UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2138

September Term, 2015

SHEILA E. BERRY-TATUM

v.

LEE E. BERRY

Wright,
Reed,
Sharer, J. Frederick
(Retired, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: July 25, 2016

Following a two-day hearing in the Circuit Court for Baltimore City, appellee, Lee E. Berry, was awarded primary legal and sole physical custody of the three minor children of the parties.[1] In her appeal, Sheila E. Berry-Tatum asserts that the court erred in modification of an existing custody order.

We exercise jurisdiction over the circuit court's judgment pursuant to Md. Code, Courts & Judicial Proceedings § 12-301. Where a case is tried by the court without a jury, our review is dictated by Maryland Rule 8-131(c). *See Davis v. Davis*, 280 Md. 119, 123-24 (1977). "In a non-jury action, we review the case on the law and the evidence, and we will not set aside the judgment on the evidence unless clearly erroneous, giving due regard to the opportunity of the trial court to judge the credibility of the witnesses. *Williams v. State,* 173 Md. App. 161, 167 (2007) (citing Md. Rule 8-131(c)).

Before a determination can be made that such a decision is clearly erroneous, the evidence must be viewed in a light most favorable to the prevailing party below. If, viewed in that light, there is substantial evidence to support the factual conclusion, then the appellate court should accept that conclusion. *Goodwin v. Lumbermens Mut. Cas. Co.,* 199 Md. 121, 128-29 (1952). We exercise plenary review of questions of law. *Muse v. State*, 146 Md. App. 395, 403 (2002) (citations omitted).

[1] The hearing was the latest in a five-year course of litigation.

In reaching its decision, the circuit court considered the factors set forth in *Taylor v. Taylor*, 306 Md. 290 (1986), and supported its judgment with an extensive, thorough, and well-reasoned memorandum opinion.[2]

After our thorough review of the record, we hold that the circuit court neither erred in its factual findings nor abused its discretion in awarding primary legal and sole physical custody to appellee.[3]

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED;
COSTS ASSESSED TO APPELLANT.

[2] We append the trial court's memorandum opinion hereto, and incorporate its findings of fact and conclusions of law.

[3] The trial court did not resolve visitation, as appellant and the children remain estranged.

SHEILA TATUM	*	IN THE
Plaintiff	*	CIRCUIT COURT
v.	*	FOR
LEE BERRY	*	BALTIMORE CITY
Defendant	*	CASE NO.: 24-D-05-000493

* *

MEMORANDUM IN SUPPORT OF CUSTODY RULING

The parties are the parents of three children, Connor (D.O.B.: 8/3/03) and twins Caleb and Sean (D.O.B.: 5/22/05). The parties have been the subject to an ongoing custody dispute that began in this court in July 2010. The Plaintiff sought *en banc review* and prevailed on her petition following the court's original decision to grant to Defendant custody of the children. Ultimately, the parties came back before the court for custody proceedings but the court has not finalized a custody decision, primarily due to attempts to reunify the children with Plaintiff, from whom they are primarily estranged, to varying degrees. The parties appeared for a two-day custody hearing in July 2015 and September 2015. The court is prepared to rule on the issue of custody and to rule temporarily on the issue of access. Unfortunately, this court cannot finally resolve the issue of access.

Factual Findings

The court finds that the three minor children resided primarily with Plaintiff from the time of the parties' separation until approximately January, 2010. By

Consent Custody and Visitation Order dated January 6, 2006, the parties were ordered to share legal custody. Plaintiff was granted primary physical custody of the minor children and Defendant was granted reasonable and liberal access to the children, to include every other weekend.

There is a dispute between the parties as to the reason Defendant was permitted to remove the children from Maryland in 2010. Plaintiff contends that because she grew up with her father, she thought it would be good for the children to reside with their father for a time; Defendant asserts that Plaintiff acknowledged an inability to control the children and requested that he come for the children. The court finds that Plaintiff represented to Defendant that she could no longer manage the trio; therefore, Defendant took the children to live with him in Rochester, New York.

The court finds that at a minimum, when the children were permitted to go to Rochester, the parties had every intention that the children would reside with Defendant at least through the end of the 2009-2010 school year. Indeed, Plaintiff concedes that she went on a school tour in Rochester. According to Plaintiff, the twins returned from Rochester in March 2010; the parties agreed that Connor would finish out the year, although, according to Plaintiff, Connor expressed a desire to return home before then. Plaintiff retrieved Connor at the end of June 2010.

In July 2010, Plaintiff filed for modification of the custody order because she learned that Connor, having been identified as needing medication upon

being enrolled in school in New York, was given medication with Defendant's consent but without Plaintiff's knowledge and consent, a fact Defendant denies.[1] In the motion, Plaintiff also alleged that the children were neglected in defendant's care. At the time of trial, Plaintiff added that the children were regressing, with Sean and Caleb demonstrating fear of the dark and Sean urinating on himself. According to Plaintiff, she took Connor to see Kyle Ogle, a therapist, because Connor tried to hurt himself by wrapping a belt around his neck a couple of times upon returning to her home. She did not notify Defendant about Connor's attempts to hurt himself. At this point, Plaintiff was not sure the ADD issue was "a thing" for Connor. Plaintiff testified that she stopped taking Connor to see Mr. Ogle because he did not wish to speak with Mr. Ogle.

The parties participated in a hearing before a magistrate on March 2, 2011 and March 7, 2011. The magistrate recommended that the Defendant be granted sole legal and primary physical custody of the minor children, effective June 24, 2011. Plaintiff took exceptions to the magistrate's recommendation. This court overruled the exceptions on January 9, 2012. Plaintiff sought *en banc review* and, on August 7, 2013, the panel remanded the matter, citing as error the Magistrate's failure to afford the Plaintiff an opportunity to review all parts of the investigative reports in the case.

---

[1] Defendant filed his own motion for modification, alleging that Connor's performance in school improved in his care, and asserting that his accommodations were better and that Connor's asthma was brought under control in his care.

The children continued to reside with Plaintiff and to have access to Defendant while the *en banc* matter was pending. Following a holiday visit with Defendant, Plaintiff took the children in for treatment in January 2012, asserting that the children were being starved because she held the opinion that the children were too skinny and therefore were being neglected. Her request for attention triggered an investigation by the Department of Social Services. There was no finding of abuse or neglect on Defendant's part. Defendant continued to have visits with the minor children following Plaintiff's complaint. However, when Defendant picked up the children for the spring break visit, he notified Plaintiff that he did not intend to return the children. The evidence suggests that Plaintiff's last attempt to have the children evaluated prompted an investigation that led to a finding of abuse on Plaintiff's part.

Following legal wrangling in the form of an injunction and a protective order, the children continued to live in Defendant's home and the parties reached an agreement for the children to reside with Defendant. On November 22, 2013, the parties appeared before the court an abandoned the protective order proceedings. At that time, they reached an agreement that the minor children would reside with Defendant and that the Plaintiff would have therapeutic visitation with the children twice monthly, once in Maryland and once in Rochester.

The parties reached another agreement in June 2014, through which the parties agreed that Plaintiff would have therapeutic access to the children twice

monthly, once in Baltimore and once in Rochester. The parties reached yet another agreement in October 7, 2014, through which both therapy sessions would take place in Rochester.

For the most part, the children have resided primarily with Defendant since summer 2012. The children have received therapy and each has received various psychotropic medications since that time, along with therapeutic intervention. Through the court and outside of the court, efforts have been made to engage Plaintiff in the children's therapeutic intervention. None of the efforts has taken hold. Either Plaintiff failed to adhere to the regimen, the children were not ready to engage her, or alleged inappropriate behavior on Plaintiff's or maternal grandmother's part has served as the impetus for Plaintiff to disengage. At times, Plaintiff has voluntarily opted to stay away from the children; at trial, she testified that when she cut contact with the children in fall 2014, it was because they were in New York, she could not do anything to help them, and she was causing them pain. The court does not believe Plaintiff's testimony in this regard. The court finds that Plaintiff was psychiatrically impaired and needed to focus on her own issues.

This case is not the standard custody case where the parents are simply philosophically at odds. Rather, this case involves three children who require intensive and sustained psychological intervention. At least one of children has been in therapy off and on since 2010, at least one has required medication for

an equally long period of time, and the children appear to have miles to go before they sleep.[2]

Therapeutic intervention appears to have yielded some benefits for the children, as they are described by Defendant as less apt to violently fight with one another than they were inclined to do when Defendant first retrieved the children from Baltimore. According to Defendant, Connor is an emerging teen who is now moving into the challenging stage that involves some back- talk, but he is learning to apply his coping skills. He is an excellent student who takes accelerated classes; however, he does continue to challenge authority. Connor has had a challenging few years that involved attempted suicide and much, much intervention.

Caleb, like Connor, is an excellent student; however, he has also had his share of emotional challenges. He appears to be the most amenable to contact with Plaintiff; however, he can be triggered to reject Plaintiff by taking cues from Connor's disdain for Plaintiff.

Sean exhibits challenging conduct in school and at home. He may be on the autism spectrum, although no autism spectrum diagnosis has been made. Sean struggles with his school work, and of late has stolen at home and in school. Like Connor, Sean has exhibited suicidal ideation and received emergency intervention for a psychiatric crisis. Like both brothers, Sean

---

[2] This reference is taken from the poem, *Stopping by Woods on a Snowy Evening*, by Robert Frost.

continues to take medication and to receive therapy in an effort to address his psychiatric and behavioral problems.

Plaintiff has been unable to engage meaningfully in the children's treatment. Indeed, Plaintiff does not appear convinced that the children require intervention or medication, although she sought treatment for the children while they were the State of Maryland, last taking the children to therapist Kyle Ogle as part of attempts at reunification in July 2014.

Summary of Witnesses' testimony

Plaintiff

Plaintiff has resided in the home of her aunt and uncle at 930 N. Gilmor Street for approximately five (5) years. Her adult male cousin also lives in the home. When Plaintiff testified in July 2015, she was unemployed, her current contractual employment having recently come to an end. When Plaintiff testified in September 2015, she was again employed, working as an analyst. Plaintiff suggested that her employment is hindered by her child support obligation, in that certification for medical coding will not be issued unless she clears up her child support obligation.

Plaintiff has not seen the children in one year because, in her judgment, Defendant would not permit her to have access. The arrangement, as of the time she last saw the children, was that she would participate in two visits per month with the guidance of a mental health provider; one visit was to take place in New York and one visit would take place in Maryland. The goal of therapy was to

allow Plaintiff to reestablish contact with the children, the same goal having been pursued since 2013.

As of July 2015, the parties were operating pursuant to the court's October 7, 2014 Revised Temporary Consent Order Regarding Visitation.[3] Plaintiff dropped out of the children's lives shortly after the order went into effect. She testified that she stopped reaching out because of the stress caused by the custody situation. The dropping out period also coincides with Plaintiff's decision to seek emergency mental health intervention.

Plaintiff did not see the children between January 2014 and July 2014; she ought to have been participating in the therapy sessions in New York. Plaintiff last saw the children in Baltimore in November 2013. That access took place at the courthouse.

Plaintiff testified that pursuant to the 2006 custody arrangement, the parties shared legal custody and she had sole physical custody. Defendant had open access to the children, although the court order called for him to see the children on weekends. According to Plaintiff, Defendant lived in Great Mills, Maryland and visited the children sporadically. Once Defendant moved to New

[3] Pursuant to the October 7, 2014 order, the parties agreed that Plaintiff would have access to the children no less than twice each month during therapy sessions in New York with the parties and the children. Additional access was to be arranged between the parties and the children's best interest attorney based upon therapeutic recommendations. Each party was to have open access to the therapists. Phone calls were also contemplated, albeit through the help of the therapist.

York and she sought to change the custodial arrangement, Defendant's visitation became more consistent.

In November 2009, Defendant advised Plaintiff that he wanted to move the children to New York. Plaintiff thought about it and, given her understanding of what it is like to be raised without a father, decided the children should move to New York with Defendant. According to Plaintiff, the parties agreed that she would remain the children's sole physical custodian and the parties would give the move to New York a "shot." The parties agreed on schools and she paid a visit to the schools and met the children's teachers. The children returned to her in March 2010 and the parties agreed to allow Connor to complete the school year in New York, although Connor expressed a desire to return home. She retrieved Connor at the end of June 2010.

She moved to modify custody in July 2010, after learning that Defendant placed Connor on medication within three weeks of moving to New York; she had not been consulted in the decision. She had been warned by Connor not to trust Defendant as things were not as they seemed. When Plaintiff attempted to speak with Defendant, she found Defendant evasive. Defendant allowed his wife, Marlise to address Plaintiff's concerns.

In Plaintiff's judgment, the children regressed while in Defendant's care. Sean was urinating on himself and the children were clingy. Sean and Caleb were afraid of the dark. Upon his return, Connor was small and did not want to play outside; she found that unusual for Connor. The parties' relationship

deteriorated in July and Defendant came to Plaintiff's home in Howard County on several occasions with the police.

Plaintiff took the minor child to see Kyle Ogle in July 2010, because if the child's ADD was a "real thing," she needed the child properly treated. Therapy with Mr. Ogle terminated because the child did not wish to speak with him. Ultimately, Plaintiff added that she took the child to see Mr. Ogle because upon return from Defendant's home, Connor placed a belt around his neck a couple of times. Plaintiff did not notify Defendant of the belt incidents.

In 2011, a magistrate recommended that Defendant be granted custody and Plaintiff filed exceptions. The magistrate's recommendations were affirmed by this court and Plaintiff sought *en banc review.* The en banc panel determined that Plaintiff's counsel had not been afforded adequate access to the custody evaluation materials and remanded the matter for the court's reconsideration.

The children continued to reside with Plaintiff until 2012. In 2012, during her spring break access, upon advice from her attorneys, Plaintiff took the children to Johns Hopkins Hospital for what she believed to be evidence of abuse, namely a cut on Caleb's neck. She described the children as emaciated and bruised. Following the hospital visit, a CPS investigation was initiated and the children were returned to Defendant. In May 2012, Plaintiff received written notification from Defendant that he would no longer bring the children to her home. She sought and received a restraining order in August 2012 for return of the children and went to Great Mills with a state trooper to retrieve the children;

Sean and Caleb left the home with Plaintiff; Connor was in New York. She kept the children until August 31, 2012. After that, Defendant refused to allow her to see the children.

Plaintiff had "no opportunity" to see the children between January and June 2013 although no court order prohibited access. She saw the children at the courthouse 6 times between July and November 2013. In November 2013, the parties entered into an agreement whereby Plaintiff would participate in therapy sessions with the children twice per month, once in Baltimore and once in New York. The New York and Baltimore therapists were to coordinate treatment. Plaintiff was also afforded an opportunity for a dinner visit with the children if therapy went well and to take a companion of her choice to dinner. Defendant was to be present for the dinner but to remain out of sight. That order remained in effect until July 16, 2015, at which time the parties agreed to allow the Best Interests Attorneys' participation in the decision of when to advance access based on the success of therapy. As noted earlier, Plaintiff has had little contact with the children since the July 2014 Order went into effect.

When Plaintiff admitted herself for treatment in November 2014, she was diagnosed with major depression, anxiety (as had been diagnosed in 2013) and Seasonal Affective Disorder. She attributed her despair to a conversation with Connor that had taken place two weeks earlier and her anticipation that she would never see Connor again. The conversation, along with the child's attempt to kill himself and her kids having been taken away pushed her "over the edge."

Plaintiff also sought therapy in late 2012 and had been diagnosed with depression in 2013 "because of this case."' Although she took medication for a time, it appears that she is no longer taking medication. The court cannot determine whether she made the unilateral decision to stop medicating, or whether the physician sanctioned the cessation of the medication. The court has concerns that if Plaintiff's psychiatric problems are not under control, the children may be adversely affected. Plaintiff's instability caused her to abandon efforts to reunite with the children in November 2014.

Erika McGowans

Ms. McGowans and Plaintiff share a twenty year friendship. Ms. McGowans, who works as a Hospital Revenue Analyst, testified that she knows the three children, who are now 12 and 10 years old and last saw them in 2012. She has seen Plaintiff with the children and described Plaintiff as a loving, responsible and caring parent. The children enjoyed trips to the park, the zoo and the mall when in Plaintiff's care. She has never seen Plaintiff hit or choke the children, never saw bruises or other marks on the children, and only knew Plaintiff to have disciplined the children through frowning and time-out. In sum, she described Plaintiff as a good mother.

Vernette Dezurn

Ms. Dezurn, the children's maternal grandmother, last saw the minor children on August 31, 2012. The children never lived in her home when they lived in Baltimore; however, the kids "would stay with her" sometimes and she

would "watch them" sometimes at night. She testified that she did not "watch" the children; rather, the children's great grandmother and great uncle "watched them."[4]

Ms. Dezurn described Plaintiff as a good mother who listened to her children, attended to any issues that arose in school, helped with homework, cooked and took care of the children's laundry. If disciplinary issues arose, Plaintiff removed privileges. According to Ms. Dezurn, the children showed no fear of Plaintiff. Plaintiff did not physically discipline the children. When it came to the children's health, Plaintiff was a "hypochondriac," who would take the children to the hospital for a "sneeze." When the children were with Plaintiff, they were healthy, not skinny as they appeared in the photographs entered into evidence. According to Ms. Dezurn, when the children returned to Plaintiff in June 2010, they had lost a great deal of weight.

The children's therapist accused Ms. Dezurn of undermining the children's therapy. She traveled to New York with Plaintiff in July 2010 for a therapy session. She saw Caleb and Sean, who were each accompanied by the therapist. She did not see Connor and does not know why he was not brought out to see her. Beyond that, she believes Defendant has deprived Plaintiff of access to the children.

---

[4] The adoption and custody home study report leads this court to conclude that the children spent a great deal of time in maternal grandmother' s care while Plaintiff worked and attended school.

According to Ms. Dezurn, following the July 2010 visit, Plaintiff required intervention due to anxiety caused by the custody situation. Plaintiff admitted herself for treatment in October 2014; Ms. Dezurn does not know the details of Plaintiff's condition or where she received treatment; however, she denies that Plaintiff has been diagnosed with bipolar disorder. Neither is Ms. Dezurn aware of whether Plaintiff is on medication.

As an aside, the adoption and custody home study report described an incident where Ms. Dezurn acted out while in the social worker's office. Ms. Dezurn's conduct has not helped the situation as it exists.

Custody Evaluations

As noted, this case has been open for nearly five (5) years. During the course of the litigation the parties have been referred for evaluations through Court Medical Services and have been referred for evaluations through the Adoption and Custody Unit.

Court Medical Services

In February 2011, both parents were evaluated through the Court Medical Services Division of the Baltimore City Circuit Court. At that time, Connor was 7 years old and Caleb and Sean were 5 years old; the minor children were then living in Plaintiff's home.

a. Plaintiff's evaluation

At the time of the February 2011 evaluation, the evaluator found in Plaintiff an indication of abnormalities of mood, thought, or perception; however, the

evaluator also found that that Plaintiff presented with "no significant medical, psychiatric, or drug related problem that would limit her ability to care for 'the' children."

b. Defendant's evaluation

At the time of the February 2011 evaluation, in contrast to Plaintiff, Defendant showed no sign of "significant problems with mood, thought or perception." Like Plaintiff, Defendant presented with "no significant medical or psychiatric problem which would affect his ability to care for 'his' children."

At the time of the February 2011 evaluation, the evaluator recommended that the children remain in Plaintiff's care given their age and that they have frequent contact with Defendant during the school year and extended contact with Defendant in the summer. Although Defendant reported that Plaintiff had problems with depression that affected her ability to care for the children, the evaluator found nothing to indicate that Plaintiff had a mood disorder or behavioral problem that would place the children if they remained in her care.

On February 27, 2015, Plaintiff was again evaluated through the Court Medical Services Division. In addition to meeting with Plaintiff, the evaluator considered medical reports and had discussions with Plaintiff's treating clinicians.

During the evaluation, Plaintiff reported that whenever the children returned from Defendant's home, she took the children to Mercy's Hospital's emergency room for a check-up based upon the children's reports that they had been beaten, kicked and punched by Defendant and his wife. In January 2012,

when the children returned, she noticed a "gash" on Caleb's neck and notified the police. At that point, a CPS referral was made; however, abuse could not be substantiated.

Plaintiff reported that she was not permitted to see the minor children between April 2012 and August 2012. Thus, she went to Defendant's parents' home in August 2012, accompanied by a state trooper and her attorney. In April 2013, Plaintiff received notice from a New York CPS worker that she (Plaintiff) was the subject of a CPS investigation. She reported that that abuse was unsubstantiated.

According to Plaintiff, she and Defendant reached an agreement in summer 2013 whereby Defendant would have sole legal and physical custody of the minor children and she would see the children monthly at the courthouse. However, when the visits occurred, to her surprise the children accused her of choking them and Connor demanded an apology.

At the time of the February 2015 evaluation, Plaintiff reported having sought therapy between 2012 and 2014 relative to the custody battle. In 2013, she began to take medication to address her symptoms. At the time of the evaluation, she was taking a daily dose of Prozac and taking Ativan as needed. She also reported having felt suicidal and having been hospitalized in November 2014 for "situational depression." According to Plaintiff, the episode was triggered by a combination of factors, one of which was Connor's directive to her to give up on him and move forward with her life.

The evaluator contacted Dr. Cummings, the physician from whom Plaintiff psychiatric treatment. Dr. Cummings shared with the evaluator his belief that Plaintiff has borderline personality traits, such as "impulsivity and stress-related anxiety and dysphoria."

In addition to speaking with Dr. Cummings, the evaluator reviewed Plaintiff's medical records created as a result of the November 2014 hospitalization. Medical records revealed to the evaluator that Plaintiff was hospitalized for three days in November 2014 at a time when she was "actively suicidal." Plaintiff was diagnosed with a major depressive disorder and generalized anxiety disorder. Plaintiff was discharged from the hospital's partial hospitalization program in December 5, 2014. Between her discharge from the inpatient program and December 5, 2014, she had not regularly attended the outpatient program.

The evaluator also took into consideration Plaintiff's records of treatment through Michelle Backe from October 2012 through early 2014. Plaintiff was reportedly often late for appointments and inconsistent with keeping her appointments. Ms. Backe diagnosed Plaintiff with post-traumatic stress disorder precipitated by Plaintiff's inability to see her children. Ms. Backe ceased providing care for Plaintiff as she believed Plaintiff's needs to exceed the scope of her practice. According to Ms. Backe, as of January 2014, Plaintiff needed therapy and medication management through a community health care center.

The evaluator held the opinion that Plaintiff misperceives reality, and that she would benefit from treatment aimed at alleviating her mood disorder and anxiety, as well as addressing the losses Plaintiff has experienced over time. The evaluator also concluded that Plaintiff had displayed "ambivalence in relationships" and has a history of "instability of interpersonal relationships" during her adult life.[5] The evaluator also concluded that Plaintiff has experienced stress-related anxiety, depression, misperception of reality (based upon her report of Defendant having kidnapped the children and the Best Interest Attorney siding with Defendant),[6] and poor impulse control (as evidenced by Plaintiff's "attack" on the children's attorney and her decision to confront Defendant's wife on one occasion.

Adoption and Custody Division's Study

In 2010, each party participated in a study conducted by the court's social worker. At that time, Plaintiff reported that she moved into her relatives' home in July 2010. She still resides in that home. She reported that she was a "junior" at

[5] The court does not accept the evaluator's conclusion that Plaintiff has generally had instability in her relationships in her adult life. The unstable relationships, in terms of romance, appear to have predated Plaintiff's relationship with Defendant and do not appear to this court to indicate that Plaintiff has a history of engaging in dysfunctional relationships; they merely appear to be failed relationships, just as Defendant's subsequent marriage and divorce appears to be a failed relationship.

[6] The court tends to view this more as feeling victimized and exaggerating the circumstances that led to the children residing with Defendant.

the University of Baltimore.[7] The home in which the children resided was deemed appropriate for the children, although there was evidence of a leak in the children's room and exposed wiring in the home.

The children were quite young when interviewed in 2010 and this court recognizes that the children's statements may not be reliable. Importantly, the court gleans from Connor's statements that he did not like the food at his Defendant's home, and, consequently, lost weight initially while in Defendant's care. In Connor's view, his father almost "starved him" to death. Connor did not report abuse at either parent's hands, although he did note that if he misbehaved while in Plaintiff's care, he got away with it but was corrected and disciplined while in Defendant's care. Also important to this court was Connor's statement that if someone bothers him, "I just beat him up." Connor did acknowledge having some fun while in Defendant's care.

The twins were also interviewed. For his part, Sean noted that he was present at the meeting to "have a talk about daddy, and Marlise." Sean noted that he wanted Plaintiff to be nice to him but she fusses at him. He viewed both parents as caretakers but indicated that while in Plaintiff's care, he received beatings and time-outs. The children reported that Plaintiff had in the past pushed Caleb and Defendant had in the past pushed Connor. According to Sean, he had not been hurt by either parent. He reported that his parents had pushed one another. He described fighting with Connor. Sean had no complaints about

[7] Elsewhere, she reported that she graduated from University of Maryland, Baltimore County.

either parent. Sean did not report physical abuse at either parent's home. Neither did he complain of being placed in the dark at Defendant's home. He did report seeing his parents hit one another.

The investigator noted, and this court agrees, that the parents do not have a favorable relationship. The investigator also noted, and this court concurs, that the parties have different parenting styles and mete out different forms of punishment. If the children's reports are to be believed, they were beaten and yelled at while in Plaintiff's care and subjected to time out in Defendant's care.

At the time of the report, the children appeared to have had more structure in Defendant's home. Indeed, it appears from school reports that when the children first were placed in Defendant's care, Connor was unaccustomed to sitting still, needed one-on-one attention and was significantly delayed in his performance when compared to his peer group. Additionally, this court accepts Defendant's assertion that the children had no structure, were not accustomed to bedtime, and required "programming" in order to function. The court also notes that the lack of structure may be due in part to the fact that the children, despite Plaintiff's assertion, had been living between the Gilmore Street home and the residence of the maternal great aunt, as Plaintiff appears to have had a busy evening school schedule.

Supervised Visitation

Beginning in July 2013, the parties had the benefit of participating in Supervised Visitation through the Circuit Court's Medical Services Division. On

the first visit (7/30/13), Connor told Plaintiff that he liked visiting her but that he was still angry that she tried to choke him. The twins agreed that Plaintiff had choked Connor; Plaintiff denied having choked Connor. The visit ended when the facilitator was unable to de-escalate the argument that ensued between Plaintiff and Connor. Connor and Plaintiff argued during the second visit as well, a visit Plaintiff attempted to record until Connor discovered the recording. The court notes that there existed no conflict between Plaintiff and the twins on the first two visits and that during the confrontations between Connor and Plaintiff, Caleb and Sean attempted to mediate the session by encouraging Connor not to be "mean." The twins were each affectionate with Plaintiff.

During the third visit (10/22/13), Connor began to demand that Plaintiff apologize for her prior abuse. During the fourth visit, the facilitator made a decision to allow Sean to visit alone and to offer Connor an abbreviated visit later. Sean was very affectionate towards Plaintiff and appeared to enjoy his time alone with her. Once Connor came to the room, he agreed to hug Plaintiff only after he received a computer from her for Christmas. He then told her that Caleb had to be hospitalized after having flashbacks of her choking them. Once again, the visit ended in an argument between Plaintiff and Connor, this time over whether video games cause ADHD. At that time, Connor called Plaintiff a liar and the facilitator ended the visit.

Caleb returned for the fifth visit. At that time, he asked Plaintiff not to get angry and told Plaintiff that she does hurt them. Connor, who again had delayed

entry into the visitation room, again accused Plaintiff of choking them and Plaintiff again denied having choked the children. At the end of the visit, the twins each hugged and kissed Plaintiff and told Plaintiff they loved her. Connor told her he did not love her and she replied that she loved him.

Custody

The children are in Defendant's care pursuant to this Court's October 7, 2014 Revised Temporary Order regarding visitation; however, that temporary order is superimposed upon the court's 2006 custody order, through which the parties were granted joint legal custody and Plaintiff was granted sole physical custody of the minor children.

Regardless of the procedural posture of the case, the parties are now competing for custody of the minor children, with each seeking sole decision-making authority and sole physical custody of the minor children.

As the proponent of change to the 2006 custody order, both Plaintiff and Defendant technically bear the burden to demonstrate (1) that there exists a material change in circumstances that warrants modification of the existing order, and (2) that modification of the order is in the minor children's best interests since they each sought modification of the custody order. *Domingues v. Johnson*, 323 Md. 486, 492-493 (1991); *Vernon v Vernon*, 30 Md. App. 564, 566-567 (1978). The imposition of this two-fold duty upon the proponent has its roots in ensuring stability for the children and preventing the re-litigation of resolved issues. *McCready v. McCready*, 323 Md. 476, 482-483 (1991). As was noted in

Domingues v. Johnson, "change is not to be lightly made. The benefit to children of a stable custody situation is substantial, and must be carefully weighed against other perceived needs for change." *Id.* at 500. And, the conditions upon which any anticipated modifications rest must be conditions affecting the children's welfare, and not predicated upon the parents' desires. *Vernon*, *supra*, 30 Md. App. at 566-567.

As a rule, where a proponent fails to demonstrate a material change in circumstances, the inquiry ends. *Wagner v. Wagner*, 109 Md. App. 1, 28. The circumstances to which the change would apply are the circumstances that were known to the trial Court when it issued its earlier custody ruling. *Wagner*, *supra*, 109 Md. App. at 28. But even if the Court finds that a material change in circumstances exists, the Court may only modify the arrangement if it finds that the minor children's best interests warrant modification. *Wagner*, *supra*, 109 Md. App. at 29. In making its determination, the Court should emphasize changes in circumstances that have occurred since the last hearing. *Wagner*, *supra*, 109 Md. App. at 39. The court notes that the initial custody was predicated upon the parties' agreement rather than a judicial determination, the court having apparently determined that ratification of the parties' agreement was in the children's best interests.

The Court has considered each child individually and taken into consideration the court's prior admonishment that when possible and in their individual best interests, siblings ought to be raised together. *Goldberg v.*

Goldberg, 96 Md. App. 771, 788, 626 A.2d 1062 (1993); *Hild v. Hild*, 221 Md. 349, 359, 157 A.2d 442 (1960), abrogated in part on other grounds, *Shenk v. Shenk*, 159 Md. App 548, 558, 860 A.2d 408 (2004).

Plaintiff's assertion of material change in circumstance

In her July 2010 filing, Plaintiff asserted that Defendant abused and/or neglected the children and allowed the oldest of the children to take ADHD medication without having discussed the matter and obtained her consent.

Defendant's assertion of material change in circumstance

In his 2010 filing, Defendant asserted that Plaintiff's home was not appropriate for the children in terms of space and environment and asserted that Connor's performance and asthma both improved while the child was in his care.

Court's Finding that There Exists a Material Change in Circumstances

Both parties succeeded in demonstrating that the evidence, in totality, demonstrates that there exists a material change in circumstances that triggers the Court's obligation to determine whether it is in each minor child's best interests for the Court to modify the existing custody order. The parties are no longer able to communicate, as is required if they are to continue to share legal custody. Allegations of abuse by Plaintiff were substantiated, resulting in the children being transferred to Defendant's care, despite the terms of the current custody order. The children exhibit psychiatric and behavioral problems that are of a longstanding nature, and that have required intensive intervention, and for two of the children, overnight hospitalization. Time has not led to more security

for the minor children in this instance. Five years after the parties filed their respective motions for modification, the children remain in legal limbo.

The parties have not communicated in any productive fashion in more than five (5) years. The children have been in psychological turmoil for years. They have had no unsupervised contact with Plaintiff since 2013. The children require therapy in and outside of school and require behavioral management. By all accounts, the children range from equivocal concerning contact with Plaintiff to not wishing to have any contact with Plaintiff, depending upon the date, time and circumstances of proposed contact. Given the change in circumstances, the court will undertake its best-interests inquiry.

Legal Custody

When the Court instituted its initial order, the parties agreed that shared legal custody with physical custody to Plaintiff was in the children's best interests. The parties agree that they are unable to communicate concerning the minor children, although neither accepts responsibility for the breakdown in communication. Plaintiff asserts that Defendant makes unilateral decisions concerning the minor children, has alienated the children, shut her out of the children's lives, and has, in effect, turned the children against her over the past few years. Defendant asserts that Plaintiff's mistreatment of the children when they were in her care led the children to a place of distrust, and that through no prompting on his part, the children wish to have no contact with Plaintiff.

When appropriately permitted, joint custody results in a substantial benefit to both the children and the parents; thus, the propriety of joint custody should be given the Court's careful consideration. *Taylor v. Taylor*, 306 Md. 290, 302-303. In considering the propriety of joint custody, the Court must consider the issue not in a vacuum, but as part of the total consideration of the parties' custody dispute. *Id.* at 303. Having found the existence of a material change in circumstances, the Court considers the below-listed factors in determining whether the parties should be permitted to share legal custody:

1. The parties' ability to communicate;
2. The parents' willingness to share custody;
3. Parental fitness;
4. The relationship between each child and each parent;
5. The child's preference if the child can form rational judgment;
6. The potential disruption to each child's school and social life;
7. The geographic proximity of the parties' homes;
8. The parents' employment demands;
9. The ages and number of children;
10. The sincerity of the parties' requests;
11. The parents' financial status;
12. The impact of joint custody on any benefits to which the child would be entitled; and
13. Any benefit of joint custody to the parents.

The Court finds that the parties each made a showing of a material change of circumstances as it pertains to the issues of both legal and physical custody. Through evidence offered during the modification hearing, each party demonstrated that, at this time, the parties are incapable of working jointly for the benefit of the minor children. There remains a clear disconnect between the parties.

1. THE PARTIES' ABILITY TO COMMUNICATE

The parties are unable to communicate. The court finds that the breakdown in communication is attributable to multiple factors. Plaintiff holds the opinion that Defendant deliberately drove a wedge into her relationship with the children once she sought treatment for what she believed to be abuse and/or neglect on Defendant's part. Defendant asserts that it is impossible to communicate with Plaintiff, in part due to her behavior, and in part due to the fact that she lapses in and out of availability. When the parties do communicate, the communication tends to be acrimonious.

The parties' battle for control over the children has lasted for five years, due in part to multiple continuances of this case in order to allow for the parties to engage in therapy aimed at reunifying Plaintiff with the children to some degree. Although the children have reportedly made progress with some of their behaviors and in terms of behavior modification, there has been no progress towards reunifying the children with Plaintiff. Given that the children need continued intervention, and given that the parties do not appear to view the

children's needs and/or solutions to the children's problems through the same lens, the parties are not suited to sharing legal custody. One parent or the other must have the ability to tend to the children's needs.

2. THE PARENTS' WILLINGNESS TO SHARE CUSTODY

Neither party wishes to share custody.

3. PARENTAL FITNESS

The court does not find that either parent is unfit to have legal and/or physical custody of the minor children. The court has some concerns regarding Plaintiff's mental health and her judgment. Plaintiff did not provide concrete information on the status of her mental health issues but shared with the court that she is no longer taking medication and now "checks in" with her mental health care provider.[8] The court is not satisfied with Plaintiff's representations that she is cleared by her mental health care provider given the children's fragile emotional and psychiatric states.

The court does not find that Defendant is unfit to have custody of the minor children. He has met the children's needs over the past five years, paying particular attention to their mental health needs. He has also met their economic needs. He is currently unemployed, having moved to Maryland following his divorce. He is still meeting the children's needs at this time. The court notes that Defendant does not appear to have a long track record when it comes to

[8] Just under one year ago, Plaintiff checked herself into a facility for mental health treatment. She asserts that at the time, she was overwhelmed by the circumstances of this case.

employment. But the court also notes that Plaintiff also appears to move in and out of employment.

Plaintiff continues to express concern due to Defendant's conviction, a point that was addressed to distraction during the trial. In approximately 1996, Defendant traveled across state lines to meet a young girl. He was convicted of a crime but is not required to register as a sex offender. There is no evidence that Defendant has been arrested since 1996 and no evidence that he has sexually abused the children. Importantly, Plaintiff bore the twins with complete knowledge of the sexual offense; thus, she cannot use that conviction, in and of itself, as a sword. This court notes that pursuant to Md. Rule 5-609, a person may be impeached by the fact that he committed an infamous crime, provided that the crime is not more than fifteen years old. Md. Rule 2-609(b). This court notes that the conviction occurred nearly twenty years ago.

4. THE RELATIONSHIP BETWEEN EACH CHILD AND EACH PARENT

To varying degrees, the children are each estranged from Plaintiff at this time. Caleb appears most receptive to engaging Plaintiff, and he is equivocal at best. Connor reportedly does not wish to have contact with Plaintiff at this time, and Sean takes his cues from Connor in that regard. Connor's relationship with Plaintiff appears to be at a stalemate based upon Connor having demanded an apology from Plaintiff that she refuses to give. Specifically, Connor has requested an apology based upon Plaintiff having allegedly choked him in the past. Plaintiff denies that she ever choked Connor and therefore will not apologize. Plaintiff

believes Defendant has put the children up to alleging misconduct on her part. Defendant believes Plaintiff is responsible for the children asserting that he has abused or neglected them while the children were in Defendant's care. This court notes that Connor is an emerging teen, and he is rapidly approaching the age where the court will take into consideration his views towards visitation, although Connor's views will not dictate the court's decisions concerning access.

5. THE CHILDREN'S PREFERENCE IF THE CHILD CAN FORM RATIONAL JUDGMENT

The children were represented by counsel in this matter. The court did not interview the children and would not interview them given the fact that they are in treatment for their mental health conditions. This court does not consider the children to have rational judgment at this time. Although they are of an age where children are quite capable of expressing their preferences, these children are compromised by psychological and behavioral problems. Moreover, they have labored under their parents' discord for an extended period time. As pertains to the twins, the fact that they often follow Connor's lead would be another reason to avoid taking into consideration where the children claim to want to live.

6. THE POTENTIAL DISRUPTION TO EACH CHILD'S SCHOOL AND SOCIAL LIFE

The parties do not agree on fundamental issues pertaining to the children. Thus, it is unlikely that they could work together for the children's benefit for

education at this point. Although Plaintiff was cooperative in attending the school visit when the children first moved to Rochester, the parties cannot see eye to eye on any issues at this point. When the children were seeing a counselor in Maryland with a goal of reunification, allegations were made that Plaintiff and maternal grandmother each attempted to undermine counseling efforts that were lodged at the children.

The children have been subjected to more than one DSS investigation as a result of the parties' mistrust of one another. Police have been called to intervene on more than one occasion. The court notes that the children are at risk of more investigations. The court believes there is grave risk to the children's social and school stability if the parties are ordered to share custody.

7. THE GEOGRAPHIC PROXIMITY OF THE PARTIES' HOMES

Plaintiff resides in Baltimore; Defendant lives in Prince Frederick, Maryland, a couple hours' drive from Baltimore.

8. THE PARENTS' EMPLOYMENT DEMANDS

Plaintiff works daylight hours. Although the court is not completely clear that Plaintiff has complete control over her work schedule, she painted for the court a picture that she can set her schedule in a way that would allow her to get the children to and from school, and to get them to and from counseling, if necessary. Plaintiff also takes classes. This semester, she is taking two classes, one of which is online. Her classes are located in Howard County. Defendant is currently unemployed and searching for work. He was employed when he first

moved with the children to Maryland following the demise of his marriage; however, according to Defendant, the children's demands cost him the ability to work.

9. THE NUMBER OF CHILDREN AT ISSUE

The parties share three children. Neither parent has any other children besides the three children they share.

10. THE SINCERITY OF THE PARTIES' REQUESTS

The Court finds that the parties are each sincere in their request for custody.

11. THE PARENTS' FINANCIAL STATUS

Plaintiff is currently employed contractually. Defendant is unemployed and has been since his move to Maryland, with the exception of one month. Defendant lost his new-found employment in Maryland because he needed to tend to the children's emotional needs.

12. THE IMPACT OF JOINT CUSTODY ON ANY BENEFITS TO WHICH THE CHILD WOULD BE ENTITLED

Neither party presented evidence of this factor.

13. ANY BENEFIT OF JOINT CUSTODY TO THE PARENTS

Neither parent presented evidence of this factor.

In addition to the *Taylor* factors, the Court may consider additional factors in ruling on the issue of custody generally. As was noted in Montgomery County

D.S.S. v. Saunders, 38 Md. App. 406, 420, 381 A.2d 1154 (1978), the Court also considers the following factors in ruling on physical custody.

1. EACH PARTY'S CHARACTER/REPUTATION

Plaintiff presented evidence from her mother and her best friend that she is a good mother who puts the children's needs first. Defendant produced evidence from his sister that he is a good father who provides for the children's physical and emotional needs.

2. THE PARTIES' DESIRES AND ANY AGREEMENTS BETWEEN THEM.

The parties are not in agreement on any aspect of custody.

3. THE POTENTIAL FOR MAINTAINING NATURAL FAMILY RELATIONS.

The potential for maintaining natural relations would best be served by granting custody to Defendant. This court finds that Defendant has made genuine efforts to engage Plaintiff in the children's therapy with a view to restoring her relationship with the children. The court finds that when the children have been in Plaintiff's care since 2010, she has used the opportunity to subject the children to DSS and medical evaluations that are unfounded.

4. MATERIAL OPPORTUNITIES AFFECTING THE MINOR CHILDREN'S FUTURE

The parties did not present evidence regarding his factor.

5. THE CHILDREN'S AGES, SEX AND HEALTH.

Connor is 12; Caleb and Sean are 10. Connor has asthma that is controlled in Defendant's care. Each child has mental health issues that must be addressed. In addition, Sean may ultimately be diagnosed with a spectrum disorder.

6. THE LOCATION OF THE PARTIES' RESIDENCES AND THE OPPORTUNITIES FOR VISITS.

The parties live a couple of hours' drive away from one another. Given the fact that the children are estranged from Plaintiff and would require continued therapy before re-establishing her relationship, the distance between the parties' homes is of less consequence to the issue of custody and of more consequence to the issue of how to logistically include Plaintiff is reunification therapy, if the court ultimately determined that reunification therapy is appropriate at this time.

7. THE LENGTH OF SEPARATION OF THE PARTIES.

The children have effectively resided with Defendant since 2013. Before then, the children lived primarily with Plaintiff from 2006 until 2010, with Defendant for part of 2010, and between the homes, but primarily with Plaintiff, between 2010 and 2013.

8. WHETHER THERE WAS A VOLUNTARY SURRENDER OF CUSTODY.

Plaintiff voluntarily surrendered custody pursuant to the court's 2006 custody order when she advised Defendant that she was unable to manage the children and that he needed to tend to them beginning in January 2010.

However, she made it clear in mid-March 2010 that she wanted the children returned to her care. The parties have been wrangling over custody since July 2010.

DECISION REGARDING LEGAL AND PHYSICAL CUSTODY

The parties do not agree on the appropriate structure for the minor children, or on the best school placement for the minor child. They do not communicate well, even though they are many years post-separation. There is bare bones communication that ultimately devolves into disagreement or that ultimately results in Plaintiff going missing for a time.

Although the parties' positions as to who bears responsibility for the poor communication and the fact that the parties are diametrically opposed, this Court finds Defendant more credible. This Court finds Defendant has attempted to notify Plaintiff of the children's conditions and needs, but that the Plaintiff's focus has been not on working with Defendant toward the goal of making the children secure, but, rather, on her singular desire to win back the children at all costs, and without regard to the fragility of the mental conditions.

As was noted in *Taylor v. Taylor*, supra, 306 Md. at 304, the parties' ability to communicate and reach shared decisions is the most important factor in determining whether to joint legal custody is the appropriate arrangement.[9] And,

[9] The *Taylor* Court indicated that the ability to communicate is also the most important factor when a court considers whether to permit a shared physical custody arrangement. Id.at 304. Even if the parties lived next door to one another, they would be unable to share custody given the complete breakdown in

the best evidence of whether the parties would be able to share custody is the parties' "track record." Id. at 307. The Court does not find that the parties' breakdown in communication is likely to reverse itself once this litigation ends. Rather, the parties' breakdown appears "more permanent in nature." Id. at 307. And, as the *Taylor* Court made clear, it is rarely appropriate to allow parties to share custody where their conduct does not admit of an ability to effectively communicate with one another regarding the child's best interests. *Id.* at 304. The parties' track record bears out that there is "nothing to be gained and much to be lost" in ordering the parties to share legal custody. *Taylor*, supra, 306 Md. at 306. Moreover, there is no evidence that the parties collectively demonstrate the characteristics the *Taylor* Court associates with the ability to share custody.[10]

The Court finds that the deterioration in the parties' ability to communicate, coupled with Plaintiff's sabotage (intentional or unintentional) of any efforts to work with Defendant towards ensuring the children's stability, and along with its findings with regard to the *Taylor* factors lead to the inescapable conclusion that the parties are unable to share legal or physical custody. The minor children's

---

their communication and their apparently vast differences in parenting styles and philosophies.

[10] These characteristics include, *inter alia*, a sense of respect for one another as parents, appreciation of the other parent's value to the child, the capacity to control anger and hostility, a lack of rigidity in thinking and behavior, personal flexibility and shared child-rearing values. *Taylor*, supra, 306 Md. at 306. Plaintiff does not display the level of respect and maturity that would lead to a successful shared custody arrangement.

best interests are best served by allowing them to remain in Defendant's primary legal and physical care.

The children's psychiatric needs and educational needs have been addressed by Defendant and either ignored or negatively impacted by Plaintiff. Regardless of the road that led the parties to where they stand, the children's needs are pressing, they must be addressed, and they have been consistently addressed in Defendant's care. Although Defendant is currently dependent in part upon his parents, he has provided for the children's housing needs, and the housing he has arranged appears adequate. He works closely with the children's educators and health care providers, and, at this point, has worked hard to reverse some of the problems that were noted in terms of violent behavior, skill deficiency and educational lag when the children first came into his care in 2010.

Although Defendant has primary legal custody of the minor children, Plaintiff shall be permitted to obtain access to the minor children's health and educational records, to the extent otherwise permitted by law so that she may stay abreast of the minor children's health, development and performance.

ACCESS

Despite the passage of many years, this court is not in a position to determine that granting to Plaintiff unsupervised access to the minor children is in the minor children's best interests. The anecdotal evidence is that Plaintiff was indicated for abuse in 2013. With the limited information it received (i.e. Plaintiff's acknowledgement that she was indicated for abuse) court has taken into account

Md. Fam. Law Code Ann., §9-101. The court cannot make a determination at this point that there is no likelihood of further abuse if Plaintiff is given unsupervised access at this point because of the potential for psychological damage. The children are in counseling. Connor shows resistance to having access to Plaintiff. The twins vacillate between wanting to see Plaintiff and not wanting to see Plaintiff.

This Court is mindful of the visitation factors courts are typically required to consider as outlined in *Fairbanks v. McCarter*, 330 Md. 39, 49-50 (1992). The specific factors the *Fairbanks* Court suggests that courts consider are the nature and stability of relationships between the children and the litigants, the frequency and regularity of contacts between the parties and the children, the amount of time the parties and the child spend together, the potential benefits and detriments of time spent together, the effects of visitation on family dynamics, the parties' physical and emotional health, and the stability of the children 's living arrangements. The Court will address the factors seriatim.

FREQUENCY AND REGULARITY OF CONTACTS

The children have had no unsupervised contact with Plaintiff in years and no telephone contact with Plaintiff in over a year, when Plaintiff made the unilateral decision to stop contacting the children and to stop participating in therapy with the children.

POTENTIAL BENEFITS AND DETRIMENTS OF TIME SPENT TOGETHER

Given the children's view of Plaintiff, the children's psychiatric conditions, and the prior finding of abuse against Connor, the court does not find, pursuant to Md. Fam. Law Code Ann., §§9-101 and 9-101.1, that it is in the minor children's best interests to have access to Plaintiff Mother at this time outside of a therapeutic milieu.

EFFECTS OF VISITATION ON FAMILY DYNAMICS

Family dynamics will not change at this time because this court cannot currently sanction unsupervised access between the minor children and Plaintiff Mother at this time.

THE PARTIES' PHYSICAL AND EMOTIONAL HEALTH

Plaintiff suffers from migraines and notes that she is diabetic. There is no indication that those medical conditions affect her ability to care for the children at this time. Plaintiff was receiving mental health intervention which she contends she no longer needs. Plaintiff gave conflicting testimony on whether it was her decision or her doctor's decision for her to stop taking her medications. In short, the court is left with nothing other than Plaintiff's suggestion that from a mental health standpoint, she is fine.

There is no indication that Defendant has any medical or mental health conditions that affect his ability to care for the minor children. He does routinely participate in counseling with the children and has plans to continue with the current treatment protocol and to begin in-home therapy with the entire family.

THE STABILITY OF THE CHILDREN'S LIVING ARRANGEMENTS

The children are in a stable living arrangement, living with their paternal grandparents. Connor has his own room and the twins sleep in the living room. Although they sleep in an open space, the evidence before the court reveals that the living room is suitable for the twins' needs, in that they are able to sleep, study and play in the living room they share.

Plaintiff testified that the children's room at her aunt's hour remains available to the children, and that the room is large enough to accommodate all three children. The court was somewhat confused by Plaintiff's testimony in that she initially testified that the room was as it was when they left, but later testified that she had taken down the children's personal effects because it was too hard to walk past the room and see their belongings. On the other hand, Plaintiff added that her aunt is renovating the home, but did not provide to the court any information on the significance of the renovation to the children.

RULING REGARDING ACCESS

The court does not find that it is psychologically safe for the children to have unsupervised access to Plaintiff at this time. They have not been able to engage with Plaintiff for more than one year, when she stopped participating in therapeutic treatment. The children are still in the same state of flux in this case that The Court has considered each child individually and taken into consideration the court prior admonishments that when possible and in their

individual best interests, siblings ought to be raised together. *Goldberg v. Goldberg*, 96 Md. App. 771, 788 (1993); Hild v. Hild, 221 Md. 349, 359 (1960). hey were in in mid-2010, in part due to the court's attempts to reunify Plaintiff with the minor children.

This court has some concerns that access to Plaintiff has been driven to some degree by the children's expressed desires. The court notes that a therapist has been involved in the process since 2013, but there is no way for the court to know whether the therapist is taking more cues from the children, or from the therapist's own expertise.

This court finds that it is in the children's best interests for the court to submit the children for a bonding study. Given the extended period of time that has passed since the children have had meaningful access to Plaintiff, the court finds that the court would benefit from a determination of whether (and to what extent) the children are bonded to Plaintiff as that will inform the court as to the direction in which it should go in attempts to reunify the children with Plaintiff.

The court cannot determine at this point that it would be fruitful to institute court-involved supervised visitation at this point in time. Neither can the court ascertain at this point that there is value to ordering Plaintiff to participate in therapy, as several attempts have failed to date. Thus, the court will await the bonding study before moving forward with visitation of any type.

The court considered allowing Plaintiff to have telephone access to the minor children in the interim; however, the court has concerns that if Plaintiff is

inconsistent in keeping to a schedule for the telephone calls, the children will withdraw even further from the Plaintiff. Thus, the court will take a step back, attempt to obtain information regarding the bond, and attempt to move forward with an appropriate approach to reunification.

Judge's signature appears on the original document only

Judge Yvette M. Bryant

cc: Joshua Ortega, Esquire
Stephen R. Rourke, Esquire
David D. Nowak, Esquire
Clerk: Please send via U.S. Mail

TRUE COPY
TEST

LAVINIA G. ALEXANDER, CLERK

11-4-15