DOCKET NO. HHD FA18-5056762 S

TYREE HUGHEY	:	SUPERIOR COURT
v.	:	JUDICIAL DISTRICT OF HARTFORD
	:	AT HARTFORD
KIMBERLY HUGHEY	:	MAY 3, 2024

ORDERS RE: THE PLAINTIFF'S MOTION FOR MODIFICATION (DOCKET ENTRY #171), MOTION FOR CONTEMPT (DOCKET ENTRY #218), MOTION TO REMOVE CHILD THERAPIST (DOCKET ENTRY #219), MOTION FOR A SECOND PSYCHOLOGICAL EVALUATION (DOCKET ENTRY #221) AND REQUEST FOR ACCESS TO REPORTS (DOCKET ENTRY #223) AND DEFENDANT'S MOTION FOR MODIFICATION (DOCKET ENTRY #186), MOTION RE: EDUCATION (DOCKET ENTRY 196) AND MOTION TO DISMISS (DOCKET ENTRY #212).

The plaintiff's February 8, 2022 motion for modification (docket entry #171), July 20, 2023 motions for contempt (docket entry #218), to remove child therapist (docket entry #219), for a second psychological evaluation (docket entry #221) and request for access to psychological report and [Department of Children and Families] report (docket entry #223) and the defendant's July 26, 2022 motion for modification (docket entry #186), January 23, 2023 motion re: education (docket entry 196) and July 6, 2023 motion to dismiss (docket entry #212) came before the court on July 24, 25, August 16, October 26 and November 29, 2023. The plaintiff, Tyree Hughey, represented himself on the first three days of trial. He was represented

Notice Sent 05/03/2024:

Tyree Hughey
Atty Scott Sandler
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by attorney Scott Sandler on the last two days of trial and thereafter. The defendant, Kimberly Hughey,[1] was represented by attorney Eric Emanuelson throughout the trial. Attorney Kathleen Nevins is the court-appointed Guardian ad litem (GAL). She attended each day of the trial.

Both parties testified. In addition, the court heard testimony from Katonya Hughey, Mr. Hughey's mother, Erin Wasicki, a DCF investigator, Alexa Joseph, a family relations counselor who conducted a general case management of the family, Katherine Hughey, Mr. Hughey's grandmother, and the GAL.[2]

The court finds all facts by a preponderance of the evidence presented, except where otherwise noted. The court has listened carefully to the witnesses and assessed their credibility. "*It is the sole province of the trial court to weigh and interpret the evidence before it and to pass upon the credibility of witnesses.* . . . It has the advantage of viewing and assessing the demeanor, attitude and credibility of the witnesses and is therefore better equipped . . . to assess the circumstances surrounding the dissolution action." (Citation omitted; emphasis in original; internal quotation marks omitted.) *Rubenstein* v. *Rubenstein*, 107 Conn. App. 488, 497, 945 A.2d 1043, cert. denied, 289 Conn. 948, 960 A.2d 1037 (2008). "It is the judge in the courtroom

[1] Kimberly Hughey was married during the trial and is now known as Kimberly Billings. She shall be referred to as such, hereinafter.

[2] The court, *Carrasquilla, J.*, ordered the appointment of Attorney Nevins as the minor child's GAL on February 22, 2023 (docket entry #205).

who looks the witnesses in the eye, interprets their body language, listens to the inflections in their voices and otherwise assesses the subtleties . . . ." (Internal quotation marks omitted.) *In re Davonta V.*, 285 Conn. 483, 497, 940 A.2d 733 (2008).

In a case tried to the court, "[t]he . . . judge, as the trier of facts, is the sole arbiter of the credibility of witnesses and the weight to be given to their testimony." (Internal quotation marks omitted.) *Taylor* v. *Commissioner of Correction*, 324 Conn. 631, 637, 153 A.3d 1264 (2017). "It is well established that it is the exclusive province of the trier of fact to make determinations of credibility, crediting some, all, or none of a given witness' testimony." *Goldstar Medical Services, Inc.* v. *Dept. of Social Services*, 288 Conn. 790, 830, 955 A.2d 15 (2008). "It is well settled that the trier of fact can disbelieve any or all of the evidence proffered . . . and can construe such evidence in a manner different from the parties' assertions." *State* v. *DeJesus*, 236 Conn. 189, 201, 672 A.2d 488 (1996). "Testimony that goes uncontradicted does not thereby become admitted or undisputed . . . nor does the strength of a witness's belief raise it to that level." (Citation omitted.) *Stanton* v. *Grigley*, 177 Conn. 558, 563, 418 A.2d 923 (1979).

The court applies all relevant law. The court also unseals all financial affidavits pursuant to Practice Book § 25-59A (h), and takes judicial notice of all pleadings in the court's files. "[Connecticut Code of Evidence §] 2-1 (c) provides that a court may take judicial notice of facts

that are not subject to reasonable dispute in that [they are] either (1) within the knowledge of people generally in the ordinary course of human experience, or (2) generally accepted as true and capable of ready and unquestionable demonstration." (Internal quotation marks omitted.) *In re Jah'za G.*, 141 Conn. App. 15, 24, 60 A.3d 392, cert. denied, 308 Conn. 926, 64 A.3d 329 (2013). "Judicial notice . . . meets the objective of establishing facts to which the offer of evidence would normally be directed. . . . Judicial notice relieves a party only of having to offer proof on the matter; it does not constitute conclusive proof of the matter nor is the opposing party prevented from offering evidence disputing the matter established by judicial notice." (Internal quotation marks omitted.) Id., 22.

"Notice to the parties is not always required when a court takes judicial notice. Our own cases have attempted to draw a line between matters susceptible of explanation or contradiction, of which notice should not be taken without giving the affected party an opportunity to be heard . . . and matters of established fact, the accuracy of which cannot be questioned, such as court files, which may be judicially noticed without affording a hearing." (Internal quotation marks omitted.) *Simes* v. *Simes*, 95 Conn. App. 39, 51, 895 A.2d 852 (2006). "Connecticut Code of Evidence § 2-2 (b) provides: The court may take judicial notice without a request of a party to do so. Parties are entitled to receive notice and have an opportunity to be heard for matters

susceptible of explanation or contradiction, but not for matters of established fact, the accuracy of which cannot be questioned." (Internal quotation marks omitted.) Id., 51 n.14.

FINDINGS OF FACT

The parties were married on December 13, 2014 in Hartford, Connecticut and separated in December 2018. They entered into an agreement to dissolve their marriage on March 26, 2021 (docket entry #165). The court, *Nguyen-O'Dowd, J.*, approved the agreement and incorporated it into the judgment of dissolution on the same day (docket entry #168).

Mr. Hughey is the father and Ms. Billings is the mother of Kenzie Ty Hughey, born on March 27, 2012. Kenzie was eleven years of age at the close of evidence; she is now twelve years old.

In his February 8, 2022 motion for modification (docket entry #171), Mr. Hughey asks the court to modify the parties' parenting schedule so that Ms. Billings's parenting time takes place only outside the home she shares with her significant other and his two children.[3] Mr. Hughey claims that Kenzie was hurting herself with razors at Ms. Billings's home due to racial abuse she suffers there.

[3] Ms. Billings's significant other at the time Mr. Hughey filed his motion, is now her husband.

Mr. Hughey's July 20, 2023 motion for contempt (docket entry #218) seeks to have Ms. Billings held in contempt for restricting his phone access with Kenzie.

In his July 20, 2023 motion to remove Kenzie's therapist (docket entry #219), Mr. Hughey alleges that the therapist, Leigh Anne Mehldau, has been providing ineffective treatment to the child.

Mr. Hughey asserts in his July 20, 2023 motion for a second psychological evaluation (docket entry #221), that the first psychological evaluation of the family conducted by Dr. John Collins was "factually inaccurate and failed to adhere to the applicable legal requirements and standards for psychological evaluations due to [Ms. Billings] knowingly and willingly falsifying and withholding relevant pertinent information for the court." Mr. Hughey did not introduce any evidence of the applicable legal requirements and standards for psychological evaluations, nor did he identify any relevant, pertinent information that Ms. Billings knowingly and willingly falsified or withheld.

Mr. Hughey's July 20, 2023 request for access to a psychological report as well as reports from DCF (docket entry #223), notes that he was self represented at that time and needed the information to properly prosecute his outstanding motions. The court takes judicial notice of the May 6, 2022 order of the court, *Diana, J.*, (docket entry #171.11), which gave counsel of record

access to the DCF report and prohibited counsel from sharing, copying or distributing the report without a court order but allowed counsel to discuss the contents of the report with their clients. Mr. Hughey was represented by attorney Sandler as of September 19, 2023, making this motion moot.

Ms. Billings's July 26, 2022 motion for modification (docket entry #186) alleges a physical altercation between Kenzie and Katonya Hughey, her paternal grandmother, which resulted in a DCF report. The motion further asserts that Mr. Hughey "through his words and actions, attempted to improperly influence [Kenzie] regarding her racial identity and direct interaction with others surrounding the issue of race." Ms. Billings also claims that Mr. Hughey "has made false and baseless claims to the court, to the minor child's therapist, school teachers, counselors and DCF" and is "teaching the minor child to believe racist thoughts and adopt his racist view of the world."

Ms. Billings's January 23, 2023 motion regarding Kenzie's education (docket entry #196) points out that the school in which Kenzie was then enrolled only provided education through the fifth grade and that decisions had to be made regarding choices of the school that

Kenzie would attend for sixth grade and beyond.[4] Ms. Billings asserts that Mr. Hughey had been unwilling to meet with Elaine Ducharme, Ph.D., the educational consultant the parties had engaged to help them make educational decisions.[5]

Finally, Ms. Billings's July 6, 2023 motion to dismiss (docket entry #212) seeks to have four motions that Mr. Hughey filed[6] dismissed because they lack signatures required by Practice Book § 4-2, § 4-4 and § 7-6, they lack a certification page as required by Practice Book § 10-14, § 11-1, and § 7-6, they lack the case title as required by Practice Book § 4-1 and § 7-6, they lack docket numbers as required by Practice Book § 4-1 and § 7-7, they lack the nature of the documents as required by Practice Book § 4-1, § 7-6 and Practice Book Form 101, and they lack

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[4] The court devoted the entire hearing on August 16, 2023, to the issue of Kenzie's future education. On August 17, 2023, the court granted the defendant's motion re: education, awarding final decision-making authority regarding educational decisions to Ms. Billings (docket entry #196.10) because the start of school was imminent and the court wanted the child to have certainty about which school she would the attending.

[5] Initially, the parties were supposed to make joint decisions about Kenzie's school and if they were at an impasse, they were to enlist the aid of Dr. Ducharme. Ms. Billings wanted Kenzie to attend school in Glastonbury. Mr. Hughey did not think it was diverse enough. Ms. Billings tried to use the mediator, but Mr. Hughey canceled the meeting. Eventually, Dr. Ducharme declined to continue as their mediator.

[6] All four motions are undated and untitled. They are a motion to change Kenzie's therapist (docket entry #197), a motion for contempt regarding Mr. Hughey's telephone access with Kenzie (docket entry #198), a motion for access to psychological and DCF reports (docket entry #199) and a motion for a second psychological evaluation (docket entry #200).

an order page as required by Practice Book § 11-1 and § 7-6.[7] Ms. Billings's motion to dismiss is moot because Mr. Hughey refiled the motions at issue under new docket numbers before the first hearing.[8]

Kenzie is a biracial child. Ms. Billings is Caucasian; Mr. Hughey is African-American.[9]

Mr. Hughey is employed by the Boston public school system as the Director of Student Support Services. *Plaintiff's Exhibit 11.* He commutes to Boston from his home in Connecticut.

Ms. Billings is a licensed clinical social worker in private practice in New Britain, Connecticut. Cultural diversity is a significant component of her professional life.

Kenzie is a precocious, smart, bubbly, sassy and sometimes sarcastic twelve-year-old who looks much older than her age. The GAL observed that Kenzie looks like a fifteen-year-old, but still acts like a little girl. The child lately has begun to question her sexuality. She once

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[7] The court takes judicial notice that Mr. Hughey's June 5, 2023 motion to compel (docket entry #211) was rejected by the clerk on those same grounds. The court is unaware of the reason the clerk accepted the four motions that are the subject of Ms. Billings's motion to dismiss (docket entry #212). Although it is clear that the clerk may reject a pleading that is an improper form or lacks required contents, the court is unaware of any legal basis to dismiss a pleading.

[8] Mr. Hughey's motion at docket entry #197 was superseded by the motion at docket entry #219, his motion at docket entry #198 was superseded by the motion at docket entry #218, his motion at docket entry #199 was superseded by the motion at docket entry #223 and his motion at docket entry #200 was superseded by his motion at docket entry #221.

[9] Mr. Hughey testified he is biracial because he is of Jamaican and Cuban descent. The court is unaware of any credible scientific theory that identifies Jamaicans and Cubans as individual races. In his February 8, 2022. Application for Relief from Abuse (HHD FAA - 22-5071645-S), Mr. Hughey described himself as black (docket entry #100.30, p. 3, § 5).

identified as bisexual and currently identifies as pansexual. It is not entirely clear whether, at her tender age, she fully understands the meaning of either of those terms.

The parties currently have what is generally referred to as a 2-2-5 parenting plan.[10] During Mr. Hughey's parenting time, Kenzie is usually cared for by Katonya Hughey, Mr. Hughey's mother. Kenzie is with her grandmother much more frequently than she is with her father.

Mr. Hughey testified that he has a great deal of flexibility in his work schedule and is with Kenzie on a regular basis. He introduced a November 29, 2023 email from his supervisor, Paul Neal, the Regional Principal of the Boston public schools, in which Mr. Neal wrote that Mr. Hughey is allowed to arrive at 9:45 a.m. every Tuesday, Wednesday and every other Monday and he is allowed to leave early every Monday and every other Friday. *Plaintiff's Exhibit 13.*

Mr. Hughey has a two to three hour commute to and from work, depending on the traffic conditions. Katonya Hughey testified that Mr. Hughey leaves for work between 4 a.m. and 7 a.m. each day. The GAL saw no evidence that Mr. Hughey is with Kenzie as much as he claims, concluding that either Mr. Hughey does not have the flexibility with his work schedule he

[10] In a "2-2-5 schedule" typically one parent has the child Mondays and Tuesdays, the other has the child on Wednesdays and Thursdays and they alternate the weekends.

claims, or if he does, he does not exercise it. In addition to his work in Boston, Mr. Hughey is engaged to be married to a woman from Boston. Both Ms. Joseph, the family relations counselor, and Ms. Wasicki, the DCF investigator, concluded that Mr. Hughey spends more time in Massachusetts than he acknowledges. Kenzie described him as not emotionally involved with her anymore.

Kenzie experiences very different parenting styles in her parents' homes. Ms. Billings and Mr. Hughey disagree about bedtimes, discipline, nutrition, accountability and stages of child development. Kenzie has described Mr. Hughey as more fun-loving than Ms. Billings. She also described her father as a fun parent without any rules, in contrast to her description of Ms. Billings as a taskmaster who has lots of rules. Kenzie views Mr. Hughey's home as less structured.

Kenzie told several of the professionals who spoke with her that she "rules the roost" at Mr. Hughey's house. Katonya Hughey and Mr. Hughey let Kenzie do whatever she wants when she is with them. A prime example is a contest Kenzie engages in with her friends. The children stay connected on their electronic devices at night, competing to see who is able to stay up the latest. Staying awake later than her friends is very important to Kenzie; sometimes she is awake until five or six in the morning and usually has trouble in school later that day. In Ms. Billings's

home, Kenzie is not allowed to have electronic devices in her room after bedtime. At Mr. Hughey's home, generally under Katonya Hughey's supervision, Kenzie has no specific bedtime and is allowed to keep her electronic devices in her bedroom with her. Consequently, the contest with her friends to stay up the latest only takes place during Mr. Hughey's parenting time.

Despite the stark contrasts in their parenting styles, Kenzie sees both of her parents as emotionally supportive. She has a deep, loving relationship with both of her parents and is very upset that her parents cannot be civil to each other. All of the adults in Kenzie's life love her unconditionally.

Kenzie shaved her eyebrows at Ms. Billings's home. Katonya Hughey and Mr. Hughey described Kenzie's behavior as self-harm and attributed Kenzie's actions to the racial abuse they believe takes place in Ms. Billings's home. Kenzie denied cutting her eyebrows as a means of self harm. She told the DCF investigator that she did it to annoy her mother.

On February 8, 2022, Mr. Hughey filed an ex parte application for relief from abuse (HHD FA 22-5071645) on behalf of Kenzie. In the supporting affidavit he filed, Mr. Hughey alleged, inter alia: "I found when Kenzie was returned to me last week that Kenzie had shaved her eyebrows using a razor. She said that her mother was constantly yelling at her and Kenzie wants to hurt herself as a result so that her mother would feel Kenzie's pain. . . . Kenzie told both

professionals [Kenzie's school social worker and therapist] that she wants to hurt herself because her mother does not accept her because she is bi-racial. . . . Department of Children and Families became involved on . . . February 1, 2022. Both professionals are mandatory reporters. It is unknown whether either or both referred the matter to DCF. . . . Kenzie is suffering from racial bigotry at her mother's home and in school. Nine-year-old Kenzie is suffering from racial identification and is not supported in her mother's home. . . . Kenzie is hurting herself physically due to psychological and emotional damage being inflicted upon her by her mother . . . ." (Docket entry #100.30. pp. 2-3. ¶¶ 6, 10, 11, 13 & 14). After an evidentiary hearing on February 22, 2022, the application was denied by the court, *Epstein, J.* (docket entry #104).

Ms. Wasicki, the DCF investigator assigned to the matter, learned that Mr. Hughey, a former DCF employee, had made the referral, intending it to be anonymous. He initially told Ms. Wasicki that someone else had made the report. Indeed, Mr. Hughey knew that neither Kenzie's school social worker nor her therapist made a referral because he did it himself. Eventually, Ms. Wasicki found that there was no substance to the underlying complaint and concluded it was not made in good faith. When Ms. Wasicki interviewed Kenzie, the child told her that Ms. Billings mentally abused her. Upon further inquiry, it became clear to Ms. Wasicki that Kenzie had no idea what the term "mental abuse" meant, even though she used the phrase several times. Kenzie eventually confessed that she heard an adult, whom she declined to identify, use the phrase in connection with Ms. Billings.

In December 2022, Kenzie wrote a letter to her father as a school project. In the letter, Kenzie said "My dad is a good parent . . . He encourages me, he listens to me and acknowledges me. I am so grateful to have him in my life. . . . My dad knows how to listen to me. . . . He understands what I say and where I come from." *Plaintiff's Exhibit 3*. Kenzie's relationship with her father began to change in early 2023 when Mr. Hughey took the job in Boston and became romantically involved with a woman there. Kenzie felt somewhat isolated and marginalized. She told the GAL that her dad is "not around," even when he is physically present.

Mr. Hughey's inability or unwillingness to communicate with Ms. Billings is profound. The parties are supposed to communicate through OurFamilyWizard (OFW) but Mr. Hughey refuses to use it nor does he employ any other means of communication in lieu of OFW on a regular basis. When the GAL was first appointed and reviewed OFW, she determined that there were seventy-one messages from Ms. Billings to Mr. Hughey – some than six months old – to which Mr. Hughey had not responded. The messages covered such topics such as summer camp, vacation plans, therapy and Kenzie's medical issues. As of the first day of trial, there were sixty-five OFW messages from Ms. Billings to Mr. Hughey that he had not read, even when prompted to do so by the GAL. *Defendant's Exhibit E.* Ms. Billings sent ten OFW messages to Mr. Hughey regarding Kenzie's attendance at summer camp that year. He did not respond to any of them, forcing Ms. Billings to make decisions about summer camp on her own.

Ms. Billings has final decision-making authority with respect to medical issues but tries to involve Mr. Hughey to little or no avail. Mr. Hughey will not participate in discussions or respond to OFW posts so Ms. Billings has to make medical decisions herself or nothing would be done.

In January 2023, Mr. Hughey enrolled Kenzie in a lottery for an East Hartford middle school, even though neither of her parents lived in that school district. Ms. Billings did not learn that Kenzie was on the wait list for the school until April 2023.

In May 2023, Ms. Billings discovered Kenzie had been four hours late to school. When confronted, Kenzie admitted to her mother that Mr. Hughey had taken her on a tour of St. Timothy's Catholic elementary school in West Hartford (St. Timothy's). *Defendant's Exhibit I.* Mr. Hughey never broached the subject of Kenzie attending a Catholic school with Ms. Billings nor did he tell her that he was taking Kenzie for a tour of one.

Ms. Billings acknowledged she knew very little about St Timothy's because as a private educational institution, it does not make its academic evaluations public. Mr. Hughey did not share any information with Ms. Billings about St. Timothy's. She repeatedly asked him questions through OFW, but he never responded. The GAL asked Mr. Hughey to share information about St. Timothy's with Ms. Billings, but he never did. Taking Kenzie to tour a school without telling Ms. Billings was wrong. Having Kenzie keep it a secret from her mother was worse.

After Kenzie shaved part of her eyebrows, Mr. Hughey took her to a therapist, Siobhan Brown, without telling Ms. Billings. Mr. Hughey associated the eyebrow incident with racial issues he believes Kenzie is confronting at Ms. Billings's house. He identified Ms. Brown as a specialist in racial issues. Kenzie did not care for Ms. Brown and only saw her on two occasions. Ms. Mehldau, Kenzie's regular therapist since January 2021, did not know she was seeing Ms. Brown. Unfortunately, Ms. Brown did not know that Kenzie had a regular therapist.

Ms. Mehldau has developed a strong bond with Kenzie. Kenzie recognizes the therapy is important to her well-being; she derives a great benefit from the therapy. Mr. Hughey did not get along with Ms. Mehldau, in part because he believes that she does not adequately address Kenzie's racial issues. He claims, for instance, that when Kenzie expressed her feelings to Ms. Mehldau, she responded "is that you talking or is that your dad talking?" Ms. Mehldau told the DCF investigator that issues Kenzie raises in therapy often stem from conversations Mr. Hughey has with his daughter. When Mr. Hughey communicated with Ms. Mehldau, she felt badgered and overwhelmed. Before Ms. Billings was given final decision-making authority with respect to medical issues, Mr. Hughey unilaterally withdrew his consent for Ms. Mehldau to provide therapy for Kenzie. Taking Kenzie to a second therapist without telling Ms. Billings was wrong. Making Kenzie keep it a secret from her mother was worse.

During the trial, Ms. Billings became aware that Kenzie had TikTok accounts.[11] Eventually, Ms. Billings learned that Kenzie had five such accounts, some of which were public. Ms. Billings was particularly concerned about Kenzie's use of social media because she views her daughter as easily influenced and susceptible to peer pressure. Mr. Hughey had put the TikTok application on Kenzie's phone without telling Ms. Billings. Katonya Hughey regularly made videos of Kenzie and posted them on one of Kenzie's TikTok accounts.

Ms. Billings noted that a person Kenzie described as her boyfriend had created a post on TikTok using Kenzie's name. The post was very sexual in nature. *Defendant's Exhibit P.* Ms. Billings tried to communicate via OFW with Mr. Hughey about the incident. He responded by email, at first denying that Kenzie was on TikTok. *Defendant's Exhibit P.* Eventually Mr. Hughey acknowledged the TikTok accounts and said he would follow up with the boy's family. Mr. Hughey testified that employees of the Boston public school system monitor Kenzie's TikTok accounts for her protection. Even if that were true, it is an improper delegation of parental responsibility and apparently ineffective because the monitors did not detect the sexually explicit post. Mr. Hughey was wrong to give Kenzie access to TikTok at such a young age. Having Kenzie keep her TikTok access a secret from her mother was worse.

[11] TikTok is a peer to peer short-form video service, which hosts user-submitted videos ranging in duration from three seconds to ten minutes. TikTok requires its users to be at least thirteen years of age. *Defendant's Exhibit R.* Kenzie was nine years old when Mr. Hughey first allowed her to have a TikTok account.

Kenzie has been involved in several physical altercations with classmates at school. In one instance in December 2022, she slapped another student on the head, but told everyone that she tripped and hit the child accidentally. She even gave a written statement to that effect. A video of the incident proved that Kenzie had intentionally struck the other child and lied about it. *Defendant's Exhibit L.* Kenzie received a one day in-school suspension for the incident. *Defendant's Exhibit M.* Ms. Billings took away Kenzie's computer, stopped her from playing basketball and soccer and made her write letters of apology. There were no consequences from Mr. Hughey.

Kenzie had a crisis in school in late September 2023 between the third and fourth trial days. Kenzie sent Mr. Hughey a text from school saying she needed to be picked up because she was having a difficult time. Mr. Hughey was working in Boston. Instead of calling Kenzie's mother who lives minutes away from the school, he called Katonya Hughey, who lives in another town. Almost an hour after he received the text from Kenzie, Mr. Hughey sent Ms. Billings a text telling her: "Kenzie informed the school that she has been cutting and she is high risk for suicidal ideation. Are you available to be at CCMC with us for her to be checked out[?] She needs both of us[.]" He also informed Ms. Billings that Katonya Hughey was taking Kenzie to the Connecticut Children's Medical Center (CCMC). *Defendant's Exhibit U.* Ms. Billings told Mr. Hughey she would get Kenzie and take her to the hospital because she thought it important for Kenzie to have a parent with her. Ms. Billings picked up Kenzie less than fifteen minutes after she received Mr.

Hughey's text, had a brief discussion with the school psychologist and took Kenzie to CCMC where she was evaluated. Mr. Hughey did not arrive at the hospital until 3:30 p.m., almost three hours after Kenzie had contacted him. Once she and Kenzie arrived at the hospital, Ms. Billings kept Mr. Hughey updated with texts on a regular basis until he arrived.

Mr. Hughey cites this incident as an example of how well he and Ms. Billings coparent. He glosses over the fact that when Kenzie had what appeared to be a health emergency, Mr. Hughey called his mother rather than Kenzie's mother. His behavior on this occasion was consistent with the way he fails communicate with Ms. Billings on a regular basis.

Kenzie told the medical personnel at CCMC that she was feeling immense pressure at school. She had issues with friends that neither she nor her friends handled well. After an evaluation, the medical staff determined that Kenzie was not at risk and discharged her. That night at Katonya Hughey's home, Kenzie engaged in the contest with her friends to see who could stay up the latest.

Both Mr. Hughey and Katonya Hughey believe that Kenzie has racial issues, suffers racial abuse in Ms. Billings's home and struggles with her racial identity. They link almost every event in Kenzie's life to the fact that she is biracial, including the fights and the eyebrow shaving incident. They believe that Ms. Billings is racially insensitive.

Ms. Billings believes that Mr. Hughey is determined to marginalize her involvement in Kenzie's life and uses race as a weapon to do so. It is undeniable that Mr. Hughey is laser-

focused on Kenzie's race. Ms. Joseph, the family relations counselor, Ms. Wasicki, the DCF investigator, and the GAL – each of whom interviewed Kenzie extensively – concluded that Kenzie does not have the racial issues Mr. Hughey claims. Kenzie is concerned about her mental health, school, her social life, boys, the pre-teen drama that permeates her world and her dad's availability, but not race. Kenzie expressed very clearly to the GAL that race is her father's issue, not hers.

"Contempt is a disobedience to the rules and orders of a court which has power to punish for such an offense." (Internal quotation marks omitted.) *Hall* v. *Hall*, 335 Conn. 377, 391, 238 A.3d 687 (2020). It is "[a]n exhibition of scorn or disrespect toward a court . . . ." Ballentine's Law Dictionary (3d Ed. 1969).

"[A] court may not find a person in contempt without considering the circumstances surrounding the violation to determine whether such violation was wilful. . . . [A] contempt finding is not automatic and depends on the facts and circumstances underlying it." (Internal quotation marks omitted.) *Bolat* v. *Bolat*, 182 Conn. App. 468, 480, 190 A.3d 96 (2018). "[I]t is well settled that the inability of [a] defendant to obey an order of the court, without fault on his part, is a good defense to the charge of contempt . . . . The contemnor must establish that he cannot comply, or was unable to do so. . . . It is [then] within the sound discretion of the court to deny a claim of contempt when there is an adequate factual basis to explain the failure." (Citation omitted; internal quotation marks omitted.) *Ahmadi* v. *Ahmadi*, 294 Conn. 384, 398, 985 A.2d

319 (2009). "Whether [a party] establishe[s] [an] inability to pay [an] order by credible evidence is a question of fact." (Internal quotation marks omitted.) *Merkrut* v. *Suits*, 147 Conn. App. 794, 800, 84 A.3d 466 (2014). Civil contempt proceedings such as those presently before this court must be proven by "clear and convincing evidence." *Bolat* v. *Bolat*, supra, 182 Conn. App. 480.

General Statutes § 46b-56 (a) provides in relevant part: "In any controversy before the Superior Court as to the custody or care of minor children . . . the court may make or modify any proper order regarding the custody, care, education, visitation and support of the children . . . ." "Before a court may modify a custody order, it must find that there has been a material change in circumstance since the prior order of the court, but the ultimate test is the best interests of the child." (Internal quotation marks omitted.) *Payton* v. *Payton*, 103 Conn. App. 825, 834, 930 A.2d 802, cert. denied, 284 Conn. 934, 935 A.2d 151 (2007). "If such a material change [in the circumstances] is found, the court may then consider past conduct as it bears on the present character of a parent and the suitability of that parent as custodian of the child." (Internal quotation marks omitted.) *Petrov* v. *Gueorguieva*, 167 Conn. App. 505, 526, 146 A.3d 26 (2016).

"[N]ot every change in circumstances is material; and not every material change in circumstances necessarily affects the best interests of the child. To conclude otherwise would be to encourage microscopic analysis of every decision made by a custodial parent in circumstances

such as these." *Clougherty* v. *Clougherty*, 162 Conn. App. 857, 873, 133 A.3d 886, cert. denied, 320 Conn. 932, 134 A.3d 621, 136 A.3d 642 (2016).

Our Supreme Court has consistently held "in matters involving child custody, and by implication, visitation rights, that while the rights, wishes and desires of the parents must be considered it is nevertheless the ultimate welfare of the child which must control the decision of the court." (Internal quotation marks omitted). *Ridgeway* v. *Ridgeway*, 180 Conn. 533, 541, 429 A.2d 801 (1980).

In determining whether and how to modify a custody arrangement pursuant to General Statutes § 46b-56 (c), "the court shall consider the best interests of the child, and in doing so, may consider, but shall not be limited to, one or more of the following factors: (1) The physical and emotional safety of the child; (2) the temperament and developmental needs of the child; (3) the capacity and the disposition of the parents to understand and meet the needs of the child; (4) any relevant and material information obtained from the child, including the informed preferences of the child; (5) the wishes of the child's parents as to custody; (6) the past and current interaction and relationship of the child with each parent, the child's siblings and any other person who may significantly affect the best interests of the child; (7) the willingness and ability of each parent to facilitate and encourage such continuing parent-child relationship between the child and the other parent as is appropriate, including compliance with any court orders; (8) any manipulation by or coercive behavior of the parents in an effort to involve the child in the parents' dispute; (9) the

ability of each parent to be actively involved in the life of the child; (10) the child's adjustment to his or her home, school and community environments; (11) the length of time that the child has lived in a stable and satisfactory environment and the desirability of maintaining continuity in such environment, provided the court may consider favorably a parent who voluntarily leaves the child's family home pendente lite in order to alleviate stress in the household; (12) the stability of the child's existing or proposed residences, or both; (13) the mental and physical health of all individuals involved, except that a disability of a proposed custodial parent or other party, in and of itself, shall not be determinative of custody unless the proposed custodial arrangement is not in the best interests of the child; (14) the child's cultural background; (15) the effect on the child of the actions of an abuser, if any domestic violence, as defined in section 46b-1, has occurred between the parents or between a parent and another individual or the child; (16) whether the child or a sibling of the child has been abused or neglected, as defined respectively in section 46b-120; and (17) whether the party satisfactorily completed participation in a parenting education program established pursuant to section 46b-69b. The court is not required to assign any weight to any of the factors that it considers, but shall articulate the basis for its decision." See *Hibbard* v. *Hibbard*, 139 Conn. App. 10, 55 A.3d 301 (2012).

The GAL's recommendations represent a significant change to the existing court orders with respect to parenting, but do not differ very much from what is actually happening.

Traditional joint custody is no longer an effective means for these parents to raise their child because Mr. Hughey simply does not communicate with Ms. Billings. He has demonstrated on countless occasions that he will not engage with Ms. Billings regarding matters affecting Kenzie. He has ceded much of his parenting responsibilities to Katonya Hughey, who loves Kenzie very much but is not her parent.

Mr. Hughey's inability or unwillingness to communicate with Ms. Billing is a material change in circumstances, which has had a deleterious affect on the parties' ability to coparent.

The court is confident that Ms. Billings will continue to involve Mr. Hughey – to the extent he wants to be involved – in the important decisions regarding Kenzie. Ms. Billings has demonstrated her willingness to coparent with Mr. Hughey with respect to medical issues over which she has had final decision-making authority.

ORDERS

The parents shall share joint legal custody of Kenzie – making major decisions together concerning significant, non-routine matters. It is in Kenzie's best interests that, if after careful, respectful and thoughtful discussion, the parties are unable to reach an agreement, Ms. Billings shall have final decision-making authority.

Significant, non-routine decisions shall include, but not be limited to, the following areas:

- Selection of schools and educational matters;
- Kenzie's residence;

- Day care providers, including after school and summer camp programs;
- Participation in extracurricular activities;
- Nonemergency medical, dental, psychological, psychiatric or orthodontic care, including the selection of the care providers;
- Participation in religious organizations and activities; and
- Trips away from home without a parent that involve a distance of more than fifty miles, leaving the state of Connecticut or overnight stays.

Key issues affecting Kenzie's health, growth and development, course of study, extent of travel away from home, choice of camp, major medical treatment, lessons, psychotherapy, psychoanalysis or like treatment, part or full-time employment, purchase or operation of a motor vehicle, specially hazardous sports or activities, contraception and sex education, religious upbringing, nonemergency healthcare, significant changes in social environment and decisions relating to actual or potential litigation, involving Kenzie directly or as beneficiary, other than custody, shall be considered and discussed in depth by the parents.

Ms. Billings shall provide updated information to Mr. Hughey about Kenzie, particularly with respect to information that only Ms. Billings possesses. Before Ms. Billings makes a major decision for Kenzie, she shall send an OFW message to Mr. Hughey about the matter. Provided Mr. Hughey responds within at least twenty-four hours, Ms. Billings shall consider Mr. Hughey's input in good faith, before making the decision. If Ms. Billings decides to do something other

than what Mr. Hughey wanted, Ms. Billings shall give Mr. Hughey an explanation for her decision.

If either parent becomes aware of an issue affecting or that may affect Kenzie's health or well-being, that parent shall notify the other parent by phone call or text immediately.

The privileges conferred by these orders shall not be exercised for the purpose of frustrating, denying or controlling in any manner the lifestyle of the other parent.

Each parent shall have a role in providing a sound moral, social, economic and educational environment for Kenzie. The parties shall exert their best efforts to work cooperatively in developing future plans consistent with Kenzie's best interests and in amicably resolving such disputes as may arise.

Day-to-day decisions of a routine nature, including but not limited to bedtime, homework, health care, and day-to-day school, social and athletic activities customary for a child of Kenzie's age and maturity, shall be made by the parent with whom Kenzie is staying, not by any third party. The parents shall endeavor to cooperate and establish a mutually agreeable policy regarding such day-to-day decisions, but the primary responsibility for routine decisions shall rest with the parent with whom Kenzie is then staying.

Neither parent shall make a unilateral decision or take unilateral action regarding significant nonroutine matters affecting Kenzie.