STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

M. B. E.,

Plaintiff,

v. **DECISION**

R. E., **Index #: 2000/02540**

Defendant.

APPEARANCES: Barbara E. Farrell, Esq.
Attorney for Plaintiff
Rochester, New York

John G. Pericak, Esq.
Attorney for Defendant
Rochester, New York

Matthew J. Fero, Esq.
Attorney for the Child(ren)
Rochester, New York

Dollinger, J.

In a nettlesome case, a 13-year-old child, beset with physical difficulties, temporarily changes her residence from her mother to her father and, coincidentally, has surgery which improves her physical condition. The child, freed from physical difficulties and living in a different environment, performs better at school and expresses a desire to make her living conditions with her father permanent. This court, faced with the conflicting views of the parents and the child, must decide whether to modify the existing custody and primary residence agreement between the parents.

BACKGROUND

The parents were divorced in 2001. The father and mother shared joint custody under the divorce decree, the child was designated to primarily reside with the father, and he would have the final decision if the parties were unable to agree. In October 2008, the parties revised the underlying agreement, retaining joint custody, primary residence with the father, but leaving the final decision on matters relating to the health, education, and spiritual training of the child in the hands of the mother. In 2010, the father considered leaving Monroe County, and he agreed to change the primary residence of the child from the father to the mother. The stipulated order in 2010 also provided that the mother was responsible for the day-to-day homework and school project completion by the child, and further that they would abide by any direction of treating physicians for the child.

In 2012, the father filed a petition, arguing that his daughter was experiencing continual physical problems that jeopardized her health, her hygiene was poor, and that she was consistently underperforming in school. He sought sole custody and a transfer of the primary residence to his home. The court, under an order to show cause, appointed an attorney for the child and temporarily transferred the primary residence to the father in March 2012. During the period of temporary transfer until the end of the school year, the child continued to attend school in the mother's home school district. The father drove the child more than ten miles to school every school day from March through the end of school. In the summer of 2012, the court allowed the father to enroll the child in his home school district, where the child has attended since the beginning of 2012-2013 school year.

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At the core of this dispute is the child's physical and emotional health and her academic performance and prospects. The child has Charcot-Marie-Tooth disease, a muscle control disease that she inherited from her father, who also has the disease. The disease causes deformities in certain leg and foot muscles, which can interfere with walking and running. The child has suffered from the disease since birth and, in the recent past, the limitations of the disease have substantially impacted the child's walking, running, and physical fitness. The father testified to a remarkable story of his coping with the disease. He suffered from a series of disease-related afflictions and limitations until his mid-30s, then began a serious workout regimen, recovered his physical skills and is now a certified personal trainer, who runs a part-time training business with his second wife. The husband, throughout the trial, advocated that his daughter needed a similar personal exercise regiment to stabilize and improve her condition.

The daughter's condition led to surgery in February 2012. It is undisputed that the parents spent a significant time researching the appropriate physician to perform the surgery. The surgery was successful and it is undisputed that the daughter's mobility has improved as a result. There was uncontroverted testimony by a chiropractor at the trial, that the daughter will need surgery on her other foot and, depending on her muscle condition in the future, may need a repeat of the surgery later in life.

Several non-party witnesses testified regarding the child's eighth grade academic performance during the 2011-2012 school year. At the start of the eighth grade, the child lived with her mother. She shared a bedroom with her older sister in the mother's two-

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bedroom apartment. The father had somewhat limited visitation and acknowledged, in cross-examination, that he did not see his daughter for lengthy periods of time during the fall and early winter of 2011-2012. He testified that his current wife was pregnant and he was preoccupied with her pregnancy.

A series of school officials, including teachers and counselors, testified that the daughter was not performing up to her capabilities during the first half of the school year. She achieved low grades (in most cases barely passing) in the first two marking periods. The teachers agreed that she tended to follow "the path of least resistance" or, as one teacher phrased it, "she was not working to the best of her abilities." The child encountered social difficulties. The child was a frequent visitor to the nurse's office at school often eating lunch there, alone, several days a week. The school officials, almost in unison, expressed that the daughter was suffering from self-esteem issues that dampened her confidence and impacted her dress, her attitude, and her performance. It is undisputed that she was also suffering physically, as the disease substantially limited her ability to walk. She could not run and play sports, as she had done earlier. The school officials also voiced concerns that the eighth grade (hardly, in this court's recollection, a haven of understanding and compassion), was a difficult place for a child experiencing self-esteem issues.

There was extensive testimony from the school officials - and others - about the circumstances of the daughter's appearance. The father alleges, in his petition to the court and through his testimony, that his daughter was often inappropriately dressed, wearing

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baggy outfits, and oversized sneakers which he contends are inappropriate for the child's age and physical circumstances. (School officials never disciplined the children for inappropriate attire at school.) Father's counsel, through direct and cross-examination, sought to portray the child as "a tomboy," but school officials, despite an invitation on direct examination to offer the same assessment, declined. The school officials and the parents acknowledged that the child experienced weight gain during this time and, after surgery, lost weight. There is no evidence that the weight gain was abnormal or inappropriate for the child at her age or that the wife was responsible for the child's weight gain.

School officials and both parents testified about a parent-child meeting in the fall of 2011. The father, who became aware of the child's failing grades, arranged for the meeting. The mother, father, child, and school officials attended. After the meeting, the father became more diligent in communicating with teachers, exchanging emails on the homework assignments, and taking other steps. The teachers uniformly praised his weekly contacts with them concerning the child's homework assignments and classroom performance. However, he admitted under cross-examination that he never copied the mother in on these email communications. There is no evidence that the mother ever made any attempt to inquire about the father's communications with the school or ever asked the father if he was engaging in such communications. One teacher commented that the mother tended to react "positively" when comments were made about the child, but there is no evidence that the mother made any further attempts to contact school officials about her daughter's academic performance after the fall meeting. One teacher

testified that the mother was a "little unaware" that her child's grades were so bad. The mother admitted that she never went to school to inspect the contents of her child's academic file, and that she was unaware of the homework hotline and that the homework was posted online each night. Despite her daughter's substandard grades at the end of the first semester, she took no action. She did not schedule a tutor, took no disciplinary actions against the daughter and, based on her attitude during her testimony and the facts acknowledged therein, she exhibited a nonchalant attitude to her daughter's academic performance.

The testimony of the mother and her demeanor in the courtroom strongly suggest that the mother had exhausted any tools or strategies to motivate the daughter to perform well in school. The mother admitted, under cross-examination and in a moment of substantial frustration, that "she can't make the child do anything." The mother also failed to correlate her inability to motivate or prompt the child with the child's dismal academic performance. When asked about the whether the failure to complete homework and other assignments in school and the poor grades that resulted therefrom was anyone's fault, the mother testified that it was "the child's fault." She added that it was the child's responsibility to do her homework and concluded, "I am not doing her homework for her."'

The mother's attitude of placing the entire responsibility for academic performance on the child seems misplaced and irresponsible. In this regard, this court questions the mother's judgment on one other seemingly minor event. The mother asked the daughter, at one point, to pose for a picture, containing a sign indicating the date, and an item

because she wanted to use the photo as evidence in this hearing. By implication, the mother intended to draw the daughter directly into this proceeding, a step that seems inconsistent with the daughter's interest to avoid being dragged into the custody dispute between her parents.

In contrast to the mother's approach, both before and after the meeting, the teacher's were unanimous in their praise for father's intervention on behalf of his daughter. The school nurse, who had regular interaction with the child when the child ate her lunch in the nurse's office, testified that since the child went to live with her father, "demeanor has gotten much more positive." One teacher praised her father's repeated contacts with the teachers and school. Another teacher testified that at the end of the second semester (just before the surgery and the transfer to her father's home), the child was "at risk for not meeting" standards, but then, *after* she resided with her father, "she was now meeting standards." Another teacher described that the child was "just skating by," but now that the father is involved and the daughter is "backed up by someone checking," the grades have improved. A teacher described the child, prior to the time with her father, as functioning at "the bare minium of achievement." Asked about whether the child would, based on her academic performance during the first half of the eighth grade, achieve a high school diploma sanctioned by the New York Board of Regents (a regent's diploma), the teacher added: "it could go either way." The same teacher said that her attitude, *after* the surgery, was different, "she wants to be successful and her effort has recently increased." This teacher added that "with her father, she knows she's accountable." Another teacher

testified that when the child takes things home now, “it comes back done.”

While the teachers praised the father for his academic intervention, the proof at the hearing establishes that his overall involvement with his daughter during her eighth grade year was uneven, at best. The father’s interaction with his daughter was sporadic during the six months prior to her temporarily changing her residence to reside with him. The father did not see the child at his home during the last portion of 2011, and into early 2012. The father testified that he saw his child at school, but he did not have the child stay overnight with him for an extended period of time. The wife testified, without contradiction, that the child received no gifts from her father at Christmas and he did not see the child on that day, or over Thanksgiving. The father’s proffered explanation for these failures, that his wife was pregnant during this time, is imprecise and lacks sincerity, even though the court found the remainder of his testimony, on a variety of issues, credible and convincing.

It is undisputed that the child, when she underwent the surgery in February 2012, was behind in many subjects . After the surgery and change of her primary residence, the child ‘s academic performance improved. She had an incomplete grade in one subject and a 39 (out of 100) in another at the end of the second semester, but after residing with her father, passed both courses for the year. Furthermore, it appears that the mother had a lackadaisical attitude toward the need for tutoring for the child during her convalescence. The surgery was scheduled over the February school break and the mother, in scheduling the tutoring, elected not to schedule it until after the school break had ended. As a consequence, the child, who was barely passing several courses, and failing others, did

not have a tutor for almost a month while she recovered from the foot surgery.

When the child went to live with the father, her physical condition also substantially improved. The father changed her diet, utilizing the recommendations of his current wife, a nutritionist. In the period from February through the date of trial, the child lost 21 pounds. The father has also rigorously required his daughter to wear an orthopedic brace. A chiropractor testified the daughter could lessen her need for additional surgery if she maintained a daily exercise regimen and that the exercise routine could delay the need for further surgery until she matures and her bones reach their final growth.

What emerges from this testimony is the picture of a child, who struggled during the start of her eighth grade. Beset with physical limitations, limited self-esteem, an inability to exercise, and some conflicts with her mother, the child was heading down a path of failing classes, summer school, and further complications. The facts demonstrate that the mother was extremely casual in her oversight of her daughter's academic performance. The mother's admission that she could not "get her daughter to do anything," is a striking demonstration of parental inability to influence the goals and directions of a 13-year-old child. Her suggestion that the daughter's academic failures were solely her responsibility reflect a gross misunderstanding of the parental role in the life of an emerging teenager.

The contrast between the father's and mother's approach could not be more distinct. The mother seemed unaware of her daughter's failing grades until the first report card. Upon learning of the failing grades, the husband arranged the meeting with the teaching staff, followed up with emails, and changed his daughter's motivation level after she went

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to live with him. These interventions are all testament to his "hand's on" style in dealing with his daughter.

However, this court notes that while the child has undisputedly improved in all facts of her life - improved academic performance, improved self-esteem, improved appearance - since she went to live with her father, the court must avoid the logical fallacy that the shift in residence, alone, is the cause of the other. In February, 2012, the daughter's life changed in two ways: she had the surgery and she moved in with her father. The surgery, without dispute, allowed her to enter an exercise regiment, which, almost every witness acknowledged, improved her self-esteem and caused a weight loss. This self-esteem boost gave the child more confidence. But, while this hastened her physical resurgence, there is also no doubt that her father's intervention and persistence brought about a dramatic improvement in her academic performance, which further bolstered her confidence. Under the father's watchful eye, the child has steadily improved her grades, handed in homework in a timely fashion, and otherwise academically prospered. These are achievements that the mother's more casual approach to child-rearing had been unable to attain. In this court's view, the mother's comment about lacking an ability to tell the child what to do and getting the child do it, and the mother's suggestion that the child is alone responsible for her lack of academic success, is startling and troubling. The mother's admission regarding her inability to draw the child's best performance in academics is evidence of a substantial failure and one that this court cannot let persist.

In addition, this court is troubled by the apparent lack of communication between

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the parents over the course of this matter. It took the parents more than a year to select the doctor to perform the child's surgery. The child's lack of academic success appears to have taken both parents by surprise (certainly the father was surprised, and the mother did not appear to be concerned). Thereafter, when the father began closely monitoring his daughter's school work, he failed to copy the mother on the emails and communications to teachers and other school officials. He failed to inform the mother about the daughter's consultation with the chiropractor. These unilateral actions, without consultation or communication with the mother, hardly befit a parent with joint custodial obligations. But the mother can't protest too loudly. There is no evidence that she sought a stronger role in her daughter's academic life after the meeting in the fall of 2012, even though it was strikingly obvious that she was struggling. There is no evidence that she changed the daughter's academic routine or that she attempted to communicate with the father regarding the child's academic performance. There is no evidence that she ever attempted to communicate with the father after the fall school meeting. As a final ingredient in this case, the court-appointed attorney for the child participated in the trial and articulated the daughter's preference to live with her father.

THE LAW AND ITS APPLICATION IN THIS CASE

Initially, there is a dispute over the legal standard to be applied by the court. The mother, seeking to retain the current custody and primary residence, argues that the standard adopted by the Fourth Department requires the father to demonstrate a sufficient showing of a change in circumstances to warrant any modification. *Matter of Mathewson*

v. Sessler, 94 AD3d 1487 (4th Dept. 2012); *Matter of Carey v Windover*, 85 AD3d 1574 (4th Dept. 2011); *Matter of Gridley v. Syrko*, 50 AD3d 1560 (4th Dept. 2008). The father, and the attorney for the child, argue for a different standard. They state that the Court of Appeals has established a different test in cases where the initial custody determination is made upon the trial court's adoption of an agreement reached by the parties. In those instances, custody may nonetheless be modified where it is shown that, viewing the totality of the circumstances, a change in custody is in the child's best interests. *Friederwitzer v. Friederwitzer*, 55 NY2d 89, 94 (1982); *Matter of Yearwood v. Yearwood*, 90 AD3d 771 (2nd Dept. 2011). Other appellate divisions have adopted variations of this rule. In one case, the Third Department articulated that the modification of custody was only justified if "sufficient change in circumstances, reflecting a real need for a change in order to insure the continued best interests of the child was demonstrated." *Starkey v. Ferguson*, 80 AD3d 799, 800 (3rd Dept. 2011). But, at the conclusion of the opinion, the Third Department held that the proof in the case supported a finding of a "substantial change in circumstances" to justify a change in custody. *Id*. at 801. In another case from the Third Department, the court cited the same standard for changing custody as in *Starkey v. Ferguson*, at the start of its opinion, but at its conclusion determined that the appropriate standard was the totality of circumstances test articled in *Eschbach v. Eschbach*, 56 NY2d 167 (1982). *See also Rue v. Carpenter*, 69 AD3d 1238 (2nd Dept. 2010).

Based on its review of these authorities, there is no need for this court to make a determination of any "change" in circumstances, the *de novo* examination of the "best

interests of the child" dictates the result. The seemingly small difference between these two views is magnified in this case. The question of whether this court can conclude, without finding any "substantial" or "significant" change in circumstances of the parties, that the best interests of the child would be served by a transfer of custody and primary residence, is at the heart of this case. The father seeks to change the custodial relationship from joint custody with final decision-making and primary residence with the wife, to sole custody with final decision-making and primary residence with him. The wife's custodial right to fully participate and jointly decide her child's future would be replaced by an order giving the father that sole responsibility, and the child would be primarily residing with the father. To reach that conclusion, this court, under the Court fo Appeals precedents discussed above, would not need to find a sufficient change in circumstances between the time of the stipulation and the time of the hearing on the petition to warrant modification and instead, could simply find that the change is in the best interest of the child. *Matter of Brothers v Chapman*, 83 AD3d 1598 (4th Dept. 2011); *Matter of Moore v Moore*, 78 AD3d 1630, 1632 (4th Dept. 2010). Even if this court concludes that the father failed to meet that admittedly steep burden of proof, the court faces another question: whether the court can utilize another, perhaps lesser, standard of proof to change the primary residence of the child without changing the mother's right to custodial decision making, solely on a best interests of the child analysis.

Regardless of which standard is applied, this court notes that among the factors to consider in determining whether a change of primary physical residence is warranted are

the quality of the home environment, the parental guidance the custodial parent provides for the child, the ability of each parent to provide for the child's emotional and intellectual development, the financial status and ability of each parent to provide for the child, the relative fitness of the respective parents, and the length of time the present custody arrangement has been in effect. *Knoll v. Waters*, 305 AD2d 741, 760 NYS.2d245, 246 (3rd Dept. 2003); *Matter of Kristi L.T. v Andrew R.V.*, 48 AD3d 1202, 1204 (4th Dept. 2008).

The mother claims that the father's proof is insufficient to establish a "significant change in circumstances" to justify any changes in primary residence. Furthermore she argues that the same proof fails to establish that a change would be in the child's best interests. However, the threshold question is this: who has undergone the significant change of circumstances? In most cases reviewed by this court, the "substantial change" occurs in the parent - loss of parental income, adverse health consequences or other consequences to the parent, including child estrangement. In this case, there is no significant change in either parent. The mother's nonchalant and apparently non-productive parenting style does not seem newly minted. The father's strong intervention in the child's academic and physical life is newly manifest and seems to have been inactive until a few months before the hearing. This court, in analyzing the father's renewed commitment to assisting his daughter, declines to view his prior inactivity as evidence of a lack of interest or concern, as the mother has argued. The father's explanation that he was unaware of the extent of his daughter's academic and physical deterioration is credible, especially because his other family duties with his new family, awaiting the birth

of a child, easily accounts for his lack of intense oversight. There is no evidence of any change in income levels by either parent. The mother's living arrangements, the mother and her two daughters living in a two-bedroom apartment, is not new. The father has new responsibilities, a new child from his second wife, but his living arrangements are not new or changed either.

What has changed and changed substantially is the daughter's condition. This court is willing to credit the mother's argument that the surgery has occasioned changes in the daughter's life. She is more mobile, better able to exercise and participate in social settings, but as described by the various school witnesses and attested to by both parents, it is not merely a physical change. The daughter's attitude and confidence are remarkably improved since she began living with her father. Her grades have improved. Her confidence in school, even when she was transported daily more than 10 miles by the father to the school district in which her mother resides, improved substantially. Her self-esteem, an essential ingredient in a maturing young person's life, has substantially improved. This court closely observed the child during the *Lincoln*[1] hearing and saw clearly that she had turned a corner in her life, physically, emotionally, and academically.

In opposition to the father's application, the mother argues that the "a long term custodial arrangement," established by agreement, should prevail unless there is evidence that a parent is "less fit." *Matter of Mathewson v. Sessler*, 94 AD3d 1487, 1489 (4th Dept. 2012). This Court disagrees. First, the "custodial arrangement" here is not of a long-

[1] *Lincoln v. Lincoln*, 24 NY2d 270 (1969).

standing variety. The father raised the child from age two until she was almost eight. In 2008, the parents reached a stipulated settlement, influenced in some measure because the child wanted to reside with her mother. Now, four years later, the child's preference has changed, and pronounced and significant changes have occurred in her academic performance and physical abilities. This court is cognizant that the Fourth Department has cautioned that children should not be "shuttled back and forth between divorced parents." *Fox v. Fox*, 177 AD 2d 209 (4th Dept. 1992). But in this case, when the transfer of primary residence would bear such tangible benefits to the child, the court declines to defer to the prior custodial agreement. The Court of Appeals has noted that "no agreement of the parties can bind the court to a disposition other than that which a weighing of all of the factors involved shows to be in the child's best interest." *Friederwitzer v. Friederwitzer*, 55 NY2d 89, 94 (1982). Second, this court need not determine which parent is "less fit" under the "best interests" analysis. Even if both parents are "fit parents," the court can award primary residence based on the "best interests" analysis. *Matter of Flint v. Ely*, 96 AD3d 1681 (4th Dept. 2012). Finally, if this court is required by the "less fit" analysis suggested by the Fourth Department in *Matter of Mathewson v. Sessler*, and argued by the mother, the court finds that she is, by virtue of her admitted lack of control over the child and her failure to monitor her academic performance, a "less fit" parent on these critical areas of child development. Even if the agreement is considered "long-standing," it should nonetheless be changed.

The mother also challenges her daughter's preference to live with her father as a

factor in this court's evaluation. It is axiomatic that the child's desires are not determinative. In weighing the child's stated preference, the court must consider the age and maturity of the child, and the potential of pressure having been exerted on the child to influence the process.[2] *Eschbach v. Eschbach*, 56 NY2d 167 (1982); *Elissa N. v Ian B.*, 32 Misc3d 1215A (Fam. Ct. Monroe Cty. 2011). This court acknowledges that younger children usually lack "sufficient maturity to weigh intelligently the factors essential to making a wise choice as to custody." *Fox v. Fox*, 177 AD2d at 211. This court interviewed the 13-year-old child at some length. She demonstrated a reasoned grasp of the choice facing the court. She rendered a detailed depiction of living with her mother and her sister in the two-bedroom apartment. She also gave a detailed and thoughtful explanation of her rationale for living with her father. This court also notes that the father's more rigorous household routine - homework checking, daily physical exercise, the complications of a new born child - may not be a picnic for the child, compared to the less restrictive, more laid back approach in her mother's household. If this child were seeking a less restrictive environment (as many teenagers elect) in this court's judgment, she would prefer to live somewhere other than her father's home. Nonetheless, she prefers the more rigorous road occasioned by living with her father.

Furthermore, in this case, the child has recent experience in living in both residences. She lived with her mother for two years prior to March 2012 and lived with her

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[2] There is no evidence of any pressure, by either parent, on the child's expressed preference.

father for four months prior to the hearing. The New York courts have held that a 13-year-old child's expressed preference can, in certain circumstances, be "entitled to great weight, particularly where their age and maturity would make their input particularly meaningful." *Bowe v. Robinson*, 23 AD3d 555 (2nd Dept. 2005) (according a preference to a 13-year-old child in a custody case). *Van Gorder v. Van Gorder*, 188 AD2d 1049 (4th Dept. 1992) (preference of a 12-year-old child would not be determinative, but it would be a factor for the court to consider). While this court could easily conclude that the child in this case possesses the "age and maturity" and experience to justify giving her choice substantial weight in reaching its determination, the court instead elects not to do so. The daughter's "about face" from two years ago, when she supported living with her mother, raises a question regarding the weight to be accorded to her judgment. Irrespective of her preference, the facts justify a conclusion that transferring primary residence to her father accords with her best interests.

This court understands that the broad command to require a "significant change in circumstances" before changing custody or primary residence, is designed to give parents wide latitude in deciding the best interests of their child. The court should not intervene and alter a custodial relationship unless there is "significant" evidence of real change in the parent's relationship with the child. From this court's perspective, the question unanswered by prior case law is: who is the subject of the "significant change in circumstance?" If that test requires a "significant change in the circumstances" of the parents' interaction with the child, then the father, seeking to change the residence and final decision making, may not

meet that burden. But, if the "significant change in circumstances" can be assessed by a before-and-after analysis of the child's prospects for self-achievement, then the father's proof in this case meets that standard. Here, there is substantial evidence of real change in the life of a young woman, at a critical time in her life, the emerging teen-age years. Her residince with her father, combined with her improved physical condition, has substantially changed her outlook and her prospects for academic achievement. *Matter of Starkey v Ferguson*, 80 AD3d 799 (3rd Dept. 2011) (in modifying custody, the court also noted that, while in the father's care, the daughter performed noticeably better in school and was absent less frequently than when she was with the mother). Her continued residence with her mother , and her mother's holding a final say over her future, are incompatible with the mother's acknowledgment that she cannot get her daughter "to do anything." In sharp contrast, the father's testimony, unchallenged, leads to the conclusion that he can get his daughter to do what is necessary for academic achievement and her rehabilitation. He testified that he urged his daughter to do exercises and wear a brace: she did both. The father testified that he held his daughter accountable for her homework. The teachers attested that the father's watchful approach was paying dividends.

In addition, this determination is further bolstered by the command of the courts to make this "significant change" analysis under the umbrella of the "best interest" of this child. The daughter's outlook, self-esteem, and academic performance have been substantially changed for the better. The father's active involvement with his daughter's academic, physical and social performance holds, in this court's view, a better prospect for

the daughter's future - living with him would be in her best interests.

The father's home life also tilts in favor of having his daughter reside with him. In the father's home, the child has her own bedroom. *Maher v. Maher*, 1 AD3d 987, 989 (4th Dept. 2003) (child having their own bedroom as a factor in custody matters). At her mother's she shares the room with an older sister. The father's home also has a younger infant half-sibling, which the daughter "adores" according to the father. The father also provides better parental guidance for the child's emotional and intellectual development. There is no evidence before the court that one parent has a better financial status to provide for the child. This court concludes, based on the trial testimony, that the father, because of his close monitoring of the daughter's academic and physical performance, is a more fit parent for the daughter.

Under these facts, this court concludes that there has been a significant change in circumstances sufficient to permit this court to change the primary residence from the mother to the father. This court grants the father primary residence of the child. The parents share joint custody. The father has final decision-making on her academic and physical condition. The mother retains her final decision-making on matters related to spiritual training. As part of that determination, the court also declares that the parties are directed to prepare a schedule of visitation for the child and her mother. The parties should also calculate any support obligations that arise as a consequence of this determination.

This constitutes the decision of the court.

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SUBMIT ORDER ON NOTICE.

Dated: March 15, 2013

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Richard A. Dollinger A.J.S.C.