

ORIGINAL

IN THE SUPREME COURT OF OHIO

In re:

A.G., a minor child.

Appellant.

* On Appeal from the
* Ottawa County Court
* of Appeals, Sixth
* Appellate District

*
* Court of Appeals
* Case No. OT-11-003

12-2097

MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT A. G.,
A MINOR CHILD

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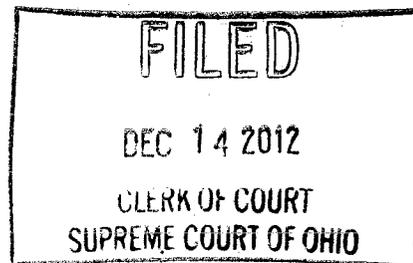


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**EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR
GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL
CONSTITUTIONAL QUESTION**

This cause presents a single issue involving a substantial constitutional question having public or great general interest and therefore merits review by this Court. The single issue involves the rights embodied in the Fourteenth Amendment of the Constitution of the United States and Article I, Section 16 of the Constitution of the State of Ohio which collectively guarantee that any person, *regardless of age*, shall be afforded the right to due process, principally the fair and impartial judicial enforcement of the legislative laws of the State of Ohio. Inherent in that right is the protection of persons from unfair decisions resulting from vague, ambiguous and broad sweeping laws that are subject to multiple interpretations or are inconsistent with each other to achieve a generally unbiased result.

In this case, the Court of Appeals, Sixth Appellate District, improvidently affirmed the trial court's erroneous application of the juvenile rules of procedure in denying Appellant A.G., *a minor child under the age of eighteen (1) years old*, the due process of the law when the trial court ruled that she could not participate in the trial proceedings to which she was a party with a direct interest in the case. Appellant A.G. further advances the premise that an issue involving statutory construction and the denial of due process to her, *a member of the class of persons under the age of majority*, is a matter involving a substantial constitutional question and rises to the level of public or great general interest.

STATEMENT OF THE FACTS

This matter came before the Ottawa County Court of Common Pleas, Juvenile Division, upon a transfer from the Henry County Court of Common Pleas, Domestic Relations Division (Case Number 98-DR-063). The transfer of the case was premised upon the fact that the minor child, A. G. (hereinafter referred to as "Appellant A.G."), and her mother (hereinafter referred to as "Appellee Mother") and step-father resided in Oak Harbor, which is located in Ottawa County, Ohio. Appellant A.G.'s father (hereinafter referred to as "Appellee Father") had relocated to the State of North Carolina. Since there were no remaining ties to Henry County, the Ottawa County Juvenile Court accepted jurisdiction of this case. The parties *did not raise an objection* to the transfer of this case to the jurisdiction of the Ottawa County Juvenile Court.

The Henry County case originally arose as a result of a filing for divorce by Appellee Father in 1998. Although Appellee Father had a lengthy and documented history wherein he was the aggressor of incidents of domestic violence involving prior wives and family members, he had never completed treatment and/or counseling for either anger management and/or domestic violence. Due to specific allegations of domestic violence and threats of harm by Appellee Father upon Appellee Mother and other family members prior to and during the pendency of the divorce action, Appellee Mother relocated herself and Appellant A.G. to live with Appellee Mother's mother (A. G.'s maternal grandmother) in Moscow, Russia. At the time of the divorce proceedings, Appellee Mother was and remained to be a Russian citizen. Because she was born in the United States, Appellant A.G. had a dual citizenship (United States and Russian). After several months, Appellee Mother and Appellant A.G. returned to the United States.

Shortly after the return of Appellant A.G. and Appellee Mother to the United States, Appellee Father absconded with Appellant A.G. and remained “whereabouts unknown” for approximately six (6) months until law enforcement authorities in Key Largo, Florida executed an Ohio bench warrant for Appellee Father’s arrest. During that six (6) month period, Appellee Father, with Appellant A.G., traveled to several states including Arizona, California, Nevada and Florida as well as to Costa Rica. Appellee Father had obtained and was using false identification for both himself and Appellant A.G. to avoid detection by the law enforcement authorities. Appellee Father had illegally obtained false birth certificates for both himself and Appellant A.G.(under the fictitious names of Michael James Philips and Emelia Carmen Philips), a false motor vehicle title, a false voter registration card, a false driver’s license and identification cards, as well as having obtained an executed lease to an apartment under the same false identity. During Appellant A.G.’s abduction, Appellee Father ***told her that her mother was dead*** (Appellant A.G. was approximately four (4) years old at the time). Appellee Father was subsequently indicted in Henry County on a charge of Interference with Custody (a fifth degree felony) and he eventually pled to a reduced charge, being a first degree misdemeanor.

During the pendency of the divorce action, the parties underwent and completed a court-ordered psychological evaluation. It was noted by the evaluator that the Appellee Father had significant “control” issues and further, Appellee Father believed that he was completely justified in asserting his control over others. Appellee Father’s own belief system was so dominant that he never sought and/or received any further counseling for the diagnosed and/or perceived mental health disorders. The evaluator further noted that Appellee Father is a “...high risk of flight again because of his knowledge, his flexibility of

job, his past experience at work travel, his contacts and financial capabilities”

(Psychological Evaluation performed by Dr. Wayne Graves, dated February 29, 2000).

When the divorce proceedings were finalized Appellee Mother was awarded legal custody of Appellant A.G.

Subsequent occurrences of domestic violence and threats of harm by Appellee Father upon Appellee Mother after the divorce caused Appellee Mother to once again seek protection for both herself and Appellant A.G. from Appellee Father by returning to Moscow, Russia. After residing with her mother for several months, both Appellee Mother and her mother were suddenly and brutally attacked, bound and drugged in their home by three (3) masked males. Appellant A.G. (who was at the time six (6) years old) witnessed this event and was forcefully taken from her maternal grandmother’s home in Moscow and transported through the Ukraine and eventually to Paris, France where Appellee Father obtained possession of her. Appellee Father and Appellant A.G. eventually returned to the United States where authorities once again intercepted and recovered Appellant A.G. from Appellee Father. Upon her return and recovery by United States law enforcement authorities, Appellant A.G. was reunited with Appellee Mother who had recovered from her injuries and returned to the United States when her daughter (Appellant A.G.) had been located by the authorities.

With respect to Appellee Father’s subsequent visits with Appellant A.G., the parties have differing accounts regarding the success and benefit conferred upon Appellant A.G. during those visits. Appellant A.G. first began to verbally express her fear of Appellee Father to Appellee Mother immediately after her return from a visit to Appellee Father’s home in North Carolina in December 2003. The fears Appellant A.G. complained of

included her recollection of unpleasant memories of her past abductions at the hands of Appellee Father, the ongoing threats and intimidation of discipline upon her by Appellee Father if Appellant A.G. did not respond to his questions as he expected she should and the constant and harassing telephone calls and letters to Appellant A.G. by Appellee Father.

Appellant A.G. began individual counseling (Lucy Moreno, LISW - Harbor Behavioral Healthcare) in January 2004 and continued in counseling for several months. Because Appellant A.G.'s fears and concerns initially appeared to be abating during these counseling sessions, Appellee Mother encouraged Appellant A.G. to see her father for short periods of time during each of the summers for calendar years 2004 and 2005. But the fears and concerns persisted and Appellant A.G.'s demeanor continued to be impacted in a more obvious and negative way. As a result, Appellant A.G. recommenced counseling with a different counselor (Barbara Feldmar, M.S., LISW - Bayshore Counseling Services) in September 2005 to once again address her growing concerns and fears regarding Appellee Father. Appellant A.G. has remained in individual counseling with the same counselor continuously from that date through to the present.

During the summer of 2006, the newly appointed guardian ad litem requested that Appellee Father's visitation be suspended altogether pending the completion of her investigation. Upon receipt of the guardian ad litem's request, the trial court suspended Appellee Father's visits with Appellant A.G. In latter 2008 and early 2009, visits were resumed on a supervised basis which could only take place in Ohio. Several supervised visits occurred with disputed results. Appellant A.G. claimed that because Appellee Father had threatened her and had mistreated her in the past, she remained afraid of him and further, she did not enjoy the recent visits with him. Additionally, Appellant A.G. claimed

that on one of the supervised visits which had occurred at the Kalahari Resort in Sandusky, Ohio, Appellee Father attempted to force both her and a female friend into a hotel room against their will. Appellee Father claimed otherwise, saying that the visits generally went so well that he wanted the trial court to order “unsupervised” visits at his home in the State of North Carolina.

Appellee Father eventually filed a motion requesting unsupervised visits on September 14, 2009. After hiring her own counsel, Appellant A.G. filed her Response to Father’s Motion and Motion to Terminate All Visitation and Companionship with Father on October 14, 2009. A five (5) day trial was held in November 2010. Following that hearing, the trial court issued its Decision and Judgment Entry (Attachment A) on January 21, 2011 granting Appellee Father’s motion for unsupervised visitation. Upon receipt of that document, the Appellant A.G. timely filed an appeal with the Ottawa County Court of Appeals, Sixth Appellate District. The Sixth Appellate District issued its Decision and Judgment on November 2, 2012 (Attachment B) denying Appellant A.G.’s assignments of error and affirming the trial court’s decision.

STATEMENT OF THE CASE

The Henry County case originally arose as a result of a filing for divorce by Appellee Father in 1998. During the pendency of the divorce action, the parties underwent and completed a court-ordered psychological evaluation. At the conclusion of the divorce case, Appellee Mother was designated residential parent and legal custodian of Appellant. Appellee Father subsequently exercised sporadic visitation with Appellant in the years following the decree of divorce. After the case was transferred to the Ottawa County

Juvenile Court, Appellee Father filed a motion requesting unsupervised visits with Appellant A.G. on September 14, 2009.

When Appellee Father filed his motion for unsupervised visitation, Appellant A.G. was then thirteen years old (Appellant's DOB: is 12/26/95), a minor under the definition of Ohio statutes, and a party to the pending action. Pursuant to Civ R 75 (B) (2), the trial court had previously joined Appellant A.G. as a party to the on-going case on March 28, 2006. After hiring her own counsel, Appellant A.G. filed her Response to Father's Motion and Motion to Terminate All Visitation and Companionship with Father on October 14, 2009.

On October 21, 2009, Appellant filed a Motion for Leave and Order Permitting Minor Child's Attendance and Participation at Trial on November 6, 2009. The trial court's magistrate initially denied Appellant A.G.'s request, without explanation, on November 6, 2009. Appellant A.G. timely requested written findings of fact and conclusions of law on November 10, 2009. Pursuant to the request of the trial court, Appellant A.G. filed her proposed findings of fact and conclusions of law on November 25, 2009, citing the applicable juvenile rules supporting her request. The trial court eventually issued its decision denying Appellant A.G.'s request approximately eleven (11) months later on October 25, 2010.

On May 27, 2010, the guardian ad litem filed a Motion and Ex Parte Motion for a change of custody of Appellant A.G. from Appellee Mother to Appellee Father and further to cease all visitation between Appellee Mother and Appellant A.G. claiming that "parental alienation" had occurred and that the alienation had resulted in Appellant A.G. fearing Appellee Father. On June 4, 2010, Appellant A.G. filed her Motion to Strike Motions and Recommendations of GAL; Motion to Discharge GAL citing; 1) a lack of evidentiary basis upon which the guardian ad litem could reasonably base her recommendations and motions, 2)

the guardian ad litem had failed to adhere to the requirements of Sup R 48, and 3) the guardian ad litem had lost her neutrality and ability to act in an unbiased manner and fairly advocate what was in Appellant A.G.'s best interest. Although the guardian ad litem later testified that she was concerned about alienation for some time, the guardian ad litem did not take timely action to properly investigate her "suspicions". The guardian ad litem did not present any expert witnesses to support her theory at trial in November 2010. Although the trial court did not act upon the guardian ad litem's motions, it did deny Appellant A.G.'s motion to discharge the guardian ad litem.

In its October 25, 2010 decision which denied Appellant's motion to participate in the trial, the trial court stated that the child "... ***does not have a constitutional right to be present during a trial*** that involves a dispute between her parents." (Attachment C at page 2, first unnumbered paragraph). In its decision, the trial court failed to acknowledge that the ***Appellant A.G. had filed her own motion*** to terminate all visitation and companionship with father on October 14, 2009. Pursuant to its ruling, the trial court did not allow the Appellant to be present and participate in the subsequent trial held in November 2010. Following that hearing, the trial court issued its Decision and Judgment Entry (Attachment A) on January 21, 2011 granting Appellee Father's motion for unsupervised visitation. Upon receipt of that document, the Appellant A.G. timely filed an appeal with the Ottawa County Court of Appeals, Sixth Appellate District. The Sixth Appellate District issued its Decision and Judgment on November 2, 2012 (Attachment B) denying Appellant A.G.'s assignments of error and affirming the trial court's decision.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. I: The denial of a person, under the age of majority, the opportunity to participate in trial proceedings in which they have a direct interest, is a violation of that person's right to due process as guaranteed by the 14th Amendment of the U. S. Constitution and Article 1, Section 16, of the Ohio Constitution.

Appellant A.G. submits this proposition of law, asserting that she was denied the right to due process of the law as guaranteed by the Fourteenth Amendment of the United States Constitution and Article 1, Section 16 of the Ohio Constitution when the trial court improvidently applied the rules of juvenile procedure and precluded her participation at trial, thereby denying her the guaranteed due process rights to which she was entitled.

Section 1 of the Fourteenth Amendment (titled "Civil Rights") provides, in relevant part, that:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. *No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.* (Emphasis added).

Appellant A.G. is a citizen of the United States for purposes of this Court's consideration in this matter. The Fourteenth Amendment **does not make** any distinction *regarding the age of the person* subject to the protections afforded by it. Rather, it applies to *all persons*.

Article 1, Section 16 (titled "Redress for Injury; Due Process"), of the Ohio Constitution further provides that:

“All courts shall be open, and *every person*, for an injury done him in his land, goods, person, or reputation, *shall have remedy by due course of law*, and shall have justice administered without denial or delay. Suits may be brought against the state, in such courts and in such manner, as may be provided by law.” (Emphasis added).

Article 1, Section 16 also does not make any distinction *regarding the age of the person* subject to the protections afforded by it. Again, it applies to *all persons*.

When Appellant A.G.’s father filed his motion for unsupervised visitation on September 14, 2009, Appellant A.G. was then thirteen years old (Appellant A.G.’s DOB: is 12/26/95), a minor under the definition of Ohio statutes, and a party to the pending action. Her counselor of several years determined that Appellant A.G. was of sufficient intelligence and maturity to participate at trial in a meaningful way. Pursuant to Civ. R. 75 (B) (2), the trial court had previously joined the Appellant A.G. as a party to the on-going case on March 28, 2006. Appellant A.G. continues her analysis with a review of Juv. R. 1, 2, 4 and 27.

Juv. R. 1(A), titled “Applicability”, provides that:

These rules prescribe the procedure to be followed in all juvenile courts of this state in all proceedings coming within the jurisdiction of such courts, with the exceptions stated in subdivision (C).

Juv. R. 1(C), titled “Exceptions”, in relevant part, provides that:

These rules *shall not* apply to procedure

...

(4) *In proceedings to determine parent-child relationships...* (Emphasis added).

Juv. R. 2, titled “Definitions”, at paragraph (Y), provides that:

“Party” means *a child who is subject of a juvenile court proceeding*, the child’s spouse, if any, the child’s parent or

parents, or if the parent of a child is a child, the parent of that parent, in appropriate cases, the child's custodian, guardian or guardian ad litem, the state, and any other person specifically designated by the court.”
(Emphasis added).

Juv. R. 4 (A), titled “Assistance of counsel”, further provides, in relevant part, that:

“Every party shall have the right to be represented by counsel and *every child*, parent, custodian, or other person in loco parentis *the right to appointed counsel if indigent*. These *rights shall arise when a person becomes a party to a juvenile court proceeding*.” (Emphasis added).

Juv. R. 27(A) further provides as follows:

(A) General provisions

Unless otherwise stated in this rule, the juvenile court may conduct its hearings in an informal manner and may adjourn its hearings from time to time.

The court may excuse the attendance of the child at the hearing in neglect, dependency, or abuse cases. (Emphasis added).

Juv. R. 27 (A)(1) further provides that:

(1) *Public access to hearings*. In serious youthful offender proceedings, hearings shall be open to the public. In *all other proceedings*, the court may exclude the general public from the hearing, but *may not exclude* either of the following:

- (a) Persons with a *direct interest in the case*,
- (b) Persons who demonstrate, at a hearing, a *countervailing right* to be present.
(Emphasis added).

In this case, the issue before the trial court was not one involving allegations of neglect, dependency or abuse, *nor was it one to determine the parent-child relationship*. Rather, Appellee Father had filed a motion for unsupervised visitation and Appellant A.G. responded with a motion, through her own attorney, to terminate all visitation with Appellee Father. In considering the requirements of Juv. R. 27(A)(1) in this case, Appellant posits that she *had a direct interest* in the case. As such, the trial court's application of Juv. R. 1(C) in denying

Appellant A.G.'s participation at trial appears to directly contradict Juv. R. 1(A), 2, 4 and 27(A)(1).

Appellant A.G. further notes that the trial court did not, at any time, appoint counsel for the Appellant A.G., even though her wishes were in direct conflict with the recommendations of the guardian ad litem (a licensed attorney in Ohio). When the guardian ad litem became aware that her recommendations were in conflict with Appellant A.G.'s desires/wishes, she did not request the appointment of counsel for Appellant A.G. and Appellant A.G., on her own accord, subsequently obtained counsel in September 2009. Although her counsel did participate in the ensuing court proceedings, he did not have the benefit of Appellant A.G.'s spontaneous and direct input regarding the testimonies of Appellee Father and the witnesses Appellee Father presented against Appellant A.G. Additionally, numerous pictures and written documents crafted by Appellant A.G. were admitted into evidence without Appellant A.G.'s ability to review them firsthand and comment to her counsel about them during trial. In being denied the opportunity to participate at trial, Appellant A.G. was also unable to submit the numerous recorded telephone calls which demonstrated Appellee Father's anger and attempted control of Appellant A.G. and further challenge Appellee Father's in-court statements.

Furthermore, the protracted efforts of Appellant A.G.'s counsel to make copies of the photographs and show them to Appellant A.G. shortly after the conclusion of the testimony denied the Appellant A.G. the opportunity to spontaneously object and comment about the authenticity and/or relevance of the photographs. With regard to the statements made by the guardian ad litem relative to the confidential conversations that she had with Appellant A.G., Appellant A. G.'s absence at trial rendered any rebuttal to the statements made by the

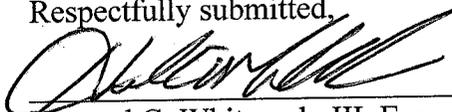
guardian ad litem impossible, since Appellant A.G.'s counsel was not present for either of those interviews and as such, he did not have personal knowledge of what occurred during those interviews. Because Appellant A.G. was denied the opportunity to participate in the trial proceedings, she was unable to observe and spontaneously challenge the in-court testimony of the guardian ad litem.

In its October 25, 2010 decision the trial court stated that the child "does not have a constitutional right to be present during a trial *that involves a dispute between her parents.*" (Attachment C at page 2, first unnumbered paragraph). Appellant A.G. respectfully submits that the trial court's decision is additionally flawed because *the pending pleadings before the trial court involved a dispute between herself and Appellee Father.* Appellee Mother had not filed a pleading regarding visitation between Appellant A.G. and Appellee Father at that time. As such, Appellant A.G. asserts that by denying her the opportunity to *personally* participate in the trial proceedings, the trial court denied her the due process rights as guaranteed by the U. S. Constitution and the Ohio Constitution, as well as the established due process requirements mandated by Juv. R. 2, 4 and 27.

CONCLUSION

For the reasons discussed above, this case involves matters of public and great general interest and a substantial constitutional question. Appellant A.G. requests that this Court accept jurisdiction in this case so that the important issues presented will be reviewed on the merits.

Respectfully submitted,



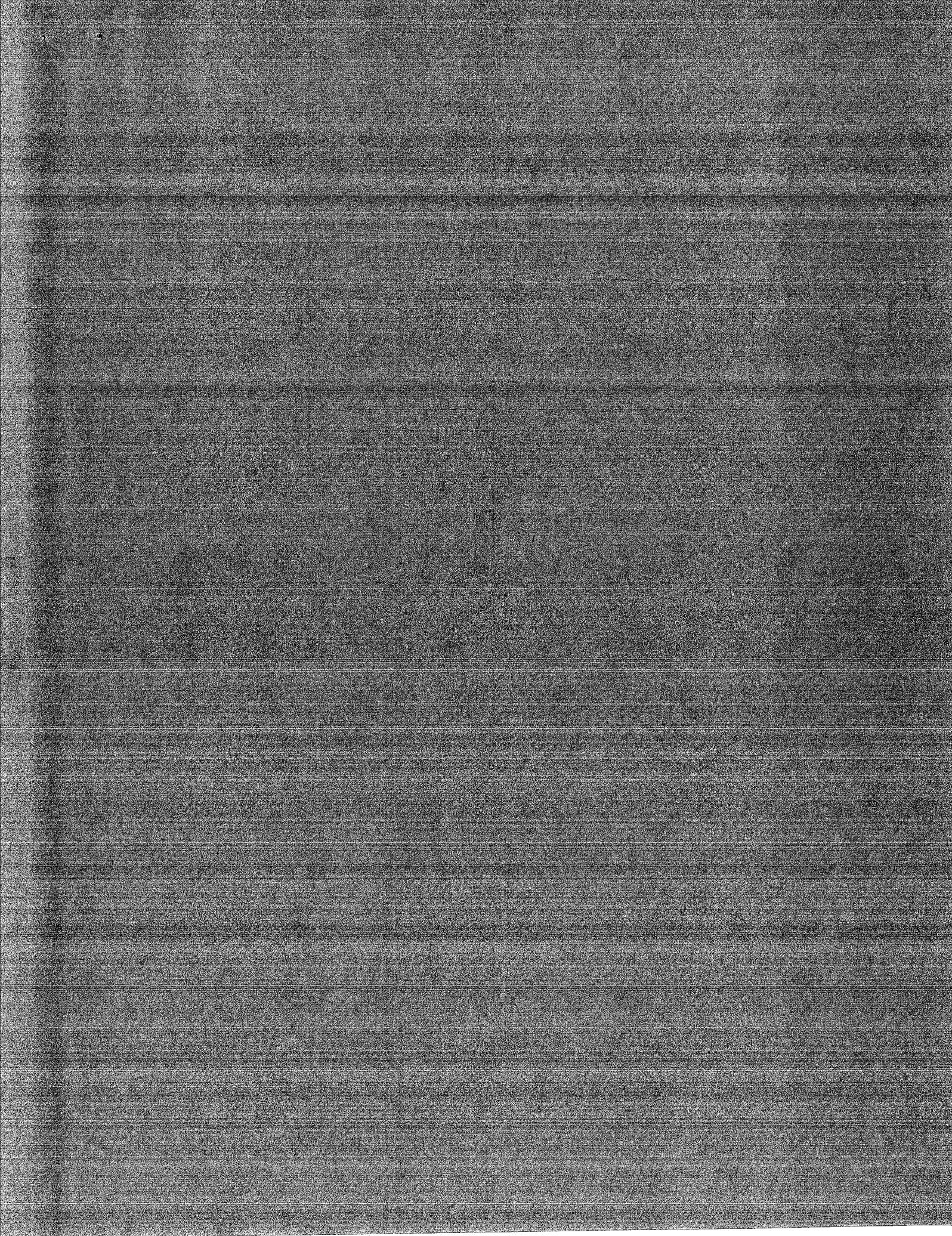
Howard C. Whitcomb, III, Esq.
COUNSEL FOR APPELLANT,
A. G., A MINOR CHILD

PROOF OF SERVICE

I certify that a copy of this Memorandum in Support of Jurisdiction of Appellant A. G., A Minor Child was sent by ordinary U. S. mail to appellee father, Mr. Patrick J. Garmyn, acting pro se, at 122 S. 29th Street, Wilmington, NC 28403; Counsel of record for appellee mother, Mr. Richard A. Karcher, Esq., at 421 North Michigan Street, Suite D, Toledo, OH 43604; and the Guardian ad Litem, Ms. Bree Noblitt Brown, Esq., at 318 Madison Street, Port Clinton, OH 43452 on December 14, 2012.



Howard C. Whitcomb, III
COUNSEL FOR APPELLANT,
A. G., A MINOR CHILD



IN THE COURT OF COMMON PLEAS
OF OTTAWA COUNTY, OHIO
JUVENILE DIVISION

JAN 21 2011

JUDGE KATHLEEN L. GIESLER
OTTAWA CO. JUVENILE COURT

IN THE MATTER OF:

AMELIA GARMYN
Date of Birth: 12/26/1995

CASE NO. 20630010

DECISION and
JUDGMENT ENTRY

This matter came before the Court for HEARING on November 1, 2010; November 2, 2010; November 3, 2010; November 5, 2010; and November 8, 2010 upon the Motion for Unsupervised Visitation filed on behalf of Father, Patrick Garmyn; the Motion for Change of Custody filed by the Guardian ad Litem and joined by Father; the Motion to Terminate Visitation filed on behalf of the minor child, Amelia Garmyn; and the Motion to Show Cause filed by Mother, Lolita Blay. Present in open court were the following:

Lolita Blay, Mother, *pro se*
Patrick Garmyn, Father
Timothy W. Hallett, Attorney for Father
Howard C. Whitcomb, Attorney for Amelia Garmyn
Bree Noblitt-Brown, Guardian ad Litem

FINDINGS OF FACT

1995

- 1.) Patrick Garmyn (hereinafter "Patrick") and Lolita Garmyn, nka Lolita Blay, (hereinafter "Lolita") were married in Lolita's home country of Russia in February of 1995. Mr. Garmyn brought his wife to the United States soon after their marriage, and they moved into the home of Patrick's brother, Joe Garmyn, in Archbold, Ohio.

- 2.) The couple began to experience marital difficulties soon after their marriage. Lolita testified that Patrick became mean, accusatory, and controlling. She claims that he would mock her and call her "stupid". At the time, Lolita could speak little English, and Patrick spoke no Russian. The couple communicated through writing.
- 3.) Lolita states that Patrick became physically abusive toward her. If she would disagree with him, he would hit her on the head with his hand. Patrick denies said allegations. There were no domestic violence charges filed against Patrick.
- 4.) In March of 1990, a restraining order was granted to Patrick Garmyn's former wife in the Sonoma County (California) Superior Court wherein Patrick Garmyn was prohibited from coming within 150 yards of her. Patrick was not charged with violating the protection order. NOTE: The Court cannot weigh the credibility of the allegations made by Mary Garmyn, as she was not present for direct or cross examination.
- 5.) Patrick and Lolita's only child, Amelia, was born on December 26, 1995.

1996

- 6.) In 1996, Lolita's mother, Natalia, traveled from Russia to visit with Patrick and Lolita for six (6) months. According to Patrick, she "overstayed her VISA" and was required by the immigration service to return to Russia.

1997

- 7.) Much discussion was had regarding an alleged assault by Patrick on Lolita's mother during her visit and soon after the divorce was filed.
- 8.) Patrick tells this story. He was dressing 15-month-old Amelia for the purpose of traveling to Toledo to obtain an American passport for the child. He was concerned that Lolita was going to take the child to

Russia, and he believed that the child could be more readily returned if she had an American passport.

- 9.) His mother-in-law began to hit him repeatedly and chased him across the street to his business. He entered the building and locked the door.
- 10.) Lolita states that she was at work and received a telephone call that her mother had been assaulted by her husband. Patrick told Lolita that he was attacked; however, Lolita observed bruising on Natalia.
- 11.) A police report was made by both Natalia and Patrick on March 25, 1997. Patrick claims that the police advised him that he had 30 days in which to file a complaint against Natalia. Lolita requested that he not do so, and the 30 days lapsed.
- 12.) According to Patrick, Lolita received her green card one month later and took her mother to file charges against Patrick. A complaint alleging assault was filed in the Napoleon Municipal Court on May 20, 1997. Patrick pled no contest to the amended complaint of disorderly conduct and paid a fine and court costs.
- 13.) During this time, Lolita filed a Complaint for Divorce in the Henry County Common Pleas Court.
- 14.) Early in the summer of 1997, Patrick was given temporary custody of Amelia, and Lolita had visitation and companionship every other weekend.
- 15.) In December of 1997, Lolita's mother returned to Russia. A few days later, Patrick received a fax stating that Lolita's father was dying and that they should all come to Russia immediately. Lolita asked Patrick to allow her to put Amelia on her Russian passport.
- 16.) Lolita dismissed her complaint for divorce.
- 17.) Patrick claims that one day Lolita "went to town with Amelia and did not come back". Lolita and Amelia went to Russia, and Patrick did not see them again for 6-7 months.

1998

- 18.) Lolita asserts that Patrick was fully aware of her plans. He described to her the route to Detroit Airport. Lolita had a return ticket for three months later; however, she claims there were problems in Russia and she did not return until June of 1998.
- 19.) The couple did have telephone communications during that time. Patrick stated that he wrote a document declaring that he would share money and his business with Lolita if she would return with Amelia from Russia.
- 20.) In June of 1998, Patrick picked up Lolita and Amelia at the Chicago airport. During the trip from the airport to the family's Archbold, Ohio home, Patrick stopped at a local convenience store. He asked Lolita to buy some Tylenol. When she came out of the store, Patrick and Amelia were gone. Patrick stated that he went to see his attorney, and he and the child returned home the next evening.
- 21.) On June 22, 1998, Patrick Garmyn filed a Complaint for Divorce in Henry County Common Pleas Court. Shortly thereafter, he was granted temporary custody of 2-year-old Amelia, and Lolita was granted supervised visitation with the child.

1999

- 22.) In February of 1999, Lolita was exercising her visitation in the presence of a teenaged supervisor. During the visit, Amelia was taken by ambulance to the local hospital. There were disputed claims by each of the parents as to whether the child was actually ill. Patrick believed this was a ploy by Lolita to remove Amelia again from his care, as he claims that Lolita had a friend waiting in the parking lot.

- 23.) Thereafter, Patrick took Amelia and "went on a three-month vacation" to Arizona, New Mexico and Costa Rico.
- 24.) While Patrick and Amelia were absent, the Henry County Common Pleas Court ordered in March of 1999 that Lolita be designated the residential parent of Amelia and that Patrick be held in contempt for his violation of the Court's orders pertaining to Lolita's visitation with the child. A bench warrant issued for Patrick's arrest and Amelia's detention into protective custody until the child could be safely returned to Lolita.
- 25.) Patrick was ultimately arrested in Key Largo, Florida. Several documents were found on his person at that time, including an Arizona driver's license bearing the name of "Michael James Phillips" with a picture of Patrick; a New York birth certificate for "Michael James Phillips"; a New York birth certificate for "Emelia Carmen Phillips"; a Certificate of Title for a 1991 Nissan pickup truck in the name of "Michael James Phillips"; an Arizona license plate; a monthly rental agreement between "Dr. R.T. Burton" and "Michael James Phillips" for a premises located at 588 E. Marble Peak Place, Tucson, Arizona; an Arizona voter registration for "Michael James Phillips"; and a Veterans Administration identification card bearing Patrick Garmyn's picture and the name of "Michael Phillips".
- 26.) Patrick acknowledged that there is no such person as "Michael James Phillips" and that he did acquire a different identity but did not use it. He claims his actions were based upon the fact that Amelia was taken by her mother to Russia for six months in violation of a custody order, and he was afraid that it would happen again.
- 27.) Lolita thereafter flew to Florida and retrieved the child. The two returned to Archbold, Ohio.
- 28.) On May 19, 1999, Patrick was indicted by the Fulton County Grand Jury on one count of Interference with Custody. Patrick thereafter pled to Attempted Interference with Custody, a misdemeanor of the first degree. In its' Judgment Entry of Sentence dated October 21,

1999, the Court suspended five months of incarceration and imposed two years of community control and a fine of \$1,000. Patrick was further ordered to comply with court orders stemming from the domestic proceedings and the recommendations of Dr. Wayne Graves.

29.) In November of 1999, Patrick was granted supervised visitation with Amelia.

2000

30.) On February 29, 2000, Dr. Graves issued his first psychological evaluation of Patrick, Lolita and Amelia. Some of his findings deemed particularly pertinent to this writer included:

Patrick's summary:

2. Patrick projects an image of gullibility and good intentions. He appears to present himself as if he is a victim here and fearful for his daughter's well-being.
5. He claims that Lolita is not what she seems to be. That she is strong-willed, tough and aggressive. He claims that she is impulsive, dishonest, volatile and not to be trusted. His perception of her is almost universally negative and based on the idea that the ordinary observer would not see these things in her.
6. He claims to be completely justified in his running away with Amelia to find a safe place. He presents that his flight was out of fear for Amelia's safety and to keep her from being taken to Russia again.
12. His behavior and beliefs have elements of grandiosity, narcissism, insecurity and paranoia. The testing supports the idea of an almost delusional belief system about those around him, acting as a threat to him or not understanding his specialness.
13. His mistrust is relatively pervasive. He uses poor judgment and engages in anger and a strong need to control, all of which are patterns similar to individuals who are abusive to those around them.
14. He seems to lack much ability to be empathic, although he can experience guilt feelings. He tends to justify his own actions and transfer responsibility to those around him.

15. Although he has been a fairly active part of Amelia's life and his beliefs about his daughter in some ways reflect positive parenting models, his suspicions, mistrust and judgment issues are going to continue to plague his interactions with his daughter over time.

Lolita's summary:

2. She appears to present as a mostly traditionally feminine woman, more comfortable reducing conflict, deferring to men, taking a more passive role, and seeking dependence as a basis for the relationship.
3. She is not entirely open in this evaluation process, but certainly more transparent and credible, in my opinion, than Patrick.
10. There is no significant psychopathology apparent to this examiner. She does display some anger, some mistrust, and a tendency toward judgmental beliefs, not unexpected in someone who has gone through her experience in this relationship.
14. She believes that it is fine for Amelia to never fully know all of the conflict or accusations that have been raised in this process.

Amelia's summary:

6. She is described by both parents as independent, capable of resisting, stubborn and can be angry.
9. The pattern of communication between the parents has been poor. The pattern of instability in the marriage pronounced and prolonged.
18. Father's fears about Amelia being taken to Russia could be addressed as well with court order. Amelia has only an American passport at this point, even though she has potential for dual citizenship and dual passports.
19. This child needs stability of living arrangement, life pattern and placement.

31.) The recommendations made by Dr. Graves were as follows:

"Therefore, it is my opinion that it is in Amelia's best interest that she be placed in the primary parenting responsibility and custodial placement with her moth, Lolita. For the time being the child needs to be continued in some form of individual treatment. This can be determined by appropriate consultation with the therapist. The evaluator believes that stability, safety and normalization should be the themes for Amelia's life...

A number of other events, at least as troublesome, can be minimized by ending the conflict, reducing risks to Amelia, and keeping her lifestyle and pattern stable.

At this point father's visitation, in my opinion, needs to continue to be supervised partly to prevent risk of flight, partly to be aware of, and conscious of, his tendency to try to induce ideas and beliefs into Amelia congruent with his own fears and distress. This supervision will probably need to continue into the foreseeable future, and the amount of hours can gradually be expanded and other supervisors, agreeable to the mother, can begin to be put in place as the court circumstances are resolved. Finally, it would probably be helpful if father had at least one other short contact with Amelia per week, simply because of the child's age. This increase in contact can be instituted as long as father is willing to accept this evaluator's recommendations and/or the court findings.

Although father has some significant and serious difficulties on a psychological level, I do not see him as a good treatment candidate. Imposing treatment as a condition of his contact with his daughter would build a lot of impediments into any therapeutic process. Father can be encouraged to seek treatment without making it mandatory. Any treating professional should have access to at least the summary portions of this report in order to untangle the web of complaints, counter-charges and allegations."

2001

- 32.) Patrick and Lolita were divorced by Judgment Entry of the Henry County Common Pleas Court on February 23, 2001.
- 33.) During the final divorce hearing, Patrick and his attorney expressed their concern to the Court that Lolita would take the child to Russia when she received her property settlement of \$40,000.
- 34.) Lolita specifically advised the Court that if she wanted to take the child back to Russia, she would go appropriately through the court system. She further assured the court that she has her life here in the United States and has no intention of leaving. Finally, if such would ever occur, she would abide by the court's orders and return the child.

28. Under ideal circumstances, she would have both her parents involved in a predictable and safe way in her life. And, she would be able to feel that going from one to the other was not a scary experience, or one marked by torn loyalties.
29. It is clear, to this examiner, that contact with father and the benefits of a father figure in her life, outweigh the risks associated with Patrick's behavioral controls or acting out.
35. These parents are not particularly good candidates for a psychotherapeutic intervention. Each is firmly convinced of the accuracy of their own views of the other parent, believe it unlikely that anyone else could understand the history of this case or the validity of their fears. They would not easily be able to adopt a productive view of their child from the other parent's point of view or understand fully the impact of their own beliefs on Amelia and her well-being. Any problematic behaviors in Amelia will likely continue to be blamed on the other parent.

45.) The recommendations made by Dr. Graves were as follows:

"Therefore, it is my professional opinion that it is in Amelia's best interest that she be placed in the primary parenting responsibility of the mother, Lolita, for the time being. All available safeguards to prevent mother leaving the court's purview should be instituted and enforced. Any measures that can be taken to prevent the legal exit from this country by Amelia should occur. This should take place not so much out of an assertion that the US is a superior culture to Russia for Amelia (but rather) as a way to increase the chances that Father can also plan a meaningful role in Amelia's life and development.

Amelia should be immediately placed in supportive psychotherapy with a well trained children's therapist who has access to these evaluations.

Movement from foster care to placement with a parent should happen as soon as is practical and safe enough. And a GAL or CASA should continue to be involved in this case for the foreseeable future.

If the court chooses to place the child with the father, Patrick, a more gradual process of reacclimation should take place, so that Amelia has more time to gradually become comfortable with father and his household. This process could be done in a 2 month period. And contact with mother should continue at the same pace as presently. Transitions should be at a neutral setting with no face to face parental contact in front of Amelia.

All new allegations of misconduct need to be resolved as expeditiously as possible for Amelia's sake and there should be no disruption in parenting time unless extraordinary circumstances dictate that is necessary.

Finally, this child's status should be reported and reviewed regularly to be responsive to her likely changing needs. However, changes in her schedule and contact with parents should not be easily interrupted or changed."

46.) On September 23, 2002, the parties entered into an Agreed Judgment Entry wherein Lolita was designated the residential parent of Amelia. Patrick was given visitation every other weekend, a midweek visit and extended summer visitation. Lolita was to obtain permanent residency status and to notify the Guardian ad Litem of her intentions to visit Russia. Both parents were allowed to travel in the continental United States. The Guardian ad Litem was ordered to hold Amelia's passport. Patrick was ordered to pay child support. NOTE: Lolita has not yet obtained her United States citizenship. She indicated that she will be eligible in January of 2011, and it is her intent to obtain that status then.

47.) To further assure visitation compliance, each party was ordered to deposit \$10,000 bond in an interest-bearing account. If either party were to remove the child from the continental United States in violation of the parental rights order, then the other parent would file a motion. A hearing would be scheduled, and the removing party could explain. If the parent and child failed to appear, then the other parent would receive the \$20,000 plus interest. Further, rights of the violating parent would be terminated.

NOTE: Said monies continue to be held by the Court.

48.) The next day, on September 24, 2002, the criminal indictment against Lolita was dismissed.

49.) Soon thereafter, Patrick moved to North Carolina. The parents of Patrick's girlfriend, Elisa, (now fiancé) lived there and were experiencing

health issues. Patrick also believed it was best to distance himself from Lolita.

NOTE: Patrick continues to reside with Elisa Edelman in Wilmington, North Carolina. Ms. Edelman is a registered nurse at Duke University Hospital.

- 50.) The parties met with a mediator and agreed to a schedule of long distance visitation, which began at Christmas of 2002.
- 51.) According to Patrick, the long distance visits went well, other than the ongoing struggles with Lolita to coordinate dates for the visits. The parents would exchange the child in parking lots without incident. The police were not involved in the exchanges.

2003

- 52.) The Court adopted the parties' agreement by Judgment Entry dated June 18, 2003.
- 53.) The parents agreed, in part, that Patrick would visit with Amelia during Christmas school vacation in the odd years, Thanksgiving in the even years, every Spring Break, and each summer from the Saturday after school is released to July 31st. The parties shared the transportation for Patrick's visits (unless he was \$400.00 behind in child support 7 days before his parenting time).
- 54.) Patrick was to have three phone calls per week with Amelia. Initially, these calls were occurring and appeared to be pleasant.
- 55.) Patrick continued to visit with Amelia in North Carolina for Spring Break, summer vacation and Christmas in 2003. They enjoyed such activities as going to the beach and the park, visiting Patrick's spa and salon, and jet skiing. Patrick indicated that Amelia never acted out, was angry, or became out of control.

- 56.) Patrick testified that Amelia began to talk about living in North Carolina. Upon his counsel's advice, Patrick took Amelia to a counselor in his area. Danielle McIntire saw Amelia on a number of occasions. She wrote a letter and soon thereafter, Patrick filed a motion for change of custody in April of 2004.
- 57.) In January of 2004, Lolita took Amelia to a therapist, Lucy Moreno, in Defiance. Lolita reported to Ms. Moreno that when Amelia came back from Christmas visitation with her father, her behavior had changed. The child was screaming, yelling, kicking and not listening.
- 58.) Lolita further reported that Amelia had stated that she wanted to die and also wanted her mother to die. Lolita expressed her suspicions that Amelia had been sexually abused. NOTE: There was no evidence of sexual abuse presented at trial.
- 59.) Ms. Moreno indicated that Amelia was concerned that her father would take her away from her mother and that her father was making negative comments about her mother.
- 60.) Although Amelia did not want to live with her father, she did not indicate that she wished to stop visiting him.
- 61.) Ms. Moreno counseled Amelia from January 8, 2004 to April 29, 2004. She closed her case when the family moved from the Defiance area.
- 62.) Leanna Thorndike, a kindergarten teacher from North Carolina, testified that she first met Amelia during the summer of 2004 when Ms. Thorndike worked at Patrick's spa and salon.
- 63.) Amelia and Leanna's daughter, Haley, were close in age. The families spent a great deal of time together, particularly during the summers.
- 64.) Ms. Thorndike described Patrick's relationship with Amelia as very loving. Amelia did not exhibit any fear of or dislike for her father. Amelia also had a very good relationship with Elisa.

- 65.) Ms. Thorndike also described the continuing communications that Amelia had with her mother while she was in Patrick's home. Patrick encouraged Amelia to call Lolita. He would dial the phone, hand it to Amelia, and then give her privacy during their conversations.
- 66.) She stated that she occasionally witnessed Patrick's attempts to contact Amelia when the child was with her mother. Patrick would finally reach Lolita, but he would be told that Amelia was asleep or at a friend's house.
- 67.) Christie Pemberton is a firefighter in North Carolina. Her husband is a deputy sheriff. She testified that she worked for Patrick's spa and salon and witnessed the relationship between Patrick and Amelia on a regular basis. They were affectionate toward each other and enjoyed many activities together.
- 68.) Ms. Thorndike and Ms. Pemberton both indicated that Amelia had expressed to them on more than one occasion that she did not want to return to Ohio. Amelia also told them that her mother and stepfather spoke badly of her father.
- 69.) Lolita met Jeff Blay (hereinafter "Jeff") in May of 2004. Jeff, a nuclear consultant, was first introduced to Amelia in August of 2004 when he and Lolita picked up the child from the airport following Patrick's summer visitation. At this first meeting, Jeff stated the "child was screaming and stating that she did not want to go back". He further stated that Amelia was kicking the car doors and stating, "I hate him. I hate him. Why do you make me go there? I am going to kill myself." She was 8 years old at the time.
- 70.) That same month, Lolita and Amelia moved to Oak Harbor in Ottawa County, and Amelia entered the third grade at Carroll Elementary School.
- 71.) Jeff and Lolita were married in November of 2004.
- 72.) In December of 2004, Amelia visited Patrick in North Carolina for the Christmas holidays. The pictures provided by way of exhibit show a little girl who appears to be enjoying herself.

- 73.) Amelia visited with her father in North Carolina during Spring Break and the summer of 2005. It was during these visitation exchanges that police presence began to be introduced at the request of Jeff and Lolita Blay.
- 74.) Lolita testified that it was necessary for her protection in light of Patrick's history of domestic violence. Jeff advised Amelia that the police were present for Amelia's protection.
- 75.) On one particular exchange in West Virginia, a police officer walked Amelia to the middle of the parking lot. They stopped, and then Amelia walked alone to her father waiting on the other end of the lot.
- 76.) When Amelia arrived in North Carolina for her 2005 summer visit, she advised Patrick that her mother and Jeff wanted to change her name to "Blay".
- 77.) Patrick had also been advised by school officials that Amelia was using the name "Blay" at school.
- 78.) Jeff explained that when he and Lolita discovered that Amelia was using the name "Blay" at school, they advised her that she must use her legal name.
- 79.) On two of Amelia's visits with her father, however, Amelia had packed sweatshirts and pants inscribed with the word "Blay".
- 80.) It is Patrick's opinion that his relationship with Amelia began to change when Amelia came to North Carolina and told him that Lolita and Jeff wanted to change her name to "Blay", and Amelia began referring to Jeff as her "dad".
- 81.) Jeff further testified that it was in 2004 or 2005 that Amelia began asking Jeff if he would adopt her. He told her that there was no need for that and that it could not happen anyway.
- 82.) Patrick testified that he continued to have difficulties in reaching Amelia by telephone after Jeff became involved. He encountered such

- obstacles as busy lines and full voice mail boxes. He stated there were "285 times" that Amelia was not made available by her mother. He was told that "she is not here", "she is asleep" or "my cell phone is dying". There were occasions when Patrick would call at a different time and be told by Lolita that "you missed your call", and she would hang up.
- 83.) On one occasion, Jeff told Patrick, "My daughter is asleep". Patrick advised Jeff that Amelia was his daughter, and Jeff exclaimed, "I will see about that."
- 84.) In September of 2005, Amelia began counseling with Barbara Feldmar of Bayshore Counseling. She has remained Amelia's counselor since that time.
- 85.) At their initial conference, Jeff and Lolita reported to Ms. Feldmar that Amelia was having much difficulty dealing with visitation.
- 86.) Jeff and Lolita advised Ms. Feldmar of their version of the history of this case. The counselor believed that Amelia was probably present during much of this explanation; however, she further believes that children have the right to know what has caused their living arrangements. Upon cross examination, she did acknowledge that it would be unfortunate for the child if the history as stated was false or exaggerated.
- 87.) Jeff and Lolita relayed no positive statements regarding Patrick, as Ms. Feldmar would have remembered any good remarks.
- 88.) She did hear that Lolita was able to make telephone calls to Amelia when the child was in North Carolina. She noted that Amelia did like some of the people that she would see in North Carolina.
- 89.) Soon after their contact began, Barbara Feldmar diagnosed Amelia with Anxiety Disorder NOS and Post-Traumatic Stress Syndrome.
- 90.) She based the diagnoses on the history as presented by Lolita Blay, Jeff Blay and Carl Anderson, Lolita's attorney, as well as the statements made by Amelia during their earlier sessions.

- 91.) She did not talk to Patrick, as she did not feel that it was her role to determine the correct story. She did acknowledge that Jeff and Lolita Blay exhibited a bias against the father.
- 92.) She specifically based her diagnosis of PTSD on what Amelia had gone through, knowing what had happened to her mother, being "kidnapped again" by her father, being fearful, and living in three foster homes. Further, Amelia exhibited signs of restlessness, avoidance, and "over-control".
- 93.) Specifically, Amelia did not want to visit her father. Further, Amelia stated that her father took her to another therapist and demanded that she tell the therapist she wanted to live with him. Finally, Amelia told Ms. Feldmar that her father asked her with whom she would like to live if he and her mother were dead. Patrick denies making either of those statements.
- 94.) Amelia did not like having to deal with the extended out-of-state visits. She has been "pretty consistent" with Ms. Feldmar about not wanting to go on the visits. The counselor believes they are made more difficult due to the ongoing motions filed with the court.
- 95.) On December 20, 2005, Patrick and Lolita entered into an agreement that was ultimately journalized by the Henry County Common Pleas Court. It was ordered, in part, that Lolita continue as the residential parent of Amelia, and Patrick have visitation for Christmas breaks in the odd years; Spring breaks in the odd years; Thanksgiving in the even years; all 3-days weekends; and summer companionship from the Saturday after school until the first Saturday in August.
- 96.) The next day, December 21, 2005, Jeff contacted the Carroll Township Police Department and advised Patrolman James Meek that he was to make visitation arrangements directly with Patrick. Patrick's brother, Joe, had left a voice mail message for Lolita to call him and set up the visits. There were phone conversations back and forth, with some yelling and profanity.

NOTE: There is no provision in the 12/20/05 Judgment Entry that indicates that Jeff (or Joe) is to be involved in making visitation arrangements between Patrick and Lolita.

- 97.) On December 23, 2005, Patrolman Meek wrote a letter at Jeff's request; however, he was not certain of the purpose for the request. He stated that he had "witnessed several times that when Patrick (ex-husband) either picks up or drops Amelia off, he leaves and when Lolita leaves Patrick turns around and follows her. I have also witnessed the same subject drive up and down State Rt. 19 until it is time to pick up his daughter at the school."
- 98.) Upon cross examination, Patrolman Meek acknowledged that such action did not mean that Patrick was following Jeff and Lolita. He did not stop him. He has never had a charge of threats by Mr. Garmyn against Mr. and Mrs. Blay.
- 99.) He did state that Patrick pulled his vehicle next to Patrolman Meek to introduce himself. Patrick was calm and accepted the fact that he was there. He was not belligerent.
- 100.) Amelia visited Patrick in North Carolina for the Christmas holidays from December 23, 2005 to January 2, 2006. The pictures provided by way of exhibit show a young girl who appears to be enjoying herself.
- 101.) Patrick introduced several letters written to him by Amelia during his visits, including several Father's Day cards. Each expressed Amelia's love for her father.

2006

- 102.) On January 4, 2006, Patrolman Meek was again contacted by Jeff Blay. He stated that his step-daughter had just returned from visitation with her father, and Jeff wanted some of the statements Amelia made to he and her mother on file. Patrolman Meek traveled to the Blay residence to meet with Amelia.

- 103.) Amelia, now 10 years of age, told the officer that her vacation with her father was okay. When asked if there was anything that happened that she did not like, she stated "yes". At first Amelia did not want to talk but she eventually "opened up".
- 104.) She stated that her father asked her while traveling in the car if she had a chance to choose with whom she would like to live. She stated that she did not know. Amelia stated that her father yelled at her and told her that she had better answer him or he would stop the car, get a branch, and beat her with it. Her father also asked her who in his family she would like to live with if her mother and father were dead. Amelia stated that her father did not strike her but did grab her arm at one point and push her into the bedroom. Finally, she told the officer that she was afraid of her father.
- 105.) Patrolman Meek stated that when he witnessed visitation exchanges, Amelia would get into Patrick's car without incident. She did not act out and seemed comfortable around Patrick and not in fear of him.
- 106.) On January 8, 2006, Lolita wrote down the events of the evening, apparently for further reference. She stated, in part,
"Today is Sunday, January 8, 2006. We were coming from Michigan to Ohio. Amelia was on Christmas Holiday program for children this night, and now afterwards we had to go home. Amelia did not want to leave and had a tantrum, but I told her we must go immediately and she can not play any more with her friends, because it was too late already. When we drove in the car on the road Amelia was screaming that she does not want to leave, she wants (sic) continue to play, and saying she hates everybody. I try to explain that we needed to leave and she should not be acting like that, or we will not be able to come back another time. She was crying and screaming (in) the car. I ask her why she was acting like this. She did not know. I asked if she acted like that in NC. Then she became furious and started to scream so hard: "No, I never said anything like that or scream." I said, "Why do you do it with me here?" She said: "Because you are my Mom and I know you love me." I said, "So, does that mean you can treat me like this?" And then she bursted in tears with very loud screaming: She said "... because I am afraid of him, and I hate him, and I don't want to go over there EVER. I am going to kill myself or I will run away!!!!..."
- 107.) Barbara Feldmar did not discuss these events with Amelia.

- 108.) On January 26, 2006, Barbara Feldmar sent a letter to Judge Denise Herman McColley of the Henry County Juvenile Court wherein she suggested the December Agreed Judgment Entry be modified to "one weekend visit each month, on a regular and predictable basis" as opposed to all three-day weekends. She stated, in part, that "... (F)or February, President's Day weekend would work well for her to have visitation with her Father..." She further recommended that "telephone calls be made during the week by 7:30 p.m.". No further limitations to the visitation schedule were recommended.
- 109.) During her testimony at the trial of these proceedings, Ms. Feldmar stated that, as a therapist, she should not be making statements regarding parental access.
- 110.) On January 31, 2006, Lolita filed a Motion to Modify Visitation Pursuant to the Counselor's Recommendations.
- 111.) On February 2, 2006, Lolita filed a Motion to Modify Visitation to allow the minor child to attend Girl Scout Camp during the summer.
- 112.) On President's Day weekend, Patrick came from North Carolina to pick up Amelia at Carroll Elementary School. He waited in the parking lot. A policeman approached his vehicle and advised Patrick that Amelia did not want to go. Patrick stated that he had just talked to her the evening before and did not anticipate any problems. He had flown 900 miles for the visit.
- 113.) He further testified that Jeff and Lolita Blay put their hands on Amelia's shoulders and stated, "Tell your dad, I don't want to go".
- 114.) Amelia eventually went for the weekend visit without incident. Later, she told her father that she wanted to stay home that weekend because Jeff and Lolita had told her they would take her skiing.
- 115.) The police continued to be involved in each exchange. Patrick described an exchange when the officer pulled his police cruiser within six inches of the back of Patrick's car so as to block him in. He indicated that if it was unnerving to him, it would be particularly so for a 9-10 -year-old child.

- 116.) By Judgment Entry of the Henry County Juvenile Court dated February 10, 2006, this matter was transferred to the Ottawa County Juvenile Court.
- 117.) This Court appointed Bree Noblitt Brown as Guardian ad Litem on March 28, 2006.
- 118.) In April of 2006, Patrick first contacted Barbara Feldmar. He asked her if she would work with an expert on Parental Alienation Syndrome.
- 119.) Patrick later met with Barbara and did tell her some of the history from his perspective. She indicated that he felt that all of Amelia's problems were due to Lolita and Jeff, and he seemed fixated on the parental alienation.
- 120.) Ms. Feldmar recommended to Patrick that he seek therapy for himself, which Patrick rejected.
- 121.) On April 27, 2006, Lolita filed a Motion to adopt the standard long distance schedule of Ottawa County (DR-4).
- 122.) Patrick and Lolita were able to work out a solution regarding Amelia's attendance at Girl Scout camp during Patrick's 2006 summer visitation. Patrick agreed so long as he could make up that time at the end of his regular summer companionship.
- 123.) Amelia went to North Carolina to begin her visit with Patrick. She enjoyed drawing pictures and writing affectionate notes to her father.
- 124.) On the designated day for the Girl Scout camp exchange, Patrick instructed Amelia to pack up her belongings. Amelia stated that she would be coming back. Patrick drove Amelia to the Oak Island Police Department (arranged by the Blay's) for the mid-visitation exchange. This would prove to be the last time Patrick would visit with Amelia in North Carolina.
- 125.) On June 23, 2006, the Guardian ad Litem filed a motion to temporarily stop all visits due to the child's stress and the need of the Guardian to finish her investigation, including review of father's criminal history. The *ex parte* order was granted that day.

- 126.) The Guardian ad Litem explained that she was very concerned for the safety of the child as well as her personal safety in light of the extreme allegations being made in this case, including hit men, protection orders, domestic violence, four kidnappings by both parents, international disputes, vandalism, and threats of constant violence. Amelia further expressed very negative feelings toward her father.
- 127.) The history she received was from Amelia, Lolita, Jeff and some members of Patrick's extended family.
- 128.) It was Barbara Feldmar's opinion that Amelia benefited from the cessation of visits, primarily in light of the problems regarding the logistics of the visits and the conflicts of the exchanges.
- 129.) The Guardian ad Litem explained that Patrick was still allowed telephone calls after the *ex parte* order. These calls became progressively worse.
- 130.) She stated that the scheduling of visits and telephone calls were very difficult. In most cases, Lolita created the issue.
- 131.) Pursuant to Judgment Entry of this Court dated August 4, 2006, the *ex parte* order of June 23rd remained in effect. Father was granted weekly telephone calls each Tuesday at 7:30 p.m.. Mother's motion to travel to Russia was denied for her failure to obtain permanent residency status.
- 132.) Much testimony was elicited concerning the return of Amelia's belongings from North Carolina after visitation was suspended. Amelia sent a letter to Patrick stating,
"Hello... Earlier I asked you if you could send my stuff (puppy & tomagotchi), now I am asking you again/Will you please send my stuff? My mom will send a check that will pay the shipping if it is to (sic) expensive. From: Amelia".
- 133.) Patrick reasoned that he believed that it would be only a short period of time before his visitation would be restored, and he could provide the items to Amelia in person. Amelia was quite upset with her father, and the items were then mailed to her in October of 2006.

- 134.) On January 5, 2007, this Court ordered that the Guardian ad Litem pick up Amelia and transport her to a visit with her father at Oak Haven Horse Farm and for further visitation as directed by the Guardian. Mother was instructed not to coach the child other than to encourage respect.
- 135.) The Guardian ad Litem noted that her relationship with Amelia began to deteriorate after this visit. It was the Guardian's suggestion that the supervised visit take place. After that, the Guardian was told by Lolita and Barbara Feldmar that Amelia was not happy with her.
- 136.) In February of 2007, Patrick underwent surgery for cancer. He suffered complications and was ill for approximately six months.
- 137.) The phone calls between Patrick and Amelia continued to be difficult. Patrick described one telephone call right after his cancer surgery. Neither Patrick nor Amelia were pleasant towards one another. When their conversation was ended, the telephone connection did not terminate. Patrick heard voices saying, "Way to go, Amelia. He's been dying for a long time. Did you know that your father tried to kill your mother? Did you know that your father tried to kill your grandmother?"
- 138.) Jeff testified that he has heard Patrick badger and scream at Amelia over the telephone. At times, Amelia would put on the phone on speaker. She would say to Patrick, "I want to get off the phone", and she would eventually hang up. She would later say, "I'm being yelled at all of the time. I'm called a liar."
- 139.) Patrick acknowledged that he has raised his voice in the past during telephone conversations with Amelia and that he has told the child that she lies.
- 140.) Jeff and Lolita had many discussions regarding the telephone calls with the Guardian ad Litem throughout 2006 and 2007. The Guardian advised Amelia to tape the telephone calls so that she could hear the conversations.

- 141.) On other occasions, Amelia would disappear when it was time for a phone call. Jeff would state to her, "It's just a phone call. Do it, and be done with it." It was Jeff's opinion that he and Lolita did not discourage phone calls.
- 142.) By Magistrate's Order, the child participated in a 1-2 hour diagnostic assessment conducted by Mike Novitski, LISW, CSAP. The clinician issued his report and recommendations on March 22, 2007.
- 143.) In preparation for the assessment, Mr. Novitski reviewed the court file, including the evaluations of Dr. Wayne Graves and Dr. Thomas Kunkle. He also spoke with Lolita as part of the interview process. He may have had contact with Jeff as well.
- 144.) Mr. Novitski found Amelia, approximately age 10, to be a "well-adjusted young lady". She was very tired of the arguing exhibited by both of her parents, and she felt that she was stuck in the middle of the conflict.
- 145.) He recommended that Amelia not be forced to have telephone contact with her father; however, he did not suggest that the parent and child be denied any access. Amelia, however, should not be forced to speak to her father for 20 minutes.
- 146.) Mr. Novitski indicated that he did not see any signs of parental alienation in this case.
- 147.) It was his professional opinion that Patrick was treating Amelia like a possession. He recommended that Patrick establish a counselor. He believed that the ongoing legal actions were driving a wedge between father and child. He specifically noted in his recommendations, in part: "...It would be in the best interest of Amelia if the court proceeding regarding visitation and or custody were to cease. She should not have to chose (sic) between her parents or 2 people who she loves. Children should never be placed in a situation where they have to choose between parents."
- 148.) Mr. Novitski stated that Amelia was upset with Patrick because he was "bringing her back to court"; however, the clinician acknowledged that he was not aware of who was filing motions with the court.

149.) On August 6, 2007, Barbara Feldmar provided a detailed update of her counseling relationship with Amelia. She concluded her remarks with the following:

"... It is not clear to me how much potential there is to repair the relationship with her father, or how that could occur, given the long distance between where they live. I am concerned about Mr. Garmyn's inclination to see the family dynamics in terms of "Parental Alienation Syndrome," which he has brought up to me, sometimes stated as asked about by this Attorney. Clearly, there is no respect left between he and his ex-wife. But it would appear to me, seeing things through this lens, in issues effecting Amelia, can only cause distortions in looking at things into extremes of "black and white, good or bad". Thus, what might be a child's normally hesitant or confused responses on the telephone can too easily be interpreted as the result of the other parent's attempt to turn the child against the parent.

What I feel is needed for Amelia, is an appreciation of what the above approach does to her, and a recognition that she would gain so much more from having parents who can try to increase their flexibility and sensitivity with one another, for her sake. She also needs stability and predictability in her emotional experiences, to lessen her need to have to figure out how to avoid provocations and anger, which only creates fear and confusion for her. We would hope to lessen the extent of fear, anxiety and confusion with which she must cope, before negative strategies and defensive measures become ingrained and fixed aspects of her personality..."

150.) Apparently, Amelia has occasionally been obstinate with her mother and stepfather, as she has written a letter to them stating that she is sorry for the way she has treated them in the past.

151.) Barbara Feldmar testified that she would have worked with Mr. Garmyn if he had been more inclined to work with her. The first time she spoke to him, he mentioned "parental alienation". He always blamed Mrs. Blay.

152.) Patrick reported to Ms. Feldmar that he had written a letter to Amelia apologizing to her for the family's conflict.

153.) By Magistrate's Order dated September 5, 2007, Dr. Wayne Graves was to conduct a psychological evaluation of Amelia and all others deemed pertinent.

154.) In the Fall of 2007, Amelia entered sixth grade at the Oak Harbor Middle School.

155.) Jeff testified that when he first met his stepdaughter, Amelia's grades were good (A's, B's and C's). He noted that in seventh grade, Amelia had difficulty with her classes. He would spend up to three hours a night helping her with her homework. Also, Amelia's teachers were helping her to study and get her homework done. Amelia began to receive C's and D's.

2008

156.) On February 28, 2008, Dr. Wayne Graves issued his third psychological evaluation of Patrick, Lolita and Amelia. Some of his findings deemed particularly pertinent by this writer include:

Lolita's summary:

2. She presents without much apparent acceptance of personal responsibility for her part in this conflict. She does not have or demonstrate any real insight into her own self and her effect on her daughter.
3. This is a rather assertive woman who presents with intensity in a near demanding style and with significant interpersonal and emotional push. It is likely that her daughter is acutely aware of her mother's emotional intensity.
4. She is frequently annoyed, judgmental sounding, and accusing, even if she does so in the name of protecting herself and her daughter.
5. She and Jeff seem to resist making Amelia available for this evaluation process and require or assert the need for a number of adaptations in order to prevent Amelia from missing any school or sporting events. She does not seem concerned with a recent drop in school performance.
9. It is clear that she sees herself as a victim. She does not seem to attribute any of Amelia's apprehensions or fearfulness to herself. She interprets most, if not all of Amelia's behavioral difficulties to be a result of Patrick, rather than seeing any possible contribution she might have to the situation.

10. She paints Patrick as violent and dangerous to everybody she communicates with, including her husband, Amelia's school, counselors, and police, as well as the courts. She is apparently quite persuasive about her view.
11. She interprets Amelia as being brave and more assertive when Amelia pushes her father away.
14. She is not naïve about an alienation pattern. She has made active requests to stop father's involvement entirely since 2002. This orientation is not likely to change.
15. Her actions are clearly alienating in character, even if their intention is protective. There is also some more malevolent motive at work, it appears.
16. Jeff is in full support of Lolita, and seems to be acting in a kind of protective role as a white knight.
17. He does not have much detachment or objectivity, and has fully endorsed Lolita's version of history.
18. He has taken on the role of father as replacement for Patrick, and is willing to do so with not much recognition of Amelia's potential need for her own biological father.

Patrick's summary:

2. He still presents as somewhat insecure, and mistrustful. Although he is not as grandiose or narcissistic sounding as he used to be, at least in terms of his presentation in this evaluation.
4. He likely would have restricted mom's visitation, if he had the primary parent, out of his own fears and beliefs.
5. He is somewhat naïve and unrealistic in his ideas about self and others, and has always been.
10. There are no clearly documented episodes of violence or unusually impulsive judgment problems over the last 6 or 7 years. Predicting rare events is difficult and there is a strong bias to identify potential risks, in order to be safe, that are actually of rather low probability. (false positive errors)

11. He continues to try to make efforts toward contact with his daughter. His persistence is a good indicator of the level of connection that he feels.
13. He has strong concerns over the pattern of alienation that he sees happening with his daughter, and believes that much, if not all, of it is attributable to Lolita and her husband.
14. He is feeling quite usurped by the stepfather, but then, perhaps, appropriately so.
15. He has been angry and frustrated in his verbal interactions with his daughter over at least the last 18 months, accusing her of lying and being quite annoyed and dismissive of her. This pattern may have been present for some time. He seems to clearly be trying to force concordance from his daughter.

Amelia's summary:

2. She has been the subject of struggle and controversy since her birth. She has had no respite...
4. ...She has had significant acting out and behavioral struggles for the last few years. The precipitants of that acting out are multiple and complex.
6. She has spent most of her developmental years in an atmosphere of relatively intense apprehension and fearfulness that she has observed in both of her parents. She learned to be less trusting. There will be long term consequences from this disturbed atmosphere to her ability to form a positive and functional intimate relationship.
7. She has also learned to be careful and circumspect in her thoughts and words. She has become gradually less open with all those in her life. She is still more open and trusting with her mother than her father.
8. Phone calls with her father used to be more positive in the apparent interpersonal exchange. They have been gradually growing more uncomfortable. Some of them more recently have been, at times, confrontational and psychologically coercive, and because of that, they have been damaging to her sense of safety.
13. She has had some productive involvement in treatment or counseling settings. The goals of that treatment have not been clear. For the most part, mother was the one who got to frame the need, goals and content for the treatment.

14. She seems to still be experiencing some divided loyalties, because there is no safe room in the middle of her parents for her. Although, in general, she is much more allied with her mother.
16. In visits, in observation with father, she is distant more than fearful, and resistant, even petulant more than apprehensive. Some of her presentation is angry and dismissive of him.
17. During those times, she displays a gradual increase in verbal output and response, but is still quite limited in her willingness to interact or to relax her guard.

Family Dynamic:

1. Amelia is gradually increasing the level of alienated feelings and behaviors that she has with her father. This process, however, is not only a reaction of Amelia (but also) to living with her mother and mother's attitudes and fears.
 2. This alienation has been a gradually increasing kind of reaction that is a combination of Amelia's developing identity and individual feelings, Mother's apprehensive fearfulness, and mother's sometimes deliberate limiting or sabotage of father's relationship.
 3. It is also a result of father's inept handling of his contacts of Amelia, his own psychological rigidity and the problematic parental communication, as well as his decision to move away, and the consequences of his own past behaviors and poor judgment.
 4. There is not a lot of substantial change in these parents over time. So, Amelia is growing up and making some choices for herself in order to preserve some degree of sanity in her own world.
 6. There is no safe middle ground for Amelia between these parents, and in my opinion none that is likely to develop. Each is convinced of the validity of their own complaints of the other parent.
 7. Using therapeutic methods to try to help Amelia adjust to the parenting process would not have any effect without substantial change in the attitudes of the parents in this process. And they are not likely to change.
- 157.) The recommendations made by Dr. Graves were as follows:

"Therefore, it is my professional opinion, to a reasonable degree of psychological certainty, that no option available to this family is likely to have a clear positive outcome. I continue to believe that some contact with

father is important, even if it is not particularly obviously helpful. I would recommend that father have supervised visits, no more than three or four times a year in the local (Oak Harbor) area of a duration that is in the range of two-to-four hours, and that could include activities away from a specific supervised physical setting (movies, park, picnics, etc.) I would also recommend that at least part of these contacts occur with or in a therapeutic setting with a counselor capable of managing the complications of this post-divorce process, who is used to working with the courts, and able to respond to visitation and parenting time conflicts and able to coach father in regard to options and possibilities for his communication with his daughter.

I would also recommend that father and daughter engage more in written forms of communication than in phone calls, even though I would suggest that there continue to be some kind of attempt at phone calls on a weekly basis. Again, I think that it would be better with Amelia initiating them with some degree of flexibility about the time, if not the day on which they occur.

At best, this is a set of recommendations that has significant flaws and limits on all participants, and can easily deteriorate; but it seems to provide the best options for all concerned while still allowing some kind of parent-child interaction that will provide some degree of safety and predictability.

This examiner, again, would urge that both parents re-examine, expand and open themselves up to other ways of looking at the situation, even with therapeutic assistance, if necessary, so that they can find ways to make the atmosphere between them for their daughter something more benign and less toxic."

158.) The Magistrate issued a Decision on March 12, 2008 addressing Patrick's motion to modify his parenting time limitations. Patrick was to have supervised visits with Amelia four times per year in the Oak Harbor/Port Clinton area. Further, father and daughter were to write four letters to each other per year and to talk by telephone two times per month. Said calls were to be placed by Amelia's counselor, Barbara Feldmar.

NOTE: After consulting with her clinical director, Ms. Feldmar later advised the court that she would be unable to provide assistance with telephone calls.

- 159.) The relationship between the Guardian ad Litem and the child continued to be strained. The Guardian spoke regularly with Ms. Feldmar through phone calls, e-mails, faxes and face-to-face meetings.
- 160.) Pursuant to Judgment Entry of this Court dated June 9, 2008, it was ordered that Patrick would have visitation supervised by Stephany Skrbina for four hours in July, six hours in August, 8 hours in September and then continuing thereafter every three months. Each parent was ordered to make no disparaging remarks about the other parent in the presence of the child.
- 161.) On July 22, 2008, Ms. Skrbina met with the Blay's and Amelia in their home. She first talked with Jeff and Lolita privately. The concerns expressed by Jeff and Lolita were that Amelia be protected from any harsh statements made by Patrick and that she not be abducted.
- 162.) Jeff and Lolita advised Ms. Skrbina that Patrick was dangerous and had a hired a hit man at one point. Lolita made comments regarding acts of domestic violence she had endured during her marriage to Patrick.
- 163.) Jeff displayed a large binder filled with pages regarding this case. At the end of their initial conversation, he stated to Ms. Skrbina, "As you can see why, I would like to adopt her."
- 164.) Amelia told Ms. Skrbina that she feared that her father would be mean to her. The supervisor assured the child that she would be protect from such statements.
- 165.) At a later time, Ms. Skrbina met with Patrick at a local restaurant. He explained his version of the history of this case and described the visits that he enjoyed with Amelia in the past. Ms. Skrbina saw evidence of a positive relationship.
- 166.) The first supervised visit took place at Nagoya Restaurant in Port Clinton on July 23, 2008. Present at that time were Amelia, Patrick, and Ms. Skrbina.
- 167.) Initially, Amelia was reluctant to engage; however, Patrick brought pictures of North Carolina "to break the ice". Amelia appeared to relax, and by the end of the visit, Amelia was initiating conversation. The

supervisor noted that Amelia did text on her cell phone a great deal during the visit.

- 168.) She further noted that Amelia was hesitant to answer some of Patrick's questions about her life in general. When this occurred, Patrick did not insist that she answer and moved on to another topic.
- 169.) After the visit, Ms. Skrbina advised Jeff and Lolita that Amelia would not tell Patrick the names of her pets. Their response, in part, was "Thank God, she didn't tell him that stuff, because we think he killed our family dog".
- 170.) Jeff testified that Amelia was upset after the visit because Ms. Skrbina forced her to talk about stuff she did not want to talk about. When Jeff and Lolita picked up Amelia at Nagoya's, Amelia walked over to them and said that Ms. Skrbina was a liar and that she did not want to be around her anymore.
- 171.) Ms. Skrbina transported Amelia for the first visit. Jeff then questioned Ms. Skrbina regarding her liability insurance. The supervisor advised him that she had liability and malpractice insurance. Lolita then filed a subpoena requesting the insurance information and filed a motion to hold the supervisor in contempt when it was not provided. Jeff thereafter went to the office of Ms. Skrbina's insurance carrier and requested the information directly and determined that she did not have business insurance but did have personal liability insurance.
- 172.) The next visit occurred at Walmart. Amelia wanted her father to buy some items for her dog. Father and daughter were walking together, and Amelia appeared to be happy. Other than Amelia calling her father a "jerk" or "cheap" when he would not buy something, it was the supervisor's opinion that the visit went well.
- 173.) Jeff testified that it was around the second visit that Amelia started cutting her arms with a blade. He talked to Barbara Feldmar about it. When Barbara discussed this with her, Amelia denied that she was cutting. She may have stated that one of her friends did that. Ms. Feldmar did not believe that Amelia was truly suicidal or homicidal.

- 174.) Ms. Skrbina testified that the visits began and ended the same. Patrick would try to make a normal exchange; however, Amelia would not acknowledge him. She further noted that in the presence of the Blay's, Amelia would show no effect or interest. At the end of the visit, Amelia would stop interacting with her father as soon as she saw Jeff and Lolita.
- 175.) Ms. Skrbina also noted that her relationship with the Blay's began to deteriorate after the second visit. She began to have trouble arranging the visits. As the supervisor, it was Ms. Skrbina's task to determine the dates of the visits. The Blay's would suggest some dates, and Ms. Skrbina would call Patrick. When she called the Blay's back to confirm, she was told that Amelia was busy with an activity.
- 176.) Jeff testified that he and his wife had specifically advised Ms. Skrbina early on that they would not be available the weekend of September 12th, as they had made plans to be gone for the weekend. When they expressed their frustration to Ms. Skrbina that she had scheduled the visit on that weekend, Ms. Skrbina stated, "too bad". Jeff stated that the family would leave their function on Sunday morning and be back in Ohio for the scheduled visit.
- 177.) On August 27, 2008, a hearing was held on Patrick's Motion to Show Cause regarding ongoing problems with telephone calls to Amelia. The parties settled their differences and agreed that Patrick would have two (2) telephone calls per month, facilitated by Stephany Skrbina, at times determined by the parents and the supervisor. Patrick thereafter withdrew his pending motion. The parties also agreed that Adrienne Skrbina could substitute as supervisor for the upcoming visit on September 14, 2008.
- 178.) The third visit thereafter occurred on that date with Adrienne (Skrbina) Finley, a licensed social worker and daughter of Stephany Skrbina. (Ms. Skrbina had undergone back surgery).
- 179.) She and Patrick first met at a local restaurant in Port Clinton. Jeff testified that they dropped Amelia off at a "bar" which smelled of smoke, and Amelia did not like it.

- 180.) Ms. Finley noted that Amelia was very "stand-offish" and would not make any eye contact with either Patrick or Ms. Finley. Patrick made consistent attempts to engage her. Amelia did not appear to be afraid of her father.
- 181.) The three went to Put-in-Bay for a 7-hour visit. Amelia's demeanor changed during the visit, as she began to respond to Patrick's questions. They joked and laughed together.
- 182.) Ms. Finley noted that Amelia would block her face if Patrick tried to take her picture or would try to delete her pictures from his camera.
- 183.) Amelia also called her father names such as "cheap" and "mean". Ms. Finley estimated that Amelia called Patrick a "jerk" at least ten times. Patrick would not address the comments but would try to engage Amelia otherwise.
- 184.) It was Ms. Finley's opinion that Patrick's visits with Amelia did not need to be supervised in the future.
- 185.) Between the third and fourth visit, Ms. Skrbina attempted to arrange some telephone calls between Patrick and Amelia. The supervisor testified that there appeared to be ongoing logistical problems with arranging the calls.
- 186.) Much testimony was provided regarding the visit in December of 2008. It was Ms. Skrbina's opinion that Amelia and Patrick would enjoy one of the water parks in an adjoining county, as there were few options for winter visits in Ottawa County. She also thought it would be beneficial to have Amelia bring a friend.
- 187.) Mr. and Mrs. Blay objected to each of these suggestions, indicating that the court order specifically limited visits to Ottawa County and no mention was made regarding the inclusion of friends.
- 188.) The Guardian ad Litem thereafter moved the Court to modify the visitation order to allow the suggested visitation terms, and same was granted.
- 189.) Ms. Skrbina insisted that Patrick reserve a room so that they would have a safe place to put their personal items and to make plans for the day.

Further, Patrick had decorated the door of the room for Amelia's birthday and had presents to give to her during the visit.

- 190.) On December 20, 2008, Jeff delivered Amelia and her friend to Kalahari at approximately 3:00 p.m.. Amelia made no eye contact with Patrick or Ms. Skrbina.
- 191.) During introductions, Patrick stated to Amelia's friend, "I met you before. I saw you playing at a basketball game". Jeff expressed concern regarding this statement because he (Jeff) had never given a basketball schedule to Patrick.
- 192.) Jeff thereafter left, and Patrick, Ms. Skrbina, Amelia and her friend headed toward Patrick's hotel room. The girls were laughing and texting on their phones. When they got to the room, Amelia stated that she was not going into the room.
- 193.) Ms. Skrbina explained that the plan was to have the girls put their coats, hats, gloves and backpacks in the room. Patrick would give Amelia her Christmas and birthday gifts, and then they could participate in various activities within the water park.
- 194.) Amelia suggested that they go to the restaurant and talk.
- 195.) Ms. Skrbina testified that they were in a busy hallway, and she wanted to have a "safe place" where they could also maintain confidentiality. Amelia continued to refuse to enter the room. When the supervisor asked her why, Amelia stated, "Because I don't have to."
- 196.) At this point, Ms. Skrbina produced a court order regarding the visit. She told Amelia that she could get in trouble with the court if she refuses to participate in the visit. Again, Amelia stated that she did not have to enter the room and would not to do so. She also asked Ms. Skrbina why she was being so mean to her.
- 197.) Ms. Skrbina made the decision that Amelia would not avail herself of the supervisor's care and control, and thus, the visit would have to end. The supervisor stepped into the hotel room and called Lolita who, in turn, called Jeff. While she was on the phone, Patrick stated that Amelia and

her friend "took off" in the hotel. Amelia was heard to make the comment, "Stephany is stupid, fat, and a liar".

198.) Jeff received the following text messages from Amelia:

- a) 3:14 p.m. "Help me"
- b) 3:18 p.m. "She is forcing us in room 7=\$lily\$"
- c) 3:20 p.m. "Help now"

199.) When Jeff called, the supervisor asked him to call Amelia and instruct her to meet Ms. Skrbina in the lobby. (Jeff refused to give the supervisor Amelia's cell phone number). Ms. Skrbina sent Patrick to look for the girls.

200.) Approximately 20-30 minutes later, Jeff entered the hotel with a security guard. He was on the phone with Amelia and determined that the girls were in one of the restaurants.

201.) Amelia was familiar with Kalahari, as she had been to the water park on approximately five occasions with family and/or friends.

202.) The girls were thereafter secured, and they left with Jeff.

203.) Upon their return home, Jeff contacted the local police department to advise that the visit did not go well and to request extra patrols of his residence during the holidays.

204.) It was the supervisor's opinion that Patrick was never a threat to Amelia during the visit. Rather, she believed that Amelia was simply defiant. It was her further opinion that there was no need for Patrick's visitation to be supervised in the future.

205.) On December 22, 2008, Lolita (and Jeff) filed a Motion to Remove Skrbina Associates and Stephany Skrbina from involvement in the case.

2009

206.) Lolita (and Jeff) filed several motions throughout January, February, March and April of 2009, including a motion to have Stephany Skrbina found in contempt for her failure to provide information to them pursuant to subpoena; a motion to change venue and supervisor for

supervised visitations; a motion to deny access to Father of Amelia's counseling records; and a subsequent motion to show cause for Patrick and his attorney.

207.) On February 15, 2009, Patrick sent a letter to Amelia (presumably in accord with the Magistrate's Decision of March 12, 2008). The letter stated,

"Hi, Goose! How are you doing today? Well I hope that you are great, really great. You know Amelia dad loves you very very much. And I want to tell you know matter what happens I will remember all of the great times we had so you see dad will not forget you. Know matter what happens I will always be there for you.

It was cold here this week very strange weather. How about you are you ready for warm weather and getting back to surfing? I have all of your stuff ready for you!! And you have your job ready and waiting for you dog groomer, and vet tech!

I hope to hear from you soon. So hang in there for a while longer I promise things will get better, and I will make sure that you find out the truth about all the negative things that you have been told. So until I see you again. Remember be nice. Think before you speak. Treat people with respect and always think for yourself do not just let people put words in your mouth. I send you all my love from the beach to the sun and infinity and back to the beach. HANG TUFF GOOSE! Love Dad, Elisa Ivory, Missy & Oliver"

208.) Amelia received the letter on or about February 19, 2009. She had talked with the Guardian ad Litem earlier in the day. While she was home alone with Jeff and they were doing homework, Amelia went to the computer and typed a response to her father in rough draft. It stated (with handwritten changes in italics),

"To Whom It May Concern: First of all I want to say that no, I am not ready for the warm weather in North Carolina because I am not going to go there! Second I don't want to have the job you are offering with the dogs, thanks, but NO THANKS! Third, things are better *the way they are now*. I'm where I want to be right now, and I am sorry if you don't like that. Also if you think my parents are feeding me with negative information, *they're* not! They are the one's who make sure I call you. Personaly (sic) I'd rather not make that phone call, but unfortunately I have no choice.

Remember how you said "always think for yourself, and do not let people put words in your mouth"? *Also sometimes you should think for other people, not just yourself. I think the only person you think about is*

yourself. You should stop trying to put words in my mouth, cause you're the only one trying to make me say things. You're the only one who has been putting words in my mouth.

For example:

1. "Are you ready for the warm weather and getting back to surfing?"
2. "I have all your stuff waiting for you."
3. "And you have your job ready and waiting for you, dog groomer, and vet tech."

All of these sentences are implying that you assume I'm coming over, BUT I'M NOT!!! Amelia Natalia Garmyn P.S. Bree this is rough draft of what I will send to bio-father. If you have any problems with me sending this please contact my parents.

209.) Amelia thereafter made the necessary changes and sent the letter to her father.

210.) A hearing commenced on April 3, 2009 before the magistrate on all pending motions. A Magistrate's Order was issued April 10, 2009 wherein it was found, in part, that "neither of the motions make any allegations that father did any wrongdoing. Ms. Skrbina and her daughter shall continue to supervise according to the order that 'visits shall be every three (3) months for eight (8) hours.'"

211.) Attorney Richard Koehn entered his appearance as counsel for Lolita on April 23, 2009.

212.) Attorney Koehn suggested that James Bedra provide supervision for Patrick's visits. The parties agreed, and a Magistrate's Decision was thereafter issued.

213.) Before he retired, Mr. Bedra worked as a supervisor for Lucas County Children's Services for 13 years. He has also worked for the Lucas County Prosecutor's Office and the Ohio Parole Board.

214.) He met Amelia at the law office of Bree Noblitt-Brown on May 23, 2009. He noted that Amelia seemed anxious and reluctant to be there.

215.) This visit included Patrick, Elisa (Patrick's fiancé), Amelia and Mr. Bedra. They went to Put-in-Bay for the day. The visit started slow, but as it progressed, Amelia grew more spontaneous. Amelia particularly

- enjoyed shopping, and her father purchased some items for her. It was Mr. Bedra's opinion that the visit was a positive experience for all.
- 216.) Amelia's next visit was in June of 2009, with Patrick, Elisa and Mr. Bedra present. Everyone met at a mutually-agreed location in Oregon, Ohio. There was some discussion about Amelia's use of her cell phone. During the first visit, Amelia had used her cell phone to excess, and it was Mr. Bedra's understanding that she would not be doing so on this visit.
- 217.) The texting issue became a problem during the June visit. Mr. Bedra estimated that 150-plus text messages transpired that day. Both he and Patrick tried to curtail use; however, neither wanted to "come down hard on her".
- 218.) During the second visit, the group went shopping again. Amelia purchased some CDs for her father from her own funds. She presented them to Patrick as a birthday gift along with a card.
- 219.) It was Mr. Bedra's opinion that the visit went well.
- 220.) He did mention Amelia's excessive phone usage to the Blay's, and Lolita and Jeff appropriately chastised Amelia for abuse of the cell phone.
- 221.) Patrick's fiancé was not present during the third visit. Lolita and Jeff brought Amelia to the designated location to meet Patrick and Mr. Bedra. Initially, Amelia would not leave the car. Eventually she did with some encouragement by the Blay's, and the visit commenced.
- 222.) Mr. Bedra noted that the visit was strained. Amelia seemed agitated and quiet.
- 223.) Patrick had done some research of activities in the area, i.e. putt-putt golf, go-karts, batting cages, etc. When they engaged in those, Amelia seemed to "spark up" and have some fun. Amelia and Patrick began to have more normal conversation and talked about school, grades, past experiences, grandparents, holidays, etc. There was nothing forced. Amelia displayed no fear.
- 224.) About 5-6 hours into the 8-hour visit, Amelia texted Mr. Bedra and told him that she wanted to go home.

225.) He did not believe the text was made out of fear, but more out of boredom. She did not give him a reason when he asked her why. When they were having lunch, Mr. Bedra told Patrick that Amelia had something to tell him. She stated she wanted to go home. Patrick remained calm and said that he was disappointed, but if that is what she wanted to do, that is fine.

226.) When they returned to the exchange site and were waiting for Lolita, Patrick sat in his car while Amelia and Mr. Bedra sat on a parking lot curb. Mr. Bedra felt compelled to ask Amelia why she did not want to continue the visit. Her only response was, "I don't like my father".

227.) After Lolita and Jeff picked up Amelia, Mr. Bedra received a telephone call from Amelia stating that while they were in the restaurant and Mr. Bedra stepped out to make a telephone call, Patrick told Amelia that she would "be one sorry girl for doing this". Amelia did not tell Mr. Bedra this while waiting in the parking lot, and Mr. Bedra did not know the context of the statement if it was, indeed, made.

NOTE: This same language was included in a letter from Barbara Feldmar to Magistrate Wendy Wood dated August 6, 2007. Ms. Feldmar stated, in part, "... During this period (*early 2007*), Mother reported that in one phone call from Father, Amelia was told that "she was going to be one sorry little girl one day." I do not know if Amelia reported this to her, if Mother listens to the phone calls, or both, and whether this reported comment could be referring to Father's illness..."

228.) Mr. Bedra did not schedule any further visits. It was his opinion that he could not ethically continue to supervise these visitations because there was no need for further supervision. At no time did he ever see any risk of harm to Amelia by her father or feel that Amelia was in danger.

229.) Jeff provided telephone records demonstrating that approximately 15 calls (lasting 4-7 minutes) were made by Amelia to Patrick from January 18, 2009 through August 6, 2009.

230.) Patrick testified of an unusual telephone call he received from Amelia on August 9, 2009. During their 18-minute conversation, Amelia

indicated that she intended to find her way to an airport and to come to her father's house. Patrick called his attorney and the Guardian ad Litem the next morning, as he feared his daughter may be running away from home.

- 231.) That was the last telephone call between Patrick and Amelia.
- 232.) He has attempted to call, but there has been no answer. This past summer on at least two occasions, someone did answer and then promptly hung up.
- 233.) In the Fall of 2009, Amelia enrolled in eighth grade at Maumee Valley Country Day School.
- 234.) During her first year, Amelia received the following grades:
Math: D
Choir: B
Physical Education: A
Science: C
Spanish: F
Social Studies: F
- 235.) Her therapist indicated that Amelia was not studying as much as was needed, and Amelia was shy in terms of asking for help.
- 236.) Jeff suggested that Amelia's grades began to decline when Amelia got notice that her father was asking for unsupervised visits.
- 237.) It was then decided that Amelia would return to Oak Harbor High School the following Fall. Over the summer, there were some difficulties. When Amelia went to volleyball practice, some of the other girls were mean to her. Mr. and Mrs. Blay thereafter decided to return Amelia to Maumee Valley Country Day School and were able to obtain financial aid.
- 238.) Patrick testified that it has been difficult to receive any information regarding his daughter's education. He did receive the grades from Maumee Valley, although it has been a struggle.
- 239.) He is not made aware of any of Amelia's extracurricular activities.
- 240.) On September 14, 2009, Patrick filed a motion for unsupervised visitation, requesting that Amelia travel to North Carolina for Thanksgiving and Christmas.

- 241.) On September 15, 2009, Jeff and Lolita filed a copy of a letter they had sent to Patrick informing him that Amelia will be traveling to Russia from December 19, 2009 through January 2, 2010.
- 242.) In September of 2009, Amelia advised Lolita and Jeff that she would like her own attorney. It was also during this time that Amelia had talked with one of her friends who had been successful in terminating a visiting relationship with her father.
- 243.) On October 15, 2009, Attorney Howard Whitcomb entered his appearance on behalf of Amelia and filed a motion to terminate all visitation.
- 244.) On November 18, 2009, Attorney Richard Koehn sought leave to withdraw as counsel for Lolita. Same was granted, and Lolita proceeded *pro se*.
- 245.) In November of 2009, Jeff called the Ottawa County Sheriff's Office and reported acts of vandalism on some of his farm equipment that was sitting in the field overnight during harvest.
- 246.) Jeff advised the dispatched deputy that he believed Patrick was involved. The deputy testified that Jeff made reference to Patrick's kidnapping the child and his ties to the Mafia.
- 247.) The deputy contacted the records department and did not note any concerning previous convictions.
- 248.) The deputy further noted that there were no fingerprints or tire tracks. The vandalism could have been done by anyone.
- 249.) Patrick testified that he was never contacted by law enforcement. Further, he can provide telephone records and an alibi, if necessary.
- 250.) On November 20, 2009, a full-day trial began before Visiting Judge David A. Zeitzheim as to all pending motions. The matter continued for three more days on December 4, 2009, February 8, 2010 and February 9, 2010. The matter was continued for finalization to June 14 and June 15, 2010.

- 251.) The Guardian ad Litem testified that she had originally felt that if the supervised visits, as ordered in 2008, went well, she would recommend that Patrick have expanded visits.
- 252.) When the first trial commenced in November of 2009, she was not sure of her position regarding Amelia's contact with her father.
- 253.) She began to reconsider her position, however, after talking with the supervisors and conducting personal research on parental alienation, including talking with noted experts. She did not ask the court for a parental alienation evaluation, as she could not, in good conscience, ask that this matter be further delayed.
- 254.) She now believes that it would be in Amelia's best interest that custody be granted to Patrick.
- 255.) The Guardian ad Litem bases her opinion, in part, on the following:
- (a) Lolita has continuously created scheduling problems regarding visits and telephone calls.
 - (b) Amelia is not fearful of her father.
 - (c) Amelia started using her stepfather's name.
 - (d) Amelia has been kept fully apprised of court proceedings.
 - (e) Jeff and Lolita brought police presence into the visits.
 - (f) Jeff and Lolita support Amelia's position instead of encouraging her to participate in visitation.
 - (g) Patrick would facilitate visitation between Lolita and Amelia.
 - (h) Dr. Graves indicated in his report that parental alienation does exist in this case.
 - (i) The atmosphere created for this child by her mother and stepfather, knowingly or otherwise, is the major cause of Amelia's problems with her father.
- 256.) When this case was first transferred from Henry County to Ottawa County and she was appointed as the Guardian ad Litem, Ms. Noblitt-Brown indicated that she was scared for the child as well as herself. She was worried that the father was dangerous based upon the statements

made by Lolita and Jeff. However, as she has gotten to know Patrick, her concerns have been alleviated.

257.) Further, she noted that the Henry County Court dealt with the issues of custody and visitation in December of 2005 soon after each of the parties had taken the child out of the country, and that Court did not see a reason why Patrick should not have a relationship with his daughter.

258.) On May 27, 2010, the Guardian ad Litem filed a six-pronged motion, including a request for "immediate change of custody from Mother to Father and temporary cessation of visitation between Mother and Child".

259.) It is the Guardian's belief that if Amelia remains in the home of her mother, there is little hope that Amelia's relationship with her father will ever improve.

260.) She is concerned for the future and well-being of Amelia, as she has already been harmed. "Amelia deserves both parents in her life without any conflict".

261.) Her recommendation is further based upon the fact that the child cannot give a reason why she does not want to visit with her father.

262.) Upon cross examination, the Guardian ad Litem indicated that she was aware that Barbara Feldmar had suggested that Patrick seek a counselor so that he may have an "ally" in this dispute. However, Ms. Brown recognizes Patrick's frustration in having to "do one more thing" with nothing in return.

263.) Finally, the Guardian stated that both parents and stepfather are very negative. Lolita refuses to take any responsibility for the visitation problems. Jeff has no objectivity and fully accepts Lolita's stance, and Jeff has told the Guardian that he wishes to adopt Amelia.

264.) The Guardian ad Litem last spoke to Amelia in May of 2009. It was the Guardian's understanding that during the period of supervised visits, she would no longer continue investigating the case.

265.) Further, she was told that Amelia no longer wished to speak with her. The Guardian continued to speak with Barbara Feldmar at length.

- 266.) On June 2, 2010, Lolita filed a "Motion to Remove Attorney/GAL Bree Brown and Reject GAL Recommendations and Motions".
- 267.) On June 4, 2010, the minor child filed a "Motion to Strike Motions and Recommendations of GAL" and a "Motion to Discharge GAL"
- 268.) On June 7, 2010, the minor child filed a request for Judge Zeitzheim to recuse and disqualify himself due to his prior litigation with Jeff's mother.
- 269.) On June 8, 2010, Judge Zeitzheim ruled that he would not voluntarily recuse or otherwise disqualify himself.
- 270.) On June 28, 2010, the Supreme Court of Ohio denied the minor child's request to disqualify Judge Zeitzheim.
- 271.) All pending motions were thereafter scheduled for finalization on August 23 and August 24, 2010.
- 272.) On August 19, 2010, Visiting Judge David Zeitzheim recused himself, as he believed that he could no longer act impartially in this case.
- 273.) Visiting Judge Thomas Heydinger was scheduled to hear this case in its' entirety on September 27 through October 1, 2010. Unfortunately, Judge Heydinger suffered a medical emergency, and the matter was referred back to the presiding judge of this Court for final determination.

- 274.) Barbara Feldmar "was shocked" when she learned that the Guardian ad Litem was recommending a change of Amelia's custody. When she talked with Amelia, the child stated that the motion was "revenge against my mother".
- 275.) The Guardian ad Litem stated that she discussed with the counselor the possibility of filing such a motion. Ms. Feldmar did think it was extreme, but she could not give a reason why visitation should be terminated. Ms. Feldmar has counseled Amelia for the past 4-5 years.

- 276.) Ms. Feldmar believed that the supervised visits were going well, and then Patrick introduced another motion for unsupervised visitation. She felt that he should have been more patient.
- 277.) It was the opinion of Ms. Feldmar that some of Amelia's problems have to do with her parents. She believes that it would have been better for Amelia had her parents been able to work out difficulties related to visitation.
- 278.) She is not an expert in parental alienation. She believes that it can exist in different levels. However, there is very little research. It is not accepted as a mental health diagnosis, and it is very controversial. She does accept that a child may have "estrangement" issues with a parent.
- 279.) Finally, she believes that a relationship can be repaired, depending upon the contentiousness between the parents.
- 280.) It is Ms. Feldmar's opinion that should visitation continue, it should be supervised.
- 281.) She suggested that the Court consider appointing a "special master", if possible, who would make binding day-to-day decisions for this high-conflict family.
- NOTE: This Court is unaware of any provision for a binding arbiter in family law cases in the State of Ohio. This Court further questions the likelihood if such arbitration would be followed by these parties in light of the failure to adhere to the Interim Order issued by a judge.
- 282.) Patrick acknowledged that it would be helpful for he and Amelia to work on their relationship through joint counseling.
- 283.) He is recently began counseling with a therapist in Wilmington who works with teens and families.
- 284.) Patrick has not been charged with domestic violence or stalking of Lolita. There have been no restraining orders sought by Jeff and/or Lolita. Patrick has not been convicted of a crime against his daughter or alleged to have abused or neglected her.
- 285.) Patrick's estranged niece and nephew testified that when they were 10 and 8, respectively, (approximately 20 years ago), they saw books in a

room in which Patrick was staying entitled "How to Hire a Hit Man" and "How to Pick a Lock". They could not state that the books belonged to Patrick, and they did not tell anyone of the identity of the books at the time.

286.) Patrick indicated that he has made 28 trips to Ohio in an effort to have visits with Amelia. This is "no vendetta against Lolita".

287.) Terri Kardos of the Ottawa County Child Support Enforcement Agency testified and submitted a brief report, stated in part as follows:

"Mr. Garmyn is ordered to pay \$465.05 per month in current child support effective July 1, 2010... The case currently has a credit balance as of October 31, 2010 of \$2.85. According to the payment history attached, three months out of twenty-eight with no payment. The other 25 months meet or exceed the monthly obligation through October 31, 2010."

288.) Patrick has not maintained a bank account of \$1,000 for child support purposes.

289.) He indicated that he has spent considerable amounts of money traveling to Ohio for numerous hearings in an effort to secure some companionship with his daughter. The three months when he did not make timely payments, he was spending his funds to travel to Ohio.

290.) He further indicated that he does not have \$1,000 to set up a bank account due to substantial litigation expense.

291.) Patrick is employed as a realtor/broker in Wilmington, North Carolina and owns a carpet/tile cleaning business.

292.) Ms. Kardos testified that usually support from self-employed parents fluctuates. She further indicated that Patrick was "making up" a deficient month very quickly. To her knowledge, a Notice of Default has not ever been sent by the agency.

293.) Lolita and Jeff further notified Patrick that he was responsible for uninsured health care expenses incurred on behalf of Amelia as follows (Child's Exhibit XX):

Allergy 2009	758.19
Eye examine 2009	85.00
Contacts 2009	195.00
Eye examine 2010	383.90
Contacts 2010	85.00
Total Paid by Blay's	1,508.07
Owed by Patrick (70%)	1,055.65

294.) Patrick has not paid said sum. He requested copies of documentation from the insurance company indicating how much had been paid but did not receive same in return.

295.) He acknowledged that he did not contact the provider himself or direct his legal representative to do so.

CONCLUSIONS OF LAW
AND
FURTHER FINDINGS

Termination of Visitation

The Court in *Petry v. Petry* (1984), Ohio App.3d 350, began its' analysis of whether to terminate a parent's visitation by stating that "(A) noncustodial parent's right of visitation with his children is a natural right", *Porter v. Porter* (1971), 25 Ohio St.2d 123. "As such, the right of visitation, albeit not absolute, should be denied only under extraordinary circumstances", *Foster v. Foster* (1974), 40 Ohio App.2d 257.

"Extraordinary circumstances would include, for example, the unfitness of the noncustodial parent or a showing that visitation with the noncustodial parent would cause harm to the children, *Foster*, supra, *Smith v. Smith* (1980), 70 Ohio App.2d 87. The Court in *In re Hall* (1989), 65 Ohio Ap.3rd 88, held that it would be an extraordinary circumstance if the non-custodial parent was imprisoned for a number of years for a crime of violence.

“The burden of proof is on the party contesting visitation privileges, and absent a showing of extraordinary circumstances, the trial court may fashion any just and reasonable visitation schedule.” See R.C. 3109.05(B). “The standard of proof for one contesting visitation is clear and convincing evidence”, *Petry* as cited in *John-tonny v. Malliski* (1990), 67 Ohio App.3d 709. “Once the custodial parent proves the existence of an extraordinary circumstance, the burden shifts back to the non-custodial parent to prove that any visitation would be in the best interests of the child,” *Hoppel v. Hoppel*, 2004-Ohio-1574, *Dubec v. Pochiro*, 2010-Ohio-1293.

The minor child (and by inference, Mother) has failed to show by clear and convincing evidence that an extraordinary circumstance exists to terminate Father’s visits.

Modification of Custody

§ 3109.04 of the Ohio Revised Code provides, in part, as follows:

“(E)(1)(a) The court shall not modify a prior decree allocating parental rights and responsibilities for the care of children unless it finds, based on facts that have arisen since the prior decree or that were unknown to the court at the time of the prior decree, that a change has occurred in the circumstances of the child, the child’s residential parent, or either of the parents subject to a shared parenting decree, and that the modification is necessary to serve the best interest of the child. In applying these standards, the court shall retain the residential parent designated by the prior decree or the prior shared parenting decree, unless a modification is in the best interest of the child and one of the following applies:

- (i) The residential parent agrees to a change in the residential parent...

- (ii) The child, with the consent of the residential parent... has been integrated into the family of the person seeking to become the residential parent.
- (iii) The harm likely to be caused by a change of environment is outweighed by the advantages of the change of environment to the child.”

The prior decree last allocating parental rights and responsibilities for Amelia was on December 20, 2005. (Although there have been filings and court proceedings dealing with visitation since that time, this was the last Judgment Entry that addressed the issue of who should be the residential parent of the child.)

296.) There has been a change of circumstances since the date of the prior order to warrant a determination as to whether it is in the best interest of the minor child that parental rights be modified, based upon the following facts:

- (a) The child is now almost 15 years of age. At the time of the prior order, she was 10 years old.
- (b) The child currently expresses her unwillingness to foster a relationship with her father. At the time of the prior order, she would demonstrate love and affection for her father as demonstrated by her writings and family photographs.
- (c) There exists some evidence of alienation by the child's mother and stepfather.
- (d) There has been no telephonic contact between the child and her father since August of 2009.
- (e) There has been no visitation or face-to-face contact between the child and her father since approximately Fall of 2009.

R.C. 3109.04(F)(1) further provides:

"In determining the best interests of the child pursuant to this section, whether on an original decree allocating parental rights and responsibilities for the care of children or a modification of a decree allocating those rights and responsibilities, the court shall consider all relevant factors, including, but not limited to:

(1) The wishes of the child's parents regarding the child's care.

297.) It is the desire of Mother, Lolita Blay, that Amelia be allowed to make her own decision regarding contact with Amelia's father.

298.) It is apparent through the actions and words of Mother that she does not want the father to have any relationship with the child.

299.) Father, Patrick Garmyn, desires to have contact with Amelia and agrees with the Guardian ad Litem that a father-daughter relationship can only be fostered if the child is placed in his custody.

(2) If the court has interviewed the child in chambers... regarding the child's wishes and concerns as to the allocation of parental rights and responsibilities concerning the child, the wishes and concerns of the child, as expressed to the court.

300.) The Court interviewed Amelia on October 20, 2010. She was pleasant and engaging.

301.) She indicated that she wants "nothing to do with her biological father". It is her desire that all contact - visits and telephone calls - be stopped completely.

302.) Her reason given for all cessation of contact was that she was traumatized "from everything from before and the threats and just the screaming and stuff".

(3) The child's interaction and interrelationship with the child's parents, siblings, and any other person who may significantly affect the child's best interest.

303.) Amelia enjoys a close relationship with her mother. They like to shop and watch television together. When Amelia needs to talk to someone, she goes to her mother.

304.) Amelia also has a good relationship with her stepfather. They work with the horses together, and Jeff helps Amelia with her homework.

305.) Amelia has no siblings.

306.) Amelia visits regularly with Jeff's mother and Jeff's extended family.

307.) Amelia's maternal grandmother and aunt reside in Russia. She did visit with them in December of 2009.

308.) Amelia likes Patrick's fiancé, Elisa.

(4) The child's adjustment to the child's home, school, and community.

309.) Amelia enjoys living with her mother and stepfather.

310.) She appears to be doing better academically this school year.

311.) She has several friends at Maumee Valley Country Day School, including a very close friend of more than a year. She also maintains friendships with teens in the Oak Harbor area.

312.) Should Patrick receive custody of Amelia, he indicated that he would assist her in her adaptation to North Carolina. There are excellent schools in his community, and he and Elisa would help Amelia engage in many activities. There are also beaches, a YMCA, and friends.

(5) The mental and physical health of all persons involved in the situation.

- 313.) It has been approximately four years since Patrick was diagnosed with cancer. He now is in good health.
- 314.) Lolita and Amelia appear to be in good physical health.
- 315.) There was no evidence presented to suggest that Patrick and Lolita suffer from any diagnosed mental illness.
- 316.) Lolita and Jeff have alleged that Amelia has indicated that she wants to die and, at one point, was cutting herself.
- 317.) Barbara Feldmar testified that Amelia does not suffer from any chronic depression and that she has not heard that she is suicidal. Amelia has not told her that she was cutting herself.

(6) The parent more likely to honor and facilitate court-approved parenting time rights or visitation and companionship rights.

- 318.) Patrick would be more inclined than Lolita to facilitate visitation and companionship.
- 319.) There appeared to be no obvious problems with Amelia's contact with her mother while she was in North Carolina.
- 320.) Patrick has indicated that, should he have custody of Amelia, Lolita could see Amelia whenever she wanted. He would not call the police for exchanges and would try to avoid the friction during the transfers.
- 321.) There is ample evidence to indicate that Jeff and Lolita have made past visits difficult by summoning the police and continuing to regurgitate the history of this case to any person that may become involved.
- 322.) Lolita has attempted to absolve herself of all obligations to assure that the child complies with court orders.
- 323.) As a result, it is unlikely that Lolita will honor court-ordered visitation.

(7) Whether either parent has failed to make all child support payments.

324.) Patrick has substantially complied with payment of child support.

(8) Whether either parent has been convicted or pleaded guilty to (certain enumerated offenses).

325.) There was no evidence presented regarding prior convictions of the enumerated offenses by either parent.

(9) Whether the residential parent.... has continuously and willfully denied the other parent's right to parenting time in accordance with an order of the court.

326.) See findings above.

(10) Whether either parent has established a residence, or is planning to establish a residence, outside this state.

310.) Patrick has resided in the State of North Carolina since 2002.

Although this writer agrees with the Guardian ad Litem when she states it will be difficult for Amelia to visit with her father while her mother and stepfather continue to impliedly interfere with said visits, either knowingly or otherwise, the Court finds that the advantages of changing the child's environment do not outweigh the harm of removing the child from her mother, her school, and her friends.

Modification of Visitation

"... (w)hen a party requests a change in visitation, the trial court must consider the factors set forth in R.C. 3109.051(D) and then determine visitation that is in the best interest of the child", *Braatz. v. Braatz*, 1999-Ohio-203.

The factors included in R.C. 3109.051(D) are, in pertinent part, as follows:

(1) The prior interaction and interrelationships of the child with the child's parents... and any other persons related by consanguinity or affinity.

327.) See findings above.

(2) The geographical location of the residence of each parent and the distance between those residences.

328.) See findings above.

(3) The child's and parent's available time, including, but not limited to, each parent's employment schedule, the child's school schedule, and the child's and the parents' holiday and vacation schedule.

329.) There was no evidence presented regarding the schedules of the parents and/or the child.

330.) Amelia does participate in the 4-H program with her horse and competes at the Ottawa County Fair (third week in July).

(4) The age of the child.

331.) Amelia turned fifteen (15) years of age on December 26, 2010.

(4) The child's adjustment to home, school, and community.

332.) See findings above.

(5) If the court has interviewed the child in chambers... regarding the wishes and concerns of the child as to parenting time by the parent who is not the residential parent... as expressed to the court.

333.) See findings above.

(6) The health and safety of the child.

334.) There was no evidence to indicate that Amelia would not be safe if she were to visit with her father in North Carolina.

(7) The amount of time that will be available for the child to spend with siblings.

335.) Amelia is the only child of Patrick Garmyn and Lolita Blay.

(8) The mental and physical health of all parties.

336.) See findings above.

(9) Each parent's willingness to reschedule missed parenting time and to facilitate the other parent's parenting time rights.

337.) See findings above.

- (10) In relation to parenting time, whether either parent previously has been convicted of or pleaded guilty to any criminal offense involved any act that resulted in a child being an abused child or a neglected child,, and whether there is reason to believe that either parent has acted in a manner resulting in a child being an abused child or a neglected child.**

338.) There was no evidence presented regarding convictions of either parent of these offenses.

- (11) Whether either parent previously has been convicted of or pleaded guilty to a violation of section 2919.25 of the Revised Code involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding and caused physical harm to the victim in the commission of the offense...**

339.) There was no evidence presenting regarding convictions by either parent of these offenses.

- (12) Whether the residential parent has continuously and willfully denied the other parent's right to parenting time in accordance with an order of the court.**

340.) See findings above.

(13) Any other factor in the best interest of the child.

341.) Soon after each parent had taken the child out of the country in an effort to keep the child from the other parent, Patrick and Lolita were able to sit down with a mediator and work out their differences regarding visitation. The Henry County Juvenile Court accepted that agreement only a few months after the child came back from Russia.

342.) A large portion of the evidence presented at this 2010 trial was a rehashing of the events that occurred from 1995 through 2005. It is time to put these matters to rest...

343.) It would be in Amelia's best interest that she has a relationship with each of her parents that is encouraged by Lolita, Jeff, Patrick and Elisa.

344.) This Court is not without empathy for Amelia. She is an only child caught in a web of parental hostility and ongoing conflict.

345.) It is this Court's belief that she has been influenced by her mother's fear and paranoia, her father's need for control, and her stepfather's full acceptance of Mother's position with no intent of acting as a conciliatory intermediary.

346.) Each of these parents is responsible for the conflict they have created for themselves, and particularly, for their child.

347.) Unfortunately, due to the inability of these parents to work out their own differences, this Court must impose its' judgment upon this family.

Based upon all of the foregoing Findings of Fact and Conclusions of Law,
IT IS HEREBY ORDERED that the Motion to Terminate Visitation filed on behalf of the minor child is hereby DENIED.

IT IS FURTHER ORDERED that the Motion for Change of Custody filed by the Guardian ad Litem and joined by Father is hereby DENIED.

IT IS FURTHER ORDERED that the Motion to Show Cause filed by Mother is hereby DENIED.

IT IS FURTHER ORDERED that Mother shall provide to Father copies of the Explanation of Medical Benefits paid on the health care expenses submitted for payment. Said documents shall be provided within thirty (30) days. Upon receipt and within thirty (30) days thereafter, Patrick Garmyn shall pay his portion of the uninsured expenses pursuant to this Court's prior order.

IT IS FURTHER ORDERED that the Motion for Unsupervised Visitation filed on behalf of Father is hereby GRANTED.

IT IS FURTHER ORDERED that Father shall have visitation and companionship with the minor child as follows:

- 1.) One-half (1/2) of the Christmas school vacation. If the parents cannot agree as to which half, then in the even-numbered years, the first half of the vacation shall be spent in Mother's home, with the second half in the home of Father. The first-half visitation shall commence at 2:00 p.m. on the day after school concludes at the commencement of the break and shall end at 2:00 p.m. on the day representing the half way point of the child's school vacation. The second-half visitation shall commence at 2:00 p.m. on the day representing the half way point of the child's school vacation and shall conclude at 2:00 p.m. on the day before school reconvenes at the conclusion of the break.
- 2.) The Spring school vacation during the odd-numbered years, commencing at 2:00 p.m. on the day after school concludes at the commencement of the break until 2:00 p.m. on the day before school reconvenes at the conclusion of the break.
- 3.) Two (2) weeks in August, commencing at 2:00 p.m. on the first Monday in August and ending at 2:00 p.m. on the third Monday in August.
- 4.) One (1) weekend during the odd-numbered years and two (2) weekends during the even-numbered years in Ottawa County, Ohio or its' contiguous counties. Said visits shall commence at 6:00 p.m. on Friday and shall conclude at 6:00 p.m. on

Sunday. Father shall notify Mother at least thirty (30) days in advance of the time that he will be in the area and desirous of said visitation. Transportation costs for said weekend visitation shall be borne solely by Father.

IT IS FURTHER ORDERED that responsibility for the transportation and associated costs for summer, spring and Christmas visitations shall be the responsibility of the non-residential parent receiving the child at the commencement of the visitation and companionship period and the residential parent at the conclusion of the visitation and companionship period (unless the parties agree otherwise).

IT IS FURTHER ORDERED that the exchanges of the child in Ottawa County shall be at Joyful Connections, 8200 W. St. Rt. 163, Oak Harbor, Ohio.

IT IS FURTHER ORDERED that the exchanges in North Carolina shall be at a similar visitation exchange facility in the Wilmington area. Counsel for Mother and Father shall determine an appropriate facility for said exchange.

IT IS FURTHER ORDERED that the parents shall provide all necessary information as required by the visitation facilities and shall equally pay the fees associated with the exchanges.

IT IS FURTHER ORDERED that Amelia shall telephone Father on the first day of each month at 7:00 p.m. Father and daughter shall attempt to carry on a pleasant conversation. Father shall not raise his voice or make accusations toward the child. The child shall be respectful to Father. Telephone conversations are not required to extend beyond five (5) minutes unless Father and daughter desire to continue talking. Mother shall assure that the child has complete privacy during the telephone calls.

IT IS FURTHER ORDERED that discussions regarding visitation arrangements and matters pertaining to Amelia shall be solely between Mother and Father, or counsel for the parents (if necessary). Any discussions between the parents shall be civil in nature.

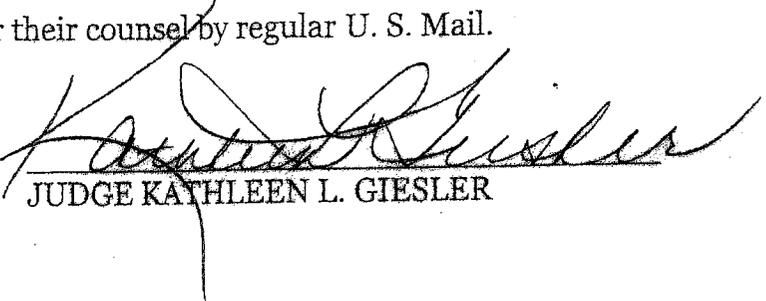
IT IS FURTHER ORDERED that each of the parents shall encourage free communications between the child and the other parent, and both parents

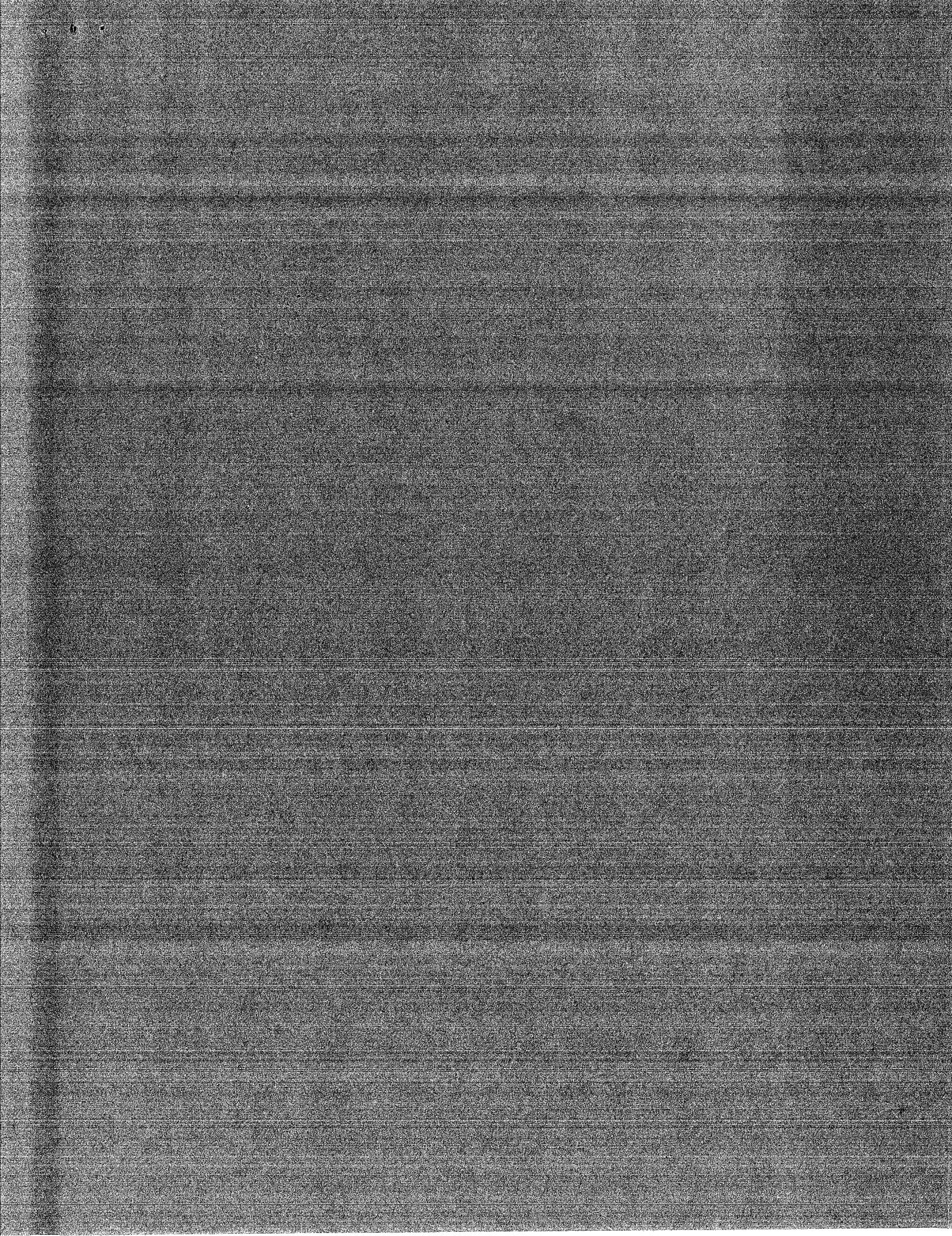
shall encourage the child to love the other parent and refrain from criticizing or making disparaging comments about the other parent.

IT IS FURTHER ORDERED that Mother and Father shall not discuss these proceedings with the minor child, with the exception of advising Amelia of times and arrangements for visits as ordered herein. Mother and Father shall assure that his or her spouse or significant other refrain from engaging in any discussion with the minor child regarding aspects of these proceedings. Said parents shall further assure that any discussions between themselves and others regarding these proceedings shall be conducted out of the sight and hearing of the minor child.

IT IS FURTHER ORDERED that failure to abide by these orders may be result in a finding of contempt of court and monetary consequence, including but not limited to, payment of attorney fees, Guardian ad Litem fees and court costs.

IT IS FURTHER ORDERED that copies of this Judgment Entry shall be sent to all parties of record or their counsel by regular U. S. Mail.


JUDGE KATHLEEN L. GIESLER



NOV 02 2012

JENNIFER L. WILKINS, CLERK
OTTAWA COUNTY, OHIO

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
OTTAWA COUNTY

In re A.G.

Court of Appeals No. OT-11-003

Trial Court No. 20630010

STATE OF OHIO, OTTAWA COUNTY
I hereby certify this to be a true copy of original on
file.

Subscribed to me this 2 day of
November 2012
By Jennifer L. Wilkins Clerk of Courts
deputy

DECISION AND JUDGMENT

Decided: NOV 02 2012

* * * * *

Howard C. Whitcomb, III, for appellant.

Timothy W. Hallett and Eric K. Nagel, for appellee.

* * * * *

SINGER, P.J.

{¶ 1} Appellant, A.G., appeals from a decision of the Ottawa County Court of Common Pleas, Juvenile Division, granting her father, appellee, unsupervised visitation.

For the reasons that follow, we affirm the decision of the trial court.

{¶ 2} A.G. was born in December 1995. Her parents divorced in 2001. On September 14, 2009, father filed a motion seeking unsupervised visitation with A.G.

A.G. filed her own motion on October 14, 2009, to terminate all visitations with her father. The court granted father's motion and denied A.G.'s motion. She now appeals setting forth the following assignments of error:

I. In denying A.G.'s request to attend and participate in the trial proceedings, the trial court violated her due process rights as guaranteed by the 14th Amendment of the U.S. Constitution and Article 1, Section 16, of the Ohio Constitution.

II. The trial court abused its discretion in ordering unsupervised visitation between A.G. and her father as said order was contrary to the best interests of the minor child, A.G. and was against the sufficiency and/or manifest weight of the evidence adduced at trial.

III. The minor child was deprived the due process of the law in that the court-appointed guardian ad litem failed to zealously represent the best interests of A.G. pursuant to the requirements of R. 48 of the Ohio Rules of Superintendence.

IV. The trial court denied A.G. the protections afforded by R.C. Chapter 2151 and Superintendence Rule 48 by denying her request to re-appoint a different guardian ad litem to represent her best interests.

{¶ 3} In her first assignment of error, A.G. contends that the court violated her due process rights when denying her motion to attend the hearing for her father's motion for unsupervised visitation. In support, A.G. cites Juv.R. 27(A)(1) which states in pertinent

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part: “the court may exclude the general public from any hearing, but may not exclude either of the following: (a) persons with a direct interest in the case[.]” A.G. naturally contends that, as the subject of the motion, she is a person with a direct interest.

{¶ 4} However, Juv.R. 1(C)(4) states that the Juvenile Rules of Procedure do not apply “in proceedings to determine parent-child relationships * * *.” A proceeding to determine parent-child relationships includes the determination of custody and visitation rights. *Hook v. Gahris*, 2d Dist. No. 2011-CA-36, 2011-Ohio-6491. Thus, appellant’s reliance on Juv.R. 27 is faulty.

{¶ 5} In *Hanna v. Hanna*, 177 Ohio App.3d 233, 2008-Ohio-3523, 894 N.E.2d 355 (10th Dist.), a minor child filed his own objections to a magistrate’s decision regarding a shared parenting matter after his father withdrew his objections. In finding that the trial court did not err in failing to rule on the child’s objections, the court stated:

The question is not whether the minor child has a personal interest in the proceedings relating to custody modification; without question, the minor child has an interest in proceedings that involve such significant matters as where the child resides or spends his time. * * * According to the plain language in R.C. 3109.04(E)(1)(b), only plaintiff and defendant, as the minor child’s parents, could invoke the court’s continuing jurisdiction to modify a prior custody decree and grant shared parenting. The right of action is not in the child; it is in his parents and is jurisdictional. *Id.* at

¶ 13-14.

{¶ 6} In this case, A.G. was represented by an attorney who conveyed her wishes and she was able to express her wishes to the court in an in-camera interview. She also was scheduled to testify at the hearing. For all of the foregoing reasons, we find that the trial court did not err in denying her motion to be present at the hearing. A.G.'s first assignment of error is found not well-taken.

{¶ 7} In her second assignment of error, A.G. contends that the court erred in granting her father's motion for unsupervised visitation. A.G. contends that the decision was contrary to her best interest and was against the sufficiency and/or manifest weight of the evidence.

{¶ 8} In determining whether the trial court's determination, that the best interests of the children would be served by a modification of visitation, was against the manifest weight of the evidence, a reviewing court "does not undertake to weigh the evidence and pass upon its sufficiency but will ascertain from the record whether there is some competent evidence to sustain the findings of the trial court." *Ross v. Ross*, 64 Ohio St.2d 203, 204, 414 N.E.2d 426 (1980). The juvenile court has broad discretion as to visitation issues. *In re S.K.G.*, 12th Dist. No. CA2008-11-105, 2009-Ohio-4673, ¶ 21. The juvenile court's decision, therefore, is subject to reversal only where there is an abuse of discretion. *In re A.M.*, 12th Dist. No. CA2005-11-492, 2006-Ohio-5986, ¶ 8. Thus, a reviewing court may not merely substitute its judgment for that of the trial court absent a showing that the decision was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 9} R.C. 3109.051 governs matters of visitation. *Braatz v. Braatz*, 85 Ohio St.3d 40, 44-45, 706 N.E.2d 1218 (1999). Therefore, when ordering a modification of visitation the court must consider the enumerated factors in R.C. 3109.051(D) as well as any other factor in the child's best interest. R.C. 3109.051(D). R.C. 3109.051(D) states, in pertinent part:

In determining whether to grant parenting time to a parent pursuant to this section or [other sections], * * * in establishing a specific parenting time or visitation schedule, the court shall consider all of the following factors: prior interrelationships with parents and relatives; the geographical distance between parents; the available time of both the child and parent(s); age of the child; child's adjustment to home, school and community; wishes and concerns of the child; health and safety of the child; child's time with other siblings; mental and physical health of all parties; each parent's willingness to reschedule missed parenting time; whether the residential parent has denied the other parent's rights to parenting time; whether either parent is establishing a residence outside the state; and any other factor in the best interest of the child.

{¶ 10} A.G. contends that the court, in awarding unsupervised visitation, ignored evidence of her unhealthy relationship with her father and ignored her father's mental health issues. We disagree.

{¶ 11} The record reflects a long, contentious history between the parents involving the custody of their daughter. The trial court in this case meticulously detailed this history in a 63 page judgment entry. To summarize, A.G. has shifted back and forth between her parents during her life and has even spent some time in foster care. Both parents, on separate occasions, have absconded with A.G. to foreign countries in an attempt to circumvent whatever custody order was in place at the time. Both parents have faced legal consequences in the past as a result of their actions.

{¶ 12} In 2002, father moved to North Carolina. A.G. sometimes expressed an interest in moving to North Carolina and sometimes maintained that she did not want to go at all. The record shows that father, throughout A.G.'s life, has consistently made an effort to stay in touch with her, despite impediments created by mother and appellant's stepfather. As for father's mental health issues, the court considered the various psychological evaluations done of father over the years. Generally, he was found to be mistrustful. He was found to have good intentions but very insecure about his relationship with his daughter. He tends to see himself as the victim in this matter. He has anger issues and exhibits a strong need to control situations.

{¶ 13} The guardian ad litem ("GAL") in this case noted that A.G. could not cite any reason why she did not want to visit her father. She further noted that A.G. exhibits no fear of her father.

{¶ 14} James Bedra, a retired social worker experienced in issues involving minors, testified that in 2009, he was appointed by a magistrate to be a supervisor for

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visitation between A.G. and her father. Each visitation period was approximately eight hours long. He was compensated for his time by A.G.'s father and mother. Appellant was 13 years old at this time. They went on an out of town trip, went shopping and rode go-carts for the three visits he supervised. He testified that A.G. and her father appeared to engage in positive interaction. Though A.G. sometimes seemed reluctant to participate in the visits, Bedra testified that in his opinion, she was exhibiting normal teenage girl behavior. Her demeanor generally became more agreeable as the visits wore on. Bedra testified that A.G. did not seem to fear her father and he testified that he saw nothing inappropriate in the way father acted towards A.G. He, in fact, found him to be a loving father and he did not believe A.G. was at risk in father's presence. Bedra testified that after the three visits, he saw no need for their visits to be further supervised and he thought it would be unethical to accept any more money to supervise their visitations.

{¶ 15} Stephanie Skrbina, a social worker, testified that she also acted as a supervisor during A.G.'s visitations with her father. Before her first visit with A.G. and father, she met with appellant's mother and stepfather. They told Skrbina that father was dangerous, that there was domestic violence between father and mother, and they believed he had hired a hit man. They also told her that appellant's stepfather wanted to adopt A.G.

{¶ 16} Despite obstacles in scheduling supervised visits, obstacles Skrbina attributed to mother, Skrbina accompanied A.G. and father on two visits. In her opinion, these visits showed evidence of a positive relationship between father and daughter.

Skrbina testified that she saw no signs of mental illness in father and that A.G. did not appear to fear her father. They went shopping and they went to a recreational water park. Like Bedra, Skrbina noted that A.G. was withdrawn at the beginning of the visits but she gradually let her guard down and fully participated. She further noted that father was very patient with A.G. when the girl acted defiant or accused her father of being cheap or even when she called him a jerk. Skrbina concluded that after supervising two visits, she felt there was no more need for supervised visitation.

{¶ 17} Adrienne Finley, a social worker, testified that she supervised a seven hour visit with A.G. and father. They took a boat ride and played games at a pizza arcade. Like the other two witnesses before her, Finley testified that A.G. was initially withdrawn but later opened up and talked with her father. Finley testified that she seemed to enjoy the visit and that there was no indication that she feared her father. She also testified that father's behavior towards A.G., even when she was being standoffish, was appropriate.

{¶ 18} In the judgment entry granting father's motion for unsupervised visitation, the judge noted that A.G. was 15 years old and that the last order designating mother as the residential parent was issued when A.G. was 10 years old. The court recognized that A.G. had expressed an unwillingness to foster a relationship with her father, however, the court pointed out that in the past, she has demonstrated love and affection for her father which can be seen in the drawings A.G. gave to her father when she was younger and by the many photographs of the two together. As of 2009, A.G. and her father have not

talked on the phone, nor has there been any face-to face contact between the two. The court further stated:

A large portion of the evidence presented at this 2010 trial was a rehashing of the events that occurred from 1995 through 2005. It is time to put these matters to rest. It would be in [A.G.'s] best interest that she has a relationship with each of her parents that is encouraged by [mother, father and stepfather]. This court is not without empathy for [A.G.]. She is an only child caught in a web of parental hostility and ongoing conflict. It is this court's belief that she has been influenced by her mother's fear and paranoia, her father's need to control, and her stepfather's full acceptance of mother's position with no intent of acting as a conciliatory intermediary. Each of these parents is responsible for the conflict they have created for themselves, and particularly, for their child. Unfortunately, due to the inability of these parents to work out their own differences, this court must impose its judgment upon this family.

{¶ 19} After a thorough review of the record, especially the testimony presented at the hearing, we cannot conclude that the trial court abused its discretion in its visitation determination. Accordingly, A.G.'s second assignment of error is found not well-taken.

{¶ 20} A.G.'s third and fourth assignments of error will be addressed together. A.G. contends that the GAL failed to honestly and zealously represent her best interests. As such, the court erred in denying her motion to discharge the GAL.

{¶ 21} The GAL testified that from the beginning of her involvement in this case she was very concerned about A.G.'s well-being. This was because of the extreme allegations that both of A.G.'s parents had made and because of the kidnapping history. She therefore spoke to as many people who knew the parties as she possibly could so she could get an accurate grasp of the situation. She spoke to A.G. many times and A.G. was always adamant that she hated her father and did not want to see him. However, A.G. was never able to give a reason as to why she hated her father. The GAL testified that before she could recommend that the relationship between A.G. and her father be severed, she needed something more concrete than just A.G.'s blanket statements of hatred that the GAL did not find credible. The GAL testified that in her opinion, both father and mother believe they are justified in their positions but as a consequence, they are forcing A.G. to choose sides, something the GAL did not believe A.G. should have to do. The GAL did not exonerate either father or mother from fault but she concluded, based on the success of the supervised visits; it appeared to her that there was a relationship between A.G. and her father that was worth rekindling.

{¶ 22} The role of the GAL is to investigate the child's situation and then ask the court to do what the guardian feels is in the child's best interests. *In re Baby Girl Baxter*, 17 Ohio St.3d 229, 232, 479 N.E.2d. 257 (1985). "Because a guardian ad litem owes his or her principal duty to the court, a guardian may properly reject the child's expressed wishes and support a contrary position, one that the guardian believes is in the child's best interests." *In re Alfrey*, 2d Dist. No. 01 CA0083, 2003-Ohio-608, ¶ 18.

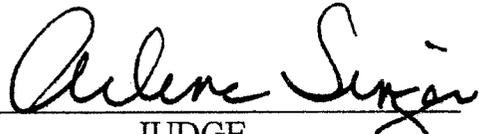
{¶ 23} We find nothing in the record to suggest that the GAL failed to adequately protect A.G.'s best interests. Rather, the record shows that after a thorough investigation, the GAL reached a different conclusion than A.G. would have liked. This does not constitute reversible error. A.G.'s third and fourth assignments of error are found not well-taken.

{¶ 24} On consideration whereof, the judgment of the Ottawa County Court of Common Pleas, Juvenile Division, is affirmed. It is ordered that appellant pay the costs of this appeal, pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See also 6th Dist.Loc.App.R. 4.

Arlene Singer, P.J.



JUDGE

Thomas J. Osowik, J.



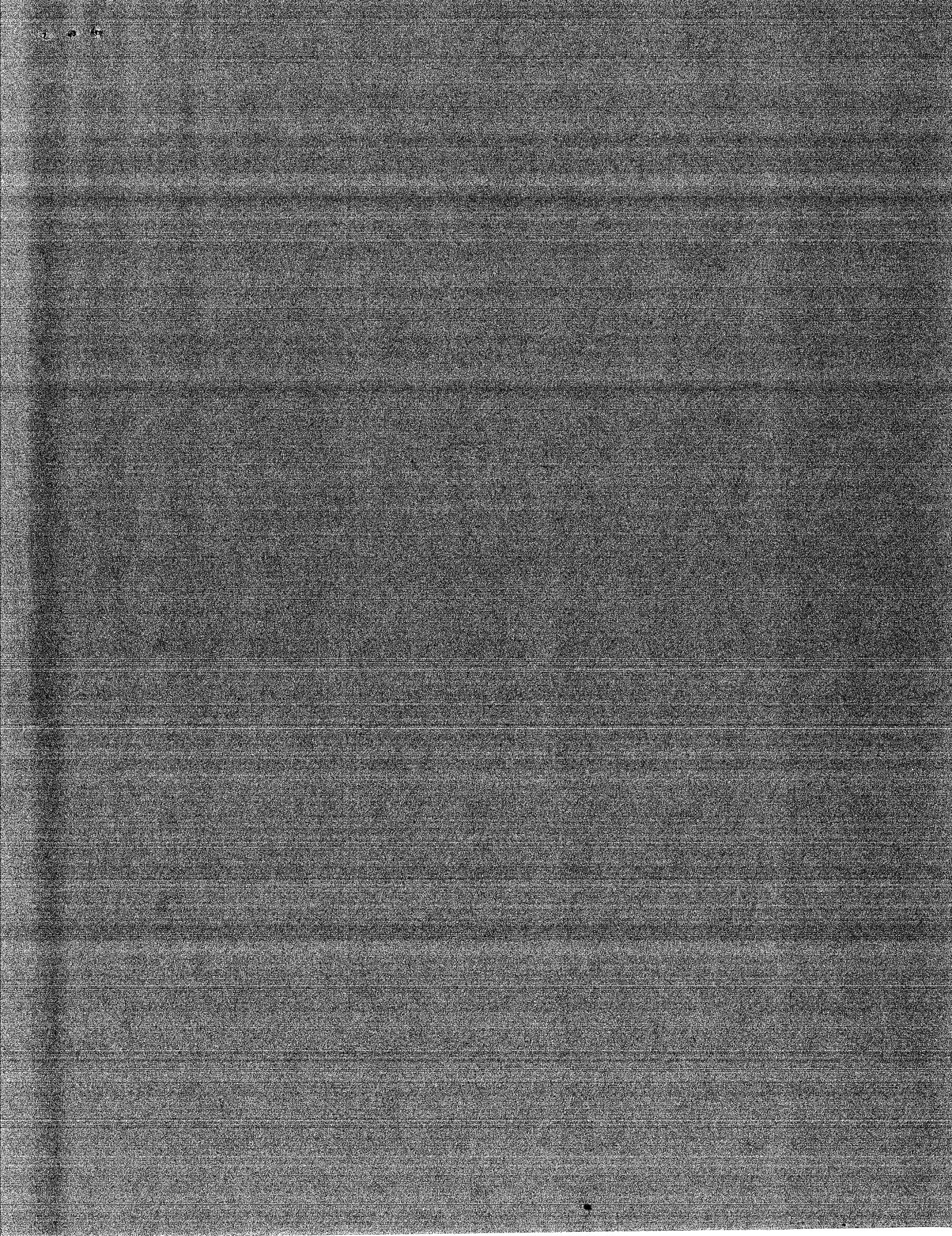
JUDGE

Stephen A. Yarbrough, J.
CONCUR.



JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.



IN THE COURT OF COMMON PLEAS
OF OTTAWA COUNTY, OHIO
JUVENILE DIVISION

FILED

OCT 25 2010

JUDGE KATHLEEN C. GESLER
OTTAWA CO. JUVENILE COURT

IN THE MATTER OF:) CASE NO. 20630010
)
AMELIA GARMYN)

This matter is before the Court upon the Motion of the Child, Amelia Garmyn, to be present during the pending visitation and custody proceedings. The Court, being duly advised, finds as follows:

- 1.) On October 14, 2009, Attorney Howard C. Whitcomb entered his appearance for and on behalf of the minor child, Amelia Garmyn. On that same date, a Motion to Terminate All Visitation was filed on said minor child's behalf.
- 2.) On October 21, 2009, Attorney Whitcomb further filed a Motion for Leave Permitting Minor Child's Attendance and Participation at Trial.
- 3.) Mother, Lolita Blay, was previously represented by counsel, Richard Koehn. On October 23, 2009, Mr. Koehn filed a Motion to Withdraw, stating that Mrs. Blay "will be relying on the newly-retained counsel for the minor child and their own pro se efforts in this case".
- 4.) On November 6, 2009, Magistrate Gilbert-Conway entered Orders denying leave for the child to attend and participate in the proceedings and further denying Attorney Koehn's motion to withdraw.
- 5.) On November 10, 2009, the minor child filed a Request for Written Findings and Fact and Conclusions of Law.
- 6.) On November 17, 2009, a copy of a letter from Jeff and Lolita Blay to Richard Koehn was filed. In said correspondence, Mr. and Mrs. Blay indicated that Mr. Blay and others would now be paying for Amelia's attorney, and multiple attorney fees were unaffordable.

- 7.) By Judgment Entry of this Court dated November 18, 2009, Richard Koehn was granted leave to withdraw as Mrs. Blay's counsel. Lolita Blay continues to represent herself in these proceedings.
- 8.) On November 25, 2009, the minor child submitted Proposed Findings of Fact and Conclusions of Law.
- 9.) On December 1, 2009, Lolita Blay submitted Proposed Findings of Fact and Conclusions of Law.
- 10.) The pending proceedings were heard by Visiting Judge David Zeitzheim on November 20, 2009, December 4, 2009, February 8, 2010, and February 9, 2010.
- 11.) Pursuant to Judgment Entry of this Court dated August 19, 2010, Judge Zeitzheim recused himself.
- 12.) On October 20, 2010, this Judge conducted an *in camera* interview of the minor child, Amelia Garmyn.
- 13.) During the interview, Amelia expressed her desire to be present at these proceedings. She further indicated that she believed that she had sufficiently articulated her wishes and concerns in full.
- 14.) Pursuant to the witnesses lists filed with the Court by Lolita Blay and Attorney Whitcomb, Amelia is scheduled to be a witness at the upcoming trial.

As a party to these proceedings, Amelia Garmyn is entitled to be represented by counsel pursuant to the Ohio Rules of Juvenile Procedure. Further, the child is required to have counsel, as her wishes are in dispute with the recommendations of the Guardian ad Litem. However, she does not have a constitutional right to be present during a trial that involves a dispute between her parents.

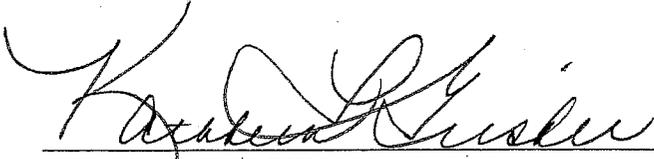
She has been and will be adequately represented by her own attorney in the courtroom, and her wishes will be further advanced by her mother during these proceedings. She has had an opportunity to express her wishes and

concerns to this Court during her *in camera* interview. Further, this Court will allow her to testify in open court as a witness.

Amelia's best interests would be better served by her attendance at school where she participates in rigorous academics rather than spending five (5) days in protracted litigation between her parents.

IT IS THEREFORE ORDERED that Amelia Garmyn shall not be present in the courtroom during the proceedings set in the above-referenced matter during the first two weeks of November 2010.

IT IS FURTHER ORDERED that Amelia Garmyn may testify as a witness in open court at a time to be scheduled by counsel and Lolita Blay so as not to interfere with the child's school attendance, if possible.



JUDGE KATHLEEN L. GIESLER