communications with the Court Administrator's Office for the Family Division as

well as any communications between [Mother's counsel] and Julie Colton, Todd Begg, Robert Raver, and/or any other agent of Judge Eaton."

Father sent Mother's counsel four (4) separate emails on December 14, 2023, claiming that the court should not be presiding over this matter and that he will raise the court's actions to the Supreme Court, federal court, and the Judicial Conduct Board.

d. Judge Chelsa Wagner

The case was assigned to Judge Chelsa Wagner prior to the undersigned handling the case. On or around January 12, 2023, Father submitted a Motion for Recusal of Judge Chelsa Wagner from the custody matter. In his Motion, Father averred that Mother made statements to Father during the course of their relationship that she has a "positive relationship" with Judge Wagner, who was allegedly a classmate of Mother's at the University of Pittsburgh School of Law. Father further averred that this "positive relationship" may give the appearance of impropriety or prejudice based on Mother's comments. Father requested that Judge Wagner recuse herself from this matter and that another Family Division judge "with no material previous relationship with either party or other disqualifying relationship to the people and matters involved herein" be assigned to this case.

Mother submitted an Answer to Father's Motion. In her Answer, Mother denied making any statements to Father about a relationship with Judge Wagner.

Mother stated that Judge Wagner had been presiding over the case for a year and Father never previously filed a Motion for Recusal. Mother requested that the Court deny Father's Motion. On January 27, 2023, Judge Wagner denied Father's Motion for Recusal and added in her Order that she did not have any recollection of Mother and that any possible interactions did not impact her impartiality in presiding over the case and did not merit a recusal.⁵

In addition, Father engaged in an exchange with Judge Wagner's law clerk, wherein Father responded, "Don't worry bud, your 'Good luck' email is going to be an exhibit. Are you going to self-report your conduct or do I need to file a complaint about your email?" Judge Wagner's law clerk responded, "Please feel free to report my 'conduct.' I certainly don't have anything to self-report. I am not aware that wishing 'best of luck' to a pro se litigant in navigating the Family Division system runs afoul of any ethical rules or prohibitions. But, please, by all means, feel free to do what you think is best."

e. Randy Brodsky, Mainline Testing Services

As stated above, Father was ordered by this Court on several occasions to undergo a hair follicle test to test for substances. For the most part, Father refused to take these tests when ordered. Father was initially ordered to undergo random drug testing with Mainline Testing Services but was eventually barred from testing

⁵ Judge Wagner ultimately recused herself from this matter.

with Mainline due to harassing emails and calls that he sent to Mr. Randy Brodsky. Mr. Brodsky sent an email to Father stating, "You are out of line here [Father], per your text messages, that I am in cahoots with anyone. You calling screaming at me without telling me who you were and then calling me an 'a-hole' was very unprofessional on your part." Mr. Brodsky followed up with another email banning Father from further testing with Mainline Testing.

f. Dr. Beth Bliss, Custody Evaluator

The Pre-Trial Conference was held on February 5, 2024 and Father did not participate in the proceeding. The GAL submitted her Final Report on March 28, 2024. On April 2, 2024, Father submitted an email to Mother's counsel, the GAL, and the Court stating that he intended to represent his Petition for Recusal. He submitted a copy of the Petition with this email, but did not appear to submit it through the Client Services Center as was required for all self-represented litigants with cases in Allegheny County's Family Division, as well as the undersigned's Standard Operating Procedures. Later that day, Father submitted a subsequent email to Mother's counsel, the GAL, and the Court stating that he would be submitting a Motion *in Limine* to exclude Dr. Beth Bliss's testimony as the court-appointed custody evaluator because Dr. Bliss became the appointed custody evaluator while the case was still assigned to Judge Wagner, who later recused.

g. Inspiring Change, LLC, Co-Parenting Counselor

An Order of Court issued on October 16, 2023, directed Father and the Children to undergo reunification counseling with Inspiring Change, LLC. Shortly after the court-ordered counseling, the court received notice from Inspiring Change, LLC that they would not be able to provide reunification counseling. Inspiring Change, LLC handles complex/high-conflict custody cases, and it is not common for them to terminate work with a family early in the process. The court's staff sent the parties, and the GAL, communication and requested that the GAL provide a position regarding alternative providers.

On October 31, 2023, an Order of Court was issued vacating Inspiring Change's appointment and directing that the GAL contact Dr. Deborah Gilman regarding her ability to conduct reunification counseling. If Dr. Gilman could not perform it, then the GAL was to contact Dr. Shannon Edwards regarding her ability to conduct reunification counseling. If Dr. Edwards could not perform it, then the GAL was to contact the Parenting Institute⁶ regarding their ability to conduct reunification counseling. Ultimately, on November 2, 2023, the court issued an Order appointing Dr. Deborah Gilman to conduct reunification counseling with

⁶ The parties already saw Lynn MacBeth and the Parenting Institute for co-parenting counseling; however, the court was running out of options for appropriate services to support the family's needs.

Father and the Children. That counseling never occurred due to Father's lack of contact with Dr. Gilman.

II. Procedural History⁷

On April 26, 2023, an Order of Court was issued reassigning this matter to the undersigned judge. On May 4, 2023, Father submitted a Petition for Contempt and Special Relief. In his Petition, Father averred that Mother ignored or rejected his requests regarding therapy and communications with third parties. Father also averred that Mother has made unilateral medical and educational decisions for the Children, and that Mother was engaging in parental alienation, disparagement and degradation of Father, and interfering with Father's daily video calls with the Children. Father requested that Mother pay \$5,000.00 in counsel fees, that a Guardian ad Litem ("GAL") be appointed for the Children, and that a hearing on medical and educational decision making be scheduled.

On May 9, 2023, Mother submitted an Answer and New Matter to Father's Petition. In her Answer, Mother avers that Father admitted to her as late as January 2021 that he was using drugs. Mother reiterated that Father failed to comply with random drug screens and co-parenting counseling by delaying screens and sessions

⁷ The court recognizes that this Procedural History is long and protracted; however, the undersigned believes it is necessary to include this information to provide context to the events leading up to the Order of Court issued on May 23, 2024. As such, the trial court will provide some of the procedural history in an Appendix "A" to this Opinion.

and engaging in inappropriate behavior that caused the providers to cease services with the family.⁸

Following oral argument, on May 17, 2023, the undersigned issued an Order of Court directing as follows: (1) the parties would jointly contact Dr. Bliss concerning the status of the full custody evaluation; (2) neither party would directly communicate with the other party's parents or step-parents; (3) a GAL would be appointed; (4) all other issues raised in Father's Petition for Contempt and Special Relief would be consolidated with the custody trial; and (5) counsel would be prepared to provide documentation of counsel fees when the issue is litigated.

On July 6, 2023, Mother submitted a Praeclipe for a Judicial Conciliation before the undersigned, and a Judicial Conciliation was scheduled for October 16, 2023. Also on July 6, 2023, Mother submitted a Petition for Special Relief Regarding Custody. In her Petition, Mother averred that P.G. experienced behavioral issues at Sacred Heart Elementary School due to his ADHD, and had to complete the school year virtually. P.G. needed assistance to meet his needs that Sacred Heart would not be able to provide. Mother wanted to enroll the Children in the Upper St. Clair School District, which would offer supports for P.G.'s

⁸ Mother admits that she refused to do family therapy with Father, but Hearing Officer Valles confirmed that she did not have to participate due to Father's conduct. Mother claims Father does not include her in all legal custody conversations, that Father sent Mother's parents a letter containing "untrue and defamatory statements" about Mother, and that Father has made similar allegations to their church and the Children's school. According to Mother, Father invokes the First Amendment's Establishment Clause to justify his conduct.

educational needs. Mother messaged Father asking if he agreed to enroll the Children in Upper St. Clair, but he did not respond. Mother requested that she be permitted to enroll the Children in the Upper St. Clair School District and schedule a school choice hearing.

On July 11, 2023, Father submitted an Answer to Mother's Petition for Special Relief Regarding Custody.⁹ In his Answer, Father averred that Mother chose the Upper St. Clair school district, in part, because her significant other, Andrew Dittoe lives in that school district. Father suggested that the Children attend the Riverview School District "where Father has an opportunity to secure residency" or the North Hills School District.¹⁰ Father also averred that having the Children attend school in Upper St. Clair would frustrate his custodial time as Upper St. Clair is about one and a half (1 ½) hours away from Father's residence in Armstrong County. Father requested that Mother's Petition be denied and that the Children remain at Sacred Heart and/or cyber school until further Order and that the matter be scheduled for a school choice hearing.

Following oral argument, on July 14, 2023, the undersigned issued an Order of Court directing as follows: (1) Mother's Petition for Special Relief was deemed a Petition for School Choice Hearing; (2) a School Choice Hearing was scheduled for

⁹ This Answer referred to here does not appear on the Department of Court Records docket.

¹⁰ It should be noted that Father was not residing in either of these school district at the time the Petition and Answer were submitted. To this Court's knowledge, Father's residence remained in Ford City, Armstrong County for the entirety of the litigation.

August 4, 2023; and (3) pending the School Choice Hearing, both parties could register the Children for the school district where each parent resides. On July 18, 2023, a Pre-Hearing Order of Court was issued scheduling the matter for a half (1/2) day School Choice Hearing on August 4, 2023.

Meanwhile, on July 11, 2023, an Order of Court was issued appointing Kilbreth E. Barton, Esquire as the GAL for the Children. Shortly after this Order was issued, Court Administration notified the undersigned's chambers that Ms. Barton-Rhea could not accept the appointment. As such, an Order of Court was issued on July 18, 2023 vacating Ms. Barton-Rhea's appointment. On July 24, 2023, an Order was issued appointing Alyson Landis, Esquire as the GAL for the Children.

On July 27, 2023, Mother submitted an Emergency Petition for Special Relief. In her Emergency Petition, Mother averred that Father was arrested on June 16, 2023 and charged with 75 Pa.C.S.A. §§3802(d)(1)&(2) (relating to Driving Under the Influence of Controlled Substances). Mother stated that Father concealed this from her and has continued to drive the Children during his partial custody time. In addition, Mother averred that Father was left unsupervised during his custodial periods and that the Children have observed Father drink alcohol during his visits.¹¹

¹¹Mother requested that Father's custodial periods be suspended, that his visits be supervised by Happy Child Supervision, and that Father complete a hair follicle test that covers opiates, heroin, and alcohol, among other substances. The Court issued an Interim Order on July 28, 2023 stating that Father would be prohibited from driving a vehicle with the Children present pending oral argument.

An Amended Emergency Petition was submitted on July 31, 2023 which contained additional information regarding the circumstances of Father's arrest.¹² Mother reiterated her original requested relief.

Following oral argument, on August 2, 2023, the undersigned issued an Order of Court directing as follows: (1) the School Choice Hearing would be continued to a later date; (2) an *In Camera* Interview with the Children would be scheduled for August 4, 2023; and (3) Mother's Emergency Petition would remain under advisement pending the *In Camera* Interview.

On July 27, 2023, Father's then counsel submitted an Expedited Motion to Withdraw and Continuance.¹³ Father averred that he would not have enough time to prepare for the School Choice Hearing due to the "quick scheduling" of the same and that he would be prejudiced by the lack of time to prepare. Mother's counsel submitted a Response on July 31, 2023, averring that Father's loss of counsel is not a legitimate basis to continue to School Choice Hearing. Mother requested that Father's request for a continuance be denied. An Order of Court was issued on

¹² In this Amended Emergency Petition, Mother averred that Father was pulled over by Blawnox Police while driving. The police officer noticed that Father was sweating profusely and had slurred speech, pinpoint pupils, and glossy eyes. The police officer called EMS while Father went in and out of consciousness. Father was transported by ambulance to St. Margaret's Hospital. At the hospital, blood tests were performed which showed that Father tested positive for fentanyl, amphetamine, morphine, and methadone. Mother averred that the blood tests confirmed that Father was using drugs again and that it was not safe for the Children to be left unsupervised with Father.

¹³ This Motion referred to here does not appear on the Department of Court Records docket.

August 2, 2023 permitting Father's counsel to withdraw on August 5, 2023 and ordering that the School Choice Hearing be continued.¹⁴

The *In Camera* Interview with the Children was conducted on August 4, 2023.

On August 7, 2023, the Court issued an Order directing that the Children would be registered for and attend the Upper St. Clair School District pending the School Choice Hearing. On August 14, 2023, a Pre-Hearing Order of Court was issued scheduling the School Choice Hearing for December 1, 2023.

On September 15, 2023, Mother submitted a Petition for Special Relief Regarding Custody. In her Petition, Mother averred that the Upper St. Clair School District conducted a meeting and sent forms which would permit the school district to evaluate P.G. for educational services. Mother stated that Father initially did not attend the meeting, and responded to an email from the school that he would not give permission for P.G. to be evaluated.¹⁵ On September 25, 2023, Father submitted an Answer to Mother's Petition. In his Answer, Father denies the accusations made by Mother and again claimed that his constitutional rights and his rights under the Americans with Disabilities Act.

¹⁴ In total, Father was represented by five (5) attorneys during the pendency of this custody litigation. From this point on, Father was a self-represented litigant.

¹⁵ Mother requested that Father execute any documents for Peter's evaluation by Upper St. Clair, that his custody periods only be supervised by Happy Child Supervision, that Father and his family cease making negative and inappropriate comments to the Children about Mother, and that Father only communicate with Mother on Our Family Wizard.

The GAL also submitted a Report on or around September 25, 2023. In her Report, the GAL details her contact with the family and the issues of P.G.'s school evaluation, Father's alleged actions towards Mother, Father's behavior while the Children are in his custody, and Father's DUI charges. The GAL recommended that Father and the Children enroll in family therapy, that Father and Mother communicate exclusively in Our Family Wizard, that P.G. be evaluated by the Upper St. Clair school district, that Father would not make negative comments about Mother to the Children, and that Father would not drive a vehicle with the Children present.

On September 26, 2023, in considering the above, the undersigned issued a Memorandum and Order of Court. In its Order, the Court directed that the parties follow the schedule in the September 21, 2022 Order of Court. Father was prohibited from using alcohol or illegal or non-prescribed drugs at least twenty-four (24) hours prior to his supervised visits. Father was not to transport the Children, and he was to submit to a hair follicle test within twenty-four (24) hours of the Order. Father was also to comply with signing all documents for the school district to meet the Children's educational needs and that he would not make negative or inappropriate comments to the Children about Mother. In addition, on October 2, 2023, the Court ordered Father and the Children to undergo reunification counseling with Inspiring Change, LLC.

On October 5, 2023, Mother submitted a Second Emergency Petition for Special Relief Regarding Custody. In this Petition, Mother averred that Father did not complete the ordered hair follicle test. Mother also averred that the GAL learned from the Children that Father left his visit to go get “energy drinks;” after Father returned, he went into a separate room, lied down on the couch, and appeared to be under the influence. Mother averred that Paternal Grandmother and Paternal Step-Grandfather did not take action regarding Father’s behavior. Mother again requested that Father’s custodial time be suspended.¹⁶

Father’s Response to this Motion contained a Counter-Petition requesting that the Court extend the deadline to file a Written Narrative and Proposed Order for the October 16, 2023 Judicial Conciliation. As an exhibit to his Response, Father attached the Forensic Chain of Custody and Control form for a five (5) panel and ETG drug screen performed by Fastest Labs; no results from that test were included, nor does the form list what substances were tested.

The GAL also submitted an Updated Report on October 6, 2023. In her Report, the GAL details the issues of Mother’s Emergency Petition for Special Relief, school choice, and communication on Our Family Wizard. The GAL

¹⁶ Father submitted an email claiming that he would be filing a defamation action against Mother’s counsel and a Motion for the undersigned to recuse herself, as well as complaints with the Pennsylvania Supreme Court and the Department of Justice. On October 6, 2023, Father submitted a Response raising many of the same points as his email. He also claimed that this Court did not follow the Rules of Civil Procedure in sending the September 28, 2023 Order via email instead of regular mail. Father averred that Mother was litigating this matter “in a manner designed to inflict the maximum amount of stress and trauma on Father.”

recommended that Father's custodial time be suspended pending the results of Father's hair follicle test, that Father get a hair follicle test that covers opioids, that Father get make up time if his hair follicle tests were negative, and that Mother be permitted to renew the Children's passports.

On October 6, 2023, the Court issued an Order directing that pending the October 16, 2023 Judicial Conciliation, Father's partial physical custody would be supervised by Happy Child Supervision, and that Father would be permitted to submit his Written Narrative and Proposed Order by October 11, 2023.

On October 12, 2023, Father submitted a Petition for Recusal. Father mentioned comments that the undersigned allegedly made concerning his sobriety, whether Father had reported his arrest and charge to the Disciplinary Board, and whether he had reached out to Lawyers Concerned for Lawyers or a similar organization.¹⁷ Father claimed that he was treated "like something less than human." Father requested that the undersigned recuse herself. An Order of Court was issued on the same day stating that the Petition would be addressed at the Judicial Conciliation and that Father had the burden of proof of demonstrating why the undersigned should recuse herself. Mother submitted a Response on October 13, 2023 denying the allegations that Father made in his Petition. Mother requested that Father's Petition for Recusal be denied.

¹⁷ Father is employed as an attorney who is licensed to practice in the Commonwealth of Pennsylvania.

A Judicial Conciliation was held on October 16, 2023. Mother's Second Emergency Petition for Special Relief, Father's Response, Father's Petition for Recusal, and Mother's Response were all addressed at that time. Following the Judicial Conciliation, two (2) Orders of Court were issued. The first Order issued on October 16, 2023 denied Father's Petition for Recusal. Then, a Memorandum and Interim & Interlocutory Order of Court was issued on October 18, 2023. In this Order, Mother was to have primary physical custody. Father was to have supervised visitation on Wednesdays after school until 7:30 p.m. and every Saturday from 9:00 a.m. to 9:00 p.m. Father's visits were to be supervised by Happy Child Supervision, and a failure to participate in visits could raise a negative inference.¹⁸ Moreover, Father and the Children were to undergo reunification counseling with Inspiring Change, LLC, and Father was to submit his most recent hair follicle test and undergo a subsequent hair follicle test within seven (7) days of the Order.

An Order of Court was issued on October 24, 2023 scheduling a Pre-Trial Conference for February 5, 2024. On the same day, an Order was issued scheduling a two (2) day trial for April 9 and 11, 2024. Following these Orders, the Court received notice from Inspiring Change, LLC¹⁹ that they would not be able to provide reunification counseling. The Court sent the parties and the GAL this

¹⁸ The parties were to continue sharing legal custody, the Children were to continue with individual therapy, and Father was to continue with drug and alcohol and mental health treatment.

¹⁹ Inspiring Change, LLC handles complex/high-conflict custody cases, and it is not common for them to terminate work with a family early in the process.

communication and requested that the GAL provide a position regarding alternative providers for reunification counseling. On October 31, 2023, an Order of Court was issued vacating Inspiring Change's appointment, and directing that the GAL contact Dr. Deborah Gilman regarding her ability to conduct reunification counseling. If Dr. Gilman could not perform it, the court listed alternative providers that the family could potentially utilize.

On November 30, 2023, an Order of Court was issued ahead of the December 1, 2023 School Choice Hearing. In this Order, Father was precluded from calling any witnesses other than himself and from presenting any exhibits because he did not submit his Pre-Hearing Statement and Exhibit Binder by the deadlines proscribed in the August 14, 2023 Pre-Hearing Order of Court.

The School Choice Hearing was scheduled for December 1, 2023 at 8:30 a.m. Mother, her counsel, and the GAL were all present, but Father was not. At the hearing, the Court was made aware that Father was scheduled for an ARD hearing before Judge Kelly Bigley in the Criminal Division beginning at 7:00 a.m. on the same day.²⁰ Despite waiting approximately forty (40) minutes for Father, and paging him over the Family Division intercom, Father did not appear. Thus, the proceeding commenced. Following the hearing, a Memorandum and Order of Court was issued

²⁰ The GAL did note that Father may have believed the hearing started at 9:30 a.m. as originally ordered on August 14, 2023, even though an Order was issued on November 21, 2023 changing the start time of the hearing. Moreover, Father did not present a Motion for Continuance requesting that the hearing be continued due to his ARD hearing or for any other reason.

directing that the Children were to continue attending the Upper St. Clair school district. The Order also stated that the record from the hearing would be incorporated into the record at trial, and all non-conflicting provisions of prior Orders remain in full force and effect.

The Pre-Trial Conference was held on February 5, 2024. The GAL submitted her Final Report on March 28, 2024. On April 2, 2024, Father submitted an email to Mother's counsel, the GAL, and the Court stating that he intended to represent his Petition for Recusal. He submitted a copy of the Petition with this email, but did not appear to submit it through the Client Services Center as was required for all self-represented litigants with cases in Allegheny County's Family Division, as well as the undersigned's Standard Operating Procedures. Later that day, Father submitted a subsequent email to Mother's counsel, the GAL, and the Court stating that he would be submitting a Motion *in Limine* to exclude Dr. Beth Bliss's testimony as the court-appointed custody evaluator.

On April 3, 2024, an Order of Court was issued directing that, because Father had not abided by the deadlines listed in the October 24, 2023 Pre-Trial Order to submit his Pre-Trial Statement, (1) Father would be precluded from presenting any witnesses at the trial other than his own testimony; (2) both parties would be precluded from presenting Motions *In Limine* and any issues that would have been raised would be deemed waived; (3) Father's Petition for Recusal would not be

addressed unless it was presented in compliance with the undersigned's Standard Operating Procedures.

Mother timely submitted her Exhibit Binder on April 5, 2024. Father submitted a series of emails from April 5-8, 2024 with CVs for four (4) expert witnesses which he intended to call, along with a Motion *in Limine* to exclude Dr. Bliss's testimony, and a weblink that purported to contain his exhibits and Petition for Recusal. On April 8, 2024, Mother submitted Objections to Father's Pre-Trial Statement, Expert Witnesses, Motion *in Limine* and Petition for Recusal because they were not submitted in a timely manner. An Order of Court was issued on April 8, 2024, directing that Father was precluded from presenting exhibits at trial, Father's Petition for Recusal would not be addressed at trial²¹, and all other provisions of the October 24, 2023 Pre-Trial Order of Court and April 3, 2024 Order of Court would remain in full force and effect.

A one (1) day custody trial was held on April 9, 2024. Mother, her counsel, and the GAL were present during the proceedings. Prior to the beginning of trial, Father requested that his brother, who told court staff that he was his attorney and had not filed his appearance with the Department of Court Records, and several of his family members be present in the courtroom during the trial.²² The Court denied

²¹ In the Order, the undersigned gives an analysis of whether she would have recused herself from the custody matter, despite not addressing it directly at trial.

²² It is the court's practice to sequester witnesses, whether they are participating in person or virtually via Microsoft Teams.

Father's request to have his brother present because he was not listed as counsel of record for Father. The Court also offered to have Father's family members view the proceedings from a Microsoft Teams link instead of being physically present in the courtroom. Mother's attorney objected to them being present in the courtroom, but had no objection to them participating remotely. It is this Court's understanding that upon hearing this from court staff, Father then left the Family Law Center. As he did not appear in the courtroom for any part of the custody trial despite court staff paging him twice over the building intercom. The trial proceeded with just Mother, her counsel, and the GAL.

Following the proceedings on April 9, 2024, an Order was issued on April 10, 2024 stating that the record for the custody matter is closed, the April 11, 2024 trial date would be cancelled, and the parties would receive both a short Order of Court with the Court's decision, along with this written Memorandum and Order of Court within the following weeks.²³ The Memorandum and Order of Court was issued on May 23, 2024.

On June 10, 2024, Mother submitted a Motion for Clarification and Reconsideration of the May 23, 2024 final Order. Father also submitted a Motion

²³ A short Interim and Interlocutory Order was issued on April 11, 2024 ordering that Mother would have sole legal custody and sole physical custody of the Children, with Father having supervised visitation with the Children upon Dr. Deborah Gilman's recommendation and upon starting reunification counseling with Children, completing an eighteen (18) panel hair follicle test, and continuing with mental health and substance abuse treatment. Father appealed this Interim and Interlocutory Order prior to the Memorandum and Final Order being issued; however, his appeal was quashed by the Superior Court.

for Reconsideration of his Petition for Recusal on June 10, 2024. The Court did not address either Motion and cancelled the scheduled oral argument due to Father's current appeal. The court was inclined to deny Father's Motion and clarify Mother's Motion to state that Father was to begin reunification counseling, and that once the Children were to be integrated into the sessions, Father would submit to an eighteen (18) panel hair follicle test within seven (7) days of this first session with the Children. The court would be willing to issue such a clarifying order once Father's appeal has been resolved.

On June 24, 2024, Father filed his Notice of Appeal and Concise Statement of Errors Complained of On Appeal.

III. Issues on Appeal

Upon a review of the pleading submitted, this court will address the Concise Statement of Errors as a list of thirteen (13) issues complained on appeal, which are set forth as follows:

1. Whether this court committed reversible error by virtue of the manner in which it adjudicated Father's October 12, 2023, April 7, 2024, and April 8, 2024 petitions for recusal based upon various actions and statements of the Honorable Nicola Henry-Taylor during various proceedings and at various points in this action.

2. Whether this court abused its discretion and/or committed reversible error by denying Father's aforementioned petitions for recusal.
3. Whether this court committed reversible error and/or violated Father's constitutional and statutory rights by denying Father's attorney's attempts to enter an appearance during the April 9, 2024 trial held in this matter.
4. Whether Father's fundamental constitutional right to parent his children and participate in their upbringing and/or his rights under the Americans with Disabilities Act, 42 U.S.C. §§12131-12134, were violated by the manner in which this court disposed of his petition for custody, including
 - (i) the more than three years Father waited for a trial on his custody claims,
 - (ii) the conditions this court placed on Father's exercise of physical custody of the children, and
 - (iii) this Court's refusal to consult with or allow him to participate in decisions as to the individuals who should provide services to Father and the Children and the conditions under which such services should occur.
5. Whether this court committed reversible error by permitting at trial the testimony of an expert witness who was appointed – over Father's objection – in response to the petition of [Mother] by the Honorable Chelsa

Wagner before Judge Wagner subsequently recused herself from this action because of her social relationship with Mother.

6. Whether the court committed reversible error or abused its discretion in the manner in which it applied the factors set forth in 23 Pa.C.S. §5323.
7. Whether the court committed reversible error by issuing an order that forbids either party from moving for a modification pursuant to 23 Pa.C.S. §5338.
8. Whether this court committed reversible error by ordering Father to exercise supervised custody without first receiving any evidence that Father poses any form of danger to the Children and then, subsequently, requiring Father to exercise custody under the supervision of individuals who possess no specialized training or knowledge with respect to the purported danger Father poses.
9. Whether this court committed reversible error in the manner it adjudicated Mother's petition to enroll the Children in the Upper St. Clair School District and move them from Forest Hills, Pennsylvania to Upper St. Clair, Pennsylvania.
10. Whether the conditions of this court's September 26, 2023 interim custody order impermissibly infringed on the parties rights under the First Amendment of the United States Constitution.

11. Whether this court committed reversible error by subjecting Father, at Mother's behest, to invasive, inherently-unreliable, hair-follicle testing by a purported forensic laboratory that previously had its license to conduct forensic testing revoked due to unscientific practices in which it engaged in connection with a criminal action before the Court of Common Pleas of Philadelphia County, Pennsylvania.
12. Whether the Standard Operating Procedures of the Honorable Nicole Henry-Taylor ("SOPs"), the Local Rules of the Family Division of the Court of Common Pleas of Allegheny County, and the Administrative Orders of this court, as applied in this case, combined to deprive Father, as a pro se litigant, of due process of law.
13. Whether, through the SOPs, Judge Henry-Taylor issued rules that—if applied as written—exceed her authority to issue such rules pursuant to the Pennsylvania Rules of Civil Procedure.

IV. Standard of Review

When a trial court orders a form of custody, modifies custody, or permits relocation, the best interests of the children are paramount.²⁴ To determine the

²⁴ 23 Pa.C.S. §§ 5328, 5338.

children's best interests, the trial court must consider the custody factors enumerated in 23 Pa.C.S. §5328(a).

When reviewing the trial court's decision, the Superior Court applies the following standard of review:

In reviewing a custody order, . . . [w]e must accept findings of the trial court that are supported by competent evidence of record, as our role does not include making independent factual determinations. In addition, with regard to issues of credibility and weight of the evidence, we must defer to the presiding trial judge who viewed and assessed the witnesses first-hand. However, we are not bound by the trial court's deductions or inferences from its factual findings. Ultimately, the test is whether the trial court's conclusions are unreasonable as shown by the evidence of record. We may reject the conclusions of the trial court only if they involve an error of law, or are unreasonable in light of the sustainable findings of the trial court.²⁵

V. Discussion

1. The trial court did not err or abuse its discretion in denying Father's multiple Petitions for Recusal.

Father's first and second issues shall be addressed together because they both address the overarching issue of whether the court erred in denying Father's Petitions for Recusal. Father's first issue alleges that the trial court erred in the manner in which it adjudicated Father's October 12, 2023, April 7, 2024, and April 8, 2024 petitions for recusal based upon alleged "various actions and statements" of the

²⁵ *C.R.F. v. S.E.F.*, 45 A.3d 441, 443 (Pa. Super. 2012).

undersigned during various proceedings and at various points in this action. Father's second issue alleges that the trial court abused its discretion by denying Father's aforementioned petitions for recusal.

The Court went on the record at the October 16, 2023 Judicial Conciliation to address Father's first Petition for Recusal, which the trial court denied. In addition, Father did not appear for the April 9, 2024 custody trial. Father had the opportunity to come into the courtroom and state his position on the second and third Petitions for Recusal. Instead, Father decided not to enter the courtroom and left the Family Law Center. As such, the court argues that these issues should be deemed waived. If the Superior Court wishes to address this issue, the trial court offers the following analysis.

It should be noted that this is not Father's first attempt to have a sitting judge recused from his custody matter. As described in the Factual Background and Appendix "A" attached to this Opinion, Father filed a Petition for Recusal against the Honorable Chelsa Wagner claiming that Mother and Judge Wagner have a "social relationship." Judge Wagner denied this Petition.

Father cited *Municipal Publications, Inc. v. Court of Common Pleas*, 489 A.2d 1286 (Pa. 1985); however, this case does not apply to the facts presented here. *Municipal Publications, Inc.* is based on a recusal when a judge has personal knowledge of the facts and permits themselves to be a witness in the matter. In the

instant case, the undersigned has no personal knowledge of any disputed facts and is not acting as a witness in the proceedings. Therefore, this caselaw is not on point with the circumstances of this matter.

The Superior Court has held that a judge did not abuse their discretion in denying a petition for a recusal.²⁶ The Court held that " [e]ven if prejudicial information was considered by the trial court, a judge, as fact finder, is presumed to disregard inadmissible evidence and consider only competent evidence."²⁷

Father asserts that the undersigned used her prior knowledge and experience as an Assistant Public Defender and Assistant District Attorney to label him as an "addict who needs close scrutiny." Father noted that per the United States Disability Act, 42 U.S.C. §12131-12134, "decisions about child safety and whether a parent...represents a threat to safety must be based on an individualized assessment...and may not be based on stereotypes or generalizations about persons with disabilities." According to *Kearney*, a judge can knowingly use any information that may be deemed prejudicial, and can disregard anything not applicable. Here, it applies that her background would further add to the understanding of him being an addict – which Father freely admits. Therefore, the undersigned's background

²⁶ *Commonwealth v. Kearney*, 92 A.3d 51 (Pa. Super. Ct. 2014).

²⁷ *Id.* at 61.

ultimately does not matter. Father's past safety concerns regarding his anger and addiction entail an individualized assessment.

Additionally, *Kearney* held that "judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge... A judge's ordinary efforts at courtroom administration—even a stern and short-tempered judge's ordinary efforts at courtroom administration—remain immune."²⁸ Father alleged that Judge Henry-Taylor made comments to him that would be seen as stern, and that she made commentary without him in the room in front of his attorney. The undersigned wishes to make clear that she denies being short-tempered during any proceeding involved in the case. But even if this happened, according to *Kearney*, a judge is allowed to make such remarks without it affecting their impartiality. Therefore, Father's alleged statements and actions in his petitions for recusal of Judge Henry-Taylor have no basis and should not be upheld.

2. *The court did not err in not permitting Father's brother to represent him at the custody trial because Father's brother did not properly enter his appearance as Father's counsel.*

²⁸ *Kearney*, 92 A.3d at 61.

Father's third issue alleges that the court committed reversible error or violated Father's constitutional and statutory rights by denying Father's attorney's attempts to enter an appearance during the April 9, 2024 custody trial.

Father only provided notice the morning of the trial that his brother was an attorney and wished to represent him. In addition, Father did not appear for the April 9, 2024 custody trial. Father had the opportunity to come into the courtroom and place his objection on the record to his brother not being allowed to represent him. Instead, Father decided not to enter the courtroom and left the Family Law Center. As such, the court argues that this issue should be deemed waived. If the Superior Court wishes to address this issue, the trial court offers the following analysis.

The Superior Court has held that "Courts may disqualify attorneys for violating ethical rules. On the other hand, courts should not lightly interfere with the right to counsel of one's choice. Thus, disqualification is appropriate "only when both another remedy for the violation is not available and it is essential to ensure that the party seeking disqualification receives the fair trial that due process requires."²⁹ In *G.L.P.*, the court held that the trial court must cite an authority for denying an attorney's appearance³⁰. The trial court in *G.L.P.* did not cite an authority, and there was no validity to the denial.

²⁹ *In the Interest of G.L.P.*, 131 A.3d 90 (Pa. Super. Ct. 2015).

³⁰ *Id.*

In the instant case, the undersigned noted that Pa.R.C.P.No.1012(a) states that "a party may enter a written appearance which shall state an address at which pleadings and other legal papers may be served in the manner provided by Rule 440(a)(1) and a telephone number... Written notice of an entry of an appearance shall be given forthwith to all parties[; however,] entry of written appearance is not mandatory."³¹ Under Rule 1012, copies of the petition shall be served upon all other parties to the action pursuant to Rule 440.

Furthermore, it has been determined that "In all civil litigation, the trial judge has broad power and discretion to control the conduct of the trial...[and] the judge's control is also limited by applicable statutory requirements, which require that all procedures, motions, and other matters relating to the trial, by jury or otherwise, of any civil action or proceeding, be conducted in the manner, at the times, on the terms and conditions, and in the form prescribed by such statutes."³² *Id.* Other than this, "the trial judge may control the procedure in the trial in whatever way accords with equitable principles and the attainment of justice."³³ This is further from the Pennsylvania Rules of Civil Procedure, which, "specifically empower[s] the court to make and enforce rules and orders involving control over various aspects of a trial, subject to the requirements of due process of law and of the constitutional rights

³¹ Pa. R.C.P. 1012.

³² See The Standard Pennsylvania Practice 2d, §48:1. *Judge's control over conduct of trial, generally.*

³³ *Id.*

of the parties, such as regulating or excluding the public or persons not interested in the proceedings whenever the court deems such regulation or exclusion to be in the interest of the public good, order or morals.”³⁴

Here, the Court did not violate Father’s rights by not allowing Father’s brother to orally attempt to enter an appearance at the April 9, 2024, trial because, as discussed above, Father’s brother never made any attempt to enter an appearance beforehand, and Father’s brother did not give notice to opposing counsel or the court. Furthermore, as the statutes and Standard Pennsylvania Practice discuss, a judge can control the proceeding and “make and enforce rules” over various aspects of a trial. The undersigned’s authority as a judge allowed her to make and enforce the rule that Father’s brother made no attempt to make an appearance before the trial; therefore, he was denied the right of an appearance.

Even if the Superior Court were to decide that Father’s brother should have been permitted to proceed as counsel for Father, the decision not to allow him to enter his appearance as counsel is not a reversible error, but rather a harmless error. A reversible error is one that affects a party’s rights so significantly that it is grounds for reversal if the affected party properly objected at trial. “A party may not sit silent and take his chances of a verdict, and then, if it is adverse, complain of a matter

³⁴ *Id.*

which, if an error, would have been immediately rectified and made harmless.”³⁵ In addition, “the general rule will not be applied where there is basic and fundamental error which affects the merits or justice of the case.”³⁶

The proper function of our legal process does not require or assure a litigant of an errorless trial, but a fair trial.³⁷ If no objection is taken at the time the error was committed, (1) no decision will be reversed, or (2) only those errors are reversible which were incorrectible at the time they were made.³⁸ Harmless error exists where (1) the error did not prejudice the defendant or the prejudice was *de minimis*; or (2) the erroneously admitted evidence was merely cumulative or other untainted evidence which was substantially similar to the erroneously admitted evidence; or (3) the properly admitted and uncontradicted evidence of guilt was so overwhelming and the prejudicial effect of the error was so insignificant by comparison that the error could not have contributed to the verdict.³⁹

In the instant matter, the potential error of not allowing Father’s brother to enter his appearance as Father’s attorney is not reversible because Father did not present an objection on the record at the custody trial. In addition, even if Father’s brother were allowed to represent Father, it would have been highly unlikely that

³⁵ Donald R. Ringone, Appeal of Errors in the Absence of Objection-Pennsylvania’s Fundamental Error Doctrine, 73 DICK. L. REV. 496, 496 (1969).

³⁶ *Id.*

³⁷ *Id.* at 498, citing *Commonwealth v. Williams*, 248 A.2d. 301 (Pa. 1968).

³⁸ *Id.* at 503.

³⁹ *In re: A.J.R.-H. and I.G.R.-H.*, 188 A.3d 1157, 1180 (Pa. 2018) (concurring), citing *Commonwealth v. Bruno*, 154 A.3d 764, 796 (Pa. 2017).

Father or his counsel could have made an argument as to why Father should have increased custodial time or unsupervised custodial time given the voluminous amount of evidence against Father showing his history of conflict with Mother (and others involved in this court matter), his ongoing history of substance abuse, and his inability and/or unwillingness to comply with court directives that could have given him an opportunity to have expanded or unsupervised custodial time with the Children. Therefore, the court's decision to not allow Father's brother to enter his appearance is *de minimis* when compared to the admitted and uncontradicted evidence presented at the custody trial.

3. *The court did not violate Father's fundamental rights, either under the U.S. Constitution or under the Americans with Disabilities Act.*

Father's fourth issue alleges that the court violated his constitutional right to parent his children and participate in their upbringing and/or his rights under the Americans with Disabilities Act, 42 U.S.C. §§12131-12134, were violated by the manner in which this court disposed of his petition for custody.

As stated above, Father did not appear for the April 9, 2024 custody trial. Father had the opportunity to come into the courtroom and place testimony and objections on the record regarding the custody matter. Instead, Father decided not to enter the courtroom and left the Family Law Center. As such, the court argues

that this issue should be deemed waived. If the Superior Court wishes to address this issue, the trial court offers the following analysis.

The Supreme Court of Pennsylvania has held that “the Due Process Clauses of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.”⁴⁰ The Court ruled that they “must apply a strict scrutiny analysis any infringement by the state of the fundamental right of parents to direct the care, custody, and control of their children.”⁴¹ In determining the strict scrutiny analysis, the appropriate test is determined by “if the infringement is supported by a state interest and if the infringement is narrowly tailored to effectuate that interest...[and] balancing...the parent’s rights [is determined through the] clear and convincing evidence standard.”⁴² The Court determined that there is a compelling state interest in protecting the health and emotional welfare of the child.

Similarly, in *Hiller*, Father contends that his substantive due process rights were violated in relation to custody of his son. The Court determined that the trial court did not err and a parent’s right can be taken away when it is for the protection of the child. In the instant case, although Father has a constitutional right to parent his children, Father has caused the court to apply the strict scrutiny test, and the

⁴⁰ *Hiller v. Fausey*, 904 A.2d 875, 879 (Pa. 2006).

⁴¹ *Id.* at 359.

⁴² *Id.*

burden is met through the clear and convincing evidence standard that he, at times, has been a detriment to the children's safety. The court protected the children throughout the three (3) years Father waited for a trial on his custody claims and the conditions that the court placed on Father's exercise of physical custody.

Moreover, under the Americans with Disabilities Act (ADA), parents' rights are still balanced against the best interests of the child. In a case regarding adoption, the Court has held that the ADA was not applicable in a proceeding regarding the termination of parental rights because if it were, it would require the court to shift its attention from the needs of the child to those of the parent.⁴³ In determining whether the court violated Father's rights under the ADA by Father's allegations of not having his children for three (3) years, the conditions placed on Father's exercise of physical custody, and the refusal to allow him to participate in some decisions depends on whether the court did provide Father with the rights to participate.

This court has fairly given Father the ability to participate in every proceeding and listened to both parents; Father has made the decision to either not show up in proceedings or not behave in a calm fashion. Based on Father's actions, this court correctly placed the children with Mother, placed conditions on Father's physical custody, and disallowed him from participating in such decisions that were for the welfare of the children.

⁴³ *In the Interest of J.J.L.*, 150 A.3d 475 (Pa. Super. Ct. 2016).

Moreover, 42 U.S. Code §12132 states that no qualified individual shall be excluded from participation in services, denied services of a public entity, or subjected to any discrimination. Father has not been excluded from any participation or denied of services; he chose not to come inside the courtroom during the trial and he did not adhere to the Standard Operating Procedures, Local Rules, or Pennsylvania Rules of Civil Procedure regarding the appearance of his brother as an attorney. Therefore, there has been no discrimination of Father by this court, Father chose not to participate in the proceeding.

4. The court did not err in permitting the testimony of Dr. Beth Bliss, who was appointed by the previously recused Judge.

Father's fifth issue alleges that the court committed reversible error by permitting at trial the testimony of Dr. Beth Bliss, an expert witness who was appointed – over Father's objection – in response to the petition of [Mother] by the Honorable Chelsa Wagner before Judge Wagner subsequently recused herself from this action.

The court has an inherent authority to appoint an expert.⁴⁴ The Supreme Court has held that Pennsylvania courts have the inherent power to appoint expert witnesses.⁴⁵ Additionally, the Superior Court has held that under the law of

⁴⁴ 1 Ohlbaum on the Pennsylvania Rules of Evidence §706.06

⁴⁵ *Galante v. West Penn Power Co.* 37 A.2d 548 (Pa. 1944).

Pennsylvania, the “appointment of an expert witness...to assist...is vested in the sound discretion of the trial court.”⁴⁶

Dr. Beth Bliss is a forensic psychologist who frequently conducts custody evaluations for the trial court. Rule 1915.8(a) leaves it to the “sound discretion” of the Court whether or not to order an evaluation, and the Superior Court has remanded custody determinations when a party’s request for an evaluation has been denied.⁴⁷ Given the concerns regarding Father’s substance use, and the history of conflict between the parties, Judge Wagner ordered that the parties undergo a custody evaluation. The undersigned Judge allowed the evaluator to testify at trial, so as to give a better picture into the mental health state of the parties and their abilities to parent the Children. As such, the trial court used its sound discretion in having Dr. Bliss testify at trial.

5. The court did not err in applying the factors set forth in 23 Pa.C.S. §5323 or in appointing a professional supervisor for Father’s visits with Children.

Father’s sixth and eighth issues shall be addressed together in that they both address specific provisions of the May 23, 2024 Order of Court. Father’s sixth issue alleges that the court committed reversible error or abused its discretion in the manner in which it applied the factors set forth in 23 Pa.C.S. §5323. Father’s eighth

⁴⁶ Commonwealth v. Gelormo, 475 A.2d 765, 769 (Pa. Super. Ct. 1984).

⁴⁷ Pa.R.C.P. 1915.8(a).

issue alleges that the court committed reversible error by ordering Father to exercise supervised custody without evidence that Father poses any form of danger to the Children and then requiring Father to exercise custody under the supervision of individuals who Father claims “possess no specialized training or knowledge with respect to the purported danger Father poses.”

As stated above, Father did not appear for the April 9, 2024 custody trial. Father had the opportunity to come into the courtroom and place testimony and objections on the record regarding the custody matter or provisions of the final order. Instead, Father decided not to enter the courtroom and left the Family Law Center. As such, the court argues that this issue should be deemed waived. In addition, the undersigned’s reasoning in applying the custody factors are set forth at length in its Memorandum issued concurrently with the May 23, 2024 Order of Court, which is attached to this Opinion. As such, the court urges affirmance of these errors based on the Memorandum. To the extent that the Superior Court requests legal analysis of these issues, the undersigned offers the following:

The burden of providing the trial court erred in applying the 23 Pa.C.S. §5323 custody factors falls on the party challenging the custody decision. Father has not provided any authority or case law to prove this. Additionally, the Superior Court has held that a trial court must “delineate the reasons for its decisions when making an award of custody...[and] there is no required amount of detail for the trial court’s

explanation; all that is required is that the enumerated factors are considered and that the custody decision is based on those considerations.”⁴⁸ The court reiterated that the child’s well-being is the most important factor in custody trials, and the “best-interests standard” is shown through each custody factor and its reasoning. Further, the Superior Court held that “appellate courts will find a trial court abuses its discretion if, in reaching a conclusion, it overrides or misapplies the law, or the record shows that the trial court’s judgment was either manifestly unreasonable or the product of partiality, prejudice, bias or ill will.”⁴⁹

Here, the trial court utilized the “best-interests standard” through the explanation and reasoning of each custody factor. Each factor is thoroughly detailed with factual reasoning, and the evidence of record supports the trial court’s conclusions. The Children’s best interest in their “physical, intellectual, moral and spiritual well-being” was sound judgment, and the court did not err as there was no abuse of discretion.⁵⁰

In addition, in ordering Father to have supervised custody, the “best-interests standard” can be utilized, and the evidence in the record supported the undersigned’s decision. Father’s substance abuse, other disorders, and his actions were all logical basis for supervised custody.

⁴⁸ *R.L. v. M.A.* 209 A.3d 391, 395 (Pa. Super. Ct. 2019).

⁴⁹ *R.L.*, 209 A.3d at 395.

⁵⁰ *Id.*

6. *The court did not place any unduly burdensome restrictions on Father's ability to file a future Petition for Modification of Custody.*

Father's seventh issue alleges that committed reversible error by issuing an order that "forbids" either party from moving for a modification pursuant to 23 Pa.C.S. §5338. In particular, the May 23, 2024 Order of Court states that prior to filing any future Complaint or Petition for Modification of Custody, Father must do the following:

- (1) complete substance abuse treatment that addresses co-occurring disorders and follow all recommendations;
- (2) engage in mental health treatment with a doctorate level provider that can prescribe medication, if needed;
- (3) complete reunification counseling and follow all recommendations; and
- (4) submit proof of completing the above to Mother's counsel, the GAL, and the undersigned's chambers.

As stated above, Father did not appear for the April 9, 2024 custody trial. Father had the opportunity to come into the courtroom and place testimony and objections on the record regarding the custody matter. Instead, Father decided not to enter the courtroom and left the Family Law Center. As such, the court argues that this issue should be deemed waived. If the Superior Court wishes to address this issue, the trial court offers the following analysis.

The Court has held that "Petitions for modification of custody orders may be entertained at any time without regard to whether there have been any material changes which would warrant a revaluation."⁵¹ The Court further explained that the "Supreme Court has provided 'a directive that petitions for modification of custody orders may be filed at any time, and in all such cases the court hearing the petition must consider the best interests of the child or children.'"⁵² Additionally, the Court has held that the "the State has a duty to protect the children's best interests and welfare, it may always entertain an application for modification and adjustment of custodial rights. This right to oversee the interests of children within this Commonwealth is of paramount importance."⁵³

Pennsylvania law allows parents to file for modification of custody at any time, and the courts are required to consider the best interests of the child. In requiring Father to undergo treatment and counseling, these practices were serving the Children's needs and welfare. Caselaw does not explicitly discuss requiring treatment and counseling before filing for a petition; however, the court has broad discretion in determining the best interests of the child.

⁵¹ *J.P. v. J.S.*, 214 A.3d 1284, 1290. (Pa. Super. Ct. 2019).

⁵² *Id.*

⁵³ *Friedman v. Friedman*, 307 A.2d 292, 295 (Pa. Super. 1973).

Father's assertion of error is also somewhat of a mischaracterization. The May 23, 2024 does not forbid him from filing for a Petition for Modification of Custody at any point in time. If Father were to complete substance abuse treatment that addresses co-occurring disorders, complete mental health treatment, and engage in reunification therapy with the Children, the trial court would consider potentially modifying Father's physical and legal custody of the Children. Father is free to file a Petition for Modification of Custody, but if he cannot show proof that he has completed substance abuse treatment, mental health treatment, and reunification therapy, it is highly unlikely that physical or legal custody would be modified.

7. The court did not err in adjudicating Mother's Petition for School Choice.

Father's ninth issue alleges that the court erred in the manner it adjudicated Mother's Petition to enroll the Children in the Upper St. Clair School District and move them from Forest Hills, Pennsylvania to Upper St. Clair, Pennsylvania. It should first be noted that neither party filed a Notice of Proposed Relocation at any point in time during this litigation; as such, any issues related to relocation are deemed waived.

The Superior Court has held that school choice is a discrete legal issue that does not require a full analysis of the custody factors.⁵⁴ In the instant case, a school choice hearing was scheduled for December 1, 2023 to start at 8:30 a.m. Mother,

⁵⁴ See, e.g., *S.W.D. v. S.A.R.*, 96 A.3d 396 (Pa. Super. Ct. 2014).

her counsel, and the Guardian *ad Litem* (GAL) were all present at 8:30 a.m. Father was not present. The GAL noted that Father may have still believed that the hearing started at 9:30 a.m. as originally ordered on August 14, 2023. An Order of Court was issued on November 21, 2023 directing that the start time would be changed from 9:30 a.m. to 8:30 a.m.

The court was also made aware that Father was scheduled for an ARD Hearing before Judge Bigley in the Criminal Division on December 1, 2023 starting at 7:00 a.m. Father did not present any Motion for Continuance requesting that the school choice hearing be continued because of his ARD hearing or for any other reason. The court waited until 9:00 a.m. and paged Father over the Family Division intercom at that time. At 9:10 a.m., Father still did not appear, and the proceeding was concluded after waiting forty (40) minutes from the scheduled start time, for Father to appear. Following the conclusion of the proceeding, the court granted Mother's Petition and ordered that the Children would attend the Upper St. Clair School District.

Despite Father contesting Mother's Petition for School Choice, he did not appear for the hearing which adjudicated her claims. Father could have presented evidence and testimony, but he was precluded from doing so because he did not follow the August 14, 2023 Pre-Hearing Order of Court's deadlines to submit Pre-Hearing Statements and Exhibit Binders. Moreover, Father could have presented a

Motion for Continuance requesting that the school choice hearing be continued to a later date, but he did not do so. Father had opportunities and relief available so that he could be present and participate in the school choice hearing, but he did not avail himself of such. Therefore, the trial court did not err in the matter in which it adjudicated Mother's Petition for School Choice.

8. The court reasonably restricted Father's First Amendment rights in order to protect the Children's best interest and psychological well-being.

Father's tenth issue alleges that the September 26, 2023 interim custody order impermissibly infringed on the parties rights under the First Amendment of the United States Constitution. It is not clear what provisions of this Order Father claims are a violation of the First Amendment. The September 26, 2023 interim custody order states, in relevant part, that Father is not to drive or transport the Children, that conversations with the Children would be age appropriate and not include any adult issues or discussion of the litigation, and that Father is to refrain from making negative or inappropriate comments to the Children about Mother.

As stated above, Father did not appear for the April 9, 2024 custody trial. Father had the opportunity to come into the courtroom and place testimony and objections on the record regarding any speech restrictions. Instead, Father decided not to enter the courtroom and left the Family Law Center. As such, the court argues

that this issue should be deemed waived. If the Superior Court wishes to address this issue, the trial court offers the following analysis.

The Supreme Court held that courts can restrict the First Amendment if it is narrowly tailored and is for the protection of the Child's welfare.⁵⁵ In custody matters, the "First Amendment freedoms must be "applied in light of the special characteristics of the [relevant] environment".⁵⁶ In determining the characteristics of the environment, the Court's "exclusive purpose [was] protecting the psychological well-being and privacy of [the] Child," and that is the main focus.⁵⁷

In the instant case, Father has a history of making inflammatory and derogatory about Mother including to the Children. He has accused Mother of having anxiety, OCD, and other mental health diagnoses. Father also made various unsubstantiated claims that Mother engaged in misconduct, which led to the breakdown in the marriage. Father made these comments not just to Mother, but to the Children, his family, and to uninterested third parties such as the Children's school and church. When Father made these negative comments about Mother to the Children, the Children would become upset, to the point where they would feel attacked and cry. Although these comments may be otherwise protected under the First Amendment, these comments would almost certainly cause psychological harm

⁵⁵ *S.B. v. S.S.*, 243 A.3d 90 (Pa. 2020).

⁵⁶ *Id.* at 104.

⁵⁷ *Id.* at 106.

to the Children should these comments ever be disclosed to them. As such, the Court found it was necessary to restrict Father's speech by ordering him to refrain from making derogatory comments about Mother to the Children and from discussing the litigation with the Children.

The Superior Court most recently held that a trial court did not abuse its discretion or err in a PFA order that included not allowing the parent to drive the child.⁵⁸ The Court reasoned that there was reasonable fear because of the parent's history, including a drinking problem and anger issues. The concerns in the instant case are similar, as discussed below regarding Father's mental health and substance abuse.

This also relates to *S.B. v. S.S.* because being ordered not to drive could be a First Amendment violation. In determining whether it is in this matter, the protection of the child's welfare is the priority. Similar to *Trymbiski*, there have been concerns about Father's mental health, anger issues, and drug addiction. These concerns were even more heightened following his DUI around June 16, 2023. The undersigned decided that, in the best interest of the Children's well-being, it would be safest for the Children to not to be in the car with Father.

⁵⁸ *Trymbiski v. Trymbiski*, No. 2495 EDA 2023, 2024 Pa. Super. Unpub. LEXIS 1047, at *1 (Apr. 26, 2024).

9. *The court did not err in ordering that Father undergo a hair follicle test with Mainline Testing Services.*

Father's eleventh issue alleges that the court committed reversible error by subjecting Father to hair follicle testing, which he considers to be "invasive" and "inherently-unreliable." Father also claimed that the laboratory in question, Mainline Testing Services, "previously had its license to conduct forensic testing revoked due to unscientific practices in which it engaged in connection with a criminal action before the Court of Common Pleas of Philadelphia County, Pennsylvania."

The Superior Court has held that courts can require a hair follicle drug test, and they are deemed reliable.⁵⁹ Courts could require a follicle drug test based on the parent's history and in determining what is in the best interest of the child in terms of custody. The court determined that the provisions of 23 Pa.C.S. Ch. 53 (relating to child custody) apply in determining the best interests, and this requires "the fact-finder to consider not only a parent's history of drug and alcohol use but also their mental health and physical conditions."⁶⁰

In this case, Father's has a known prior history of substance abuse. Father has refused to take hair follicle tests in the past for the same reasons stated in his Concise Statement of Errors. The only proof that Father presented to this Court of taking a

⁵⁹ *H.R. v. C.P.*, 224 A.3d 729 (Pa. Super. Ct. 2019).

⁶⁰ *Id.* at 736.

hair follicle test was a form showing that Father submitted to a five (5) panel hair-follicle test. This document did not show which substances were tested. Father was believed to be in active addiction throughout the litigation, as far back as 2021. These concerns became more pressing when Father was arrested and charged with DUI in June 2023 after he tested positive for fentanyl, norfentanyl, methadone, morphine, and amphetamines in a blood test conducted by St. Margaret's Hospital. Given these past and ongoing behavioral health concerns, the trial court correctly decided that it would be in the best interest of the Children for Father to undergo a hair follicle test.

This court does not have independent knowledge of the claims Father raises regarding the facility's, Mainline Testing Services, "unscientific practices." Mainline Testing Services has been utilized by the Court of Common Pleas of Allegheny County on numerous occasions to conduct hair follicle tests of litigants who are believed to be abusing alcohol or other substances. It should be noted that, according to Mother's Motion for Custody Evaluation from January 2023, Father sent harassing emails and phone calls to Randy Brodsky, the owner of Mainline Testing Services, which resulted in Mr. Brodsky no longer permitting Father to test through that facility. Based on this, the undersigned does not find Father's claims about Mainline Testing Services practices to be credible.

10. The court did not err or abuse its discretion in ordering that Father comply with the undersigned's Standard Operating Procedures.

Father's twelfth and thirteenth issues shall be addressed together because they both address the undersigned's Standard Operating Procedures. Father's twelfth issue alleges that a combination of the undersigned's Standard Operating Procedures, the Local Rules of the Family Division of the Court of Common Pleas of Allegheny County, and the Administrative Orders of the lower court combined to deprive Father, who was a pro se litigant, of due process of law. Father's thirteenth issue alleges that the undersigned's Standard Operating Procedures exceed her authority to issue certain rules under the Pennsylvania Rules of Civil Procedure.

As stated above, it has been determined that "In all civil litigation, the trial judge has broad power and discretion to control the conduct of the trial...[and] The judge's control is also limited by applicable statutory requirements, which require that all procedures, motions, and other matters relating to the trial, by jury or otherwise, of any civil action or proceeding, be conducted in the manner, at the times, on the terms and conditions, and in the form prescribed by such statutes."⁶¹ *Id.* In addition to that, "otherwise, the trial judge may control the procedure in the trial in whatever way accords with equitable principles and the attainment of

⁶¹ The Standard Pennsylvania Practice 2d, §48:1. *Judge's control over conduct of trial, generally.*

justice.”⁶² This is further from the Pennsylvania Rules of Civil Procedure, which, “specifically empower[s] the court to make and enforce rules and orders involving control over various aspects of a trial, subject to the requirements of due process of law and of the constitutional rights of the parties, such as regulating or excluding the public or persons not interested in the proceedings whenever the court deems such regulation or exclusion to be in the interest of the public good, order or morals.”⁶³

The judge's control is also limited by applicable statutory requirements, which require that all procedures, motions, and other matters relating to the trial, by jury or otherwise, of any civil action or proceeding, be conducted in the manner, at the times, on the terms and conditions, and in the form prescribed by such statutes.⁶⁴ Therefore, the undersigned did not exceed her authority along with the Local Rules of the Family Division of the Court of Common Pleas of Allegheny County and the Administrative Orders of the Court.

Moreover, as determined above, the Constitution, focusing on the First and Fourteenth Amendments, focuses on protecting a parent's right; however, that right can be varied when protecting the welfare of the child. Father has shown on multiple occasions that the Children's safety could be threatened, and the Judge, acting on

⁶² Standard Pennsylvania Practice 2d, §48:1.

⁶³ *Id.*

⁶⁴ *Id.*

behalf of the state and local rules and her standard operating procedures, acted diligently in putting the Children's needs first.

Father claims that he was denied certain due processes of law because he was a *pro se* litigant. "The right of self-representation has been protected by statute since the beginning of our nation."⁶⁵ Father chose to represent himself for a significant portion of this custody litigation; however, it should be noted that Father is not typical of the *pro se* litigants that appear before the undersigned in Family Division matters.

Father is employed as an attorney, and as such, he possesses knowledge about the intricacies about the case law, statutes, rules, and court procedures that exceed that of the vast majority of *pro se* litigants that appear in the Allegheny County Family Division. Courts in other circuits and states have held that *pro se* litigants who are licensed attorneys should not be given leniency in following statutes and rules in proceedings. In the case of *Huffman v. Lindgren*⁶⁶, the Ninth Circuit Court of Appeals held that, even in jurisdictions that typically provide leeway to *pro se* litigants, this leeway is not given to *pro se* litigants who are also attorneys.⁶⁷ The Ninth Circuit explained:

There is a good reason that we afford leeway to *pro se* parties, who appear without counsel and without the benefit of sophisticated representation: "Presumably unskilled in the law, the *pro se* litigant is

⁶⁵ *Faretta v. California*, 422 U.S. 806, 813 (1975).

⁶⁶ 81 F.4th 1016 (9th Cir. 2023).

⁶⁷ *Id.* at 1020.

far more prone to making errors in pleading than the person who benefits from the representation of counsel." . . . That logic does not apply to practicing attorneys, nor should the grace extend to them."⁶⁸

As an attorney, Father should understand the importance of following any judge's Standard Operating Procedures when appearing before them in court, whether it is in Family Division, Civil Division, Criminal Division, or Orphan's Court. Based on this, Father should not be given leniency for failing to follow the undersigned's Standard Operating Procedures in this custody matter.

In addition, throughout the course of this litigation, Father has had no qualms about threatening to file a King's Bench Brief to the Supreme Court alleging misconduct on the undersigned's part, or to repeatedly make harassing calls and emails to court administration about how unfairly he claims he has been treated by the lower court. As an attorney, Father should also be aware of the Pennsylvania Rules of Professional Conduct, particularly Rule 3.1 (regarding meritorious claims and contentions), Rule 3.5 (regarding impartiality and decorum of the tribunal) and Rule 8.2 (regarding statements concerning judges and other adjudicatory officers). Sadly, it appears that Father is trying to weaponize his education and profession when it is convenient to him and to his narrative, and the trial court strongly urges Father to reconsider his behavior towards the undersigned and to the lower court in any and all future proceedings.

⁶⁸ *Huffman*, 81 F.4th 1016 at 1021.

VI. Conclusion

Based on the above facts and applicable law, Father's appeal should be dismissed, and the final Order of Court dated May 23, 2024, should be affirmed.

By The Court:

 Nicola Henry-Taylor, J.

Nicola Henry-Taylor

APPENDIX "A"

Procedural History prior to April 26, 2023

II. Procedural History

The litigation began on February 23, 2021 when Father filed a Complaint for shared legal custody and partial physical custody of the Children⁶⁹. The parties were to proceed through the Generations program⁷⁰ on Father's custody complaint, and the parties were scheduled for Mediation on March 10, 2021. On March 10, 2021, an Order was issued scheduling the parties for an Interim Relief Hearing before Hearing Officer Laura Valles due to the COVID-19 pandemic for April 19, 2021. Due to scheduling conflicts from both parties, the Interim Relief Hearing was rescheduled by Order of Court to May 17, 2021.

On or around April 12, 2021, Father filed a Petition for Special Relief: Interim Custody. In his Petition, Father averred that the delay caused by rescheduling the Interim Relief Hearing was negatively impacting Father's custodial rights and that Mother was withholding physical custody of the Children. Mother submitted a Response to Father's Petition. In her Response, Mother averred that the parties separated after five (5) years of marriage due to Father's drug usage and erratic behavior, and claimed that Father had "limited supervised involvement" with the Children over a five (5) year period. Mother stated that she tried to reach an

⁶⁹ It is not clear from the docket whether there was a final resolution to this custody matter filed in February 2021, as the last document filed prior to Father's Petition for Modification was an Interim Order of Court dated September 22, 2021. Hence, the original Complaint for Custody and events leading up to the September 22, 2021 Interim Order will also be discussed here.

⁷⁰ The Generations program is administered by the Allegheny County Family Division Custody Department. The program provides information to parents and children about engaging families and offers parents and caregivers skills to reach their own resolution.

agreement for a step-up supervised custody schedule and regular drug-testing, but Father “refused to acknowledge his past and current drug use and abuse, his history of repeated relapses, and his lack of involvement in the Children’s lives for the last five (5) years.”

On April 20, 2021, Judge Jennifer Satler issued three (3) Orders of Court denying Father’s Petition and Mother’s Answer, and directing that the claims be addressed at the May 17, 2021 Interim Relief Hearing. Following the Interim Relief Hearing, an Order of Court was issued on June 9, 2021. This Order directed that Father would have supervised partial physical custody with the Children every Wednesday from 4:00 p.m. to 7:30 p.m. and Saturday from 12:00 p.m. to 7:30 p.m. Father’s custodial time would be supervised by Paternal Grandmother, Paternal Step-Grandfather, or a mutually agreed on third party. Mother would continue to have primary physical custody and the parties would share legal custody. Father was also to submit to random drug screens through Mainline Drug Testing Services, and a Review Hearing before Hearing Officer Valles would be scheduled for September 13, 2021.

By consent, the parties entered into an Interim Order of Court on September 22, 2021. In this Order, the parties agreed that they would share legal custody, Mother would have primary physical custody, and Father would have supervised partial physical custody. Father was to continue with random drug screens, and

Mother could request that Father undergo a hair follicle test. The parties were also to engage in co-parenting counseling with the Parenting Institute and enroll in Our Family Wizard for communication about the Children.⁷¹

Father filed a Petition for Modification on June 14, 2022, seeking an increase in partial physical custody and the lifting of the requirements for supervision and random drug screens. Father averred that he complied with the terms of the September 22, 2021 Interim Order, continued to have negative drug screens for a year, and was continuing treatment and the recovery process. The parties again proceeded through the Generations program on Father's Petition for Modification, and the parties were scheduled for Mediation on June 30, 2022.

Father submitted a Praeclipe on July 7, 2022 to schedule a hearing before Hearing Officer Valles regarding modification of partial custody. On July 12, 2022, an Order of Court was issued scheduling a hearing for September 21, 2022. The parties entered into an Interim Consent Order on September 21, 2022, which directed that Father was to obtain a hair follicle test by September 26, 2022; if his results were negative, he would have unsupervised physical custody every Saturday from 9:00 a.m. to 7:30 p.m. Mother would have the ability to request further hair follicle tests, and Father was to provide quarterly updates concerning his treatment plan.

⁷¹ The Order further states that a Review Hearing before Hearing Officer Valles would be scheduled for November 15, 2021; however, there is nothing on the docket scheduling this Hearing or an Order of Court coming out of that Hearing.

The parties agreed to have full custody evaluations completed, and a Review Conciliation would be scheduled before Hearing Officer Valles. These terms were reiterated by a further Interim Consent Order on December 19, 2022.

On or around January 6, 2023, Mother submitted a Motion for Custody Evaluation. In her Motion, Mother averred that Father failed to exercise all of the visitation periods provided in the Interim Orders, and when Father did exercise his custody time, Paternal Grandmother and Paternal Step-Grandfather did not properly supervise Father. Mother also averred that Father ended co-parenting counseling after “verbally [abusing]” Mother and counselor Lynn Macbeth from the Parenting Institute, and behaved inappropriately towards Randy Brodsky of Mainline Drug Test Services, which resulted in Mr. Brodsky no longer permitting Father to test through their organization. In a footnote, Mother states that Father sent court staff “inappropriate and threatening emails, including claims that he would report the court’s clerk to the disciplinary board.”

Father filed an Answer and Counter-Petition for Custody Evaluation. In his Petition, Father avers that Mother is negatively characterizing him because of his past opioid use and claimed that Mother was engaged in a “litigation strategy of bullying Father as well as federally-proscribed discrimination in this dispute.” Father also claimed that raising a negative inference about his parenting based on his medical treatment would violate the Americans with Disabilities Act and the U.S.

Constitution. Father stated that Mainline issued incorrect results and engaged in *ex parte* communications with Mother's counsel. Father requested that the Court deny Mother's Petition and grant Father's Counter-Petition appointing Dr. Sheinvold to conduct the evaluations.

Mother then submitted a Response to Father's Counter-Petition. In her Response, Mother averred that Father never proposed Dr. Sheinvold as a potential evaluator. Mother's counsel had sent Father's counsel four (4) emails concerning whether Father would agree to utilize Dr. Eric Bernstein as an evaluator, but only heard mention of Dr. Sheinvold when Father's counsel finally responded to Mother's counsel. On January 27, 2023, Judge Chelsa Wagner granted Mother's Petition and denied Father's Response and Counter-Petition. In the Order, Judge Wagner ordered that any evaluator assigned to conduct the evaluation consider any potential conflicts of interest before accepting the assignment for the custody evaluation.

On or around January 12, 2023, Father submitted a Motion for Recusal of Judge Chelsa Wagner from the custody matter. Mother submitted an Answer to Father's Motion. In her Answer, Mother denied making any statements to Father about a relationship with Judge Wagner. Mother states that Judge Wagner had been presiding over the case for a year and Father never previously filed a Motion for Recusal. Mother requested that the Court deny Father's Motion. On January 27, 2023, Judge Wagner denied Father's Motion for Recusal and added in her Order that

she did not have any recollection of Mother and that any possible interactions did not impact her impartiality in presiding over the case and did not merit a recusal.

On March 2, 2023, an Order of Court was issued appointing Dr. Beth Bliss to conduct the full custody evaluation.

APPENDIX "B"

Memorandum & Order of Court dated May 23, 2024

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

ZACHARY GELACEK,

Plaintiff,

v.

MONICA COSTLOW,

Defendant.

MEMORANDUM &
ORDER OF COURT

No.: FD-21-007339-007

BY:

The Honorable Nicola Henry-Taylor
City-County Building, Room 712
414 Grant Street
Pittsburgh, PA 15219

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FILED

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DEPT. OF COURT RECORDS
CIVIL/FAMILY DIVISION
ALLEGHENY COUNTY, PA

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

ZACHARY GELACEK,

Plaintiff,

No.: FD-21-007339-007

v.

MONICA COSTLOW,

Defendant.

MEMORANDUM

HENRY-TAYLOR, J.

May 23, 2024

A. FACTUAL BACKGROUND

A one (1) day custody trial was held in this matter on April 9, 2024. Plaintiff, Zachary Gelacek ("Father"), and Defendant, Monica Costlow ("Mother") are the natural parents of two (2) minor children, Peter Gelacek (DOB: 06/26/2012) and Louisa Gelacek (DOB: 03/11/2014) ("Children"), who are the subject of these proceedings. Mother presently resides in Upper St. Clair, Allegheny County, Pennsylvania with her significant other, Andrew Dittoe. Father presently resides in Ford City, Armstrong County, Pennsylvania with Paternal Grandmother and Paternal Step-Grandfather.

Mother is employed as a Regulatory Policy Analyst with the University of Pittsburgh School of Health Sciences. Father is employed as an Attorney. The parties were married on April 9, 2011. Mother avers that the parties separated on December 5, 2016. Father avers the parties separated on January 7, 2021. The separation was caused, at least in part, by Father's substance usage and behaviors. Father has opioid use disorder and has an extensive history of using heroin, fentanyl, and other substances. This, along with other behavior that Father displayed to Mother,

have caused friction between the parties. The parties submitted to a custody evaluation with Dr. Beth Bliss in 2023, with her report being issued on May 26, 2023.

B. PROCEDURAL HISTORY

The litigation began on February 23, 2021 when Father filed a Complaint for shared legal custody and partial physical custody of the Children¹. The parties were to proceed through the Generations program² on Father's custody complaint, and the parties were scheduled for Mediation on March 10, 2021. On March 10, 2021, an Order was issued scheduling the parties for an Interim Relief Hearing before Hearing Officer Laura Valles due to the COVID-19 pandemic for April 19, 2021. Due to scheduling conflicts from both parties, the Interim Relief Hearing was rescheduled by Order of Court to May 17, 2021.

On or around April 12, 2021, Father filed a Petition for Special Relief: Interim Custody. In his Petition, Father averred that the delay caused by rescheduling the Interim Relief Hearing was negatively impacting Father's custodial rights and that Mother was withholding physical custody of the Children. Father stated that Mother wanted his visits to be supervised by her due to his history of opioid use disorder, which Father stated he has been "clean and compliant with his treatment plan." Father averred that he had only had video visits with the Children during this time and wanted the Children to have in-person visits with him and his extended family. Father

¹ It is not clear from the docket whether there was a final resolution to this custody matter, as the last document filed prior to Father's Petition for Modification was an Interim Order of Court dated September 22, 2021. Hence the original Complaint for Custody and events leading up to the September 22, 2021 Interim Order will also be discussed here.

² The Generations program is administered by the Allegheny County Family Division Custody Department. The program provides information to parents and children about engaging families and offers parents and caregivers skills to reach their own resolution.

requested that the Court grant him supervised visits with the Children pending the outcome of the Interim Relief Hearing.

Mother submitted a Response to Father's Petition. In her Response, Mother averred that the parties separated after five (5) years of marriage due to Father's drug usage and erratic behavior, and claimed that Father had "limited supervised involvement" with the Children over a five (5) year period. Mother stated that she tried to reach an agreement for a step-up supervised custody schedule and regular drug-testing, but Father "refused to acknowledge his past and current drug use and abuse, his history of repeated relapses, and his lack of involvement in the Children's lives for the last five (5) years." According to Mother, Father's drug usage precluded him from having unsupervised visits, and that Paternal Grandmother—one of Father's proposed supervisors—enables Father's drug usage. Mother had asked Father if he wanted to spend time with the Children, but Father has either refused Mother's requests or failed to show up after accepting the request. Mother requested that the Court deny Father's Petition.

On April 20, 2021, Judge Jennifer Sattler issued three (3) Orders of Court denying Father's Petition and Mother's Answer, and directing that the claims be addressed at the May 17, 2021 Interim Relief Hearing.

Following the Interim Relief Hearing, an Order of Court was issued on June 9, 2021. This Order directed that Father would have supervised partial physical custody with the Children every Wednesday from 4:00 p.m. to 7:30 p.m. and Saturday from 12:00 p.m. to 7:30 p.m. Father's custodial time would be supervised by Paternal Grandmother, Paternal Step-Grandfather, or a mutually agreed on third party. Mother would continue to have primary physical custody and the parties would share legal custody. Father was also to submit to random drug screens through

Mainline Drug Testing Services, and a Review Hearing before Hearing Officer Valles would be scheduled for September 13, 2021.

By consent, the parties entered into an Interim Order of Court on September 22, 2021. In this Order, the parties agreed that they would share legal custody, Mother would have primary physical custody, and Father would have supervised partial physical custody. Father was to continue with random drug screens, and Mother could request that Father undergo a hair follicle test. The parties were also to engage in co-parenting counseling with the Parenting Institute and enroll in Our Family Wizard for communication about the Children.³

Father filed a Petition for Modification on June 14, 2022 seeking an increase in partial physical custody and the lifting of the requirements for supervision and random drug screens. Father averred that he complied with the terms of the September 22, 2021 Interim Order, continued to have negative drug screens for a year, and was continuing treatment and the recovery process. The parties again proceeded through the Generations program on Father's Petition for Modification, and the parties were scheduled for Mediation on June 30, 2022.

Father submitted a Praccipe on July 7, 2022 to schedule a hearing before Hearing Officer Valles regarding modification of partial custody. On July 12, 2022, an Order of Court was issued scheduling a hearing for September 21, 2022. The parties entered into an Interim Consent Order on September 21, 2022, which directed that Father was to obtain a hair follicle test by September 26, 2022; if his results were negative, he would have unsupervised physical custody every Saturday from 9:00 a.m. to 7:30 p.m. Mother would have the ability to request further hair follicle tests, and Father was to provide quarterly updates concerning his treatment plan. The parties agreed to

³ The Order further states that a Review Hearing before Hearing Officer Valles would be scheduled for November 15, 2021; however, there is nothing on the docket scheduling this Hearing or an Order of Court coming out of that Hearing.

have full custody evaluations completed, and a Review Conciliation would be scheduled before Hearing Officer Valles. These terms were reiterated by a further Interim Consent Order on December 19, 2022.

On or-around January 6, 2023, Mother submitted a Motion for Custody Evaluation. In her Motion, Mother averred that Father failed to exercise all of the visitation periods provided in the Interim Orders, and when Father did exercise his custody time, Paternal Grandmother and Paternal Step-Grandfather did not properly supervise Father. Mother also averred that Father ended co-parenting counseling after "verbally [abusing]" Mother and counselor Lynn Macbeth from the Parenting Institute, and behaved inappropriately towards Randy Brodsky of Mainline Drug Test Services, which resulted in Mr. Brodsky no longer permitting Father to test through their organization. In a footnote, Mother states that Father sent court staff "inappropriate and threatening emails, including claims that he would report the court's clerk to the disciplinary board." Mother proposed utilizing Dr. Eric Bernstein as a custody evaluator, which Father rejected. Father suggested Dr. Arnold Sheinvold, an evaluator based in Harrisburg, which Mother rejected. At a Review Conciliation on December 19, 2022, Father refused to sign a Consent Order to allow Allegheny Forensic Associates to conduct the evaluation, claiming that their evaluations were "inadequate." Mother averred that Father was trying to circumvent the parties' prior agreements and the Family Division's procedures for appointing custody evaluators. Mother requested that the Court enter an Order directing the completion of a full custody evaluation by an evaluator at Allegheny Forensic Associates.

Father filed an Answer and Counter-Petition for Custody Evaluation. In his Petition, Father avers that Mother is negatively characterizing him because of his past opioid use and claimed that Mother was engaged in a "litigation strategy of bullying Father as well as federally-proscribed

discrimination in this dispute." Father denied verbally abusing Lynn Macbeth during co-parenting sessions, and claimed that he ended co-parenting counseling sessions based on a letter from his physician, Dr. Michelle Barwell, stating that Ms. Macbeth's participation "contravened ethical rules" given previous interactions with Father (which Father did not detail in his Answer). Father also claimed that raising a negative inference about his parenting based on his medical treatment would violate the Americans with Disabilities Act and the U.S. Constitution. Father states that Mainline issued incorrect results and engaged in *ex parte* communications with Mother's counsel. Father averred that his selection of Dr. Sheinvold as an evaluator was governed by the fact that Mother's work supervisor was the Dean of the University of Pittsburgh's School of Public Health and that both parties' fathers are prominent doctors in the western Pennsylvania medical community—seeming to infer that any evaluator from Allegheny County would be biased from Mother's potential connections to the aforementioned individuals. Father further claimed that Dr. Sheinvold's evaluation process is conducted in a more relaxed environment for children and is more diligent about contacting collateral sources compared to Allegheny Forensic Associates, and that Allegheny Forensic Associates is severely backlogged in cases. Father requested that the Court deny Mother's Petition and grant Father's Counter-Petition appointing Dr. Sheinvold to conduct the evaluations.

Mother then submitted a Response to Father's Counter-Petition. In her Response, Mother averred that Father never proposed Dr. Sheinvold as a potential evaluator. Mother's counsel had sent Father's counsel four (4) emails concerning whether Father would agree to utilize Dr. Eric Bernstein as an evaluator, but only heard mention of Dr. Sheinvold when Father's counsel finally responded to Mother's counsel. Mother averred that there was no basis to have Allegheny Forensic

Associates removed as an evaluator for this matter, and claims that Father is trying to "create a conflict where no conflict exists."

On January 27, 2023, Judge Chelsa Wagner granted Mother's Petition and denied Father's Response and Counter-Petition. In the Order, Judge Wagner ordered that any evaluator assigned to conduct the evaluation consider any potential conflicts of interest before accepting the assignment for the custody evaluation.

On or around January 12, 2023, Father submitted a Motion for Recusal of Judge Chelsa Wagner from the custody matter. In his Motion, Father avers that Mother made statements to Father during the course of their relationship that she has a "positive relationship" with Judge Wagner, who was allegedly a classmate of Mother's at the University of Pittsburgh School of Law. Father averred that this may give the appearance of impropriety or prejudice based on Mother's comments. Father requested that Judge Wagner recuse herself from this matter and that another Family Division judge "with no material previous relationship with either party or other disqualifying relationship to the people and matters involved herein" be assigned to this case.

Mother submitted an Answer to Father's Motion. In her Answer, Mother denied making any statements to Father about a relationship with Judge Wagner. Mother states that Judge Wagner had been presiding over the case for a year and Father never previously filed a Motion for Recusal. Mother requested that the Court deny Father's Motion. On January 27, 2023, Judge Wagner denied Father's Motion for Recusal and added in her Order that she did not have any recollection of Mother and that any possible interactions did not impact her impartiality in presiding over the case and did not merit a recusal.

On March 2, 2023, an Order of Court was issued appointing Dr. Beth Bliss to conduct the full custody evaluation. On April 26, 2023, an Order of Court was issued reassigning this matter to the undersigned judge.

On May 4, 2023, Father submitted a Petition for Contempt and Special Relief. In his Petition, Father averred that Mother has used his struggle with opioid use disorder as a weapon against him and has not recognized his stability. Father also claimed that he requested family therapy, that Mother copy him on all communications with the Children's school and providers, and that Mother stop communicating with his parents—all of which Mother has ignored or outright rejected. Father also averred that Mother has made unilateral medical and educational decisions for the Children, especially in not consenting to behavioral health treatment for Peter and organizing virtual schooling for Peter when the Children's prior school stated that Peter was no longer permitted to attend school in person due to behavioral issues. Father also claimed that Mother was engaging in parental alienation, disparagement and degradation of Father, and interfered with Father's daily video calls with the Children. Father requested that Mother pay \$5,000.00 in counsel fees, that a Guardian ad Litem ("GAL") be appointed for the Children, and that a hearing on medical and educational decision making be scheduled.

On May 9, 2023, Mother submitted an Answer and New Matter to Father's Petition. In her Answer, Mother avers that Father admitted to her as late as January 2021 that he was using drugs. Mother reiterated that Father failed to comply with random drug screens and co-parenting counseling by delaying screens and sessions and engaging in inappropriate behavior that caused the providers to cease services with the family. Mother admits that she refused to do family therapy with Father, but Hearing Officer Valles confirmed that she did not have to participate due to Father's conduct. Mother claims Father does not include her in all legal custody conversations,

and that Father sent Mother's parents a letter containing "untrue and defamatory statements" about Mother. In her New Matter, Mother avers that Father has defamed Mother to her parents, their church, and the Children's school regarding purported behavior in which Mother engaged. According to Mother, Father invokes the First Amendment's Establishment Clause to justify his defamatory conduct. Mother requests that Father be directed to not have any communication about Mother with third parties.

Following oral argument, on May 17, 2023, the undersigned issued an Order of Court directing as follows: (1) the parties would jointly contact Dr. Bliss concerning the status of the full custody evaluation; (2) neither party would directly communicate with the other party's parents or step-parents; (3) a GAL would be appointed; (4) all other issues raised in Father's Petition for Contempt and Special Relief would be consolidated with the custody trial; and (5) counsel would be prepared to provide documentation of counsel fees when the issue is litigated.

On July 6, 2023, Mother submitted a Preccipe for a Judicial Conciliation before the undersigned, and a Judicial Conciliation was scheduled for October 16, 2023. Also on July 6, 2023, Mother submitted a Petition for Special Relief Regarding Custody. In her Petition, Mother averred that Peter experienced behavioral issues at Sacred Heart Elementary School due to his ADHD, and had to complete the school year virtually. Peter needed assistance to meet his needs that Sacred Heart would not be able to provide. Mother wanted to enroll the Children in the Upper St. Clair School District, which would offer supports for Peter's educational needs. Mother messaged Father asking if he agreed to enroll the Children in Upper St. Clair, but he did not respond. Mother requested that she be permitted to enroll the Children in the Upper St. Clair School District and schedule a school choice hearing.

On July 11, 2023, Father submitted an Answer to Mother's Petition for Special Relief Regarding Custody.⁴ In his Answer, Father averred that Mother chose the Upper St. Clair school district, in part, because her significant other, Andrew Dittoe lives in that school district. Father suggested that the Children attend the Riverview School District "where Father has an opportunity to secure residency" or the North Hills School District.⁵ Father also averred that having the Children attend school in Upper St. Clair would frustrate his custodial time as Upper St. Clair is about one and a half (1 ½) hours away from Father's residence in Armstrong County. Father requested that Mother's Petition be denied and that the Children remain at Sacred Heart and/or cyber school until further Order and that the matter be scheduled for a school choice hearing.

Following oral argument, on July 14, 2023, the undersigned issued an Order of Court directing as follows: (1) Mother's Petition for Special Relief was deemed a Petition for School Choice Hearing; (2) a School Choice Hearing was scheduled for August 4, 2023; and (3) pending the School Choice Hearing, both parties could register the Children for the school district where each parent resides. On July 18, 2023, a Pre-Hearing Order of Court was issued scheduling the matter for a half (1/2) day School Choice Hearing on August 4, 2023.

Meanwhile, on July 11, 2023, an Order of Court was issued appointing Kilbreth E. Barton, Esquire as the GAL for the Children. Shortly after this Order was issued, Court Administration notified the undersigned's chambers that Ms. Barton-Rhea could not accept the appointment. As such, an Order of Court was issued on July 18, 2023 vacating Ms. Barton-Rhea's appointment. On July 24, 2023, an Order was issued appointing Alyson Landis, Esquire as the GAL for the Children.

⁴ This Answer referred to here does not appear on the Department of Court Records docket.

⁵ It should be noted that Father was not residing in either of these school district at the time the Petition and Answer were submitted. To this Court's knowledge, Father's residence remained in Ford City, Armstrong County for the entirety of the litigation.

On July 27, 2023, Mother submitted an Emergency Petition for Special Relief. In her Emergency Petition, Mother averred that Father was arrested on June 16, 2023 and charged with 75 Pa.C.S.A. §§3802(d)(1)&(2) (relating to Driving Under the Influence of Controlled Substances). Mother stated that Father concealed this from her and has continued to drive the Children during his partial custody time. In addition, Mother averred that Father was left unsupervised during his custodial periods and that the Children have observed Father drink alcohol during his visits. Mother requested that Father's custodial periods be suspended, that his visits be supervised by Happy Child Supervision, and that Father complete a hair follicle test that covers opiates, heroin, and alcohol, among other substances. The Court issued an Interim Order on July 28, 2023 stating that Father would be prohibited from driving a vehicle with the Children present pending oral argument.

An Amended Emergency Petition was submitted on July 31, 2023 which contained additional information regarding the circumstances of Father's arrest. Father was pulled over by Blawnox Police while driving. The police officer noticed that Father was sweating profusely and had slurred speech, pinpoint pupils, and glossy eyes. The police officer called EMS while Father went in and out of consciousness. Father was transported by ambulance to St. Margaret's Hospital. At the hospital, blood tests were performed which showed that Father tested positive for fentanyl, amphetamine, morphine, and methadone. Mother averred that the blood tests confirmed that Father was using drugs again and that it was not safe for the Children to be left unsupervised with Father. Mother reiterated her original requested relief.

Following oral argument, on August 2, 2023, the undersigned issued an Order of Court directing as follows: (1) the School Choice Hearing would be continued to a later date; (2) an *In*

Camera Interview with the Children would be scheduled for August 4, 2023; and (3) Mother's Emergency Petition would remain under advisement pending the *In Camera* Interview.

On July 27, 2023, Father's then counsel submitted an Expedited Motion to Withdraw and Continuance.⁶ Father averred that he would not have enough time to prepare for the School Choice Hearing due to the "quick scheduling" of the same and that he would be prejudiced by it. Mother's counsel submitted a Response on July 31, 2023, averring that Father's loss of counsel is not a legitimate basis to continue to School Choice Hearing. Mother requested that Father's request for a continuance be denied. An Order of Court was issued on August 2, 2023 permitting Father's counsel to withdraw on August 5, 2023 and ordering that the School Choice Hearing be continued.⁷

The *In Camera* Interview with the Children was conducted on August 4, 2023. On August 7, 2023, the Court issued an Order directing that the Children would be registered for and attend the Upper St. Clair School District pending the School Choice Hearing. On August 14, 2023, a Pre-Hearing Order of Court was issued scheduling the School Choice Hearing for December 1, 2023.

On September 15, 2023, Mother submitted a Petition for Special Relief Regarding Custody. In her Petition, Mother averred that the Upper St. Clair School District conducted a meeting and sent forms which would permit the school district to evaluate Peter for educational services. Mother states that Father initially did not attend the meeting, and responded to an email from the school that he would not give permission for Peter to be evaluated, along with other "untruthful statements" about Mother, the Children, and the pending litigation. Father wanted Peter to be evaluated by the Woodland Hills School District, even though the Children did not attend that

⁶ This Motion referred to here does not appear on the Department of Court Records docket.

⁷ In total, Father was represented by five (5) attorneys during the pendency of this custody litigation. From this point on, Father was a self-represented litigant.

district. In addition, Mother averred that Father, Paternal Grandmother, and Paternal Step-Grandfather screamed at, and made disrespectful comments to, the Children during Father's custodial periods, and that Father refuses to communicate through Our Family Wizard despite being ordered to do so. Mother requested that Father execute any documents for Peter's evaluation by Upper St. Clair, that his custody periods only be supervised by Happy Child Supervision, that Father and his family cease making negative and inappropriate comments to the Children about Mother, and that Father only communicate with Mother on Our Family Wizard.

On September 25, 2023, Father submitted an Answer to Mother's Petition. In his Answer, Father denies the accusations made by Mother and again claimed that his constitutional rights and his rights under the Americans with Disabilities Act. He further averred that the evaluation by Woodland Hills was suggested by staff at Sacred Heart—that Mother and Father consent to having an Individualized Education Plan completed through their home school district (which was Woodland Hills School District at the time). Father also averred that Mother has told the Children that Father and his family are mentally ill. Father requested that Mother's Petition for Special Relief be denied.

The GAL also submitted a Report on or around September 25, 2023. In her Report, the GAL details her contact with the family and the issues of Peter's school evaluation, Father's alleged actions towards Mother, Father's behavior while the Children are in his custody, and Father's DUI charges. The GAL recommended that Father and the Children enroll in family therapy, that Father and Mother communicate exclusively in Our Family Wizard, that Peter be evaluated by the Upper St. Clair school district, that Father would not make negative comments about Mother to the Children, and that Father would not drive a vehicle with the Children present.

On September 26, 2023, in considering all of the above, the undersigned issued a Memorandum and Order of Court. In its Order, the Court directed that the parties follow the schedule in the September 21, 2022 Order of Court. Father was not to use alcohol or illegal or non-prescribed drugs at least twenty-four (24) hours prior to his supervised visits. Father was not to transport the Children, and he was to submit to a hair follicle test within twenty-four (24) hours of the Order. The Order also laid out provisions for phone and video calls with the Children and for using Our Family Wizard. Father was also to comply with signing all documents for the school district to meet the Children's educational needs and that he would not make negative or inappropriate comments to the Children about Mother. In addition, on October 2, 2023, the Court ordered Father and the Children to undergo reunification counseling with Inspiring Change, LLC.

On October 5, 2023, Mother submitted a Second Emergency Petition for Special Relief Regarding Custody. In this Petition, Mother averred that Father did not complete the ordered hair follicle test. Mother also averred that the GAL learned from the Children that Father left his visit to go get "energy drinks;" after Father returned, he went into a separate room, lied down on the couch, and appeared to be under the influence. Mother averred that Paternal Grandmother and Paternal Step-Grandfather did not take action regarding Father's behavior. Mother again requested that Father's custodial time be suspended.

Father submitted an email claiming that he would be filing a defamation action against Mother's counsel and a Motion for the undersigned to recuse herself, as well as complaints with the Pennsylvania Supreme Court and the Department of Justice. On October 6, 2023, Father submitted a Response raising many of the same points as his email. He also claimed that this Court did not follow the Rules of Civil Procedure in sending the September 28, 2023 Order via email instead of regular mail. Father averred that Mother was litigating this matter "in a manner designed

to inflict the maximum amount of stress and trauma on Father." Father's Response also contained a Counter-Petition requesting that the Court extend the deadline to file a Written Narrative and Proposed Order for the October 16, 2023 Judicial Conciliation. As an exhibit to his Response, Father attached the Forensic Chain of Custody and Control form for a five (5) panel and ETG drug screen performed by Fastest Labs; no results from that test were included, nor does the form list what substances were tested.

The GAL also submitted an Updated Report on October 6, 2023. In her Report, the GAL details the issues of Mother's Emergency Petition for Special Relief, school choice, and communication on Our Family Wizard. The GAL recommended that Father's custodial time be suspended pending the results of Father's hair follicle test, that Father get a hair follicle test that covers opioids, that Father get make up time if his hair follicle tests were negative, and that Mother be permitted to renew the Children's passports.

On October 6, 2023, the Court issued an Order directing that pending the October 16, 2023 Judicial Conciliation, Father's partial physical custody would be supervised by Happy Child Supervision, and that Father would be permitted to submit his Written Narrative and Proposed Order by October 11, 2023.

On October 12, 2023, Father submitted a Petition for Recusal. Father mentioned comments that the undersigned allegedly made concerning his sobriety, whether Father had reported his arrest and charge to the Disciplinary Board, and whether he had reached out to Lawyers Concerned for Lawyers or a similar organization.⁸ Father claimed that he was treated "like something less than human." Father requested that the undersigned recuse herself. An Order of Court was issued on the same day stating that the Petition would be addressed at the Judicial Conciliation and that

⁸ Father is employed as an attorney who is licensed to practice in the Commonwealth of Pennsylvania.

Father had the burden of proof of demonstrating why the undersigned should recuse herself. Mother submitted a Response on October 13, 2023 denying the allegations that Father made in his Petition. Mother requested that Father's Petition be denied.

A Judicial Conciliation was held on October 16, 2023. Mother's Second Emergency Petition for Special Relief, Father's Response, Father's Petition for Recusal, and Mother's Response were all addressed at that time. Following the Judicial Conciliation, two (2) Orders of Court were issued. The first Order issued on October 16, 2023 denied Father's Petition for Recusal. Then, a Memorandum and Interim & Interlocutory Order of Court was issued on October 18, 2023. In this Order, Mother was to have primary physical custody. Father was to have supervised visitation on Wednesdays after school until 7:30 p.m. and every Saturday from 9:00 a.m. to 9:00 p.m. Father's visits were to be supervised by Happy Child Supervision, and a failure to participate in visits could raise a negative inference. The parties were to continue sharing legal custody, the Children were to continue with individual therapy, and Father was to continue with drug and alcohol and mental health treatment. Moreover, Father and the Children were to undergo reunification counseling with Inspiring Change, LLC, and Father was to submit his most recent hair follicle test and undergo a subsequent hair follicle test within seven (7) days of the Order.

An Order of Court was issued on October 24, 2023 scheduling a Pre-Trial Conference for February 5, 2024. On the same day, an Order was issued scheduling a two (2) day trial for April 9 and 11, 2024.

Following these Orders, the Court received notice from Inspiring Change, LLC⁹ that they would not be able to provide reunification counseling. The Court sent the parties and the GAL this communication and requested that the GAL provide a position regarding alternative providers

⁹ Inspiring Change, LLC handles complex/high-conflict custody cases, and it is not common for them to terminate work with a family early in the process.

for reunification counseling. On October 31, 2023, an Order of Court was issued vacating Inspiring Change's appointment, and directing that the GAL contact Dr. Deborah Gilman regarding her ability to conduct reunification counseling. If Dr. Gilman could not perform it, then the GAL was to contact Dr. Shannon Edwards regarding her ability to conduct reunification counseling. If Dr. Edwards could not perform it, then the GAL was to contact the Parenting Institute regarding their ability to conduct reunification counseling. Ultimately, on November 2, 2023, the Court issued an Order appointing Dr. Deborah Gilman to conduct reunification counseling with Father and the Children.

On November 30, 2023, an Order of Court was issued ahead of the December 1, 2023 School Choice Hearing. In this Order, Father was precluded from calling any witnesses other than himself and from presenting any exhibits because he did not submit his Pre-Hearing Statement and Exhibit Binder by the deadlines proscribed in the August 14, 2023 Pre-Hearing Order of Court.

The School Choice Hearing was scheduled for December 1, 2023 at 8:30 a.m. Mother, her counsel, and the GAL were all present, but Father was not. At the hearing, the Court was made aware that Father was scheduled for an ARD hearing before Judge Bigley in the Criminal Division beginning at 7:00 a.m. on the same day.¹⁰ Despite waiting approximately forty (40) minutes for Father, and paging him over the Family Division intercom, Father did not appear. Thus, the proceeding commenced. Following the hearing, a Memorandum and Order of Court was issued directing that the Children were to continue attending the Upper St. Clair school district. The record from the hearing would be incorporated into the record at trial, and all non-conflicting provisions of prior Orders remain in full force and effect.

¹⁰ The GAL did note that Father may have believed the hearing started at 9:30 a.m. as originally ordered on August 14, 2023, even though an Order was issued on November 21, 2023 changing the start time of the hearing. Moreover, Father did not present a Motion for Continuance requesting that the hearing be continued due to his ARD hearing or for any other reason.

The Pre-Trial Conference was held on February 5, 2024. The GAL submitted her Final Report on March 28, 2024. On April 2, 2024, Father submitted an email to Mother's counsel, the GAL, and the Court stating that he intended to represent his Petition for Recusal. He submitted a copy of the Petition with this email, but did not appear to submit it through the Client Services Center as was required for all self-represented litigants with cases in Allegheny County's Family Division, as well as the undersigned's Standard Operating Procedures. Later that day, Father submitted a subsequent email to Mother's counsel, the GAL, and the Court stating that he would be submitting a Motion *in Limine* to exclude Dr. Beth Bliss's testimony as the court-appointed custody evaluator.

On April 3, 2024, an Order of Court was issued directing that, because Father had not abided by the deadlines listed in the October 24, 2023 Pre-Trial Order to submit his Pre-Trial Statement, (1) Father would be precluded from presenting any witnesses at the trial other than his own testimony; (2) both parties would be precluded from presenting Motions *In Limine* and any issues that would have been raised would be deemed waived; (3) Father's Petition for Recusal would not be addressed unless it was presented in compliance with the undersigned's Standard Operating Procedures.

Mother timely submitted her Exhibit Binder on April 5, 2024. Father submitted a series of emails from April 5-8, 2024 with CVs for four (4) expert witnesses which he intended to call, along with a Motion *in Limine* to exclude Dr. Bliss's testimony, and a weblink that purported to contain his exhibits and Petition for Recusal. On April 8, 2024, Mother submitted Objections to Father's Pre-Trial Statement, Expert Witnesses, Motion *in Limine* and Petition for Recusal because they were not submitted in a timely manner. An Order of Court was issued on April 8, 2024 directing that Father was precluded from presenting exhibits at trial, Father's Petition for Recusal

would not be addressed at trial¹¹, and all other provisions of the October 24, 2023 Pre-Trial Order of Court and April 3, 2024 Order of Court would remain in full force and effect.

A one (1) day custody trial was held on April 9, 2024. Mother, her counsel, and the GAL were present during the proceedings. Prior to the beginning of trial, Father requested that his brother, who told court staff that he was his attorney and had not filed his appearance with the Department of Court Records, and several of his family members be present in the courtroom during the trial. The Court denied Father's request to have his brother present because he was not listed as counsel of record for Father. The Court also offered to have Father's family members view the proceedings from a Microsoft Teams link instead of being physically present in the courtroom. Mother's attorney objected to them being present in the courtroom, but had no objection to them participating remotely. It is this Court's understanding that upon hearing this from court staff, Father then left the Family Law Center. He did not appear in the courtroom for any part of the custody trial despite court staff paging him twice over the building intercom. The trial proceeded with just Mother, her counsel, and the GAL.

Following the proceedings on April 9, 2024, an Order was issued on April 10, 2024 stating that the record for the custody matter is closed, the April 11, 2024 trial date would be cancelled, and the parties would receive both a short Order of Court with the Court's decision, along with this written Memorandum and Order of Court within the following weeks.¹²

The findings of the Court were not placed on the record, but are listed below.

¹¹ In the Order, the undersigned gives an analysis of whether she would have recused herself from the custody matter, despite not addressing it directly at trial.

¹² A short Interim and Interlocutory Order was issued on April 11, 2024 ordering that Mother would have sole legal custody and sole physical custody of the Children, with Father having supervised visitation with the Children upon Dr. Deborah Gilman's recommendation and upon starting reunification counseling with the Children, completing an eighteen (18) panel hair follicle test, and continuing with mental health and substance abuse treatment. Father has appealed this Interim and Interlocutory Order prior to the instant Memorandum and Final Order being issued.

C. CUSTODY FACTORS PURSUANT TO 23 Pa.C.S.A. § 5328(a)

In awarding custody, this Court is required to "determine the best interest of the child by considering all relevant factors, giving weighted consideration to those factors which affect the safety of the child." 23 Pa.C.S.A. § 5328(a). This section sets forth the following sixteen (16) factors:

(1) Which party is more likely to encourage and permit frequent and continuing contact between the children and another party?

This factor favors Mother.

Mother testified that she and Father separated in 2016 when she discovered Father's heroin usage. Mother stated that she did not leave Father alone with the Children because she was uncertain of Father's sobriety. Until Mother filed her Complaint in Divorce against Father, Mother would schedule calls and outings between Father and the Children. According to Mother, Father has not exercised any overnights with the Children since the parties separated. The parties had review hearings before Hearing Officer Laura Valles in November 2021 and March 2022. Both orders from those hearings only provided Father with supervised visits and required that Father submit to random drug screens.

Father did exercise visits with the Children, with Paternal Grandparents supervising him. In October 2023, this Court ordered that Father's visits would be supervised by Happy Child Supervision, after concerns that Paternal Grandparents were not providing adequate supervision of Father during visits. Following this Order, Father emailed Mother stating that he would "see her in federal court" and he "would not allow a sheriff"¹³ to supervise his visits.

¹³ The "sheriff" that Father is referring to is Susan Dzubinski Gualtieri, a former sheriff's deputy who founded Happy Child Supervision.

According to Mother, Father's last parenting time occurred on or around September 30, 2023. Since that time, Father has not had any supervised visits with the Children, despite the fact that he has permission by the Court to enjoy supervised visitation. With respect to phone contact, Peter called Father a few times in October and November 2023, and Louisa called Father on Christmas Day 2023. Father has only initiated one (1) call to the Children—a call to Louisa on her birthday. Regardless of whether the Children or Father initiates the call, the calls only last two to three (2-3) minutes in duration. Father did not send the Children any Christmas or birthday gifts. Dr. Bliss opined that Father "cannot put [the Children's] needs above his own," which may explain why Father has not had visits with the Children since October 2023. Father's objection to the fact that the Court has increased supervision and decreased the duration of the visits is more important to him than spending any time with the Children. It appears that Father has not made any fruitful attempt since that time to remain in contact with the Children, either through in person visits or phone or video calls.

(2) The present and past abuse committed by a party or member of the party's household, whether there is a continued risk of harm to the children or an abused party, and which party can better provide adequate physical safeguards and supervision of the children.

This factor favors Mother. See Factors (9), (13), and (15).

Mother testified that she is fearful of Father because of his verbal abuse and erratic behavior during the marriage, and especially during this litigation. Mother testified that Father makes her afraid, that he is emotionally volatile and unpredictable, and that she is always feeling "on edge." Mother was fearful for herself, her family, her attorney, and "everyone." The Court has ongoing concerns that Father is engaging in coercive control, which includes behaviors such as degrading

Mother and the Children by criticizing, mocking, and demeaning them; and attempting to manipulate the legal system to harm Mother and increase his control over her and the Children.

Mother testified to numerous text messages and emails that Father has sent to Mother that she found concerning. In February 2023, Mother reached out to Father on Our Family Wizard about Peter's ADHD treatment and therapy. Father texted Mother outside of Our Family Wizard and made comments about Mother's mental health. Father implied that in order for him to sign off on Peter seeing a new therapist, he and Mother would have to do family therapy. Also in February 2023, when Mother was texting Father about Peter's basketball tournament, Father texted Mother "your mental illness is the only obstacle for success." Mother told Father that he needs to get help to address his mental health, but Father retorted that he would stop cooperating and he would do what is the best interest of the Children. As late as March 2024, Father claimed that Mother, her attorney, the GAL, and this court were conspiring against him to take away custodial time with the Children.

This is just a small example of numerous messages presented from 2021 onwards. In these messages, Father would claim that Mother has anxiety, OCD, and other mental health diagnoses. He would blame Mother and her purported, yet unsubstantiated, actions for the discord in their relationship both in messages between them, and to other third parties such as the Children's school and their church. He told Mother that she "committed perjury" and threatened to put her in jail unless she were to drop litigation, and that he would write to the University of Pittsburgh's general counsel about Mother allegedly "misusing health information." Father also told Mother that his comments about Mother to others were protected by the U.S. Constitution as "free speech." These threats and attempts to weaponize the law against Mother are extremely concerning to this Court,

as they imply that Father is attempting to coercively control Mother (and others) into giving in to what he wants, regardless of the effect on Mother or the Children.¹⁴

This is not limited to communications via email, Our Family Wizard, and text messages; there have also been in-person confrontations. For example, at a basketball game, Mother was seated on the opposite side of the gymnasium from Father and his family. Father was texting Mother inappropriate comments about her mental health, telling her to get Peter "more help," and not to go to any of the games. At a championship game where Maternal Grandmother was present, Maternal Grandmother asked Peter to get down off of a flag pole that he was playing on. At that, Father ran to Maternal Grandmother, screaming at her to "mind your own business" and that she could not reprimand Peter. Father further stated to Mother, "until you and your family can respect my parenting time, you need to stop attending games during my parenting time."

Mother testified to even being fearful of coming to court. Mother testified that right before the trial began, she was located in the waiting area seated away from Father and his family. Mother saw the Sheriff Deputy walk over to where Father and his family were. During this discussion, she heard Father yell "they won't let us all come in, I'm just leaving," and Father "stormed out." Mother testified that this incident made her fearful.

(3) The parental duties performed by each party on behalf of the children.

This factor favors Mother.

Mother has performed the majority of parental duties on behalf of the Children. Even while the parties were together, Mother performed parental duties like bathing, feeding, taking the

¹⁴ It should be noted that Father has made several similar comments to the Court's staff through emails, claiming that he would report the undersigned to the Disciplinary Board and file a "King's Bench" brief to the Supreme Court concerning comments that the undersigned allegedly made at Motions Court, in which Father was present with his divorce counsel.

Children to school, activities, and appointments, and helping them with homework; all of this while Father was at work. Mother testified that she is willing to continue performing these duties.

Father did not testify or present any evidence about the parental duties that he has performed for the Children. Dr. Bliss testified that Father told her that he only performs about ten percent (10%) of the parental duties. According to Mother, Father did not attend any doctor or dentist appointments when the Children were younger, and has only attended appointments sporadically within the past two (2) years. Mother testified that she is unsure if Father has scheduled any appointments for the Children within the six (6) months prior to trial.

(4) The need for stability and continuity in the children's education, family life, and community life.

This factor favors Mother.

Mother testified that she has the Children involved in several afterschool and community activities. Peter plays basketball, baseball, swims, and is in chess club at school. Louisa does dance, basketball, synchronized swimming, and plays the cello. Mother testified that the Children are "thriving" at Upper St. Clair; they love their new friends there and have been invited to playdates and birthday parties of other children at the school. Both Children are excelling academically at Upper St. Clair. Peter also recently received a "Panther Paw" award—an award that is given to five (5) students for showing dedication and "going the extra mile" at school. This is a significant improvement for Peter, who previously had difficulty while at his prior school.

There was no testimony or evidence presented by Father regarding the stability and continuity that he could provide for the Children.

(5) The availability of extended family.

This factor is neutral.

Both parties have the availability and support of extended family. Father resides with Paternal Grandmother and Paternal Step-Grandfather in Ford City, Armstrong County, Pennsylvania. Maternal Grandmother and Maternal Grandfather live in the East End neighborhood of Pittsburgh. Mother testified that Maternal Grandparents are "very close" with the Children and see them once or twice per week. They also attend the Children's sporting events. Mother testified that they are available to assist her if needed.

(6) The children's sibling relationships.

This factor is neutral.

The Children are siblings to each other and have no other siblings on either Mother or Father's side of the family. Mother testified that the Children are close with each other and support each other. The Court also observed this in the Children's *In Camera* Interviews. In particular, Peter takes his role as a big brother seriously and tries to protect Louisa's feelings.

(7) The well-reasoned preferences of the children, based on the children's maturity and judgment.

This factor favors Mother. See Factor (9).

The Court conducted *In Camera* Interviews with both Children separately in anticipation of the School Choice Hearing. Peter is eleven (11) years old but appeared to be emotionally "young" for his age. Child understands that he has ADHD, which causes him trouble at school and makes him distracted doing school work. He had recently begun taking medication. Peter had also testified to being a victim of bullying with the past school year, and was excited at the prospect of potentially attending a different school. Peter testified that he "always" feels safe at Mother's house, but only "sometimes" felt safe at Father's house. Peter testified to Father "acting weird" by yelling at Louisa for calling Mother, getting angry for no reason, having "fits of anger" in the car, and drinking alcohol (which Peter was able to identify because the bottle had the word

"wine" on it). Peter also testified to an incident where Father slapped Peter on the arm for standing up for Louisa while she was crying. Peter described Mother as "nice," "loving," and "good at taking care of us." Peter described Father as "sometimes mean," "says stupid stuff," and "spits out crazy lies." Peter stated that he did not like spending time with Father, but he would like it more if Louisa or Paternal Grandmother were present.

Louisa is ten (10) years old and appeared to be quite mature for her age. At the time of the *In Camera* Interview, she was heavily involved in several activities, such as basketball, swim, dance, and Math 24. She is very close to Peter, describing him as her "best friend ever since she was born." Louisa testified that the children at their school at the time, Sacred Heart Elementary, were "mean." Louisa testified that she "always" feels safe at Mother's house, but felt unsafe at Father's house. Louisa stated that Father is "kind of mean" and a "big man" who "gets in your face." Louisa testified that on her birthday, she got into a big fight with Father about Mother. Louisa called Mother and started crying. She got so upset that she locked herself in the bathroom and vomited. Louisa also testified that during one visit, when she and Peter went to an escape room, Father "just sat on his phone."

Dr. Bliss also gleaned the Children's preferences from her interviews with the Children and observing the interactions between the Children and the parents, as detailed below. Dr. Bliss testified that Peter presented more as an adult during the interview rather than a child. Peter disclosed that he does not like spending time with Father and wants less of it. He stated that Father "makes him sad" and yells at him and Louisa. Dr. Bliss testified that Louisa would rather not see Father because he yells and screams at them about Mother. Louisa also told Dr. Bliss about comments Father made that made her upset, such as threatening to burn down their lake house and telling Maternal Grandmother to "go play in traffic" in front of her and Peter.

The Children have a preference for being primarily with Mother, but may be amenable to spending more time with Father. This, however, would be contingent on Father changing his behavior around the Children and rebuilding his relationship with them. The Court finds that the Children's preferences are both mature and well-reasoned based on the above.

(8) The attempts of a parent to turn the children against the other parent, except in cases of domestic violence where reasonable safety measures are necessary to protect the child from harm.

This factor favors Mother.

As stated above, Father has told the school psychologist that he believes Mother is alienating Peter from him. Mother denied alienating either Child or making negative comments about Father in front of the Children. On the contrary, Mother testified credibly that the Children told her that Father makes negative comments about her. Exhibits that Mother presented at trial corroborates Mother's testimony.

The GAL testified as to her impression of whether there has been alienation between Father and the Children. When she spoke to the Children in August 2023, they did not have any positive comments about Father. Peter disclosed that his most positive memory was when Father left the home. Peter also remembered an incident where the police had come to the house looking for Father. Father had told the GAL that this occurred during his addiction. Louisa told the GAL that she does not even remember Father prior to separation. Both Children reported that Father was being aggressive, yelling, and swearing at them and around them. Louisa also remembers Father getting in her face and yelling at her. In conclusion, the GAL does not believe the Children have been coached by Mother; they are just fearful of Father and very hurt by his actions and his behavior. Mother has exhibited protective capacities and has brought safety concerns regarding Father's criminal charges and substance use to the Court's and the GAL's attention.

(9) Which party is more likely to maintain a loving, stable, consistent, and nurturing relationship with the child adequate for the children's emotional needs.

This factor favors Mother.

It is clear that both parties love the Children; however, Mother appears better able to provide for the Children's emotional needs at this time.

Dr. Bliss testified to her observations during the Children's interactionals with Mother and Father. Dr. Bliss testified that the Children's interactions with Mother were appropriate and the Children appeared comfortable with Mother. During the interactional, Mother would prompt the Children to introduce themselves, play games with the Children, and give the Children reminders like sitting on their bottoms when playing. The Children would look to Mother for guidance and she would set appropriate limits.

On the other hand, Dr. Bliss observed no positive interaction between the Children and Father. Initially, Father was observed pacing in the parking lot and did not want to come inside. When Father did come inside, he did not greet anyone when he entered the room, not even the Children. He sat in a chair behind the Children. Father did not interact much with the Children, and the Children ended up ignoring him. Father told Dr. Bliss that he did not get enough sleep because he was in line buying a game for Peter. Peter felt the need to apologize for this. Father and Peter did not end up talking to each other during the interaction. Father attempted to communicate with Louisa, but Louisa told him to leave because she felt uncomfortable.

Dr. Bliss conducted a brief observation of the Children with Paternal Grandparents. Although the Children were more reserved with Paternal Grandparents than with Mother, the Children did play games with them.

(10) Which party is more likely to attend to the daily physical, emotional, developmental, educational, and special needs of the children.

This factor favors Mother. See Factors (1) and (3).

There was no testimony or evidence presented regarding what need that Father attends to on a daily basis.

Dr. Bliss testified that both Children have had their struggles with mental and behavioral issues. She testified that Peter presents as socially awkward and has a history of acting out, particularly at school. Peter is diagnosed with ADHD and may meet the criteria for high-functioning autism. Louisa does not have any diagnoses, but she does tend to internalize her feelings and withdraw when she is upset or anxious. Both Children are enrolled in individual therapy and appear to be doing well with the treatment.

Mother has presented herself as the parent who is caring for most, if not all, of the Children's daily needs. A prime example occurred when the Children were enrolling in the Upper St. Clair school district. Mother petitioned the Court for the Children to attend the Upper St. Clair school district. Father objected to Mother's request; however, Father did not appear for the scheduled School Choice Hearing, so Mother's request was granted.

In addition, Mother had initiated Peter's evaluation for services with the Upper St. Clair school district. Father would not agree to this evaluation, nor did he attend any of Peter's Individualized Education Plan (IEP) meetings or talk to the school psychologist. It was only when Mother petitioned the court for relief that Father executed the necessary paperwork for Peter's evaluation by the Upper St. Clair school district. This is just one example that demonstrates that Father has not attended to the Children's needs, and had to be ordered by the Court to assist Mother with these needs.

(11) The proximity of the residences of the parties.

This factor is neutral.

Father moved out of the marital residence in Allegheny County, and now resides in Ford City, Armstrong County, Pennsylvania. Mother resides in Upper St. Clair, Allegheny County, Pennsylvania. Their residences are approximately one (1) hour and fifteen (15) minutes away by car. According to Mother, Father had considered moving to Oakmont in Allegheny County; however, this has not occurred as far as Mother knows. Father's office is located in the Grant Building in Downtown Pittsburgh in Allegheny County.

(12) Each party's availability to care for the children or ability to make appropriate child-care arrangements.

This factor favors Mother.

There was no testimony or evidence presented regarding what childcare Father would be able to provide for the Children if necessary. Mother testified that Father never made childcare decisions regarding the Children.

Mother testified that Maternal Grandparents have provided childcare in the past and could continue to provide it in the future. Mother also stated that there are additional babysitters that she could utilize as well. Mother's significant other, Andrew Dittoe, has not provided childcare for the Children, but could be a potential option. Mother testified that Mr. Dittoe has three (3) children of his own who he sees on Tuesday evenings and every other weekend.

(13) The level of conflict between the parties and the willingness and ability of the parties to cooperate with one another. A party's effort to protect a children from abuse by another party is not evidence of unwillingness or inability to cooperate with that party.

This factor favors Mother. See Factor (2).

The level of conflict between the parties has been high throughout the litigation. This appears to be in part due to Father's comments to Mother and to other, as well as his apparent refusal to cooperate with Mother and the directives of this Court.

The parties attempted coparenting counseling with Lynn Macbeth and the Parenting Institute starting in October 2021. Father claimed that he had prior interactions with Ms. Macbeth through Lawyers Concerned for Lawyers, yet both parties appeared to have waived any conflicts with having Ms. Macbeth as their counselor. The parties had individual sessions and two (2) group sessions before Father stated that he could not continue with Ms. Macbeth due to a "major conflict" and purported ethical concerns raised by his individual therapist. During the two (2) group sessions, Mother testified that Father would not let her speak, scream at her, and make false accusations. Mother testified that she is no longer interested in doing co-parenting counseling with Father due to this experience.

Father admitted to Dr. Bliss that he has made negative statements about Mother to the Children. He told Dr. Bliss that she "has OCD" and that she wanted to divorce him. The Children would become upset when they would hear such negative comments, to the point where they would feel attacked and cry. Father did not see these statements as wrong or having a negative impact on his relationship with Mother or the Children.

On September 12, 2023, the school psychologist was trying to contact Father regarding his participation in Peter's Individual Education Plan (IEP) process. When Father did respond, he made statements claiming that Mother was making false representations about schooling and about him. On September 20, 2023, Father sent a subsequent email with further accusations that Mother intentionally scheduled the IEP when she knew that Father had a conflict, and that Mother was "alienating" Peter.

(14) The history of drug or alcohol abuse of a party or member of a party's household.

This factor strongly favors Mother. Mother does not have any significant history of drug or alcohol abuse.

Father's sobriety and substance abuse has been a paramount concern of this Court throughout the litigation. Father has struggled with substance abuse for several years. According to Mother, Father's substance abuse made his work less stable, but Father did not work or practice law while using. Father told Dr. Bliss at the time of the evaluation that he was two (2) years sober, despite a short-lived relapse which he claimed his provider "did not count against him." Mother testified that Father relapsed in August 2021; he was using heroin, which was possibly laced with fentanyl. Father was also evicted from his residence as a result of his addiction.

As stated above, Father was ordered by this Court on several occasions to undergo a hair follicle test to test for substances. For the most part, Father refused to take these tests when ordered. Father was initially ordered to undergo random drug testing with Mainline Testing Services, but was eventually barred from testing with Mainline due to harassing emails and calls that he sent to Mr. Randy Brodsky. In the one test that he did appear to complete through Fastest Labs, Father completed a five (5) panel drug test, but the test did not specify which substances were tested. In addition, in June 2023, Father tested positive for fentanyl, norfentanyl, morphine, methadone, and amphetamines in a blood test conducted by St. Margaret hospital when he was charged with DUI.

The GAL also relayed concerns that he may have been high or otherwise under the influence during his visits with the Children. During one visit, Father left the Children with Paternal Grandparents while he went grocery shopping for "energy drinks." When Father returned from the store, he went into another room, lied down, and appeared to "nod off." The Children

described the incident as scary and said that Father was acting "weird." The GAL opined that this is consistent with behavior displayed by people who are under the influence of opiates. The Children also told the GAL about Father consuming alcohol during their visits with him while Paternal Grandparents were present. Likewise, in the *In Camera* Interview, both Children discussed Father drinking alcohol while at dinner with Paternal Grandmother.

The Court is very concerned about the state of Father's sobriety and the impact that his substance use has had on the Children. It is crucial that Father address his substance use and maintain his sobriety so that he may maintain and rebuild his relationship with the Children.

(15) The mental and physical condition of a party or member of a party's household.

This factor favors Mother.

Both parties have a history of mental health issues that have impacted them. Mother told Dr. Bliss that she was diagnosed with adjustment disorder with anxiety and depression. Dr. Bliss elaborated that this is related to the parties' marriage and custody dispute. Mother denied having any physical conditions that would impact her ability to care for or have custody of the Children.

Father has been diagnosed by his two (2) previous mental health providers with generalized anxiety disorder (GAD), ADHD inattentive type, major depressive disorder, persistent depressive disorder, and opioid use disorder. Father was prescribed methadone to treat the opioid use disorder. Father was previously in therapy.

Both Mother and Father took the MMPI-2 test during their evaluation. Mother's test results were not clinically significant. Father's test results show elevations on Scale 3 and Scale 4. Dr. Bliss testified that a person with these elevations tend to have "hostile and aggressive impulses which they cannot express appropriately." They tend to project, be sensitive to rejection, and become hostile when criticized. Dr. Bliss further testified that Father presented as having an

inflated sense of self and wanted to discuss his accolades. Dr. Bliss also testified that he did not appear to take responsibility for the negative things that occur in his life; he instead blames everyone else. According to Dr. Bliss, Father was likely sober during his evaluation. Dr. Bliss recommended that Father enroll in individual therapy to address his "maladaptive personality traits."

Dr. Bliss further recommended that both Children enroll in or continue with counseling to address their mental health needs. Both Dr. Bliss and the GAL believe that reunification counseling between Father and the Children is necessary to repair their relationship. According to the GAL, Father was initially agreeable to reunification counseling, but he did not put forth the effort to follow through with it. Father reiterated to the GAL that he would not follow through with reunification counseling "until his parental rights are respected under federal and state law."

The Court agrees with the recommendations given by Dr. Bliss and the GAL regarding counseling. It will be vitally important for Father to engage in individual therapy—perhaps therapy that can address co-occurring disorders—as well as reunification counseling with the Children so that he may maintain his optimum health and rebuild his relationship with the Children.

(16) Any other relevant factor.

There are no other applicable factors.

D. CONCLUSION

Based on the above, this Court's consideration of the statutory factors mandates the conclusion that: (1) Father's Complaint for Custody be DENIED; and (2) Father's Petition for Modification is DENIED. An Order reflecting the same is entered herewith.

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

ZACHARY GELACEK,

Plaintiff,

v.

MONICA COSTLOW,

Defendant.

No.: FD-21-007339-007

ORDER OF COURT

AND NOW, this 23rd day of May, 2024, after trial and consistent with this Court's Memorandum of this date, it is hereby ORDERED, ADJUDGED and DECREED as follows:

This matter involved the custodial responsibilities of:

CHILD	DATE OF BIRTH	AGE
Peter Gelacek	06/26/2012	11
Louisa Gelacek	03/11/2014	10

I. CLAIMS

1. Father's Complaint in Custody is DENIED.
2. Father's Petition for Modification is DENIED.

II. LEGAL CUSTODIAL RESPONSIBILITIES

1. Mother shall have sole legal custody of Children. Mother shall have the ultimate say in making decisions of importance in the life of Children, including educational, medical, and religious decisions.
 - a. Mother shall tell Father in Our Family Wizard (OFW) about any major parental decisions that she has made concerning Children, including, but not limited to

Children's health, medical, dental and orthodontic treatment, mental health treatment, education, religious training and upbringing.

- b. Mother shall provide complete and full information from Children's doctor, dentist, teacher, professional or authority. Father is entitled to have copies of any reports or information given to either parent, in accordance with 23 Pa.C.S.A. §5336. These reports should be provided via OFW.
- c. Mother shall execute any and all legal authorizations so that Father may obtain information from Children's schools, physicians, psychologists, or other individuals concerning their progress and welfare.
- d. As soon as practical after receipt by Mother, copies of Child's school and sporting events schedule, special event notifications, party invitations, and similar items shall be provided to Father via OFW.
- e. Mother shall have sole decision-making power regarding the following matters: Children's enrollment or termination in a particular school or school program, advancing or holding Children back in school, authorizing enrollment in college, authorizing Children's driver's license or purchase of an automobile, authorizing employment, authorizing Children's marriage, enlistment in the armed forces, approving a petition for emancipation, authorizing foreign travel, passport application or exchange student status.
- f. Father shall not impair Mother's rights and responsibilities for her legal custodial responsibilities for Children.

- g. Each parent should promptly and politely respond to the other parent's messages. If one parent will be late, they shall message other parent as soon as possible prior to appointed meeting time.
2. Peter shall be evaluated for high-functioning autism, if such an evaluation has not already occurred.
3. No Conflict Zone
 - a. The parties shall not alienate the affections of Children from the other party and the other party's extended family and shall make a special conscious effort not to do so and, to the extent possible, prevent third parties from alienating Children's affections from the other party as well as the other party's extended family.
 - b. The parties shall establish a No-Conflict Zone for Children and refrain from making derogatory comments about the other parent in the presence of Children, and to the extent possible, shall not permit third parties from making such comments in the presence of Children while in their physical custody, whether they are sleeping, awake or in another room.
 - c. Each party shall speak respectfully of the other whether it is believed the other reciprocates or not. Each party shall refer to the other by the appropriate role name such as Mom, Dad, your Grandmother, etc.
 - d. Each party shall refrain from encouraging Children to provide reports about the other party. Communication should always take place directly between the parties, never using Children as an intermediary.
 - e. For a period not to exceed twenty-four (24) months from the date of this Order, Monica Costlow; Zachary Gelacek; Brian McKinley, Esquire; Alyson Landis;

Esquire; and any other attorney retained by Mother or Father, shall NOT speak publicly or communicate about this case including, but not limited to, print and broadcast media, online or web-based communications, or inviting the public to view existing online or web-based publications.

- f. For a period not to exceed twenty-four (24) months from the date of this Order, Monica Costlow; Zachary Gelacek; Brian McKinley, Esquire; Alyson Landis, Esquire; and any other attorney retained by Mother or Father, shall NOT direct or encourage third parties to speak publicly or communicate about this case, including but not limited to, print and broadcast media, online or web-based communications, or inviting the public to view existing online or web-based publications.
- g. The Court further finds that a restriction in the manner of speech furthers the governmental interest of protecting the psychological well-being and privacy of the Children at the center of this custody dispute. *S.B. v. S.S.*, 243 A.3d 90, *8 (Pa. Super. 2020).

4. Communication between Mother and Father

- a. The parties shall continue to use Our Family Wizard (OFW) for all non-emergency communication regarding Child.
- b. Each party shall be responsible for payment of his or her annual membership fee and/or any monthly fees unless a scholarship has been granted.
- c. Each party shall provide and input the initial information requested by OFW. The parties must update that information in the future as new information becomes available.
- d. Each party shall input his or her own personal information.

- e. The party with access to specific information such as health insurance information, doctor's appointments, sports schedules, etc. shall input that information into OFW.
- f. The Court shall have access to all areas of the parties' OFW accounts.
- g. Both parties' OFW entries shall be viewable via a Professional Account to both parties' attorneys of record and the Judge assigned.
- h. All communications regarding parenting matters shall be done through OFW.**
- i. All OFW communication between the parties shall follow the BIFF (Brief, Informative, Friendly, and Firm) format. Communications shall be kept to one (!) time per day and a maximum of five (5) sentences per communication.
- j. The parties shall no longer email, text, direct message, or telephone one another, and all communication shall be done on OFW.
- k. Only matters of emergency (acted upon within twenty-four to forty-eight (24-48) hours) can be made outside OFW.
- l. The parties shall use the Calendar, Info Bank, and Expense features. The Messenger feature shall be used solely when the information cannot be communicated through the Calendar, Info Bank, and /or Expense features.
- m. Parties should respond to all entries within twenty-four (24) hours. Failure to do so will be cause for contempt.**
- n. Text or email alerts about new activity shall be done by using the Daily Digest or On Action option.**

- b. With regard to any emergency decisions which must be made, the party having physical custody is responsible for Children at the time of the emergency, and that party shall be permitted to make any immediate decisions necessitated thereby; however, that party shall immediately inform the other about the emergency.
- c. The party with physical custodial responsibilities for Children during any given period of time shall communicate in a prompt fashion with the other party concerning the well-being of Children and shall appropriately notify the other party of any changes in health or educational progress.

2. Custody Schedule

- a. Mother shall have sole physical custody of the Children.
- b. Father shall have supervised visitation with the Children for four (4) hours per week upon satisfying the requirements set forth below.
- c. Prior to starting any supervised visitation with the Children, Father shall complete the following:
 - i. Father shall contact Dr. Deborah Gilman, as previously ordered, to begin reunification counseling with the Children.
 - ii. Father shall be solely responsible for the costs of reunification counseling.
 - iii. All other provisions of the November 2, 2023 Order of Court remain in full force and effect.
- d. Upon Dr. Gilman's recommendation that Father begin sessions with the Children and seven (7) days prior to the first session with the Children, Father shall complete an eighteen (18) panel hair follicle test.

- i. The test shall screen for the following substances: fentanyl, opiates, opioids, alcohol, amphetamines, cocaine, PCP, heroin, and marijuana.
- ii. The testing facility shall be permitted to utilize alternate methods of testing should a hair follicle test not be possible.
- iii. Father shall be responsible for all costs related to the hair follicle test.
- iv. Father shall provide the results to Mother's counsel, the *Guardian ad Litem* (GAL), and Dr. Gilman within twenty-four (24) hours of receiving the results.
- v. A failure to timely complete a hair follicle test shall be deemed a positive test.

- e. Father shall continue with mental health and substance abuse treatment.
 - i. If Father is not currently participating in either mental health and/or substance abuse treatment, he shall immediately enroll in both.
 - ii. Father shall provide a copy of Dr. Bliss's evaluation to his mental health and substance use provider.
 - iii. Father shall provide Dr. Gilman and the GAL the reports from his providers and shall execute any authorizations to allow the GAL and Dr. Gilman to access them.
 - iv. Dr. Gilman shall be provided with the specifics of Father's treatment plan with his providers.
- f. The frequency, duration, and level of supervision of Father's custody time shall be expanded upon Dr. Gilman's recommendation once she has engaged in reunification therapy between Father and the Children.

g. School Holidays and Teacher in Service Days

- i. Monday school in-service days and holidays including, but not limited to Martin Luther King Day, President's Day and Columbus Day, shall not affect the custody schedule.

h. Holidays

- i. With respect to holidays, Father and Mother shall celebrate holidays with Children as they mutually agree.
- ii. Holiday visits shall be supervised in the same manner as other visits as set forth herein.

IV. GENERAL PROVISIONS

1. Transportation

- a. Mother shall drive Children to the exchange point and remain in the car unless Children need assistance in getting out of the car.
- b. Father shall not drive with Children in the car.
- c. All custody exchanges shall be silent. Neither party shall talk to, yell at, make gestures towards, or audio/video-record the other party during custody exchanges.
- d. The party coming into custody shall arrive at the exchange point in a timely manner and be prepared to pick up Children as quickly as possible.
- e. The party relinquishing custody shall notify the party coming into custody immediately of any delays that will impact Children's arrival.
- f. All exchanges shall be handled professionally, abiding by all reputable parental educational materials on techniques to avoid conflict and separation anxiety.

g. The parties shall exchange custody at Paternal Grandparents' residence.

2. Priority for Holidays

a. The periods of custody for holidays, vacations, or other special days set forth in this order shall be in addition to, and shall take precedence over, but shall not alter the schedule or sequence of regular periods of partial custody for that party set forth previously in this order.

3. Extracurricular Activities

a. The parties shall organize ways for Children to maintain their friendships, extracurricular activities, and other special interests, regardless of which household they may reside.

b. Each party shall provide the other with at least two (2) weeks' advance notice in OFW of school or other activities unless it is not possible to provide notice that far in advance. If notice is being provided less than two (2) weeks in advance of the activity, the party shall provide notice within twenty-four (24) hours of becoming aware of the activity.

c. Both parties shall honor and be supportive of the extracurricular activities Child wishes to engage in.

d. Each party shall confer with the other before arranging regularly occurring extracurricular activities for Children which might interfere with regular visitation.

e. During the times that the parties have physical custodial responsibilities of their Children, each party will make certain that Children attends their extracurricular activities and transport Children **on time** to and from games, practices and any activities that are scheduled so that they are able to participate in those events.

4. Telephone/Video Calls

- a. Father shall enjoy reasonable telephone or video call access to Children while Children are enjoying custody time with Mother.
- b. Children shall be encouraged by Mother to telephone or have a video call with Father daily.
- c. Mother shall activate a cellular phone for the purpose of calls between Children and Father.
 - i. The parties shall exchange the phone number for this phone in Our Family Wizard.
 - ii. Only Children shall be permitted to use this phone. Neither parent shall use this phone to communicate with each other.
- d. Phone calls with Father and the Children shall occur daily at 8:00 p.m. Eastern/7:00 p.m. Central time.
- e. Both parties are hereby directed to refrain from preventing the party who may be calling from talking to Children, or preventing Children from calling the other party, provided that the phone calls are not excessively frequent or too long in duration that they disrupt Children's schedule.
- f. Phone/video calls with Children shall occur once per day for no longer than thirty (30) minutes per phone call.
- g. Neither party shall insert themselves into the conversation, or cause conflict with the other party during the call.

5. Financial Care of Children

- a. In the event that a significant matter arises with respect to the medical care, education, or financial care of Children, such as a change in occupation, health insurance, educational expenses, or residence of a party, those matters shall be discussed with the other party before any change is made by either party.

6. Mutual Consultation

- a. Each party shall confer with the other on all matters of importance relating to Children's health, maintenance, and education with a view towards obtaining and following a harmonious policy in Children's educational and social adjustments.
- b. Each party is directed to keep the other informed via OFW of his or her residence and telephone number to facilitate communication concerning the welfare of Children and the custody situation.
- c. Each party shall supply via OFW the full name, address and phone number of any person in whose care Children will be for period in excess of twenty-four (24) hours, and for each person or entity which may provide daycare for Children, excluding current daycare providers, relatives, or public-school institutions.

7. Illness of Children

- a. Emergency decisions regarding Children shall be made by the party then having custody. In the event of any emergency or serious illness of Children, at any time, any party then having custody of Children shall immediately communicate with the other party by telephone or any other means practical, informing the other party of the nature of the illness or emergency, so the other party can become involved in the decision-making processes as soon as practical.

b. The term "serious illness" as used herein shall mean any disability which confines Children to bed for a period in excess of seventy-two (72) hours and which places Children under the direction of a licensed physician.

8. Welfare of Children to be Considered

- a. The welfare and convenience of Children shall be the prime consideration of the parties in any application of the provisions of this order.
- b. Both parties are directed to listen carefully and consider the wishes of Children in addressing the custodial schedule, any changes to the schedule, and any other parenting issues, without putting Children in the middle of the dispute.

9. Children's Personal Belongings

- a. Clothes, toys, personal belongings, etc. shall not become matters of contention between the parents as these generally are Children's property, not the parties', entitling the belongings or clothes to be taken by Children to each party's home, as reasonably appropriate.

10. Family Relationships

- a. The parties shall permit and support Children's access to all family relationships. Special family events such as weddings, family reunions, family gatherings, funerals, graduations, etc. shall be accommodated by both parties with routine visitations resuming immediately thereafter. Each party shall have the option of proposing time or date variations to the other party when special recreational options or other unexpected opportunities arise.

11. Child Care Providers

- a. Each party shall exercise care in responsibly choosing babysitting/childcare providers.
- b. The full names and telephone numbers of these childcare providers shall be provided by both parties to each other via OFW.
- c. Both parties shall provide one another via OFW with a phone number and address where Children may be contacted at all times. This principle applies to situations such as vacations and overnight extracurricular activities. If a phone number is not available, the party shall find another mode of communication, such as email.
- d. Should either party have Children spend overnight at a place other than their primary residence, the other party will be given the name of the adult, their address and phone number via OFW.

12. Illegal Drugs, Cigarettes and Alcohol

- a. Father shall complete drug and alcohol treatment that addresses co-occurring disorders and follow all recommendations.
- b. The parties, during any period of custodial responsibility, shall not possess or use any illegal controlled substances, nor shall they consume alcoholic beverages to the point of intoxication, nor smoke cigarettes inside their residence or vehicle.
- c. The parties shall likewise assure that other household members and/or houseguests comply with this prohibition.

13. Relocation

- a. Neither party shall permanently relocate with Children if the relocation would necessitate a change in the visitation schedule or significantly impair the ability of

the non-relocating party to exercise custody, change the school district for Children, or exceed a twenty-five (25) mile radius without a minimum notice of ninety (90) days to the other parent. The ninety (90) day notice is designed to afford the parties an opportunity to renegotiate the custodial arrangements or to have the matter scheduled for mediation, a Parenting Coordination conference and/or listed for a court hearing.

- b. The party proposing relocation with Children must notify all parties in accordance with Section 5337 of the Custody Act. No relocation shall occur unless every person with custody consents or the Court approves the proposed relocation.

14. Counseling and Parenting Coordination

- a. Both children shall continue with their individual therapy with their current therapist. If the need arises to enroll one or both Children in therapy with a new therapist, Mother shall have the sole authority to do so.
- b. Mother shall engage in individual therapy as needed to maintain her optimum mental health.
- c. Father shall contact Dr. Deborah Gilman, as previously ordered, to begin reunification counseling with the Children.
 - i. Father shall be solely responsible for the costs of reunification counseling.
 - ii. All other provisions of the November 2, 2023 Order of Court remain in full force and effect.
- d. Father shall continue with mental health and substance abuse treatment.
 - i. If Father is not currently participating in either mental health and/or substance abuse treatment, he shall immediately enroll in both.

- ii. Father shall provide a copy of Dr. Bliss's evaluation to his mental health and substance use provider.
- iii. Father shall provide Dr. Gilman and the GAL the reports from his providers and shall execute any authorizations to allow the GAL and Dr. Gilman to access them.
- iv. Dr. Gilman shall be provided with the specifics of Father's treatment plan with his providers.

- e. A Parenting Coordinator shall be appointed for Children by separate Order of Court should it become necessary.

15. Modification of Order

- a. The parties are free to modify the terms of this order via OFW, but in order to do so the Court makes it clear that both parties must be in complete agreement to any new terms. That means both parties must consent on what the new terms of the custody arrangement or schedule shall be.
- b. In the event that one or the other does not consent to a change, that does not mean each party follows his or her own idea as to what he or she think arrangements should be.

V. ADDITIONAL PROVISIONS

1. The party having custody of Child should prepare her both physically and mentally for the custody with the other party and have Child available at the time and place mutually agreed upon.
2. This Order shall supersede any and all prior custody orders.

3. Father must show proof to Mother's counsel, the GAL, and the undersigned's chambers of completing the following before filing any future Complaint or Petition for Modification of Custody:

- a. Completing substance abuse treatment that addresses co-occurring disorders and following all recommendations;
- b. Engaging in mental health treatment with a doctorate level provider that can prescribe medication, if needed; and
- c. Completing reunification counseling with Dr. Deborah Gilman and following all recommendations.

4. Mother's request for counsel fees is GRANTED. Father shall pay \$9,238.70 to Mother's counsel as follows:

- a. By July 1, 2024, Father shall pay \$3,079.57 to Mother's counsel.
- b. By October 1, 2024, Father shall pay \$3,079.57 to Mother's counsel.
- c. By January 2, 2024, Father shall pay \$3,079.56 to Mother's counsel.

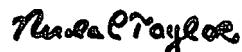
5. The parties shall pay the GAL's fees as follows:

- a. At the conclusion of trial, Father owed \$3,070.90 in GAL fees.
 - i. Within thirty (30) days of the date of this Order, Father shall pay the GAL \$1,023.64.
 - ii. Within sixty (60) days of the date of this Order, Father shall pay the GAL \$1,023.63.
 - iii. Within ninety (90) days of the date of this Order, Father shall pay the GAL \$1,023.63.
- b. At the conclusion of trial, Mother owed \$1,234.16 in GAL fees.

- i. Within thirty (30) days of the date of this Order, Mother shall pay the GAL \$411.39.
- ii. Within sixty (60) days of the date of this Order, Mother shall pay the GAL \$411.39.
- iii. Within ninety (90) days of the date of this Order, Mother shall pay the GAL \$411.38.

6. Failure of the parties to follow the terms of this Order shall raise a negative inference at any future proceedings.
7. Father's Complaint for Custody and Petition for Modification are all hereby RESOLVED.
8. This is a FINAL Order. Rule 236 Notice to be sent out to all parties.

BY THE COURT:



The Honorable Nicola Henry-Taylor, J.

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

Z.G.,

No. 17 WAL 2025

Petitioner

Petition for Allowance of Appeal
from the Order of the Superior Court

v.

M.C.,

Respondent

ORDER

PER CURIAM

AND NOW, this 24th day of March, 2025, the Petition for Allowance of Appeal is
DENIED.

A True Copy Nicole Traini
As Of 03/24/2025

Attest: Nicole Traini
Chief Clerk
Supreme Court of Pennsylvania

No.

IN THE

Supreme Court of the United States

Z. G.,

Petitioner,

v.

M. C.,

Respondent.

On Petition For A Writ of Certiorari
To The Supreme Court of Pennsylvania

APPENDIX TO PETITION FOR WRIT OF CERTIORARI
VOLUME 2

ZACHARY GELACEK
PRO SE PETITIONER
511 NEALE AVENUE
FORD CITY, PA 16226
(724) 664-5022

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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

ZACHARY GELACEK,

FAMILY DIVISION

Plaintiff,

No. FD-007339-007

v.

PETITION FOR RECUSAL

MONICA COSTLOW

Defendant.

Filed, pro se, by Plaintiff:
ZACHARY GELACEK

511 Neale Avenue
Ford City, Pennsylvania 16226
(724) 664-5022
zgelacek@gmail.com

NOTICE OF PRESENTATION

This motion is scheduled for a date certain set forth below.

To the Respondent: You may submit an answer to the motion, which must be dropped off in person at the Family Law Center, Self-Represented Litigant Motions Department, Monday through Friday, from 8am to 12pm. Responses will NOT be accepted by mail, fax, or email. If you wish to file a response (it is not required), it should be submitted as soon as possible after receipt of the motion, but no later than 3 days prior to the scheduled date. If you wish to oppose the motion, you should appear at the scheduled date and time before the Judge.

PLEASE TAKE NOTICE that the within Petition shall be heard by:

Judge HENRY-TAYLOR, Family Division, Court of Common Pleas, Allegheny County, on the 19TH day of OCTOBER, 2023 at 1:00 PM in Room 425 of the Family Law Center, 440 Ross Street, Pittsburgh, PA 15219. Please go directly to the Courtroom at the date/time designated above.

I verify that the address provided by me and set forth below is the last known address of the Respondent herein.

Monica Costlow C/O Brian McKinley

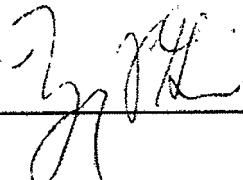
Alyson Landis

bmckinley@wildermahood.com

alandis@bpe-law.com

Date 10/12/23

Petitioner



IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
FAMILY DIVISIONZACHARY P GELACEK

Plaintiff

v.

Case Number: FD 21-007339-007MONICA COSTLOW

Defendant

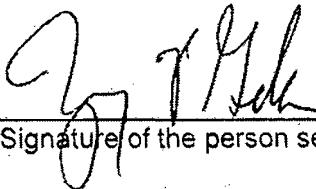
CERTIFICATE OF SERVICE

Filed on Behalf of:

Name: ZACHARY GELACEK
Address: 511 Neale Avenue
Phone: Ford City, PA 16226
(724) 664-5022
Email: Zgelacek@gmail.com

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
FAMILY DIVISIONZACHARY GELACEK
PetitionerCase Number: FD 21-007339-007MONICA COSTLOW v.
RespondentCERTIFICATE OF SERVICEI hereby certify that a true and correct copy of the within Motion and Notice of Presentation
or _____ was served upon Defendant/ Respondent by:MAIL By First Class, postage prepaid on the _____ day of _____, 20____ to the following
address: _____PERSONAL SERVICE: By handing a copy of the pleading to the Respondent, _____, at the
following address: _____ by _____
(Name), a competent adult, over eighteen years of age, not the moving
party or related to the moving party, on the _____ day of _____, 20____ at _____ am/pm. By handing a copy of the pleading to an adult member of the Defendant's family, _____
(Name) with whom the Defendant resides, at the following address
_____ on the _____ day of _____, 20____ at _____ am/pm. By handing a copy of the pleading, at the residence of the Respondent _____
to the clerk manager of the hotel, inn, apartment house, boarding house or other place of lodging
at which the defendant resides, _____ (Name) at the following
address _____ on the _____ day of _____, 20____ at _____ am/pm. By handing a copy of the pleading, at Defendant's office or usual place of business _____
to his agent or to the person for the time being in charge thereof _____
(Name) at the following address _____
on the _____ day of _____, 20____, at _____ am/pm.SERVICE TO ATTORNEY OF RECORD Respondent's attorney of record was served by _____ personal service, _____ by first class mail,
postage prepaid, _____ by facsimile, email to bmk@inkey.com on
the 11th day of October, 2023.I verify that the statements made in this Certificate of Service are true and correct
I understand that any false statements herein are made subject to the penalties
Of 18 P.A.D.S. §4904 relating to unsworn falsification to authorities.October 12, 2023

Date



Signature of the person serving the Pleading

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

ZACHARY GELACEK, FAMILY DIVISION

Plaintiff, No. FD-007339-007

v.

MONICA COSTLOW

Defendant.

PETITION FOR RECUSAL

AND NOW COMES the Plaintiff, Zachary Gelacek, pro se, and files this Petition for Recusal, as follows:

1. Defendant Monica Costlow ("Mother") and Plaintiff Zachary Gelacek ("Father") married on April 9, 2011.
2. The parties are the parents of two children, PG, age eleven (11), and LG, age nine (9).
3. As set forth in exhaustive detail in prior filings in this action, Father has suffered from opioid use disorder for the past decade. At times when the condition has manifested in particularly acute addiction, it has disrupted Father's ability to care for himself and others. At other times, Father has functioned normally.
4. Father, with Mother's assistance, voluntarily sought and began receiving treatment for this condition in April 2016. At essentially all times since then, Father has received treatment for this disease.
5. The parties separated on January 7, 2021.
6. On February 23, 2021, Father filed a Complaint for Custody, through which he seeks shared legal and physical custody of the children.

7. Over a year later, in June 2022, Mother counterclaimed for divorce.

8. Several months after that, Mother petitioned for child support.

9. The custody component of this action has had a tortured history. Three judges have been assigned to it.

10. The Honorable Jennifer Satler presided over this action from commencement until she transferred to this Court's Criminal Division.

11. At that point, The Honorable Chelsa Wagner was assigned to this action.

12. Plaintiff filed a pro se petition for the Honorable Judge Wagner to recuse herself from this action based upon her prior social relationship with Mother.

13. After initially denying Father's petition, the Honorable Judge Wagner recused herself from this action in April 2023.

14. Upon Judge Wagner's recusal, the Honorable Judge Nicola Henry-Taylor – the jurist currently presiding over this action – received the assignment.

15. In May 2023, Father, through attorney Chrystal Tinstman, filed a Petition for Contempt and Special Relief based upon Mother's refusal to co-parent and other deficient behavior.

16. The Court granted Father's motion in part, and indicated in an Order issued in May 2023 that she would appoint a guardian ad litem for the parties' minor children.

17. On June 16, 2023, Father experienced a relapse with his medical condition, his first such relapse since a prior instance in August 2021. In connection with that relapse, Father was stopped while driving and rushed to a hospital in an

ambulance, at which time he voluntarily supplied blood for analysis of the use of unprescribed medication.

18. Mother filed an expedited motion to enroll the children in Upper Saint Clair School District in early July 2023.

19. Rather than grant that motion, the Court scheduled a school choice hearing for August 4, 2023.

20. Alyson Landis, Esquire, was appointed guardian ad litem for the parties' minor children at the end of July or early August. As a result of that late appointment, Attorney Landis had essentially no time to prepare for the school choice hearing.

21. During the last week of July 2023, the Commonwealth of Pennsylvania, through the Office of the District Attorney for Allegheny County, charged Father with driving under the influence of a controlled substance – fentanyl – in connection with the June 16 instance recounted in ¶ 17, supra.

22. Father received notice of that charge via certified mail that was delivered to Father's address on July 27, 2023.

23. Mother apparently learned of Father's charges before Father. On the morning of July 27, 2023, Father's counsel filed a motion to withdraw from representation of Father based on discussions Father's then-counsel, Chrystal Tinstman, apparently had with Mother's counsel, Brian McKinley.

24. Mother filed an Emergency Petition for Special Relief in connection with learning of the June incident in late July 2023.

25. The Court conducted a hearing on Mother's Emergency Petition on or around August 2, 2023.

26. Father subsequently learned that, during that hearing, the Court commented words to the effect that:

- a. Father's DUI offense was more serious than a typical DUI offense due to the fact of the involvement of fentanyl and other medications that Father is prescribed;
- b. That – based on her prior experience as an Assistant Public Defender and Assistant District Attorney – she knows that Father is a troublesome addict who needs to be closely scrutinized; and
- c. That Father needs to be reported to the Disciplinary Board of the Supreme Court because of his criminal charge.

27. Rather than conduct a trial on school choice as initially indicated, the Court instead unilaterally decided instead to question the parties' minor children with only GAL Landis also present. No child development or child psychological or experts in family therapy or child dynamics were present for that interaction.

28. Father also learned – over the weekend of August 5, 2023 – that, during interactions with counsel on August 4, 2023, Judge Henry-Taylor commented – regarding Father's desires for a permanent school for the children – "With his issues, why does he think he even gets a say?" She also repeated her commentary on Father's law license, despite Father not appearing before her in his capacity as a licensed attorney.

29. That comment allegedly caused Father's then counsel, Chrystal Tinstman, to express her dismay at the Judge Henry-Taylor's remark.

30. Judge Henry-Taylor subsequently granted Mother's motion to enroll the children in the Upper Saint Clair School District.

31. As a result of that decision, Father now must travel nearly 2.5 hours roundtrip to get to his children's school.

32. Judge Henry-Taylor's school choice decision essentially doubled the distance between the children's school and Father.

33. At a hearing on another Petition for Special Relief on September 25, 2023, Judge Henry-Taylor made multiple upsetting, traumatic comments to Father, who appeared pro se during the initial portion of the hearing:

a. Judge Henry-Taylor began the hearing by scolding Father about his law license status. In response to inquiries about that, Father indicated that he did not need to report himself to the Disciplinary Board until his charge – a misdemeanor – is "adjudicated." That comment apparently upset Judge Henry-Taylor greatly. It proceeded to an exchange about the Lawyers Concerned for Lawyers, a program in which Father voluntarily has participated in at times and the effectiveness of a religion-based abstinence approach to treating addiction versus the evidence-based medical therapy that Father receives. This subject also was the reason that Father's doctor opined that a prior marriage therapist was unsuited for service in this action.

b. Judge Henry-Taylor commented that Father appeared "flushed" and opined that he may be "under the influence of drugs." Upon information and belief, Judge Henry-Taylor is not a licensed medical professional qualified to make such an observation. Father also notes that the "flushed" portion of comment has an obvious

racial component. Father is white. Upon information and belief, Judge Henry-Taylor is a woman of color.

c. Judge Henry-Taylor also made comments that reflected stereotypical beliefs about men who suffer from substance use issues. She repeatedly asked Father questions about "co-occurring disorders." When Father tried to explain his treatment, Judge Henry-Taylor would get frustrated and cut him off with interjections to the effect that, "That was not my question." She also intimated at one point that Father may have had PFAs filed against him, apparently because that's what white men who have opioid use disorder do – they abuse their loved ones.

34. Judge Henry-Taylor's conduct towards Father on September 25, 2023, should be compared to her conduct towards another individual who admitted to taking her children out of Allegheny County and not showing up to custody exchanges in violation of court orders. While that parent was treated with compassion and grace, Father was treated like something less than human.

35. Father's experience with Judge Henry-Taylor on September 25, 2023, traumatized him. His entire experience in this Court has traumatized him.

36. Earlier in the day on September 25, Father informed GAL Landis: This experience in the Family Division has been both terrifying and confusing to me. I am not aware of anyone else who has been denied a meaningful relationship with his or her children after 3 years of attempts. Most of the lawyers with whom I have consulted have stated that I have the worst deal he or she has seen in his or her long career. That's not because of me or my behavior or addiction. I am trying to prove that to you.

Sept. 26, 2023, email from Father to GAL Landis, a true and correct copy of which is annexed hereto as **Exhibit 1**.

37. Judge Henry-Taylor's aforementioned actions demonstrate that she has impermissible bias and prejudice toward Father due to his disability.

38. "[A]ll litigants have the right to believe that the jurist they are appearing before is impartial." Reilly v. SEPTA, 489 A.2d 1291, 1300 (Pa. 1984), abrogated on other grounds, by Drake v. Pa. Nat'l Mut. Cas. Ins. Co., 601 A.2d 797 (Pa. 1992).

39. "When circumstances arise during the course of a trial raising questions of a trial judge's bias or impartiality, it is still the duty of the party, who asserts that a judge should be disqualified, to allege by petition the bias, prejudice or unfairness necessitating recusal." Id. at 1299.

40. Father believes such relief is warranted here. Judge Henry-Taylor's actions noted above create within Father a well-founded question as to whether Judge Henry-Taylor can fairly adjudicate this custody dispute and protect Father and his children's rights under the federal constitution¹ and federal Americans with Disabilities Act, 42 U.S.C. §§ 12131-34, (the "ADA").

41. As an individual with opioid use disorder who receives medication-assisted therapy, the ADA protects Father. See U.S. Dep't of Justice Civ. Rights Div'n,

¹ In Stanley v. Illinois, 405 U.S. 645, 651 (1972), the United States Supreme Court opined:

The private interest here, that of a man in the children he has sired and raised, undeniably warrants deference and, absent a powerful countervailing interest, protection. It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children comes to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements.

The Americans with Disabilities Act and the Opioid Crisis: Combating Discrimination
Against People in Treatment or Recovery.²

42. The ADA governs the procedures employed in state courts. See Reed v. State of Ill., 808 F.3d 1103, 1109 (7th Cir. 2015) (Posner, J.) (procedures employed in state court actions must comport with ADA when disabled individual is pro se litigant).

43. It also governs the behavior of state court judges and their staff. See U.S. Dep't of HHS & U.S. Dep't of Justice, Protecting the Rights of Parents & Prospective Parents with Disabilities: Technical Assistance for State & Local Child Welfare Agencies & Courts under Title II of the Americans with Disabilities Act & Section 504 of the Rehabilitation Act at 9 (ADA applies to state court jurists, their staffs, and to custody disputes).³

44. In its technical assistance to state family courts regarding compliance with the ADA, the U.S. Department of Justice noted,

We also remind judges and court personnel of their obligations under the American Bar Association, Model Code of Judicial Conduct, Rule 2.3(b) that states: 'A judge shall not, in performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, . . . and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.

Id. at 9 n. 58.

45. Given Judge Henry-Taylor's above-noted conduct, an impartial observer could question Judge Henry-Taylor's ability to comport herself to that canon.

² A true and correct copy of this document is annexed hereto as **Exhibit 2**.

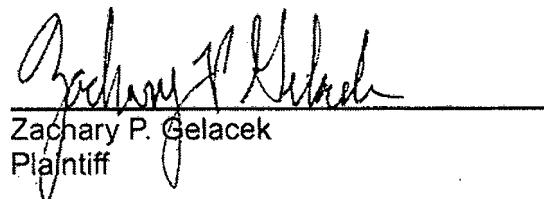
³ A true and correct copy of this document is annexed hereto as **Exhibit 3**.

46. Accordingly, she should grant the instant petition and recuse herself from this action.

47. The Superior Court of Pennsylvania supported a similar conclusion in Commonwealth v. Williams, 69 A.3d 735 (Pa. Super. 2013), a case in which a trial judge engaged in (admittedly, much more pernicious) behavior that demonstrated insensitivity to the person before him.

48. A proposed order is annexed hereto.

Respectfully submitted,



Zachary P. Gelacek
Plaintiff

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

ZACHARY GELACEK

FAMILY DIVISION

Plaintiff,

vs.

No. FD 21-007339-007

MONICA COSTLOW

Defendant.

ORDER OF COURT

AND NOW, this _____ day of _____, 2023, upon
consideration of Plaintiff's **PETITION FOR RECUSAL**, it is hereby ORDERED,
ADJUDGED and DECREED, that the Honorable Judge Nicola Henry-Taylor recuses
herself from any further participation in this matter and requests that the Administrative
Judge for the Family Division assign another Judge of this Court to preside over future
proceedings herein.

BY THE COURT:

J.
The Honorable Judge Nicola Henry-Taylor

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

ZACHARY GELACEK,)
Plaintiff,)
v.)
MONICA COSTLOW,)
Defendant.)

FD 21 - 007339 - 007

WRITTEN NARRATIVE & PROPOSED CUSTODY ORDER

AND NOW, comes Zachary Gelacek ("Father"), the pro se plaintiff in the above-noted action, and submits the following written narrative and accompanying proposed custody order in connection with the custody conciliation scheduled to occur in this action on Monday, October 16, 2023.

I. NARRATIVE

Father and the Defendant Monica Costlow ("Mother") share two biological children, eleven-year-old P.G. and nine-year-old L.G. The parties married on April 9, 2011. P.G. was born a little over a year later, and L.G. approximately three (3) years after the date on which the parties married. During the marriage, despite suffering from the significant health issues described in more detail below, Father always was engaged

and involved in the children's education and schooling and has cooperated with Mother when making decisions as to the children's best interests.

Beginning in the time period between the births of the children, Father, who at that time was employed as an associate at Reed Smith LLP, experienced an extended period of acute mental and behavioral health issues, which included a prolonged battle with acute opioid use disorder. Because of the pervasive stigma of mental health issues, in general, and opioid use disorder, in particular, within society and the Pennsylvania state court system¹ and his fear about how Mother,² her relatives, and his relatives would react to learning of his health issues, Father attempted to conceal his disease and resolve it on his own during the first few years that he suffered from it.

Father's efforts to deal with his health issues without assistance predictably failed. On April 8, 2016, Father asked Mother for assistance in obtaining inpatient treatment for his then-acute mental and behavioral health issues. Mother supplied the

¹ See, e.g., Nat'l Ctr. on Substance Abuse & Child Welfare, Disrupting Stigma: How Understanding, Empathy, & Connection Can Improve Outcomes for Families Affected by Substance Use & Mental Disorders, a true and correct copy of which is annexed hereto as Exhibit 1.

² A cursory review of Mother's submissions to this Court in the custody component of this action demonstrates that Father's fears in this respect were well-founded. Mother and Brian McKinley have attempted to turn this custody dispute into an exercise of shaming and stigmatizing Father in front of his peers in the legal community and the judges in front of whom he practices. Unfortunately for Father and everyone else who loves someone affected by a substance use issue, they have continued this line of attack in the most recent filings Father has reviewed. Father hopes that, some day in the not too distant future, Mother and Brian McKinley's actions in this matter will be viewed in the same light as the actions of the attorney for the father in Palmore v. Sidoti, 466 U.S. 429, 430-31 (1984), a case in which the custody evaluator opined – at the behest of the father's counsel – that the mother "has chosen for herself and for her child, a life-style unacceptable to the father *and to society*. . . . The child . . . is, or at school age will be, subject to environmental pressures *not of choice*," *id.* at 431, because that mother lived with, and was in an intimate relationship with, a person of color. See *id.* at 430.

requested assistance and helped Father enter inpatient treatment for depression, anxiety, and opioid use disorder on April 9, 2016.

Before the children reached school age, the parties considered the Falk School, Carlow's Campus School, and Sacred Heart Elementary School as potential schools where PG would attend pre-kindergarten. Father attended and participated in tours of all of those institutions in the application period before PG's first fall in school. Father preferred that PG attend the laboratory schools at Falk or Carlow. PG was not accepted to Falk, but was accepted at Carlow and Sacred Heart. Despite strongly preferring Carlow because of its reputation and less-stringent, laboratory pedagogical environment, Father agreed to send PG to Sacred Heart Elementary because Mother preferred that choice.

PG and Mother each experienced substantial difficulties cooperating with PG's pre-kindergarten teacher at Sacred Heart. Accordingly, Mother asked Father to tour St. Bede School, East Catholic Elementary School, Trinity Christian School, and the Woodland Hills Academy as candidates for PG's kindergarten school. PG was accepted to Woodland Hills Academy, and Father desired that choice for school for PG for kindergarten because of its public nature and more diverse student body. Mother adamantly desired St Bede, however, and Father consented to that choice.

PG has been diagnosed with ADHD, and that neurodivergence has caused PG to experience alienation from his peers and behavioral issues at various points of his schooling. At or around the point that the parties were choosing a kindergarten school for PG, Father began suggesting to Mother that PG have a pharmaceutical intervention for his condition. Mother steadfastly resisted that request until her (undisclosed at that

point) paramour, Andy Dittoe, suggested the same thing. LG also began attending pre-kindergarten at Saint Bede with PG.

Mother asked Father for a divorce on January 7, 2021. The parties separated on that date.

Father has received treatment for his mental and behavioral health issues at essentially all times from April 9, 2016, through the present. Father has maintained a clean lifestyle since the middle of January 2021, despite experiencing two isolated instances in which he ingested unprescribed medication on August 30, 2021, and June 16, 2023. The latter instance included Father's arrest and hospitalization for driving under the influence. A criminal action is pending in the Criminal Division of this Court against Father for the June 2023 incident.

On February 23, 2021, Father filed a Complaint for Custody, through which he seeks shared legal and physical custody of the children.

An interim custody hearing occurred on May 28, 2021, and an interim order of court was entered on June 9, 2021, which provided that the parties share legal custody of the children; that Father have supervised visits on Wednesday from 4:00 pm until 7:30 pm and on Saturdays from 12:00 pm until 7:30 pm, with such visits supervised by Father's mother and/or stepfather,³ and that Father pay for and submit to private random drug screening by Mainline Testing at least twice each month.

³ Paternal grandmother is a nurse practitioner whose practice deals exclusively with adolescents diagnosed with serious mental health conditions. Accordingly, she is a mandated reporter. Paternal step-grandfather is retired, but served as the Chief of the Kittanning Police and an agent of the Armstrong County Drug Control Task Force before he retired. Consequently, he also possesses the knowledge of a mandated reporter.

A review hearing occurred on September 13, 2021, which resulted in an order that issued on September 22, 2021, that again compelled Father to pay for and submit to private random drug testing as well as a single instance of hair follicle testing for unprescribed drugs with the potential for abuse by Mainline Testing. The order further required that the parties contact the Parenting Institute and commence co-parenting counseling as well as that they enroll in Our Family Wizard. In addition, Father's Saturday period of physical custody of the children was extended for an additional three hours through that order – Father's pickups were changed from 12:00 pm to 9:00 am.

Father remained as engaged as possible his children's schooling. He attended holiday plays and celebrations as well as masses and events with other parents. When he made sufficient progress in addressing his health issues, Father volunteered to help coach Saint Bede's third-grade basketball team. PG expressed his happiness with having Father as one of his basketball coaches that winter.

That same winter, the parties complied with the Court's September 22, 2021, interim order by engaging the Parenting Institute and beginning co-parent counseling led by Lynn MacBeth in December 2021. They completed only a single session of that counseling. They also participated in an abbreviated second session in January 2022, but that session was cut short by Ms. MacBeth after Father informed her that his then-primary psychiatrist, Michelle Barwell, MD, of Cranberry Psychological Center, had expressed ethical concerns regarding Ms. MacBeth's participation in that therapy.⁴

⁴ A true and correct copy of the letter from Dr. Barwell to Ms. MacBeth is annexed hereto as **Exhibit 2**.

An additional review hearing occurred on November 15, 2021, but did not result in any change to the September 22, 2021, interim order due to the parties' disagreement over the details of changes to that order that they attempted to negotiate during and after that hearing.

In the spring of PG's third-grade school year, Saint Bede's athletic director approached Father about coaching the school's junior varsity basketball team because of Father's work coaching the third-grade team and his history as a college basketball player. Father agreed. Around the same time, PG was experiencing frequent conflict with his classmates. Father once again asked Mother to start PG on medication for his ADHD in response to those issues. Mother instead suggested that PG return to attending Sacred Heart and opined that PG's issues were due to the Pittsburgh Catholic Diocese's purported interference with Saint Bede's pedagogical environment.

On June 14, 2022, Father's then-counsel Todd Begg, Esq., filed a Petition for Modification of an Existing Custody Order for reasons that are still not clear to Father. The parties participated in mediation, for the second time, on June 30, 2022, but no agreement was reached during that session and another review hearing, which was to occur on September 22, 2022, was scheduled by Order dated July 12, 2022.

Father continued to pay for and submit to the private random drug testing ordered in the September 22, 2021, interim order and also submitted to additional hair follicle analysis that Mother demanded Father submit to, despite the lack of any Order of this Court instructing Father to so submit. Every instance of drug and/or alcohol testing that this Court ordered or Mother demanded that Father submit to – including multiple

hair follicle analyses for unprescribed drugs with the potential for abuse and alcohol – was negative for any unprescribed substances of concern.⁵

For the 2022-2023 school year, PG returned to, and LG began attending for the first time, Sacred Heart. Father contacted the varsity basketball coach to volunteer to coach a Sacred Heart basketball team, and the coach replied that he would contact the athletic director about that request. Father never heard back from the varsity coach or the athletic director. Mother later informed Father that Sacred Heart's athletic director is one of Mother's closest personal friends and he believes that Mother acted to prevent Father from coaching.

At all times from June 2021 through this Court's review hearing on September 22, 2022, Father's periods of physical custody were exercised under supervision despite Father's improved health, clean lifestyle, and the absence of any behavior by Father than endangered the children's welfare. During those fifteen (15) months, Father repeatedly asked Mother to drop the supervision requirement because it implicitly communicated to the children that Father is not a competent parent.

After being informed by Hearing Office Laura Valles at the parties' September 22, 2022, review hearing that she did not foresee extending the requirement that Father's periods of physical custody be supervised in the event that she was called upon to issue an interim custody order, Mother finally relented and agreed to drop the requirement that Father's periods of physical custody be supervised by his mother and

⁵ Father's drug test results and treatment updates are annexed hereto as **Exhibit 7**.

step-father. From late September 2022 through October 2023,⁶ Father's visits were not supervised.

During the 2022-2023 school year, Father stayed very active in the children's school lives. He attended sporting events, concerts, masses, and holiday events. While Father was volunteering his time as a clock operator at a basketball game in December 2022, Father heard PG's teammates on the bench ridiculing PG while PG was playing in the game and could not hear their comments. Father immediately notified Mother via OFW that PG was being bullied and harassed by his peers. Father once again pleaded with Mother to treat PG's ADHD with a pharmaceutical intervention. Shortly thereafter, Father received from Mother an OFW message alerting Father – after the fact – that she had taken PG to see his pediatrician, who started PG on ADHD medication. Father subsequently learned that Mother finally relented on the medication issue – to PG's ultimate benefit – solely because Mr. Dittoe agreed with Father.

Upon learning of PG's difficulties with his peers and his ADHD at Sacred Heart, Father contacted the school's principal – Erin Mascaro – in the early winter to ask for an in-person meeting with her and PG's fourth-grade teacher. Several weeks thereafter, Father and PG ran into Principal Mascaro while Father walked with PG to grab takeout pizza during a day-long basketball tournament at Sacred Heart. This was Father's first physical meeting with Principal Mascaro. During their interaction, Father reminded Principal Mascaro that he wanted to meet with her and PG's fourth-grade teacher. On

⁶ As explained in more detail below, the reversion to supervision was – in Father's opinion – retaliation for Father asserting his rights under federal law to be free to discrimination on the basis of his health history. Father therefore believes that the order of this Court reimposing supervised physical custody is itself a violation of federal law.

Friday, March 10, 2023, Father left work early to travel to the Strip District and obtain ingredients for LG's ninth birthday dinner. Before he left the office, Father followed up with Principal Mascaro via email, reminding her that they still had not scheduled a date and time for him to meet with her and PG's teacher about PG's issues. Later that evening, Father received a frantic phone call from Mother, in which she informed Father that Sacred Heart "intended to kick PG out of attending classes in-person because of his behavioral issues." In response, Father inquired why he was first hearing of this issue at the time PG was "about to be kicked out of physically attending school." Mother replied, "I'm telling you now."

In response to that call, Father scheduled an emergency parental session with PG's therapist Kelly Meinhart, Psy D, to discuss PG's behavioral struggles. The next day, March 15, 2023, Principal Mascaro called Father to inform him that Sacred Heart was demanding that PG no longer attend school in-person due to behavioral issues. Father asked Principal Mascaro why she had not consulted with him like he asked. She responded by apologizing profusely to Father and informing him that Mother had told her that Mother was giving Father timely updates about their interactions via OFW. Mother did not, however, provide Father such timely information.

On that same day, Mother asked Father, via text message, to consent to moving PG to the Upper Saint Clair School District. Father responded by inquiring why Mother wanted PG to attend that district. Mother replied by saying that she had "a friend from work" whose child suffered from ADHD and attended school there with good results. When Father asked Mother for this "friend's" name, Mother replied, "Andy Dittoe." After

a brief exchange, Mother admitted that she had also been lying and misrepresenting the situation for several years despite frequently bringing Mr. Dittoe around the children.

Around two weeks later, on March 26, 2023, Father's father called him, uncharacteristically, to inform Father that Mother had called paternal grandfather and informed him that she was moving PG and LG to the Upper Saint Clair School District. Paternal grandfather, a family doctor with historically a very-close relationship with Mother, told Father that such a move would be inimical to the best interests of Father and both children because Father would not be able to continue his practice of being as closely involved with the children's lives as possible if the children are nearly two hours from his residence in Armstrong County.

On May 18, 2023, while participating in a solo parenting session with Dr. Meinhart about PG's behavioral struggles, Dr. Meinhart informed Father that she believed that, while public school is a better option for PG than private school, she believed that Mother would not consent to a public school other than Upper Saint Clair, where Mr. Dittoe's children attend school. Dr. Meinhart advised Father to advocate for PG's attendance at either the Kentucky Avenue School in Shadyside or the Carlow Campus School in Oakland, as those private schools would be good fits for PG. In response to Father proposing multiple public-school options for PG, Dr. Meinhart opined that the Riverview School District and the North Hills School District would be good choices for PG.

Throughout the entirety of this proceeding, Mother has used Father's struggle with opioid use disorder as a weapon against him, and has made every effort to malign the progress Father has made in managing his health and returning to a productive life.

Mother's inability to recognize Father's stability feeds her efforts to alienate the children and diminish as well as undermine his role as a Father. At times, Father has acted out in frustration based on his displeasure with Mother's willful, bad-faith tactics, which have caused further destruction of his relationship with his children.

This case unfortunately is characterized by a high level of conflict that is toxic to the parties and the children (and the Court and the counsel who did not spend years before 2021 meticulously planning the litigation strategy everyone else has been plagued with, i.e., all counsel except for Brian McKinley and his law partners). Multiple attorneys for Father have attempted to intervene and break the cycle of toxic conflict, but were met with hyperbolic, extremely caustic and condescending responses from Brian McKinley, which generally consist of self-serving accusations and deflections.

One of Mother and Mr. McKinley's favorite toxic litigation tactics is to file and schedule multiple motions and hearing and other events right around the same time so that Father has to try to deal with an inundation of tasks and requests and generate work product on a very compressed time frame. One instance in which that occurred was when Mother filed her motion to move the children to Upper Saint Clair in July. Mother and Mr. McKinley seek to manufacture emergency conditions to inflict the maximum amount of stress and trauma on Father and this Court.

On July 13, 2023 Father entered into a lease for a property within the Riverview School District so that the children can attend as in-district students. Father also has an option to lease property in the North Hills School District.

Since the children have moved to the Upper Saint Clair School District, Father has not been able to participate in their lives like he had been able when they attended

school closer to him. The move of the children to Upper Saint Clair has doubled the distance between the children and Father. Without construction, a round trip drive for Father from his current residence to the children's school clocks in at a time over two (2) hours. For that reason, if the Court insists upon keeping the children in school at Upper Saint Clair over Father's objections and in violation of Father's rights under the federal Americans with Disabilities Act, Father asks this Court to order that Father receive the children for the entire summer and winter break periods (Father does not object to Mother having some form of custody during the following weekends during that period – Christmas, New Years, mother's birthday (June 12), PG's birthday, and July 4).

Father's prior custody counsel withdrew from this action in early August. Since then, Father has dealt with a torrent of motions by Mother in addition to an extremely busy time with his solo practice, an ill colleague, and a raft of emails and OFW messages. Father is working as diligently as he can to respond to all of them, even though there has been a long delay. Father hopes to be fully caught up on this task before the conciliation occurs. Unfortunately, because the equitable distribution trial is October 13, Father may not have sufficient time to be entirely caught up by then.

The Court entered two more recent custody orders in September and October. Father did not read the September order until October 5. On that day, he paid \$395 for a 5-panel drug and alcohol hair follicle test at Fastest Labs. After Father informed GAL Landis that the drug test this Court ordered in its September custody order does not cover fentanyl because fentanyl is an "opioid" rather than an "opiate" or "heroin," GAL Landis expressed her concern on that topic to the Court (and failed to mention that

Father was the individual who alerted her to that issue).⁷ In response, Father traveled to Fastest Labs when it opened on Monday, October 9, and paid an additional \$210 for a fentanyl hair follicle analysis. Father signed a release with Fastest Labs so that it can send the results directly to this Court, GAL Landis, and Mr. McKinley.

During the week of October 9, GAL Landis sent emails that imply that Father did not pay the invoice she issued and that the Court discussed at the September 25, 2023, hearing on Mother's Petition for Special Relief. Contrary to that representation, Father sent GAL Landis a check for the amount in her first post-retainer invoice on October 4, 2023. On October 11, 2023, GAL Landis confirmed via email to Father that her firm received Father's check, but had not yet cashed it. Father asked GAL Landis to inform the Court of this development, but she has not yet supplied that information at the time of this filing.⁸

Federal law including Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, Title II of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12131-34, and the United States Constitution "protect parents . . . with disabilities from unlawful discrimination in the administration of child welfare programs, activities, and services." U.S. Dept. of Health & Human Servs. & U.S. Dept. of Justice, Protecting the Rights of Parents and Prospective Parents with Disabilities: Technical Assistance for State and Local Child Welfare Agencies and Courts under Title II of the Americans with

⁷ Father and GAL Landis's correspondence on that issue is annexed hereto as **Exhibit 3**.

⁸ Correspondence between Father and GAL Landis on this issue is annexed hereto as **Exhibit 4**.

Disabilities Act and Section 504 of the Rehabilitation Act (Aug. 2015) at 1.⁹ Such protection extends to individuals, like Father, who receive medication-assisted treatment as therapy for opioid use disorder. See U.S. Dept. of Justice Civil Rights Div., The Americans with Disabilities Act and the Opioid Crisis: Combating Discrimination Against People in Treatment or Recovery.¹⁰ The US Department of Justice has noted that “[d]iscriminatory separation of parents from their children can result in long-term negative consequences to both parents and their children.” **Ex. 5** at 2. Indeed, “[a]ny case of discrimination against parents . . . due to their disability is not acceptable,” id., due to the loss of “precious moments for . . . parents that can never be replaced.” Id.

“[B]oth the ADA and Section 504 require that decisions about child safety and whether a parent . . . represents a threat to safety must be based on an individualized assessment and objective facts, including the nature, duration, and severity of the risk to the child, and the probability that the potential injury to the child will actually occur.” Id. at 5. “Individuals with disabilities must be treated on a case-by-case basis consistent with the facts and objective evidence. Persons with disabilities may not be treated on the basis of generalizations or stereotypes.” Id. at 4.

“State court proceedings . . . are state activities and services for purposes of Title II. Section 504 also applies to state court proceedings to the extent that court systems receive Federal financial assistance.” Id. at 9.

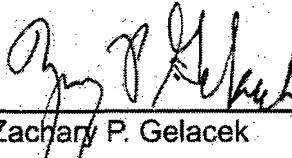
⁹ A true and correct copy of this federal administrative agency technical assistance, which governs this action under the Supremacy Clause of the United States Constitution, is annexed hereto as **Exhibit 5**.

¹⁰ A true and correct copy of this federal administrative agency document is annexed hereto as **Exhibit 6**.

"[T]he ADA and Section 504 protect individuals from any retaliation or coercion for exercising their right not to experience discrimination on the basis of disability. Individuals enjoy this protection whether or not they have a disability."

A proposed order is attached. Father respectfully requests that this Court enter it.

Respectfully submitted,



Zachary P. Gelacek

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

ZACHARY GELACEK,

FAMILY DIVISION

Plaintiff,

No. FD 21-007339-007

v.

MONICA COSTLOW,

Defendant.

2023 OCT 12 PM 4:10
 DEPT OF COURT RECORDS
 CIVIL FAMILY DIVISION
 ALLEGHENY COUNTY PA

FILED

ORDER OF COURT

AND NOW, this 12th day of October, 2023 upon consideration of Father's *Petition for Recusal*, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

1. Father's Motion shall be addressed at the Judicial Conciliation scheduled for October 16, 2023.
2. Father has the burden of proof in demonstrating why the undersigned should recuse herself. See 207 Pa. Code §15-4. Specifically, Father must demonstrate:
 - a. that a specified disqualifying fact or circumstance is present; and
 - b. that prevailing facts and circumstances could engender a substantial question in reasonable minds as to whether disqualification nonetheless should be required.
 - c. "A party seeking recusal bears the burden of producing evidence to establish bias, prejudice, or unfairness which raises a substantial doubt as to the jurist's ability to preside impartially." Com. v. Watkins, 108 A.3d 692, 734 (Pa. 2014) (citation omitted).
3. Mother's counsel and the GAL may submit a response in writing to Father's Petition for Recusal by 4:00 p.m. on October 13, 2023, if they wish to do so.

BY THE COURT:

Nicola Henry-Taylor

The Honorable Nicola Henry-Taylor

FILED

In the Court of Common Pleas of Allegheny County, Pennsylvania
 Family Division 2023 OCT 17 AM 8:57

Zachary Gelacek,) DEPT. OF COURT RECORDS
 Plaintiff) CIVIL FAMILY DIVISION
 vs.) ALLEGHENY COUNTY PA
 Monica Costlow,) FD 21 - 007339 - 007
 Defendant)

ORDER OF COURT

AND NOW, this 16th day of October, 2023, upon consideration of Father's Petition for Recusal and Mother's Answer thereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

Father's Petition for Recusal is DENIED WITHOUT PREJUDICE.

BY THE COURT:

Nicola Henry-Taylor

J.

The Honorable Nicola Henry-Taylor

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

ZACHARY GELACEK,

FAMILY DIVISION

Plaintiff,

FD No. 21-007339-007

vs.

PETITION FOR RECUSAL

MONICA COSTLOW,

Filed by Plaintiff, Zachary Gelacek

Defendant.

511 Neale Avenue
Ford City, Pennsylvania 16226
724-664-5022

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

ZACHARY GELACEK,

FAMILY DIVISION

Plaintiff,

FD No: 21-007339-007

vs.

MONICA COSTLOW,

Defendant.

NOTICE OF PRESENTATION

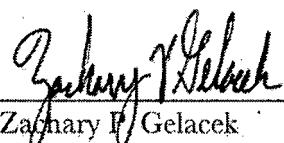
This **PETITION FOR RECUSAL** will be presented to the Honorable Judge Nicola Henry-Taylor on the 9th day of April, 2024, at 9:30 a.m. in Courtroom 323.

CERTIFICATE OF SERVICE

This **PETITION FOR RECUSAL** was served on the 7th day of April, 2024, via email, on the following:

Brian E. McKinley, Esq.
Wilder Mahood McKinley & Oglesby
10th Floor, Koppers Building
436 Seventh Avenue
Pittsburgh, Pennsylvania 15219
bmckinley@wildermahood.com

Alyson T. Landis, Esq.
Boyer Paulsick Eberle & Biss
108 East Diamond Street
Third Floor
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Zachary F. Gelacek

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

ZACHARY GELACEK,

FAMILY DIVISION

Plaintiff,

FD No. 21-007339-007

vs.

MONICA COSTLOW,

Defendant.

PETITION FOR RECUSAL

AND NOW COMES the plaintiff, Zachary Gelacek ("Father"), pro se, and files this Petition for Recusal, as follows:

1. Defendant Monica Costlow ("Mother") and Father married on April 9, 2011.
2. The parties are the parents of two children, P.G., age eleven (11), and L.G., age ten (10).
3. As set forth in exhaustive detail in other filings in this action, Father began suffering from opioid use disorder in or around 2013. At times when that condition manifested in acute addiction, it has disrupted Father's ability to care for himself and others. At other times, like the present, it does not interfere with Father's ability to function in any material respect.
4. Father, with Mother's assistance, voluntarily sought and began receiving treatment for this condition in April 2016. At essentially all times since then, Father has received treatment for this disease.
5. The parties separated on January 7, 2021.
6. On February 23, 2021, Father filed a Complaint for Custody, through which he has pursued shared legal and physical custody of the children.
7. Over a year later, in June 2022, Mother counterclaimed for divorce.

8. Several months after that, after Father's work activities finally supplied him sufficient funds to do so, Father voluntarily began transmitting child support payments to Mother.

9. Mother responded by petitioning for child support.

10. The custody component of this action has a tortured history. Three judges have been assigned to it.

11. The Honorable Jennifer Satler presided over this action from its commencement until she was assigned to this Court's Criminal Division.

12. At that point, the Honorable Chelsa Wagner was assigned to this action.

13. On January 12, 2023, Plaintiff petitioned for the Honorable Judge Wagner to recuse herself from this action based upon Mother's previous statements to Father that, for many years, she has maintained a social relationship with Judge Wagner.

14. On January 27, 2023, Judge Wagner denied Father's petition for recusal.

15. Judge Wagner subsequently scheduled a Judicial Conciliation on Mother's Equitable Distribution claim for April 12, 2023.

16. At that time, Father was represented by Chrystal C. Tinstman, Esq.

17. Father subsequently learned that, upon arrival to the April 12 Judicial Conciliation, Attorney Tinstman was informed that Judge Wagner intended to recuse herself from this action due to her social relationship with Mother.

18. On May 2, 2023, an Order of this Court was filed in this action. See Ex. 1 at 1.¹

19. That Order provides that, as of April 26, 2023, the Honorable Chelsa Wagner recuses herself from presiding over this action. See id.

¹ A true and correct copy of this Court's May 2, 2023, Order in this action is annexed hereto as **Exhibit 1**.

20. It also states that, as of April 28, 2023, the Honorable Nicola Henry-Taylor is assigned to adjudicate this action. See id.

21. Shortly thereafter, on May 4, 2023, Father, through Attorney Tinstman, filed a Petition for Contempt and Special Relief based upon Mother's refusal to co-parent and other deficient behavior. See generally Ex. 2.²

22. Through that Petition, Father requested several forms of relief to address problematic conduct of Mother including, among other things, appointment of a *guardian ad litem* ("GAL") for the children. See, e.g., id. at 21 ¶ 9 (Father's proposed order appointing a GAL for the children).

23. On May 11, 2023, Judge Henry-Taylor held a hearing on Father's May 4, 2023, Petition for Contempt and Special Relief.

24. On May 17, 2023, Judge Henry-Taylor issued an Order on Father's May 4, 2023, Petition for Contempt and Special Relief, which included the following ruling, "A Guardian ad Litem (GAL) shall be appointed by separate Order of Court." **Ex. 3** ¶ 3.³

25. Shortly after receiving this Court's May 17, 2023, Order, Father learned that, based on this Court's historical practices, such GAL for the parties' children likely would be appointed at or before the end of May 2023.

26. Although this Court rejected almost all relief that Father requested through his May 4 Petition for Contempt and Special Relief, its order granting his request for appointment of

² A true and correct copy of Father's May 4, 2023, Petition for Contempt and Special Relief is annexed hereto as **Exhibit 2**.

³ A true and correct copy of this Court's May 17, 2023, Order in this action is annexed hereto as **Exhibit 3**.

a GAL gave him hope that his custody claims eventually would be adjudicated in a just manner and in compliance with applicable law.

27. As May 2023 turned into June, Father continued to wait patiently for Judge Henry-Taylor to take action on her promise to appoint a GAL.

28. During that time, Mother continued to engage in extremely cantankerous and contumacious behavior during Father's periods of physical custody of the children, including absconding with L.G. for a long period of time during L.G.'s June 2023 and obtaining L.G. Taylor Swift concert tickets for a day on which L.G. was scheduled to be in Father's custody, which created immense pressure on Father to interact with Mother in these circumstances and forfeit his custodial time to allow L.G. to participate in that notable cultural event.⁴

29. On June 16, 2023, under intense pressure to consent to Mother's request that Father decline his previously scheduled June 17, 2023, period of physical custody in order to facilitate L.G.'s attendance at the Taylor Swift concert, Father – for the first time in almost two years – obtained and consumed unprescribed opioids in an effort to cope with the intense stress and dysphoria Mother's actions were continuing to inflict on him (which were amplified by this Court's delay in appointing a GAL who could intervene into the situation).

30. Shortly thereafter, Father was stopped while driving and rushed to a hospital in an ambulance, where he consented to have his blood drawn for analysis by law enforcement.

31. On July 6, 2023, Mother filed an expedited Petition for Special Relief regarding Custody, through which she requested that the Court permit her to move from Forest Hills, in

⁴ Taylor Swift held multiple concerts in Pittsburgh last June. Mother could have selected a date that would not have interfered with L.G.'s previously-ordered period of physical custody with Father. Instead, she of course chose the concert date and time that would cause maximum interference with Father's rights and his relationship with L.G.

eastern Allegheny County, to Upper Saint Clair, which is in southwestern Allegheny County on the border of Washington County. See generally Ex. 4.⁵

31. On July 11, 2023, nearly two (2) months after she promised to do so, Judge Henry-Taylor appointed Kilbreth E. Barton, Esq., as the children's GAL. See Ex. 5.⁶

32. The next day – on July 12, 2023 – Attorney Tinstman filed a response to Mother's July 6, 2023, expedited petition to unilaterally move the children to Upper Saint Clair, through which requested that this Court deny her attempt to secure that relief.⁷

33. On July 13, 2023, Judge Henry-Taylor heard argument on Mother's July 6, 2023, expedited petition for special relief. During that hearing, which Father attended, Judge Henry-Taylor indicated that she would hold, essentially, a mini-trial on the issue on August 4, 2023, and informed counsel for both parties that she would not accept any efforts to continue that hearing.

34. Judge Henry-Taylor subsequently vacated Attorney Barton's appointment by Order dated July 18. See Ex. 6 ¶ 1.⁸

35. In that July 18 Order, Judge Henry-Taylor provided, "A new Guardian *ad Litem* shall be appointed by Separate Order of Court." Id. ¶ 3.

⁵ A true and correct copy of Mother's July 6, 2023, Petition for Special Relief regarding Custody is annexed hereto as **Exhibit 4**.

⁶ A true and correct copy of this Court's July 11, 2023, Order – with confidential information pertaining to the children redacted – is annexed hereto as **Exhibit 5**.

⁷ Due to the extreme amount of activity in this action and the related equitable distribution and support actions that was occurring at this time – as well as Attorney Tinstman's June 1, 2023, change of law firms – Attorney Tinstman never sent Father a copy of this response. Father has requested that file and will file a copy of it as a supplemental exhibit to this petition after he receives it from Attorney Tinstman.

⁸ A true and correct copy of this Court's July 18, 2023, Order is annexed hereto as **Exhibit 6**.

36. The next day, on July 19, 2023, Judge Henry-Taylor issued the order she indicated she would issue during the July 13 hearing on Mother's expedited petition for special relief to move the children to Upper Saint Clair. Through that order, she set the issue of Mother's school choice request to be resolved through a half-day trial on August 4, 2023. See **Ex. 7** at 2.⁹

37. The following week, on July 24, 2023, Judge Henry-Taylor appointed Alyson Landis, Esq., as GAL. See **Ex. 8.**¹⁰

38. Thereafter, during the last week of July 2023, the District Attorney's Office for Allegheny County charged Father with driving under the influence of fentanyl in connection with the June 16 incident.¹¹

39. It appears that Mother learned of those charges before Father. On the morning of July 28, 2023 (before Father had a chance to even review the aforementioned certified mail), Attorney Tinstman filed an unexpected motion to withdraw from representing Father, see generally **Ex. 9.**¹² based on discussions she apparently held with Attorney McKinley.

40. Attorney Tinstman knew that Father was not available on July 27, 2023, because he was drafting an Omnibus Pretrial Motion in the action Commonwealth of Pennsylvania v.

⁹ A true and correct copy of this Court's July 19, 2023, Order is annexed hereto as **Exhibit 7**.

¹⁰ A true and correct copy of this Court's July 24, 2023, Order – with confidential information pertaining to the children redacted – is annexed hereto as **Exhibit 8**.

¹¹ On December 1, 2023, the Honorable Judge Bigley of this Court's Criminal Division accepted Father into its Accelerated Rehabilitative Disposition program, in which Father currently is participating successfully. When he finishes that two-year program, Father's charges with respect to the June 16, 2023, incident will be expunged. Father's June 16, 2023, incident was his first experience with a criminal investigation in which he was a suspect. Since that date, Father has maintained complete abstinence from any unprescribed substances of potential abuse.

¹² A true and correct copy of Attorney Tinstman's July 28, 2023, Expedited Motion to Withdraw and for a Continuance is annexed hereto as **Exhibit 9**.

Jud L. Mantini, No. CP-02-CR-0003694-2023, which is pending in this Court's Criminal Division. That Motion includes a very detailed and thoroughly briefed request for suppression of evidence gathered at a law enforcement checkpoint, see Ex. 10 ¶¶ 9-39,¹³ and was Father's first attempt to draft such a motion during his then-sixteen (16) year career as a licensed attorney.

41. Father had not yet reviewed the certified mail containing his criminal charges at the time he received a copy of Attorney Tinstman's expedited motion to withdraw (early in the morning of July 28, 2023) because of the general chaos that was occurring in all three aspects of this action (while Attorney Tinstman also was adjusting to her new law firm and its recordkeeping systems and practices) extensive efforts he devoted to drafting the Omnibus Pretrial Motion on July 27, 2023, the deadline for such filing under the Pennsylvania Rules of Criminal Procedure. See Pa.R.Crim.P. 579(A) (omnibus pretrial motion must be filed and served on or before the date 30 days after a defendant's formal arraignment).

42. Father immediately emailed Judge Henry-Taylor's Chambers, Mother, and GAL Landis to inform them of his current status and circumstances,

The Honorable Judge Henry-Taylor, Attorneys, and Staff:

I was unavailable yesterday because I woke up at 5 am to draft the attached Omnibus Pretrial Motion, which I filed last night, the deadline for its filing. I also had a half-day preliminary injunction hearing on Monday, July 24 in Curry v. Curry, No. 2022-1647-CIV. In the interim, I also was dealing with several other emergent matters in my practice.

My attorney was out of the country last week on vacation. On Monday, I have an appellant's PCRA brief and reproduced record due in Superior Court that is related to a four-day jury trial and multiple collateral issues. I have done everything within my ability to balance the burdens of my practice and participating in this matter, but the short deadlines associated with this planned August 4 school choice hearing put me in an impossible situation. Ms. Costlow informed both kids' therapist, Dr. Kelly Meinhart, and my father that she

¹³ A true and correct copy of the Omnibus Pretrial Motion that Father drafted on July 27, 2023, and filed in the action Commonwealth of Pennsylvania v. Jud L. Mantini, No. CP-02-CR-0003694-2023, is annexed hereto as **Exhibit 10**.

intended to put the children in school with her boyfriend's children in Upper Saint Clair in March, yet she waited to July to file her motion as a tactical move to make in coincide with the July 7 hearing on her Child Support claim.

I have done everything within my ability to be present for my children and intimately involved in their lives. Despite those efforts, I have run into constant resistance and attempts to undermine my relationship and mental health by my estranged wife. I beg you all not to use my heavy professional schedule and demands this week pave the way (sic) for Monica to further alienate the children from me.

Regards,

Zachary P. Gelacek

See Ex. 11 at 1.¹⁴

43. A little over an hour after Father sent the email set forth in the previous paragraph, Attorney Tinstman notified Father – for the first time – that, the previous day (July 27, 2023) – Mother filed an Emergency Motion for Special Relief regarding Custody through which she sought to reduce Father's periods of physical custody to five (5) hours each week in which Father would be supervised in his exercise of that fundamental right by a retired law enforcement officer. See Ex. 12 (Mother's July 27, 2023, Emergency Petition for Special Relief regarding Custody);¹⁵ see also Ex. 13 (Attorney Tinstman July 28, 2023, email notifying Father of Mother's July 27, 2023, Emergency Petition).¹⁶

44. Nowhere in Mother's emergency petition was any evidence that Father had engaged in dangerous behavior while exercising custody over the children. Nor was there any evidence that the children were exposed to danger during the many months that this Court

¹⁴ A true and correct copy of Father's July 28, 2023, email to this Court, Mother, and GAL Landis, among others, is annexed hereto as **Exhibit 11**.

¹⁵ A true and correct copy of Mother's July 27, 2023, emergency petition for special relief regarding custody is annexed hereto as **Exhibit 12**.

¹⁶ A true and correct copy of Attorney Tinstman's July 28, 2023, email to Father in which she first notified him of Mother's July 27, 2023, emergency petition is annexed hereto as **Exhibit 13**.

subjected Father and the children to exercising their fundamental rights to parent-child bonds under the supervision of Father's mother and step-father. See Ex. 12.

45. On August 2, 2023, Judge Henry-Taylor granted Attorney Tinstman's expedited motion to withdraw from representing Father in this action. See Ex. 14.¹⁷

46. On August 2, 2023, this Court also conducted a hearing on Mother's July 27, 2023, Emergency Petition for Special Relief regarding Custody.

47. Father subsequently learned that, during that hearing, Judge Henry-Taylor made the following remarks:

a. Father's DUI charge was more serious than typical DUI charges due to the fact that Father's offense involved a blood analysis that detected the presence of fentanyl as well as two other medications that Father is prescribed;¹⁸

b. That – based on her prior experience as an Assistant Public Defender and Assistant District Attorney – she knows that Father is a troublesome addict who needs close scrutiny;¹⁹ and

¹⁷ A true and correct copy of this Court's August 2, 2023, Order is annexed hereto as **Exhibit 14.**

¹⁸ The United States Americans with Disabilities Act, 42 U.S.C. §§ 12131-12134 (the "ADA") "require[s] that decisions about child safety and whether a parent . . . represents a threat to safety must be based on an individualized assessment and objective facts, including the nature, duration, and severity of the risk to the child, and the probability that the potential injury to the child actually will occur." U.S. Dep't of HHS & U.S. Dep't of Justice, Protecting the Rights of Parents & Prospective Parents with Disabilities: Technical Assistance for State & Local Child Welfare Agencies & Courts under Title II of the Americans with Disabilities Act & Section 504 of the Rehabilitation Act at 5 (Aug. 2015) (citing 28 C.F.R. § 35.139(b); School Bd. of Nassau County v. Arline, 480 U.S. 273, 288 (1987)), at true and correct copy of which is annexed hereto as **Exhibit 15**. Moreover, "legitimate safety requirements [which the ADA permits based on the aforementioned analysis] may not be based on stereotypes or generalizations about persons with disabilities." Id. (citing 28 C.F.R. § 35.130(h)) (emphasis supplied).

¹⁹ As noted in note 18, supra, such observation may indicate that information that the ADA forbids a family court from considering influenced or was relied upon by Judge Henry-Taylor to justify her actions. See n. 18, supra (ADA prohibits imposition of custody restrictions "based on

c. That Father needs reported to the Disciplinary Board of the Supreme Court of Pennsylvania because of his criminal charge.

48. Rather than conduct the hearing on school choice scheduled for August 4, 2023, Judge Henry-Taylor decided instead, unilaterally, to question the children with only GAL Landis also present. Despite Father's well-founded allegations of a years-long effort to alienate him and the children and undermine their bond, Judge Henry-Taylor failed to include any experts in child development, child psychology, family therapy, or child dynamics in that interaction. Nor, to Father's knowledge, is Judge Henry-Taylor or GAL Landis licensed or extensively trained in any of those field.

49. Father also learned – over the weekend of August 5, 2023 – that, during interactions with counsel on August 4, 2023, Judge Henry-Taylor commented – regarding Father's desires for a permanent school for the children – “With his issues, why does he think he even gets a say?” She also engaged in similar commentary about Father's law license as that of August 2, 2023, despite Father not appearing before her in his capacity as a licensed attorney or officer of this Court.

50. Judge Henry-Taylor's remark about the audacity of Father's belief that he would retain any agency over the future schooling and residential location of his children because of his late July 2023 criminal DUI charge allegedly drew an express rebuke from Attorney Tinstman – who was present at that hearing (ostensibly on Father's behalf although Judge Henry-Taylor had

stereotypes or generalizations about persons with disabilities”). In addition, the Supreme Court of Pennsylvania's Code of Judicial Conduct forbids Judge Henry-Taylor from “investigat[ing] facts in a manner independently . . . [or] consider[ing] evidence [other than evidence] presented and any facts that may properly be judicially noticed.” 207 Pa. Code § 2.9(C). Accordingly, both the ADA and judicial ethics forbid Judge Henry-Taylor from considering her experiences in prior employment as support for any action she takes in this action.

already granted Attorney Tinstman's Expedited Motion to Withdraw two days beforehand). See Ex 14.

51. On August 7, 2023, Judge Henry-Taylor issued an order that permitted Mother to enroll the children in Upper Saint Clair School District (and, effectively, to move the children there). See Ex. 16 ¶ 2.²⁰ That decision resulted in the children and their school being located over a two-and-a-half (2.5) hour round-trip drive from Father. Accordingly, Father no longer can maintain day-to-day involvement in the children's lives in the manner he did before that decision.

52. On or around March 15, 2023, Sacred Heart Elementary – the school that the children attended at that time – requested that P.G. stop attending classes in person due to concerns with his behavior.

53. On March 21, 2023, and in the weeks that followed, Dr. Erin Mascaro, Sacred Heart's principal; Father; the children's pediatrician, Keith Somers, MD; and their therapist, Kelly Meinhart, Psy. D., each agreed that P.G. should undergo EIP through the Woodland Hills School District, the children's home school district at that point.

54. On March 23, 2023, Father executed a consent for P.G. to undergo such an evaluation through Woodland Hills School District, which he transmitted to Dr. Mascaro and Mother. See Ex. 17.²¹

55. For months thereafter, Father, without success, begged and pleaded with Mother similarly to consent to that evaluation.

²⁰ A true and correct copy of this Court's August 7, 2023, Order is annexed hereto as **Exhibit 16.**

²¹ A true and correct copy of Father's March 23, 2023, consent to such EIP – redacted to remove confidential information of the children – is annexed hereto as **Exhibit 17.**

56. Thereafter, on September 15, 2023, Mother moved this Court for relief including, among other things, to hold Father in contempt for failing to consent (as of that date) to P.G. undergoing an EIP through the Upper Saint Clair School District in a quick-enough fashion to please Mother, see Ex. 18 ¶¶ 13-20,²² as well as a request that this Court terminate Father's joint right to legal custody of the children and force him to exercise custody from that point forward under the supervision of a retired law enforcement agent. See id. ¶¶ 21-32.²³

57. On September 22, 2023, Father filed, via the Department of Court Records electronic filing system, an extensive answer to Mother's September 15 petition, which included citations to relevant case law and over thirty (30) pages of supportive documentation. See Ex. 19.²⁴

58. Father also emailed a copy of that document and a proposed order addressing the relief Mother sought through her September 15, 2023, petition via email to Judge Henry-Taylor's Chambers, Mother, and GAL Landis. See Ex. 20.²⁵

²² A true and correct copy of Mother's September 15, 2023, Petition for Special Relief regarding Custody is annexed hereto as **Exhibit 18**.

²³ As with all of her requests for this relief in this action, Mother neither identified any danger to which Father exposed the children during his periods of unsupervised custody of the children over the year in which he exercised that right nor, for that matter, any danger to which the children were exposed during the over fifteen (15) months in which he exercised such custody under the supervision of his mother and step-father. Accordingly, Mother once again requested that this Court award relief that would contravene not only Father and the children's constitutional rights to meaningful parent-child relationships but would violate Father's rights to parent pursuant to the ADA.

²⁴ A true and correct copy of Father's September 15, 2023, Answer to Petition for Special Relief regarding Custody and supporting materials are annexed hereto as **Exhibit 19**.

²⁵ A true and correct copy of Father's September 22, 2023, email through which he transmitted copies of his answer to Mother's September 15, 2023, petition as well as a proposed order resolving that petition to Judge Henry-Taylor, Mother, and GAL Landis is annexed hereto as **Exhibit 20**.

59. At the September 25, 2023, hearing on Mother's September 15, 2023, petition, Judge Henry-Taylor informed Father that she would refuse to consider his response because Father did not submit it through this Court's Client Services Center ("CSC"), which Judge Henry-Taylor's Standard Operating Procedures ("SOPs") purport to require.²⁶

60. Included within Father's September 22, 2023, answer to Mother's petition were documents issued by a medical services provider used by Father that demonstrated that Father completed twenty-seven clean urine drug screens (many of which were observed and/or tested for presence of fentanyl) between October 2021 and September 2023. See Ex. 19 at 27-28.

61. On September 25, 2023, Judge Henry-Taylor conducted a hearing on Mother's September 15 petition for special relief regarding custody.

62. During the course of that hearing, Judge Henry-Taylor made multiple upsetting, trauma-inducing comments to or about Father, who appeared pro se in respect to the custody matters at issue on that day:

a. Judge Henry-Taylor began the hearing by scolding Father about the status of his law license. In response to queries on that topic by the Court, Father indicated that he was not yet required to report himself to the Disciplinary Board of the Supreme Court of Pennsylvania in connection with this DUI charge until that charge – a misdemeanor – is "adjudicated." That comment caused Judge Henry-Taylor to become visibly frustrated, and she proceeded to engage Father in an exchange about the Lawyers Concerned for Lawyers program in which Father has

²⁶ Father could not have submitted his verified answer to Mother's petition, with its extensive supporting documentation, through the CSC at that time. As explained in more detail below, at that time the CSC engaged in a policy of rejecting any verification or exhibits that a pro se party submitted in connection with a motion in the Family Division of this Court. Father has contacted the Court Administrator of the Family Division to alert her about the issues that Father perceives with Judge Henry-Taylor's SOPs and the practices, procedures, and policies of the CSC.

participated at times as well as varying efficacies of religion-based abstinence and evidence-based medical approaches to treating substance use disorders.

b. Judge Henry-Taylor expressly observed that Father appeared “flushed” and opined that he may be “under the influence of drugs.”²⁷ Upon information and belief, Judge Henry-Taylor is not a licensed medical professional qualified to make such an observation. Father notes that the “flushed” portion of the comment also has an obvious racial component. Father is white with very pale skin. Upon information and belief, Judge Henry-Taylor is a woman of color.

c. Judge Henry-Taylor also engaged in commentary that reflected problematic, stereotypical views as to men who suffer from substance use disorders. She repeatedly asked Father questions about “co-occurring disorders.” When Father attempted to explain the treatment in which he participates, Judge Henry-Taylor repeatedly cut-off Father’s explanation by making interjections such as, “That was not my question.” She also intimated, at one point, that Father may have PFAs filed against him or require a batterer’s intervention, apparently because white men who suffer from opioid use disorder physically abuse loved ones.

63. Judge Henry-Taylor’s conduct towards Father on September 25, 2023, should be compared to her approach to another parent who also defended herself pro se against a motion that day. That parent admitted that she removed her children from Allegheny County to the

²⁷ At any fact-finding hearing on this petition, Father intends to introduce the expert testimony of Andrew D. Ewens, Ph.D., DABT, a forensic toxicologist who Father hired to conduct extensive testing of Father in fall 2023. Father expects that Dr. Ewens will testify that his examination of Father combined with additional testing that Father underwent through his normal courses of treatment demonstrates to a high degree of scientific certainty that Father was not under the influence of drugs during this Court’s September 25, 2023, hearing in this action. For that reason, to the extent that Judge Henry-Taylor’s unscientific opinion that Father was “flushed” is of any probative value, it indicates something other than consumption of unprescribed substances.

Bloomsburg, Pennsylvania, area in violation of an Order of this Court and that she also failed to appear at a custody exchange also in violation of an Order. Judge Henry-Taylor treated that parent with dignity, compassion, and grace, and declined to rule on her co-parent's motion until she and her staff consult with social-work interns about an appropriate resolution.

64. Shortly after that interaction, however, Judge Henry-Taylor treated father in a manner that was dehumanizing, unprofessional, and decidedly unbecoming manner for a Judge, as set forth in detail in ¶ 62, supra.

65. On October 12, 2023, Father drafted, verified, executed, and compiled a Petition for Recusal through which he requested that Judge Henry-Taylor recuse herself from any further participation in this action based on her conduct at the August 2, August 4, and September 25, 2023, hearings.

66. Upon arrival at the CSC, the employee who assisted Father asked him to give her his filing, which she then took to an area out of Father's sight.

67. Later, she presented Father with a "filing" version of the documents from which Father's executed verification and exhibits were removed. When Father inquired as to the reason for act, the employee replied that this Court's Administrative Orders prohibit Father from submitting verifications or exhibits in connection with pro se motions.

68. Chastened by this Court's refusal to consider his response to Mother's September 15, 2023, petition and the traumatic experience that ensued, Father complied with the CSC employee's demands and subsequently served email copies of his Petition for Recusal on Mother and GAL Landis in the manner indicated by the CSC employee.²⁸

²⁸ A true and correct copy of one of the "service" copies of Father's October 12, 2023, Petition for Recusal is annexed hereto as **Exhibit 21**.

69. Applicable caselaw of the Supreme Court and Superior Court of Pennsylvania required Judge Henry-Taylor to refer Father's petition to another Judge of this Court for a fact-finding hearing and adjudication. See, e.g., Mun. Publ'ns, Inc. v. Court of Common Pleas, 489 A.2d 1286, 1289-90 (Pa. 1985); Commonwealth v. Dip, 221 A.3d 201, 208 (Pa. Super. 2019).

70. Father cited that line of cases in his petition, see Ex. 21 ¶ 38 (citing Reilly v. SEPTA, 489 A.2d 1291, 1300 (Pa. 1985), abrogated on other grounds, by Drake v. Pa. Nat'l Mut. Cas. Ins. Co., 601 A.2d 797 (Pa. 1992)), and listed the petition, pursuant to this Court's local rules, to be heard by Judge Henry-Taylor (for referral to another Judge of this Court for adjudication) on Thursday, October 19, 2023, at 1 p.m. in Courtroom 425 of the Family Law Center. See Ex. 21 at 2.

71. Later that same day – October 12, 2023 – Judge Henry-Taylor issued an Order through which she set forth what she believes is the proper legal framework through which Father's petition for recusal should have been judged. See Ex. 22.²⁹

72. As an initial matter, Judge Henry-Taylor abrogated Father's listing of the petition for hearing in open court on Thursday, October 19, 2023, and instead unilaterally declared that the petition should be adjudicated during a confidential custody Judicial Conciliation session already scheduled for Monday, October 16, 2023. See id. ¶ 1.

73. Judge Henry-Taylor also ruled that the Code of Judicial Conduct promulgated by the Supreme Court supplied the proper paradigm to address Father's recusal request. See id. ¶ 2, 2(a)-(b) (citing 207 Pa. Code § 15-4).³⁰

²⁹ A true and correct copy of this Court's October 12, 2023, Order is annexed hereto as **Exhibit 22.**

³⁰ In the opinion of the Pennsylvania Supreme Court that Father cited in support of his October 12, 2023, petition for recusal, see Ex. 21 ¶ 38, the Supreme Court noted that the Code of Judicial Conduct is “not a proper subject for consideration of the lower courts [with respect] to . . .

74. Judge Henry-Taylor further assigned Father the burden of proof, see id. ¶ 2, which ostensibly would not include his verified averments in the petition due to the CSC's refusal to include Father's executed verification in the filing.

75. At the October 16, 2023, Judicial Conciliation session referred to in ¶ 72, supra, Judge Henry-Taylor decided, sua sponte, that Father would be allotted "three (3) minutes" to satisfy the burden of proof she ruled he carries in her October 12 Order. See Ex. 23 at 5:15-18.³¹

76. Father commenced his 180-second allotment by noting that the case law of the Pennsylvania Supreme Court and Superior Court – rather than the (unenforceable in this action) Code of Judicial Conduct – governs Father's burden with respect to demonstrating a basis for recusal. See id. 6:5-17.³²

77. As recounted in multiple documents generated in connection with this action, Father has received treatment for opioid use disorder essentially at all times beginning in April 2016 through the present.

78. Since October 2019, Father has received medication-assisted therapy from UPMC Western Psychiatric Institute and Clinic's Narcotics Addiction Treatment Program

. judicial misconduct." Reilly v. SEPTA, 489 A.2d 1291, 1299 (Pa. 1985), abrogated on other grounds, by Drake v. Pa. Nat'l Mut. Cas. Ins. Co., 601 A.2d 797 (Pa. 1992).

³¹ A true and correct copy of relevant excerpts of the transcript generated during this Court's October 16, 2023, Judicial Conciliation in this action is annexed hereto as **Exhibit 23**. Father has redacted any confidential information concerning anyone other than him from the pages of that transcript filed in connection herewith.

³² In response to Father's argument regarding recusal at the Judicial Conciliation, Attorney McKinley stated, "the statements made by Mr. Gelacek that are attributed to this Court are just frankly untrue. They're impudent. They're offensive to this Court and, frankly, slanderous to the Court. The Court's never made those statements." See Ex. 23 at 9:12-19. GAL Landis – who, unlike Attorney McKinley, was present at all hearings described in Father's recusal petition – did not deny that Judge Henry-Taylor engaged in the remarks Father averred in his petition. See id. at 10:14-22.

(“NATP”), a regimen that includes, among other things, monthly sessions with a psychiatrist who specializes in Father’s disease, monthly therapy sessions, and a prescription for methadone, which – as demonstrated by decades of scientific inquiry – addiction psychiatrists recognize as the “gold-standard” treatment for unmanaged opioid use disorder.

79. The Civil Rights Division of the U.S. Department of Justice has confirmed that the ADA prohibits discrimination against any individual on the basis of their participation in such therapy. See U.S. Dep’t of Justice Civ. Rights Div’n, The Americans with Disabilities Act and the Opioid Crisis: Combatting Discrimination Against People in Treatment or Recovery, **Ex. 24**, at 2 (Apr. 5, 2022) (“ADA protect[s] individuals who are taking legally prescribed medication to treat their opioid use disorder”).³³

80. When the topic of discussion at the October 16, 2023, Judicial Conciliation in this action turned to the treatment Father receives through the NATP, Judge Henry-Taylor remarked, “Since you mentioned methadone, has anyone talked to you about the possibility of something like VIVITROL®,³⁴ which is the injection? I know there’s another name.” **Ex. 23** at 28:18-22.

81. The following colloquy then occurred, beginning with Father’s response to Judge Henry-Taylor’s query regarding naloxone depot injections:

[Father]: If I take VIVITROL®, I would be sick for a month because it actually counteracts methadone. So I would go into precipitated withdrawal and not be able to move.

³³ A true and correct copy of this federal administrative agency directive is annexed hereto as **Exhibit 24**.

³⁴ VIVITROL® is the trade name under which naloxone (an opioid antagonist) delivered through a time-release depot injection is marketed. Father received such injections as part of the treatment he received during the time period beginning in May 2016 and ending in or around December 2016, after Father experienced severe, debilitating reactions shortly after receiving those injections.

[THE COURT]: Well, they know their jobs. I just know that has been – VIVITROL®, and I know there's another one, that has been very helpful for some people.

[Father]: SUBLOCADE®.³⁵

[THE COURT]: Yeah.

[Father]: Well, SUBLOCADE® is also a depot injection-like VIVITROL®. SUBLOCADE® is buprenorphine, which is SUBOXONE®.³⁶ I tried SUBOXONE® before methadone, and the psychiatrist who I worked with at that time, the addiction psychiatrist Dr. Daniel Cohen, referred me to start on methadone because of how much difficulty I had in trying to get stabilized on SUBOXONE®.

Id. at 28:23-29:17.

82. Later in that proceeding, Father noted that – at all relevant times – he has participated in a drug detection program administered by UPMC and also pointed out that, on the previous Friday, October 13, 2023, Father completed a urine drug screen that was negative for any unprescribed substances of concern (including fentanyl). See id. at 33:19-21.

83. In response to that information, Judge Henry-Taylor remarked, “Okay. I’m not sure how random it is, but that’s an argument for a different day.” Id. 33:22-24.

84. In the wake of the conciliation, Judge Henry-Taylor denied Father’s petition for recusal, which ruling, she expressly noted, was “WITHOUT PREJUDICE.” **Ex. 25** at 1.³⁷

³⁵ SUBLOCADE® is the trade name under which buprenorphine (a compound with characteristics of both an opioid agonist and antagonist) delivered through a time-release depot injection is marketed. Father may receive such treatment when he fully tapers off methadone.

³⁶ SUBOXONE® is the trade name under which Reckitt-Benckiser Group, PLC, a British pharmaceutical firm, markets its buprenorphine/naloxone sublingual film (another medication approved for use as treatment for opioid use disorder). Father was prescribed SUBOXONE® from approximately December 2017 through some point in 2019, at which point the addiction psychiatrist who treated Father at that time, Daniel Cohen, MD, referred Father to the NATP because Father was failing to make sufficient improvement through a different medication-assisted treatment regimen that incorporated a prescription for SUBOXONE®.

³⁷ A true and correct copy of this Court’s October 16, 2023, Order is annexed hereto as **Exhibit 25**.

85. Judge Henry-Taylor's aforementioned conduct demonstrates that she harbors impermissible bias and prejudice towards Father due to his disability, or, alternatively and at a minimum, her rulings in this action are tainted by the appearance of impropriety.

86. The Supreme Court of Pennsylvania has noted that "all litigants have the right to believe that the jurist they are appearing before is impartial." Reilly, 489 A.2d at 1300.

87. "Questions concerning the fairness, impartiality, or bias of [a] trial court always affect the administration of justice and can cloak the whole system of judicature in suspicion and distrust." Id. at 1301; accord In re McFall, 617 A.2d 707, 710 (Pa. 1992) ("the impartiality of the court, which is a fundamental requisite of a fair trial, must be deemed compromised by appearance alone, thus eliminating the need for establishing actual prejudice"); In re Franciscus, 369 A.2d 1190, 1194 (Pa. 1977) ("A judge . . . in fulfilling his judicial function must not only strive to insure fair treatment toward every individual who appears before him, but he must also present the appearance of fairness and probity in his behaviors as a judicial officer. If that appearance falters, the confidence of the public will naturally wane").

88. "[R]ecusal is required wherever there is **substantial doubt** as to the jurist's ability to preside impartially." Dip, 221 A.3d at 206 (quoting McFall, 617 A.2d at 713); accord Joseph v. Scranton Times L.P., 987 A.2d 633, 634-35.

89. "In this regard, the appearance of impropriety sufficient to disqualify a judge exists when 'a significant minority of the lay community could reasonably question the court's impartiality.'" Dip, 221 A.3d at 207 (quoting Commonwealth v. Bryant, 476 A.2d 422, 426 (Pa. Super. 1984)); cf. Mun. Publ'ns, 489 A.2d at 1289 ("a judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned").

90. Father asserts that the above-noted events more than adequately demonstrate that Judge Henry-Taylor's impartiality with respect to this action may reasonably be questioned.

91. Father believes that Judge Henry-Taylor's actions over the course of July, August, September, and October of last year create substantial doubt as to whether she can fairly adjudicate this custody dispute and protect Father and the children's respective rights under the federal constitution³⁸ and the ADA.

92. As noted above, Father, as an individual who receives medication-assisted therapy for opioid-use disorder, receives protection under the ADA. See Ex. 24 at 2 ("ADA protect[s] individuals who are taking legally prescribed medication to treat their opioid use disorder").

93. Moreover, the ADA applies substantively in circumstances where a disability affects the capacities – or is perceived to affect the capacities – of a parent who seeks to enforce his and his children's respective rights to a fundamental parent-child relationship. See Ex. 15 at 6-7 ("The ADA . . . protect[s] the rights of individuals with disabilities. . . . [It] also appl[ies] to people who have a record of having a substantial impairment . . . , or are regarded as having such impairment, regardless of actually having an impairment").

94. The ADA substantively limits the ability of a state court and state law to infringe upon the rights of parents who suffer from or are perceived to suffer from a disability and the children of such individuals.

95. Accordingly, the ADA "require[s] that decisions about child safety and whether a parent . . . represents a threat to safety must be based on an individualized assessment and objective facts, including the nature, duration, and severity of the risk to the child, and the

³⁸ In Stanley v. Illinois, 405 U.S. 645, 651 (1972), the U.S. Supreme Court opined:

The private interest here, that of a man in the children he has sired and raised, undeniably warrants deference and, absent a powerful countervailing interest, protection. It is plain that the interest of a parent in the companionship, care, custody, and management of his children comes to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements.

probability that the potential injury to the child will actually occur.” Id. at 5 (citing 28 C.F.R. § 35.139(b)).

96. It also mandates that “legitimate safety requirements may not be based on stereotypes or generalizations about persons with disabilities.” Id. (citing 28 C.F.R. § 35.130(h)).

97. In addition, the ADA governs the behavior of state court judges and their staff.

See id. at 9 (ADA applies to state court jurists, their staffs, and to custody disputes).³⁹

98. Given Judge Henry-Taylor’s conduct set forth above (and affirmed in the affidavit of Father annexed hereto), Father believes that a significant minority of the lay community⁴⁰ – and perhaps even a substantial majority of such community – would question Judge Henry-Taylor’s impartiality with respect to Father’s custody claims and the state and federal rights that support his (and the children’s) right to a meaningful parent-child relationship.

99. The legal framework and procedure that Judge Henry-Taylor applied to the issue on Father’s previous petition in this respect does not comport with established Pennsylvania law.

100. The Superior Court has opined, “the general rule is that a party seeking recusal of a judge . . . must satisfy a burden of production and persuasion to show that the recusal claim is not frivolous.” Dip., 221 A.3d at 208.

³⁹ In its technical assistance to state family courts regarding compliance with the ADA, the U.S. Department of Justice noted:

We also remind judges and court personnel of their obligations under the American Bar Association, Model Code of Judicial Conduct, Rule 2.3(b) that states: ‘A judge shall not, in performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, . . . and shall not permit court staff, officials, or others subject to the judge’s discretion and control to do so.

Ex. 15 at 9 n.58.

⁴⁰ Accordingly, opinions of attorneys who practice before this Court – such as those Judge Henry-Taylor sought at the October 16, 2023, Judicial Conciliation – are not particularly probative or relevant to the question this petition raises.

101. Father believes that he amply has met such burden with respect to this petition (and his prior petition).⁴¹

102. Accordingly, Father believes that, under the well-established procedure for adjudicating recusal petitions announced in binding case law, Judge Henry-Taylor may now hold a hearing at which Father may present evidence – including witness testimony – and at which Judge Henry-Taylor is “entitled to determine if [Father’s] allegations ha[ve] some testimonial foundation, or whether they have been fabricated or embellished.” Id. at 209.

103. Once Judge Henry-Taylor receives “the opportunity to make such a threshold determination, [she] can decide whether to recuse, or alternatively, whether to refer the matter to another judge for a credibility assessment.” Id. at 209-210.

104. Father notes, in this respect, that the Superior Court has noted that when a jurist’s challenged comments and/or conduct relates to “critical issues involved in [a] case[],” id. at 215 n.13, like Father and the children’s respective rights under federal and state law and Father’s rights pursuant to the ADA, “the appearance [] of [impropriety] was much stronger.” Id.

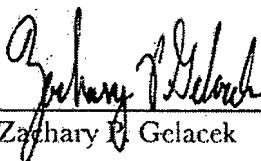
105. Father submits his sworn affidavit in connection herewith in order to supply the facts on which he bases this petition in a manner that Father believes demonstrates his good-faith in submitting this petition.

⁴¹ The combined effect of Judge Henry-Taylor’s SOPs and the policies, practices, and procedures of the CSC (as well as, to the extent the CSC’s feedback to Father on October 12, 2023, was accurate, this Court’s Administrative Orders) functioned to impermissibly intrude on Father’s ability, as a pro se party, to make such showing in connection with his October 12, 2023, petition. By removing his executed verification, the CSC denuded Father’s petition of factual support and facilitated Judge Henry-Taylor’s subsequent decision to force Father to attempt to meet that burden through a three-minute presentation at a confidential conciliation at which Father could not present witnesses. In order to ensure that this does not happen again with respect to this petition, Father annexes a sworn affidavit hereto, will file a copy of this petition with the Department of Court Records, and also will transmit a copy of this petition to the Court Administrator of the Family Division of this Court.

106. In conclusion, Father respectfully requests that Judge Henry-Taylor grant the instant petition by either recusing herself for this case or by scheduling a hearing before Judge Henry-Taylor or another Judge at which Father may present evidence and testimony regarding the averments set forth herein.

107. A proposed order is submitted in connection herewith.

Respectfully submitted,



Zachary P. Gelacek

Plaintiff

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

ZACHARY GELACEK,

Plaintiff,

v.

MONICA COSTLOW,

Defendant.

ORDER OF COURT

No.: FD-21-007339-007

BY:

The Honorable Nicola Henry-Taylor
City-County Building, Room 712
414 Grant Street
Pittsburgh, PA 15219

COPIES TO:

Self-Represented Plaintiff:

Zachary Gelacek
511 Neale Avenue
Ford City, PA 16226
(724) 644-5022
zgelacek@gmail.com

Counsel for Defendant:

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436 Seventh Avenue, Suite 1050
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(412) 261-4040
bmckinley@wildermahood.com

Guardian ad Litem:

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107 E. Diamond Street, 3rd Floor
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FILED

24 APR -8 PM 3:59

DEPT OF COURT RECORDS
CIVIL/FAMILY DIVISION
ALLEGHENY COUNTY PA

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

ZACHARY GELACEK,

Plaintiff,

No.: FD-21-007339-007

v.

MONICA COSTLOW,

Defendant.

ORDER OF COURT

AND NOW, this 8th day of April, 2024, it is hereby ORDERED, ADJUDGED
AND DECREED AS FOLLOWS:

A. BACKGROUND

1. A Pre-Trial Order of Court was issued on October 24, 2023 scheduling a two (2) day trial for April 9 and 11, 2024. See attached Exhibit "A."
2. The parties were to submit Exhibit Binders no later than three (3) business days prior to the first day of trial—that is, by April 5, 2024.
3. Mother submitted her Exhibit Binder on April 5, 2024.
4. Father submitted several emails from April 5-8, 2024, which are substantially as follows:
 - a. On Friday, April 5, 2024 at 7:27 p.m., Father submitted a Pre-Trial Statement and the CV for an expert witness, Christine Burghart Cassesse.
 - b. On Saturday, April 6, 2024 at 10:06 a.m., Father submitted the CVs for two (2) additional expert witnesses, Dr. Andrew Ewens and Dr. Philip Gelacek.

- c. On Saturday, April 6, 2024 at 5:06 p.m., Father submitted a Motion in Limine to Exclude Dr. Beth Bliss's Testimony.
- d. On Sunday, April 7, 2024 at 11:57 p.m., Father emailed to chambers a weblink which purports to contain Father's Exhibits and Petition for Recusal.
- e. On Monday, April 8, 2024 at 8:22 a.m. Father submitted the CV for a fourth (4th) expert witness, Dr. Brian Doner.

5. On Monday, April 8, 2024 at 9:27 a.m., Mother's counsel submitted Objections to Father's Pre-Trial Statement, Expert Witnesses, Motion *in Limine*, and Petition for Recusal.

- a. Mother's counsel reiterated the October 24, 2023 Pre-Trial Order's requirement that non-court appointed experts must be identified thirty (30) days in advance of the first day of trial, with reports due seven (7) days prior to trial.
- b. Father failed to identify the expert witnesses or provide their reports in a timely fashion.
- c. The Objections also refer to the April 3, 2024 Order, which state that Father is precluded from presenting any witnesses other than his own testimony.

6. Father did not timely submit his exhibits to this Court in the manner prescribed.

7. Father did not timely submit and serve his Petition for Recusal as required by the undersigned's Standard Operating Procedures¹.

¹ The April 3, 2024 Order stated that if Father submitted his Petition for Recusal pursuant to the undersigned's Standard Operating Procedures, the Motion could be addressed as an expedited Motion.

8. Even if Father would have submitted a Motion for Recusal pursuant to the undersigned's Standard Operating Procedures, the undersigned would not have recused herself for the instant case.
 - a. The undersigned engaged in the recusal analysis on more than one occasion during these proceedings to determine if the prevailing facts or circumstances could engender a substantial question in reasonable minds whether the judge can be impartial.
 - b. The undersigned has found and continues to find that she can remain impartial.
 - c. The undersigned also finds that there is no reason in the instant case where she would be disqualified due to any specified fact, circumstance, or condition that makes one ineligible or unfit to serve, or otherwise deprives the judge of the power to preside.
 - d. The undersigned is also mindful of the fact that unwarranted disqualification or recusal may bring public disfavor to the court and to the judge personally. The dignity of the court, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge should not use disqualification or recusal to avoid cases that present difficult, controversial, or unpopular issues.

Pursuant to the Undersigned's Standard Operating Procedures, expedited Motions must be submitted and served at least three (3) days in advance, with the opposing party having one (1) day to respond. In this case, Father would have had to have submitted and served the Motion by April 5, 2024, which Father did not do.

B. ORDER OF COURT

9. Due to his failure to comply with the deadlines set forth in the October 24, 2023 Pre-Trial Order of Court, Father shall be precluded from presenting any exhibits at trial.
10. Father's Petition for Recusal will not be addressed because it was not properly submitted according to the procedure for self-represented litigants in the undersigned's Standard Operating Procedures.
11. All other provisions of the October 24, 2023 Pre-Trial Order of Court and the April 3, 2024 Order of Court shall remain in full force and effect.
12. The first day of trial will now be held in Courtroom #424 of the Family Law Center, 440 Ross Street, Pittsburgh, PA 15219.

BY THE COURT:



_____, J.
The Honorable Nicola Henry-Taylor

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

ZACHARY GELACEK,

FAMILY DIVISION

Plaintiff,

FD No. 21-007339-007

vs.

**MOTION FOR RECONSIDERATION OF
PETITION FOR RECUSAL**

MONICA COSTLOW,

Filed by Plaintiff, Zachary Gelacek

Defendant.

511 Neale Avenue
Ford City, Pennsylvania 16226
724-664-5022

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

ZACHARY GELACEK,

FAMILY DIVISION

Plaintiff,

FD No. 21-007339-007

vs.

MONICA COSTLOW,

Defendant.

MOTION FOR RECONSIDERATION OF PETITION FOR RECUSAL

AND NOW comes the plaintiff, Zachary Gelacek (“Father”), pro se, and files this Motion for Reconsideration of Petition for Recusal, as follows:

1. Late in the evening on Sunday, April 7, 2024, Father emailed the Chambers of the Honorable Nicola Henry-Taylor, the Judge of this Court who has been assigned to this matter since a May 2, 2023, Order of this Court, a link to a folder on Father’s law firm’s cloud storage platform in which Father uploaded filing versions of a renewed petition for recusal that Father intended to file in this action on Monday, April 8, 2024, along with proposed orders – in Microsoft Word format – awarding Father different forms of relief he sought through the petition.¹⁹ See Ex. 1; see also Ex. 2 (email serving petition, supporting documents, and proposed orders on Court and other parties to this action).²⁰ Father copied defendant Monica Costlow (“Mother”), via her counsel in this action, Brian McKinley, Esq.; the Court-appointed

¹⁹ A true and correct copy of the version of Father’s Petition for Recusal that he circulated on the evening of April 7, 2024, filed at midnight on April 8, 2024, and presented to the Court’s Client Services Center (“CSC”) before 11 am on April 8, 2024 – which includes a copy of Father’s sworn affidavit in support thereof but lacks copies of the more than 300 pages of additional exhibits thereto – is annexed hereto as **Exhibit 1**.

²⁰ A true and correct copy of Father’s April 7, 2024, email containing the link to a folder on the cloud storage platform of his law firm, Gelacek Legal Services, LLC, in which Father uploaded a copy of the petition for recusal (and associated proposed orders of court) that Father intended to file in the above-noted action on April 8, 2024, is annexed hereto as **Exhibit 2**.

guardian ad litem (“GAL”) for the parties’ children, Alyson T. Landis, Esq.; and the Court Administrator for the Family Division of this Court, Tricia R. Sorg, Esq.,²¹ on that email. See

Ex. 2.

2. Near the end of that email, Father noted, “I plan to file copies [of the petition for recusal and proposed order submitted in connection therewith] with the Department of Court Records as well as a copy with [the Family Division’s] Client Services Center (if necessary).” Id.

3. Shortly thereafter, Father filed a copy of that Petition – as well as the proposed order – with this Court’s Department of Court Records (“DCR”). Because Father is an attorney who is licensed to practice law in this Commonwealth and practices before the Civil Division of this Court, Father maintains access to the DCR’s electronic-filing system for the Civil and Family Divisions of this Court. See Ex. 3 at 1.²²

4. At some time before 11:00 a.m. on Monday, April 8, 2024, Father traveled to the Client Services Center (“CSC”) of the Family Division of this Court. Upon arrival, Father presented the employee who then occupied its front desk (and who represented to Father that she is a “supervisor” of the Family Division’s pro se office) a physical copy of the aforementioned Petition for Recusal that included Father’s original signatures, including on a sworn affidavit that Father submitted in connection therewith.

²¹ In early April 2024, Father began copying Administrator Sorg on certain communications involving this action because of Father’s concerns with fairness and enforceability of the Family Division’s Local Rules and Administrative Orders, as well as similar concerns with respect to the Standard Operating Procedures (“SOPs”) and pre-trial decisions of Judge Henry-Taylor, the jurist assigned to this action in May 2023 after the prior judge assigned to this matter – the Honorable Chelsa Wagner – recused herself due to her longstanding social relationship with Mother.

²² A true and correct copy of the receipt Father received from the DCR’s electronic-filing system after completing his filing of the aforementioned petition for recusal is annexed hereto as **Exhibit 3**.

5. Father explained to the individual with whom he interacted at the CSC about issues Father experienced while trying to file a prior version of his petition for recusal with the prior iteration of the CSC (which, Father believes, may have been called the “Pro Se Office” or something similar) on October 12, 2023. Father’s previous encounter with the prior iteration of the CSC is described in detail in Father’s Petition for Recusal.

6. The front-desk employee indicated that she understood Father’s concerns. By this point, another employee of the CSC joined Father and the front-desk-occupying supervisor and witnessed their interactions.

7. The front-desk employee then took Father’s petition out of Father’s view, and asked him to leave the office suite in which they were then located and wait in the CSC waiting area (approximately 100 yards away from the office suite in which they were interacting at that time) while the employee prepared Father’s filings.

8. Father followed her instructions and waited in the CSC waiting area.

9. After waiting approximately fifteen (15) minutes, the front-desk employee approached Father and informed him that the filing he presented her lacked a proposed order. She informed Father that he either could bring the filing back tomorrow (Tuesday, April 9, 2024)²³ or use the CSC’s form proposed order to complete his filing.

²³ That morning, Father learned for the first time that the Family Division’s Client Services Center only permits pro se parties to file motions between 8 a.m. and 11 a.m. each weekday. The prior iteration of that office – through which Father filed a pro se motion on October 12, 2023 – accepted motions from pro se parties from 8 a.m. to 12 p.m. each weekday. The relevant local rules, practice manuals, Administrative Orders, and Standard Operating Procedures of the Family Division and its individual judges are dynamic and constantly changing. For instance, its local rules refer to a purported “Practice Manual” that – Father confirmed from interactions with the Office of the Court Administrator for the Family Division – actually has not existed since 2015. Father – who has held a law license for almost seventeen (17) years, during most of which he has practiced as a litigator – has struggled to maintain familiarity with the ever-changing rules, procedures, and conditions that govern his ability to assert his rights as a pro se litigant in the Family Division. His ability to advocate for enforcement of his fundamental right to parent his

10. Father replied that he remembered that he did not include a proposed order in his physical filing when he was walking from his office to the Family Law Center. Father's office is located in the Grant Building, which is located approximately two (2) blocks southwest of the Family Law Center.

11. Father then asked the front-desk employee for permission to quickly return to his office to grab a copy of his proposed order because he already had drafted it and, as noted in ¶ 1, supra, transmitted a copy of it to the Court and all other parties. Father's "proposed order" filing actually included three alternative proposed orders, see Ex. 1, and Father did not want to have to handwrite all of that text unless doing so was absolutely necessary.²⁴

12. The front-desk employee granted Father permission to return to his office, retrieve the proposed order, and return with it to her office for filing. She specifically instructed Father to come to the CSC's ground-floor, pro-se filing office suite upon his return with the proposed order.

13. By the time Father returned with his proposed order, it was 11:00 a.m. or shortly thereafter. In concordance with the front-desk employee's instructions, Father attempted to enter the CSC's office suite but the front door was locked. At that time, the front-desk employee was assisting another (apparently female) pro se litigant with a filing. Once she finished that task and was escorting the other litigant from the office, she let Father into the office suite.

children has been materially hampered by the dynamic procedural thicket that Father must confront every time he attempts to file a document or pleading in this action.

²⁴ Father also was in the process of preparing to represent himself in a custody trial the next day – Tuesday, April 9, 2024 – so his request for permission to retrieve his previously-drafted, proposed order from his office also was motivated by his desire to spend as little time as possible waiting for the CSC to process and file his petition and supporting documents.

14. At that time, the front-desk employee accepted Father's proposed order, which she incorporated into a "CSC" filing version of the petition.²⁵

15. The "CSC" filing version of the petition includes a form entitled "Notice of Presentation,"²⁶ which the CSC front-desk employee completed on Father's behalf. See Ex. 4 at 2.

16. While completing that document, the CSC's pro se office's front-desk employee informed Father that she was checking something on her computer terminal regarding the location of the first day of trial then-scheduled to occur in this action on the following day, April 9, 2024.

17. On or about December 14, 2023, this Court issued a Pre-Trial Order in which it indicated that the first day of trial in this action would occur before Judge Henry-Taylor on Tuesday, April 9, 2024, in Courtroom 323 of the Family Law Center.²⁷ See Ex. 5 at 1.²⁸

18. While using her computer terminal, the CSC pro se office front-desk employee who then was assisting Father informed Father that it no longer appeared to her that the first day of Father's trial would occur in Courtroom 323, but instead would occur in Courtroom 424.

²⁵ A true and correct copy of the completed, "CSC-filing" version of Father's petition for recusal, which includes the petition and Father's sworn affidavit in support thereof but lacks the other 300-plus pages of supporting exhibits, is annexed hereto as **Exhibit 4**.

²⁶ The version of the petition that Father handed over to the front-desk employee contained a "Notice of Presentation" that Father completed based on his understanding of applicable procedural rules. It listed Father's petition for recusal for argument at his forthcoming April 9, 2024, trial in the above-noted action. See Ex. 1 at 2.

²⁷ Accordingly, the Notice of Presentation included in the copy of Father's petition for recusal that he presented to the CSC on Monday, April 8, 2024, stated that Father would present that petition "to the Honorable Judge Nicola Henry-Taylor on the 9th day of April, 2024, at 9:30 a.m. in Courtroom 323." See Ex. 1 at 2.

²⁸ A true and correct copy of this Court's December 14, 2023, Pre-Trial Order is annexed hereto as **Exhibit 5**.

19. Due to the differing locations listed for the following day's scheduled trial in the Pre-Trial Order and on the screen of her computer terminal, the front-desk employee informed Father that she was going to telephone Judge Henry-Taylor's Chambers to ascertain in which courtroom trial actually would occur the following morning.

20. The employee then engaged in a telephone call (purportedly with a member of Judge Henry-Taylor's staff), which Father witnessed from a distance of approximately fifteen (15) feet.

21. During that call, the front-desk employee explained to the individual with whom she was speaking that Father had submitted a pleading to the CSC's pro se office that pertained to the trial scheduled to occur the following day in the above-noted action.

22. After ending that call, the front-desk employee indicated to Father that the first day of trial in the above-noted action, then scheduled for Tuesday, April 9, 2024, would, in fact, occur in Courtroom 424 rather than the courtroom indicated in Judge Henry-Taylor's December 14, 2023, Pre-Trial Order, Courtroom 323. See id.

23. The CSC front-desk employee subsequently completed her office's form Notice of Presentation, through which she noticed Father's petition for recusal for argument before Judge Henry-Taylor on Tuesday, April 9, 2024, in Courtroom 424 of the Family Law Center. See Ex. 4 at 2.

24. The front-desk employee then asked Father to sign the form Notice of Presentation, a request with which Father complied.

25. After completing the form Notice of Presentation included within Father's petition, the CSC front-desk employee then scanned a fully-compiled, "filing" version of Father's petition for recusal using her office suite's equipment.

26. During or around the time she was performing that task, the front-desk employee notified Father that Administrator Sorg requested that the front-desk employee scan the petition (without supporting exhibits other than Father's supporting affidavit) as well as the proposed orders and email those documents to Administrator Sorg for review.

27. After she finished scanning the documents Father presented her, the front-desk handed a copy of the petition for recusal in which she had substituted the original Notice of Presentation that Father completed with a completed version of her office's form Notice of Presentation, which listed the petition for argument at the beginning of the trial scheduled for Tuesday, April 9, 2024, at 9:30 a.m., in Courtroom 424 of the Family Law Center. Compare Ex. 1 at 2 (Father's original, April 7 version of petition), with Ex. 4 at 2 (CSC pro-se-assistance office's version of petition, which includes pro-se-office form Notice of Presentation in lieu of version Father generated).

27. Before Father left the office suite of the CSC's pro se party assistance personnel, the front-desk-employee informed Father that – based on her call with Judge Henry-Taylor's Chambers – the Court would conduct a hearing on Father's petition at the beginning of trial scheduled for the following morning. Father proceeded with that understanding over the following approximately twenty (20) hours, as explained in more detail below.

28. The front-desk employee then instructed Father to email a copy of the CSC version of the Petition on Mother's counsel.

29. Father complied with those instructions. At noon on Monday, April 8, 2024, Father emailed the CSC version of the petition to Mother and GAL Landis. See Ex. 6 at 1.²⁹

²⁹ A true and correct copy of Father's April 8, 2024, email through which he circulated an electronic copy of the CSC version of his renewed petition for recusal to Mother and GAL Landis is annexed hereto as **Exhibit 6**.

30. Next, Father proceeded to the Department of Court Records, where he purchased five (5) subpoenas to attend and testify, pursuant to Pa.R.C.P. 234.1, which he planned to serve on individuals he desired to testify at the following morning's hearing on his petition for recusal.

31. Father generated a subpoena to attend and testify for service upon Chris Powell, the owner, operator, and local franchisee of Fastest Labs, a business through which Mother and Judge Henry-Taylor subject Father to invasive, hair-follicle, drug-detection analysis through a purported "laboratory" that did not, and whose employees did not; possess a valid license to conduct such "testing." See Ex. 7 at 54-60, 68-72 (portions of Father's pre-trial statement addressing the unscientific, purported, drug-detection, hair-follicle "analyses" to which Mother and Judge Henry-Taylor subjected Father in this action).³⁰

32. At 3:53 p.m. on Monday, April 8, 2024, Father served that subpoena on Mr. Powell. See Ex. 8 at 2-3.³¹

33. After serving subpoenas, Father returned to his office and checked his email. At 12:24 p.m., see Ex. 9 at 1,³² mere minutes after the CSC's pro-se-assistance personnel assisted Father in submitting his petition for recusal and informed him – after speaking on the telephone with, allegedly, Judge Henry-Taylor's Chambers – that this Court would conduct a hearing on

³⁰ A true and correct copy of Father's pre-trial statement in connection with the April 9, 2024, trial that was scheduled to occur in this action is annexed hereto as **Exhibit 7**.

³¹ A true and correct copy of Father's Return of Service of Subpoena of Mr. Powell, which Father filed in this action on April 10, 2024, is annexed hereto as **Exhibit 8**.

³² A true and correct copy of this Court's April 8, 2024, email of 12:24 pm to the parties hereto and GAL Landis is annexed hereto as **Exhibit 9**.

that petition the following day, this Court, via Judge Henry-Taylor, issued an Order purporting to dispose of that petition without a hearing. See Ex. 10 ¶¶ 7-8, 10.³³

34. In that Order, the Court found that Father “did not timely submit and serve his Petition for Recusal as required by [Judge Henry-Taylor’s] Standard Operating Procedures,” id. ¶ 7, opined – despite unambiguous, settled case law to the contrary³⁴ – that the Court had conducted the analysis that such petition requires, see id. ¶ 8, and ruled “**Father’s Petition for Recusal will not be addressed because it was not properly submitted according to the procedure for self-represented litigants in [Judge Henry-Taylor’s] Standard Operating Procedures.**” Id. ¶ 10.

35. In the email transmitting that Order to the parties and GAL Landis, Samantha Dorn, Esq., Judge Henry-Taylor’s Law Clerk, added, “It is our understanding that [Father] did come to the C[SC] to prepare a Petition for Recusal. This Order addresses that Petition as well.”

36. Father, accompanied by his brother, Evan Gelacek, Esq. (“Attorney Gelacek”) – an attorney licensed to practice in the Commonwealth of Pennsylvania – and other members of his family arrived at the Family Law Center approximately thirty minutes before the 9:30 am time at which Judge Henry-Taylor indicated that the trial would commence on April 9, 2024.

37. Upon arrival, Father noticed that Mr. Powell of Fastest Labs complied with Father’s subpoena and was present and prepared to testify about this Court’s September 26, 2023, Memorandum and Order, in which Judge Henry-Taylor ordered:

Within twenty-four (24) hours of this Order, Father shall complete a hair follicle drug test through Fastest Labs. The hair follicle test shall include and cover

³³ A true and correct copy of this Court’s April 8, 2024, Order is annexed hereto as **Exhibit 10**.

³⁴ See, e.g., Commonwealth v. Dip, 221 A.3d 201 (Pa. Super. 2019).

opiates, alcohol, amphetamines, cocaine, PCP, heroin, and marijuana. Father shall be responsible for all costs associated with the hair follicle test.^[17]

a. Contact information for the test result distribution are below:

Brian E. McKinley, Esquire Wilder Mahood McKinley & Oglesby, LLC 436 Seventh Ave., 10 th Floor Pittsburgh, PA 15219 bmckinley@wildermahood.com	Gregory F. Suher, Esquire ^[18] Leech Tishman Fuscaldo & Lampl 525 William Penn Place, 28 th Floor Pittsburgh, PA 15219 gsuher@leechtishman.com
Zachary P. Gelacek, Esquire 511 Neale Avenue Ford City, PA 16226 zgelacek@gmail.com	Alyson T. Landis, Esquire Boyer Paulisick Eberle & Biss 108 E. Diamond St, 3 rd Floor Butler, PA 16001 alandis@bpe-law.com

Ex. 11 ¶ 15.³⁵

38. Mr. Powell indicated to Father on the day before this Court's April 9, 2024, trial in this matter that he would testify that the aforementioned September 26, 2023, Order required him to utilize ExperTox – a purported private laboratory that, among other things, analyzes hair follicles removed invasively for alleged presence of substances of abuse.

39. On October 19, 2023, ExperTox – through Fastest Labs – issued what it purported was results of the hair follicle analyses to which Father submitted as a result of this Court's September 26, 2023, Memorandum and Order. While those results purport to indicate

^[17] This testing (which was patently unnecessary due to Father's longstanding submission to random substance use testing through a UPMC WPIC program in which Father voluntarily participates, which, unlike the testing this Court ordered on September 26, 2023, is conducted in a manner approved by both the Commonwealth of Pennsylvania and the United States) cost Father \$610.

^[18] Characteristic of the haphazard, ad-hoc manner in which Judge Henry-Taylor has addressed Father's rights and fundamental dignity, Father was forced to share his private health information with Attorney Suher even though Father did not engage him in this custody dispute.

³⁵ A true and correct copy of this Court's Memorandum & Order of Court of September 26, 2023, is annexed hereto as **Exhibit 11**.

that the hair that this Court compelled Father to permit Fastest Labs remove from his body demonstrated that Father had not consumed marijuana, methamphetamine, opiates, cocaine, phencyclidine, or alcohol, see Ex. 12 at 1 & 3,³⁶ they also purport to indicate that Father consumed fentanyl. See id. at 2.³⁷

40. Knowing that he had consumed a tiny amount of fentanyl on June 16, 2023 – the only occasion on which Father had consumed unprescribed drugs for nearly two years – Father immediately realized that ExperTox’s purported positive result for fentanyl had to be faulty.

41. Accordingly, Father began researching ExperTox and learned that, on November 9, 2022 – long before this Court ordered Father to submit to its purported “analysis” – the Texas Forensic Science Commission withdrew ExperTox’s accreditation and its employees’ respective licenses to conduct forensic testing due to false positive results ExperTox issued in connection with an investigation of a Philadelphia law enforcement agent who was charged with committing sexual assault in 2019. See generally Ex. 14.³⁸

³⁶ A true and correct copy of results of all purported testing through Fastest Labs that Father was coerced into obtaining by this Court and its agents in early October 2023 is annexed hereto as **Exhibit 12**.

³⁷ The government-approved, random, urine testing to which Father submits through his UPMC WPIC treatment program demonstrates, to the contrary, that Father had not consumed fentanyl at any point after June 16, 2023. See Exhibit 13, through which Father has annexed hereto a summary of results of random urine screening – which at times has been observed by a registered nurse – to which Father has submitted through the UPMC WPIC program since he separated from Mother on January 7, 2021. Because this chart was created to demonstrate that program’s compliance with the minimum requirements of applicable law, not every negative urine screen to which Father submitted during that time period is captured by that summary. For example, that program collected urine for analysis from Father on five occasions in May 2023.

³⁸ A true and correct copy of the exhibits that Father planned to use during his direct examination of Mr. Powell of Fastest Labs at a hearing on Father’s petition for recusal is annexed hereto as **Exhibit 14**. Those materials include a newspaper article on ExperTox’s loss of its license and printouts of pages of the Texas Forensic Science Commission’s website that indicate that both ExperTox and its agent who purportedly conducted the analysis of the hair follicles collected from Father’s body at this Court’s behest lacked a license to conduct such analysis as of November 9, 2022. As those materials indicate, the specific reason that the Texas Forensic

42. In order to demonstrate the false nature of ExperTox's purported positive hair-follicle test for fentanyl, Father immediately retained the services of his toxicology expert for this action, Andrew D. Ewens, Ph.D., DABT, of Ewens Toxicology Services. During early November 2023, Dr. Ewens ordered comprehensive analysis that demonstrates, in his opinion, that Father had not consumed fentanyl on any of the days in late September 2023 on which this Court (in a public hearing) and, purportedly, the parties' daughter accused Father of being under the influence of an unprescribed substance of abuse. See Ex. 15 at 1-2.³⁹

43. Around the time trial was scheduled to start on April 9, 2024, Allegheny County Sheriff's Deputy Ashley Murray approached Father and his family members, who were waiting in the hallway outside of the Court. She informed them that Judge Henry-Taylor wanted to know the identity of the individuals other than Father. In response, Father told Deputy Murray that he was accompanied by Attorney Gelacek (his brother), as well as their mother, father, and step-father, who had attended both to testify and to support Father.

44. Father has been diagnosed as suffering from post-traumatic stress disorder ("PTSD") as a result of his experiences in this action, including, among other things, Judge Henry-Taylor's treatment of him during the course of the September 25, 2023, hearing in this custody action.

45. As a result of his PTSD symptoms, Father asked that the April 9, 2024, occur in a trauma-informed manner.

Science Commission revoked those licenses was because, in response to a complaint of the District Attorney's Office for Philadelphia County, Pennsylvania, and an ensuing query from the Commission and the College of American Pathologists, ExperTox failed to supply data that demonstrates the scientific validity of the purported hair-follicle analysis it performs.

³⁹ A true and correct of results of forensic testing of hair removed from Father on November 6, 2023, which Father planned to use as an exhibit during his direct examination of Dr. Ewens at a hearing on Father's petition for recusal, is annexed hereto as **Exhibit 15**.

46. On the morning of trial, Father observed Deputy Murray walk a therapy dog into the courtroom before the time at which trial was to commence.

47. After learning the identities of the individuals who accompanied Father on the morning of trial, Deputy Murray returned to the courtroom.

48. A few minutes thereafter, Deputy Murray again approached Father and his family members and informed them that Judge Henry-Taylor would not permit any of Father's family members to accompany him into the courtroom or witness the forthcoming trial in person.

49. Father and his family members objected to that decision. In response, Deputy Murray informed them that Attorney Gelacek and Father's parents could observe the trial virtually in a nearby conference room via the Microsoft Teams® application ("Teams").

50. Father and Attorney Gelacek again objected to that decision. On October 16, 2023, this Court held a Custody Conciliation hearing via Teams, during which Judge Henry-Taylor stated that Father's argument that Judge Henry-Taylor should recuse herself from this custody action due to her conduct on September 26, 2023 (and on occasions before that), amounted to "threats" and/or "bullying."

51. Father subsequently requested a transcript of that hearing, which he received in November 2023. Judge Henry-Taylor's comments about Father's arguments amounting to "threats" and/or "bullying" were not included in the transcript.⁴⁰

52. Fearing that Judge Henry-Taylor and/or her staff would again manipulate the manner in which the trial was witnessed or memorialized using their control over access to

⁴⁰ For this reason, Father asked Judge Henry-Taylor and Administrator Sorg to preserve Judge Henry-Taylor's purported native, original recording of this Court's October 16, 2023, Custody Conciliation hearing in this custody action.

proceedings via Teams, Father and Attorney Gelacek informed Deputy Murray that they demanded that Father's family be allowed to physically witness the trial.

53. Deputy Murray subsequently informed Father and Attorney Gelacek that, notwithstanding Father and his family's protests, Judge Henry-Taylor would not allow Attorney Gelacek or Father's parents into the courtroom for the trial. She attempted to reassure Father (who had become extremely anxious and was starting to experience acute anxiety due to his prior experiences in this action and before Judge Henry-Taylor) by saying, "Don't worry, I will be there."

54. In response, Father told Deputy Murray, "You also were there on September 25 when Judge Henry-Taylor falsely accused me of being high on drugs in the courtroom and suggested (again, falsely) that I have an issue with physical abuse, require a batterer's intervention, and have had PFAs filed against me."

55. Deputy Murray appeared flustered by Father's retort. She responded, "she is a Judge, and you know that I cannot control the behavior of a judge."

56. Father replied, "I know that. It's the issue here and the whole reason why my family and brother (Attorney Gelacek) need to be physically present to witness Judge Henry-Taylor's actions at trial."

57. At or around this point, Attorney Gelacek responded by attempting to enter his appearance as Father's trial counsel. In Father's presence, he informed Deputy Murray that he was entering his appearance and would serve as Father's trial counsel.

58. In response to Attorney Gelacek's attempt to appear in this action, Deputy Murray again returned to the courtroom.

59. Several minutes later, she re-emerged, at which time she asked Attorney Gelacek for his Pennsylvania attorney identification number.

60. Attorney Gelacek replied that his identification number is 209586.

61. Deputy Murray wrote down Attorney Gelacek's Pennsylvania attorney identification number and then returned to the courtroom.

62. After approximately ten minutes, Deputy Murray returned to Father and his family members and informed them that Judge Henry-Taylor rejected Attorney Gelacek's appearance. She then informed the group that Judge Henry-Taylor allegedly told her that Father would need to enter the courtroom without Attorney Gelacek or any of his supportive family members and enter Attorney Gelacek's appearance orally.

63. Father was confused by this ruling as he never witnessed a client make an oral appearance for an attorney and doubted (and continues to doubt) whether the Pennsylvania Rules of Civil Procedure countenance such a procedure.

64. Father and Attorney Gelacek decided that Father would not subject himself to another situation where Judge Henry-Taylor could again engage in abusive or otherwise improper behavior directed at Father, and resolved to leave as a family unit rather than continue to engage in negotiations with Judge Henry-Taylor over the purported conditions under which Father could enforce his constitutional, see Nestor v. George, 46 A.2d 469, 473 (Pa. 1946) ("in civil cases, a litigant's right to be fully represented by counsel is an integral part of that 'due process of law' which every resident of this state and nation whose legal rights are being adjudicated can freely invoke"), and statutory, see 42 Pa.C.S. § 2501(a) ("[i]n all civil matters before any tribunal every litigant shall have a right to be heard, by himself and his counsel, or by either of them"), rights to be represented by counsel of his choice at trial.

65. Father experienced PTSD symptoms such as acute, extreme anxiety and flashbacks to Judge Henry-Taylor's conduct during the September 26, 2023, hearing in this custody action during his and Attorney Gelacek's negotiations with Deputy Murray (on behalf of

Judge Henry-Taylor) as to the conditions under which Father and his family could witness and participate in the trial.

66. After Deputy Murray informed Father and Attorney Gelacek that Father would have to expose himself to further trauma by entering the courtroom alone and entering Attorney Gelacek's appearance by proxy, Father and his family members left the Family Law Center as a group.

67. Judge Henry-Taylor then purported to conduct a trial on Father's petition for custody in this action in Father's absence. See Ex. 16 at ¶ 9.⁴¹

68. On the following morning, Judge Henry-Taylor issued an Order addressing Father and Attorney Gelacek's interaction with this Court in the moments leading up to trial. See generally id. In that Order, Judge Henry-Taylor justified rejecting Attorney Gelacek's oral entry of appearance as Father's counsel by noting, "[t]he GAL and [Mother's] counsel were not in agreement with Father's brother participating in the proceeding as attorney under the circumstances." Id. ¶ 4b.

69. Father is not aware of any legal authority that grants the parties to an action discretion over a fellow party's decision to be represented by counsel at trial.

70. Judge Henry-Taylor's conduct in the hours leading up to trial serves as further evidence of why Father believes that he cannot receive an impartial adjudication of his rights in this action as long as Judge Henry-Taylor presides over it as judge.

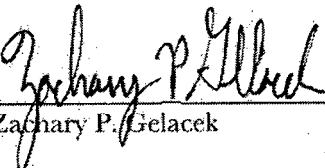
71. Accordingly, for the reasons set forth in Father's prior petitions for recusal as well as those set forth above, Father respectfully requests that Judge Henry-Taylor grant the instant petition by either recusing herself from this action or scheduling a hearing before herself or

⁴¹ A true and correct copy of this Court's April 10, 2024, Order in this action is annexed hereto as **Exhibit 16**.

another Judge of this Court at which Father may present evidence and testimony regarding the averments Father offers in support of his petition for recusal.

72. A proposed order is submitted in connection herewith.

Respectfully submitted,



Zachary P. Gelacek
Plaintiff

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

ZACHARY GELACEK,

Plaintiff,

v.

MONICA COSTLOW,

Defendant.

ORDER OF COURT

No.: FD-21-007339-007

BY:

The Honorable Nicola Henry-Taylor
City-County Building, Room 712
414 Grant Street
Pittsburgh, PA 15219

COPIES TO:

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FILED

24 JUN 21 PH 2:13
DEPT OF COURT RECORDS
CIVIL/FAMILY DIVISION
ALLEGHENY COUNTY PA

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

ZACHARY GELACEK,

Plaintiff,

No.: FD-21-007339-007

v.

MONICA COSTLOW,

Defendant.

ORDER OF COURT

AND NOW, this 21st day of June, 2024, it is hereby ORDERED, ADJUDGED
AND DECREED AS FOLLOWS:

1. Mother's Motion for Clarification and Reconsideration and Father's Motion for Reconsideration on the Petition for Recusal were scheduled to be addressed on June 17, 2024 via Microsoft Teams.
2. Mother's counsel and the GAL were present on Microsoft Teams and ready to proceed. Father was logged on Microsoft Teams, but his video only displayed a black screen.
3. The Court determined that it would be best to have oral argument on these Motions in person in the Family Law Center.
4. As such, oral argument on the above Motions shall be scheduled for July 2, 2024 at 9:30 a.m. in Courtroom 500 of the Family Law Center, 440 Ross Street, Pittsburgh, PA 15219.
5. Thirty (30) minutes will be allotted for oral argument for both Motions.
6. Father, Mother's counsel, and the GAL shall be present in person for argument.
7. The proceedings will be held on the record.

8. No continuances of the above date will be granted absent extenuating circumstances on the part of this Court.

BY THE COURT:

Ned Taylor

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

ZACHARY GELACEK,

Plaintiff,

v.

MONICA COSTLOW,

Defendant.

ORDER OF COURT

No.: FD-21-007339-007

BY:

The Honorable Nicola Henry-Taylor
City-County Building, Room 712
414 Grant Street
Pittsburgh, PA 15219

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FILED

2024 JUN 28 PM 4:26

CLERK OF COURT RECORDS
CIVIL/FAMILY DIVISION
ALLEGHENY COUNTY PA

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

ZACHARY GELACEK,

Plaintiff,

No.: FD-21-007339-007

v.

MONICA COSTLOW,

Defendant.

ORDER OF COURT

AND NOW, this 28th day of June, 2024, it is hereby ORDERED, ADJUDGED
AND DECREED AS FOLLOWS:

1. Mother's Motion for Clarification and Reconsideration and Father's Motion for Reconsideration on the Petition for Recusal were scheduled to be addressed via oral argument on July 2, 2024.
2. On June 24, 2024, Father filed a Notice of Appeal of the May 23, 2024 Order of Court, which is the same Order that is the subject of Mother's Motion for Clarification and Reconsideration.
3. In addition, Father's 1925(b) Statement (Concise Statement of Errors Complained of on Appeal), specifically refers to his prior Petitions for Recusal.
4. Based on the above circumstances, oral argument on the above Motions submitted shall be CANCELLED.

BY THE COURT:



_____, J.
The Honorable Nicola Henry-Taylor