

Matter of Bottorff v Bottorff

2018 NY Slip Op 33646(U)

September 4, 2018

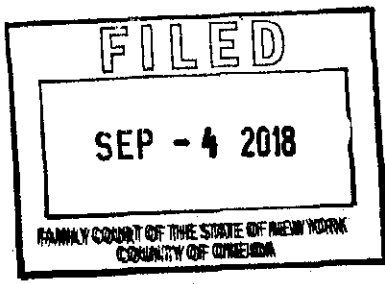
Family Court, Oneida County

Docket Number: V-04013-17/17A, B&C

Judge: Julia M. Brouillette

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At a term of the Family Court of the New York State, held in and for the County of Oneida, at 200 Elizabeth Street, Utica, New York on February 1, April 13, May 15 and August 6, 2018

**FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF ONEIDA**

**In the Matter of a Proceeding
Under Article 6 of the Family Court Act,**

File No.: 30271

CONRAD A. BOTTORFF,
Petitioner,

**Docket Nos.: V-04013-17/17A, B & C
V-04014-17/17A, B & C
V-04013-17/18E & F
V-04014-17/18E & F
Motion #1 (17A)**

-against-

JENNIFER L. BOTTORFF,
Respondent.

**In the Matter of a Proceeding
Under Article 6 of the Family Court Act,**

File No.: 30271

JENNIFER L. BOTTORFF,
Petitioner,

**Docket Nos.: V-04013-17/18D
V-04014-17/18D**

-against-

CONRAD A. BOTTORFF,
Respondent.

DECISION AND ORDER

APPEARANCES: Conrad A. Bottorff, *pro se*
Jennifer Hurley, Esq., of counsel Oneida County Public Defender's
Office - Civil, Attorney for Jennifer L. Bottorff
Joseph M. Cirillo, Esq., Attorney for the Children

Before this Court are seven petitions and one motion (Motion #1). Mr. Bottorff filed his initial violation petition (17A) on September 21, 2017 and amended on October 31, 2017; his second violation petition (17B) on November 22, 2017; his modification petition (17C) on December 21, 2017; his third violation petition (18E) on May 7, 2018; and his fourth and final violation petition (18F) on June 20, 2018. Mr. Bottorff's modification petition (17C) requests primary residence of the children, CB (6 years old) and KB (9 Years old), for a variety of alleged reasons, including the mother's unstable and unsanitary housing, the mother's decision

to homeschool the children, parental alienation and denial/frustration of the father's parenting time. Mr. Bottorff's violation petitions alleged, *inter alia*, that the mother withheld parenting time from him, disparaged Mr. Bottorff, failed to provide information regarding the children's medical/educational appointments, scheduled the children to be at activities/events during his parenting time and/or otherwise frustrated his access to the subject children. Mr. Bottorff filed Motion #1 with the Court on November 8, 2017, which motion requested that the children be academically tested, as Mr. Bottorff believed the mother was floundering in her attempt to homeschool the children.

Ms. Bottorff filed her modification petition (18D) on January 24, 2018, which petition requested that the father have daytime parenting time only (no overnights) and that the father be directed to take a parenting class to learn how to "handle a child with autism."

The matter duly came upon to be heard with this Court, the parties denied the respective allegations cast against them and the matter was scheduled for trial, which commenced on February 1, 2018, continued April 13 and May 15, 2018, and concluded on August 6, 2018. The Court did not conduct a *Lincoln Hearing*, and no request for the same was made. For purposes of this Decision and Order, Mr. Conrad A. Bottorff is designated as petitioner and Ms. Jennifer L. Bottorff is designated as respondent.

The Court took judicial notice of the following: the current pleadings; Mr. Bottorff's two paternity petitions filed with this Court on May 25, 2018, during the pendency of the instant action, which paternity petitions were dismissed by the Court on May 30, 2018; the Herkimer County Family Court May 6, 2014 Final Order on Petition for Custody and Visitation, which granted sole custody to Ms. Bottorff and parenting time to Mr. Bottorff; the parties' April 6, 2016 Judgment of Divorce¹; and the Herkimer County Family Court January 20, 2016 Final Order For Custody and Visitation, which was on consent of the parties.

At the close of the trial, the Court conducted a search of the statewide registry of orders of protection, Family Court warrants, the sex offender registry and the Family Court's child protective records and reran said searches on August 23, 2018. An order of protection out of Utica City Court was found involving Mr. Bottorff as the applying party against an individual not a party to this action.

The Court had the opportunity to observe the demeanor of the parties and witnesses and assess their credibility. A summary of the more pertinent testimony is set forth below to the extent relevant to the Court's Findings.

The Court determines that there was insufficient testimony regarding behaviors that could be determined to comprise domestic violence. As a result and at this time, the Court does not find the provisions of Domestic Relations Law § 240 require additional action by the Court.

Petitioner called himself, a CPS Caseworker, Mr. Bottorff's stepdaughter #1, Mr. Bottorff's brother-in-law, Mr. Bottorff's stepdaughter #2, Mr. Bottorff's current wife, Herkimer

¹ The April 6, 2016 Judgment of Divorce contains a typo, in that the January 20, 2016 Final Order is referenced as being filed on February 28, 2015, which should be 2016.

County Housing Authority Executive Director, and a final witness and then rested. Respondent testified on her own behalf as her only witness and rested. The Attorney for the Children did not call any witnesses and did not request a *Lincoln Hearing*. There was no rebuttal.

The testimony of the CPS Caseworker and the final witness was of no value to the Court. Mr. Bottorff testified about several incidents when he went to the mother's residence to pick-up the children at the start of his parenting time and ended up leaving without the children for several reasons. Mr. Bottorff stated that he did not get his parenting time on Thanksgiving, 2017. He also talked about how Ms. Bottorff disparaged him to or in front of the children. Mr. Bottorff claimed that the mother violated the current order by scheduling the children for activities or events, such as birthday parties or church outings, during his scheduled parenting time. He further documented alleged arguments between the parties that took place in front of the children. Mr. Bottorff described the mother's residence as too small, unsanitary and not appropriate for children. Mr. Bottorff was adamant that the mother should not be homeschooling the children. He also expressed frustration about the mother's authoritativeness regarding where he can and cannot go with the children and what he can and cannot feed the children.

Mr. Bottorff's relatives that were called as witnesses talked about their experiences when traveling with Mr. Bottorff for purposes of pick-up and drop of the children. The relatives also testified about hearing the mother or someone in the mother's circle of friends disclaiming that Mr. Bottorff was the children's father. The Court believes that Mr. Bottorff filed his *pro se* paternity petitions in the mistaken belief that the petitions could be used to prove to the mother and everyone else that in fact he was the father. The paternity petitions were dismissed by the Court, as Mr. Bottorff is the father of the subject children.

The Herkimer County Housing Authority Executive Director explained that the mother moved into the Herkimer Housing Authority on October 15, 2016 and moved out on June 28, 2017. That Ms. Bottorff was evicted and had to be removed from the apartment with the assistance of the Sheriff's Department. Prior to the eviction, there were periodic scheduled inspections; sometimes the Executive Director was able to get into the home, sometimes not. The Executive Director described his observations of the home during the time of Ms. Bottorff's residency in a manner which left no doubt that the living conditions were unacceptable. The eviction was for nonpayment of rent because of a public assistance issue. After she left the apartment, the Herkimer Housing Authority had to, among other things, replace the refrigerator, repair damage to walls and carpeting and exterminate an infestation of bed bugs.

Ms. Bottorff testified that she has been at her current residence for one year, which is a one bedroom apartment – the mother and the child CB sleep in the bedroom, with the child KB sleeping in the living room. Ms. Bottorff said the father's residence is overcrowded, with 6 people residing in his home. The mother's primary source of income is child support.

The mother described how most of the time the children refused to go with their father because they did not want to spend overnights at his residence, and that the father honored the children's wishes. It was not explained why, if the children refused overnights, the father did not spend the day with his children, but instead forfeited all his time. Ms. Bottorff complained that the father failed to provide 48 hours' notice of what day he would exercise his parenting time as directed by the January 20, 2016 Final Order, but thereafter conceded that the father

typically requested the same days every week (Saturday at 5:00 p.m. to Sunday at 5:00 p.m.). The mother has told the children that she will go to jail if they do not go with their father and initially stated that the children simply do not want to spend time with Mr. Bottorff with no reason provided. Upon further questioning, Ms. Bottorff opined that the children do not want to visit with their father because the father “screams” too much. The Court does not believe that the children simply do not want to go with their father and/or the singular issue was the father screaming. The Court finds that both Ms. Bottorff and Mr. Bottorff contributed and perpetuated the current unhealthy situation.

Throughout the trial, Mr. Bottorff did not seem convinced that the children have developmental disabilities, yet near the end of his case-in-chief, Mr. Bottorff admitted Exhibits 13 and 14, which were clinical evaluations completed in 2018 by ADHD & Autism Psychological Services and Advocacy. CB’s diagnostic impressions were autism spectrum disorder, attention-deficit/hyperactivity disorder and intermittent explosive disorder. KB’s diagnostic impressions were autism spectrum disorder, attention-deficit/hyperactivity disorder and insomnia disorder. Both evaluations recommended that the children would be excellent candidates for Applied Behavior Analysis (ABA) services, which ADHD & Autism Psychological Services offers. In spite of these evaluations, Mr. Bottorff maintained KB was normal and CB was just a little “touched.”

Ms. Bottorff testified that KB has moderate ADHD. CB’s autism is more severe, and the child also has cognitive limitations. The mother currently does not have the children on any medication except for melatonin, as she feels the negative side effects of medication outweigh the benefits. Ms. Bottorff testified that the father has told her on several occasions that the children do not have any developmental limitations. According to the mother, KB has food sensory issues. Ms. Bottorff is attempting to get assistance for the children through the NYS Office for People with Developmental Disabilities. The mother was open to the father’s participation in the children’s services/programming and was of the opinion that such participation would be beneficial. The mother claimed that the father attended the final diagnosis meeting but was otherwise absent from the children’s clinical evaluations. Ms. Bottorff said she provided Mr. Bottorff with any and all information when Mr. Bottorff requested the same, and that Mr. Bottorff never availed himself of his right to independent access to information.

PETITIONER’S VIOLATION PETITIONS

“To sustain a civil contempt, a lawful judicial order expressing an unequivocal mandate must have been in effect and disobeyed; the party to be held in contempt must have had knowledge of the order; and prejudice to the rights of a party to the litigation must be demonstrated. Those elements must be proved by clear and convincing evidence.” *Matter of Andrew B.*, 128 AD3d 1513, 1514-1515, 9 NYS3d 506 (4th Dept 2015).

Mr. Bottorff’s testimony regarding his violation petitions alleging lost parenting time was conflicting. There is no question that Mr. Bottorff did not get all the parenting time he was entitled to under the January 20, 2016 Herkimer County Family Court Final Order. There is also no question that Mr. Bottorff self-imposed restrictions on his parenting time for periods of time because the home adjacent to his residence was possibly structurally compromised and because of an infestation of bedbugs. Moreover, the testimony and records introduced during

trial make plain that Mr. Bottorff routinely asked the children repeatedly if they wanted to come with him; rather than demonstrate patience and understanding Mr. Bottorff would pressure the children by repeatedly saying “I just need a yes or a no” or engaging in a negative exchange with the child. For example, at one pick-up Mr. Bottorff asks the child CB to come for a visit; the initial exchange is fine until a point when the child stated Mr. Bottorff was being mean; Mr. Bottorff initially questions the assertion; but then changes gears, repeatedly demands a hug/kiss, tells the child to “come here or I’m gonna beat you up”, asks if he can pick the child’s nose or fart on the child’s head. Each time Mr. Bottorff yelled to the child to come here or asked a “silly” question, the child could be heard saying “no” in the background. The “no” in the background becomes progressively louder and more aggressive until it was clear the child was screaming with all his might. This is a prolonged and immature back and forth between the father and his 9 and 6 year old children, which is unproductive and unacceptable. Added to the unhealthy exchange between the father and one of the children is Ms. Bottorff injecting excuses for the children not wanting to go with their father. The interjections by Ms. Bottorff serve no purpose but to undermine Mr. Bottorff and are themselves inappropriate. Mr. Bottorff is the father; Ms. Bottorff’s refusal to behave in a manner supportive of that role is unacceptable.

In reviewing the transcript from the parties’ Judgment of Divorce in Court April 6, 2016 settlement, Mr. Bottorff stated the following: “As far as the custody goes . . . this matter, has been resolved [by the Herkimer County Family Court January 20, 2016, Final Order for Custody and Visitation bearing Docket Nos. V-00577-14/15E and V-00576-14/15E and] as soon as my home situation is taken care of by the landlord and I can show proof of it, then I am able to resume overnight visitation with my children, with the exception that they, themselves, do [not] want to spend overnight. I’m not going to force them, force something on them that they don’t want to do.”² The situation involving Mr. Bottorff’s landlord, the resumption of overnight parenting time and taking into consideration the children’s preference was not part of the underlying January 20, 2016 Herkimer County Family Court Final Order, which means the parties communicated and decided these issues on their own without formal court intervention. The 2016 testimony also confirmed that the issue of the children not wanting to spend overnights with their father and the father capitulating to the children’s position has been ongoing for at least 2 years.

In the Court’s estimation, there is entirely too much explaining and consultation that takes place at the start of what should be the father’s parenting time; the back and forth between the father and children needs to end and the mother, as the custodial parent, needs to encourage the children to spend their time with their father. The children are old enough now that the father should not and does not need to go into the mother’s residence to extract them therefrom. Instead, the children should be directed by the mother to walk out of her house, get into the transport vehicle and spend quality time with their father – including overnights. The Court is fully mindful that this will be easier said than done and that there will be difficulties, with the hope that the parties come together for the betterment of their children. The Court is also mindful that it will help the parents and the children for all parties to engage in some counseling/therapy to help them develop better communication skills for working with each other, and addressing the children’s issues long-term

² The transcript of Mr. Bottorff’s testimony left out the word “not” in regard to the children’s preference for overnight parenting time with the father, however, read in context, it is clear that the children, per Mr. Bottorff, did not want to spend overnights at his residence at that time.

Based on the testimony and the history of litigation between the parties, the Court finds that the parties have improperly empowered their children to make adult decisions of when and how they spend time with their father. This appears to be the root cause of the father's inability to exercise all his Court ordered parenting time. Both parties have contributed to the current unfortunate situation, which is not in the best interest of either child. The subject children need the best that both parents have to offer, as a mother and a father play irreplaceable roles in the lives of their children. Consequently, Mr. Bottorff's claimed violations of Ms. Bottorff denying him Court ordered parenting time have not been established by clear and convincing evidence and the remaining allegations contained in his violation petitions bearing Docket Numbers V-04013-17/17A, V-04014-17/17A, V-04013-17/18E, V-04014-17/18E, V-04013-17/18F and V-04014-17/18F are without merit. As such, those violation petitions are dismissed with prejudice.

The Court does find that the mother scheduled the children to be at activities or outings during the father's Court ordered parenting time and sustains Docket Numbers V-04013-17/17B and V-04014-17/17B. The mother violated the underlying January 20, 2016 Herkimer County Final Order, which held that Ms. Bottorff "shall not make any plans with the children during" Mr. Bottorff's parenting time. Nonetheless, the father appeared to not comprehend that children are not inanimate objects, that they are children with lives and interests, which often have nothing to do with the parents. As a result, the Court finds by clear and convincing evidence that Ms. Bottorff willfully violated an unequivocal mandate of the January 20, 2016 Order of the Court, which prejudiced Mr. Bottorff's rights as a father. At this time, the Court finds that no further action is necessary, except that the Court will consider Ms. Bottorff's violation finding for purposes of the parties' modification petitions.

PETITIONER'S & RESPONDENT'S MODIFICATION PETITIONS

"A party seeking a change in an established custody arrangement has the burden of establishing a change in circumstances sufficient to warrant an inquiry into whether the best interests of the child warranted a change in custody." *Matter of Cole v Nofri*, 107 AD3d 1510, 967 NYS2d 552 (4th Dept 2013), internal citations omitted. There has been a showing of a sufficient change in circumstances to warrant an inquiry into the best interests of the children, the most significant of which is the father's inability to exercise all his Court ordered parenting time. Even if a custodial parent has sole custody, "visitation is a joint right of the noncustodial parent and child absent exceptional circumstances inimical to the child's welfare." *Matter of Haran-Buckner v Buckner*, 188 AD2d 705, 590 NYS2d 582 (3rd Dept 1992); see also *Matter of Gowan v Menga*, 174 AD2d 977, 573 NYS2d 3 (4th Dept 1991). In addition, the parties do not agree as to how the children should be educated, the mother willfully violated the underlying order and the mother has moved residences.

"The Court of Appeals has cautioned that 'the only absolute in the law governing custody of children is that there are no absolutes' and that 'no one factor, including the existence of the earlier decree or agreement, is determinative of whether there should, in the exercise of sound judicial discretion, be a change in custody.'" *Matter of Cole v Nofri*, 107 AD3d 1510, 1511-1512, 967 NYS2d 552 (4th Dept 2013), citing *Friederwitzer v Friederwitzer*, 55 NY2d 89, 432 NE2d 765 (1982). "It is well settled that, in determining the child's best interests, a court should consider (1) the continuity and stability of the existing custodial arrangement, including the relative fitness of the parents and the length of time the present custodial arrangement has

continued; (2) [the] quality of the child's home environment and that of the parent seeking custody; (3) the ability of each parent to provide for the child's emotional and intellectual development; (4) the financial status and ability of each parent to provide for the child; (5) the individual needs and expressed desires of the child; and (6) the need of the child to live with siblings." *Matter of Braga v Bell*, 151 AD3d 1924, 1925, 58 NYS3d 807 (4th Dept 2017), internal citations omitted. "[A] change of custody should be made only if the totality of the circumstances warrants a change that is in the best interests of the child." *Matter of O'Connell v O'Connell*, 105 AD3d 1367, 1367-1368, 963 NYS2d 789 (4th Dept 2013). The Court does not find that a change in primary residence is appropriate at this time but does believe the parenting time schedule needs to be adjusted along with the mother's designation as sole custodian.

The mother has had sole custody of the minor children since May 6, 2014, which was granted upon consent of the parties, with every subsequent order granting the mother sole custody also being upon consent. At that time in 2014, the child CB was 2 years old and the child KB was 5 years old. An order based on a stipulation is "entitled to less weight than a disposition after a plenary trial." *Matter of Stevenson v Smith*, 145 AD3d 1598, 1599, 43 NYS3d 832 (4th Dept 2016).

"[A]n award of joint custody is reserved for relatively stable, amicable parents behaving in mature civilized fashion." *Matter of Fiorelli v Fiorelli*, 34 AD3d 1216, 824, NYS2d 695 (4th Dept 2006), internal citations omitted. The mother's "sole" custody status emboldened her to, on occasion, treat the father as a lesser parent, which is a complete misinterpretation of her role as the custodial parent. In regard to the father's parenting time, the parties at times have carved out a schedule and agreed to put the children's safety at the forefront. The issue of the children's school was an area of contention, which has now been settled by this Court *infra*. The Court finds that the parenting time schedule outlined herein, which decreases the amount of time the parties interact, will encourage more collegiality and decrease animosity. The mother wants the father more involved with the children's treatment and therapy. The father wants a more active and consistent role in his children's lives. Both parties have the same goal of raising their children to reach their potential. Based on all the above, the Court finds that it is in the children's best interest for the parents to share joint custody of the minor children.

Turning to the issue of home schooling, the Court finds that the mother is unqualified to home school the children and cannot effectively meet the needs of the children in a home school setting. In reaching this conclusion, the Court considered the development disabilities of both children and weighed the following factors: the quality of the education; socialization; and the willingness of the custodial parent to give the other parent a role in the educational process. There was no proof as to the quality of the education that the mother was providing. The mother believed the children struggle with crowded spaces and in group settings, yet seemed content on not providing the children with avenues for socialization. The Court finds the earlier the children obtain sustained competent education, treatment and socialization the better; that developmental challenges, such as having difficulty in group settings, will only exasperate and become more pronounced as the children age into teenagers and beyond if not adequately addressed now. Moreover, based on the current dynamics between the parties and the children, the Court finds that allowing the mother to home school the children would excise the father from the children's education and further deteriorate the father's relationship with the children. As a result, the Court finds that it is not in the children's best interest to be home schooled and that the mother is directed to forthwith enroll the children in public school for the start of the

2018-2019 school year.

Mr. Bottorff's Motion #1 requested the children be academically tested to determine if Ms. Bottorff was providing quality home schooling. The Court has determined that the children shall not be home schooled, but instead shall attend public school. As a result, the issue of having them tested for purposes of measuring how the children were doing academically in a home school setting is now moot. Motion #1 shall be dismissed with prejudice. In addition, the mother's modification petition (Docket Numbers V-04013-17/18D and V-04014-17/18D) is dismissed with prejudice, as the Court finds it is in the best interest of the children to have overnight parenting time with their father.

Accordingly, it is hereby

ORDERED that Mr. Conrad A. Bottorff's violation petition filed on September 21, 2017 and amended on October 31, 2017, bearing Docket Numbers V-04013-17/17A and V-04014-17/17A is dismissed with prejudice; and it is further

ORDERED that Mr. Conrad A. Bottorff's violation petition filed on May 7, 2018, bearing Docket Numbers V-04013-17/18E and V-04014-17/18E is dismissed with prejudice; and it is further

ORDERED that Mr. Conrad A. Bottorff's violation petition filed on June 20, 2018, bearing Docket Numbers V-04013-17/18F and V-04014-17/18F is dismissed with prejudice; and it is further

ORDERED that Mr. Conrad A. Bottorff's Motion #1 filed on November 8, 2017, is denied and dismissed with prejudice; and it is further

ORDERED that Ms. Jennifer L. Bottorff's modification petition filed on January 24, 2018, bearing Docket Numbers V-04013-17/18D and V-04014-17/18D is dismissed with prejudice; and it is further

ORDERED that Mr. Conrad A. Bottorff's violation petition filed on November 22, 2017, bearing Docket Numbers V-04013-17/17B and V-04014-17/17B is sustained as outlined below; and it is further

ADJUDGED that Ms. Jennifer L. Bottorff failed to obey the order of the Family Court and that such failure was willful, with no further action required; and it is further

ADJUDGED that Ms. Jennifer L. Bottorff knowingly, consciously and voluntarily disregarded her obligation under a lawful court order in that she made plans for the children during Mr. Conrad A. Bottorff's parenting time; and it is further

ORDERED that Mr. Conrad A. Bottorff's modification petition filed on December 21, 2017, bearing Docket Numbers V-04013-17/17C and V-04014-17/17C is denied in part and granted in part as outlined herein; and it is further

ORDERED that Mr. Conrad A. Bottorff and Ms. Jennifer L. Bottorff shall share joint custody of their minor children, CB and KB; and it is further

ORDERED that the parties shall engage in Family Functional Therapy through ADHD & Autism Psychological Services and Advocacy, or some similar provider, and follow through with all recommendations emanating therefrom; with said therapy being scheduled with a provider by November 30, 2018; and it is further

ORDERED that the children's primary residence shall be with Ms. Jennifer L. Bottorff; and it is further

ORDERED that Ms. Jennifer L. Bottorff shall forthwith enroll the children in public school for the start of the 2018-2019 school year, with the children remaining in public school thereafter; and it is further

ORDERED that the children shall not be home schooled; and it is further

ORDERED that Mr. Conrad A. Bottorff shall have parenting time with both children every other weekend from Saturday at 10:00 a.m. overnight to Monday morning, when Mr. Bottorff shall return the children to school, or if no school, until 4:00 p.m., which every other weekend shall commence on Saturday, September 15, 2018; and it is further

ORDERED that Mr. Conrad A. Bottorff shall be responsible for arranging all transportation for purposes of his parenting; and it is further

ORDERED that the pick-up and drop off of the children, if not at the children's school, shall be at Ms. Bottorff's residence, with said pick up and drop off to be curb side, which means Mr. Bottorff or his designee shall remain in the vehicle and Ms. Bottorff shall remain in her house, with only the children traversing the distance from the house/vehicle to the vehicle/house; and it is further

ORDERED that the person picking up or dropping off the children for the exercise of parenting time shall do so promptly at the appointed time; and it is further

ORDERED that Ms. Bottorff shall have the children ready to leave at the appointed time for the start of Mr. Bottorff's parenting time; and it is further

ORDERED that Mr. Bottorff shall have the option of exercising parenting time with the children during the mid-winter (typically in February) school break and the spring (typically in April) school break, which parenting time shall be an extension of his regularly scheduled every other weekend parenting time from either Saturday 10:00 a.m. to Wednesday at 4:00 p.m. (if his weekend commences at the start of said breaks) or Wednesday at 10:00 a.m. to Monday, returning the children to school Monday morning or until 4:00 p.m. if no school (if his weekend commences at the conclusion of said breaks); with Mr. Bottorff providing Ms. Bottorff notice of his intention to exercise the above referenced parenting time by January 1st of each year; Mr. Bottorff's failure to provide notice to Ms. Bottorff by January 1st shall operate as a forfeiture of that respective parenting time; and it is further

ORDERED that each party shall have the option of exercising one week of parenting time during the summer, in either July or August, with the parties exchanging which weeks they intend to exercise no later than May 15th of each year, and if there is a conflict as to which weeks the parties want, the mother's choice shall control in even years and the father's choice shall control in odd years; with the week being defined as the Monday through Friday tacked onto their regularly scheduled weekend time; failure to provide notice to the other party by May 15th shall operate as a forfeiture of that respective parenting time; and it is further

ORDERED the parties shall alternate the following holidays: Fourth of July, Thanksgiving and the Christmas Holiday, commencing with the father having Thanksgiving 2018, the mother having the Christmas Holiday in 2018, and the father having Fourth of July in 2019, etc.; and it is further

ORDERED that for Thanksgiving the parenting time shall be from Thanksgiving Day at 10:00 a.m., overnight until the following day at 4:00 p.m.; and it is further

ORDERED, that for the parent having the Christmas Holiday, his/her parenting time shall be from Christmas Eve at noon to Christmas Day at noon; and for the parent not having said Holiday, his/her parenting time shall be from December 25th at noon to December 26th at noon; and it is further

ORDERED that for the Fourth of July the parenting time shall be from 10:00 a.m. on the Fourth overnight until 10:00 a.m. on the fifth of July; and it is further

ORDERED that the children shall be with the father on Father's Day and with the mother on Mother's Day from 10:00 a.m. to 7:00 p.m.; and it is further

ORDERED that school vacation and holiday parenting time takes precedence over regularly scheduled parenting time; and it is further

ORDERED that each parent, regardless of custodial status, is authorized to access all the children's educational, medical, mental health or psychological records or any other record or notice that is available to the custodial parent. This includes the right to speak with and obtain information from teachers, counselors, mental health professionals and medical providers; and it is further

ORDERED that each parent shall promptly and fully disclose to the other parent any event significantly affecting the children's health, education, behavior or general welfare; and it is further

ORDERED that each parent shall give the other timely notice of the children's medical appointments, school events not otherwise contained within the school's published calendars, counseling sessions or the like; and it is further

ORDERED, that neither parent shall discuss the legal aspects of this case, where the children should go to school, any disagreements between the parents, who the children would like to spend more time with, overnight parenting time, any disagreements/arguments between

the parents or other similar adult issues with or in front of the children or permit third persons to do so; and it is further

ORDERED that neither parent shall disparage the other parent or other members of that parent's family or household to or in front of the children or permit third persons to do so; and it is further

ORDERED that each parent shall keep the other timely informed of the other's residential address and phone numbers; and it is further

ORDERED that neither parent shall commit any act of domestic violence, including no screaming or yelling, while in the presence of the children, nor permit the children to remain in the presence of anyone who is engaged in any acts of domestic violence or harassment; and it is further

ORDERED that neither parent shall consume or be under the influence of any synthetic drugs, illegal drugs or prescription medication not specifically prescribed for them and shall take all prescribed medication and over the counter medication in a manner that is consistent with their labeling while the children are in their presence; and it is further

ORDERED that neither parent shall be under the influence of alcohol to the point of intoxication as defined by the NYS Vehicle and Traffic Law while the children are in their presence; and it is further

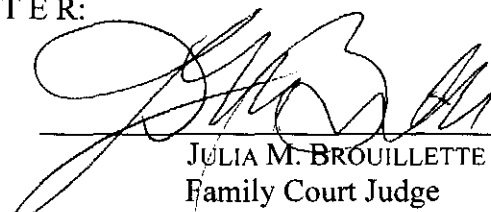
ORDERED, all previous Family Court custody/visitation orders are superseded by this Decision and Order; and it is further

ORDERED, that service of a copy of this Order by regular mail or email upon the parties, their respective attorney's, if any, and the Attorney for the Children shall be deemed good and sufficient service.

THIS SHALL CONSTITUTE THE DECISION AND ORDER OF THIS COURT

Dated at Utica, New York
on September 4, 2018

ENTER:



JULIA M. BROUILLETTE
Family Court Judge

NOTICE: Pursuant to §1113 of the Family Court Act, an appeal must be taken within 30 days of receipt of the Order by appellant in Court, 35 days from the mailing of the Order to the appellant by the Clerk of the Court, or 30 days after service by a party or law guardian upon the appellant, whichever is earliest.