

DOCKET NO. KNO-FA19-5106946

SUPERIOR COURT

MELISSA SCANLON

J.D. OF NEW LONDON

V.

AT NORWICH

MICHAEL MARGIOTTA

JUNE 5, 2024

MEMORANDUM OF DECISION
PLAINTIFF'S POST JUDGMENT MOTION FOR MODIFICATION

On August 28, 2022, the parties' minor child, aged 4 at the time, disclosed to her mother that her father had touched her in the vaginal area. Plaintiff mother, Melissa Scanlon, filed an application for emergency ex parte orders of custody, which was granted on the papers, with temporary orders entered that father was to have no contact with the minor children. The instant motion for modification was filed at the same time. The temporary *ex parte* orders were continued after the hearing on the application until a hearing could be held on the plaintiff's motion for modification, and while family relations completed tasks assigned pursuant to a general case management order. The parties, by agreement, continued this matter several times, while the defendant father undertook a psychosexual evaluation and awaited the final report. A final hearing on the plaintiff's post-judgment motion for modification was held in this matter on February 6, 2024. The plaintiff mother is self-represented, and the defendant father is represented by counsel. Attorney Paige Quilliam served as the Guardian Ad Litem (GAL).

The court, after careful consideration of the testimony and evidence presented by the parties, the parties' witnesses, the testimony and recommendations of the GAL, the parties'

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Chris Hodgkinson CFL

proposed orders, and the applicable statutes and case law, including the best interests of the minor child under the statutory criteria of Conn. Gen. Stat. § 46b-56(c), makes the following findings of fact and conclusions of law, and enters the following orders.

Ordinarily, a party seeking modification of a court order in a custody matter must make a showing of a material or substantial change in circumstances. “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.” *Kennedy v. Kennedy*, 83 Conn. App. 106, 113 (2004). *See also*, Conn. Gen. Stat. § 46b-56(b).¹ A modification of the parenting access schedule, however, requires no demonstration of such a change of circumstances.² “When a court rules on a motion to modify visitation, it is statutorily

¹ Conn. Gen. Stat. § 46b-56(b) provides as follows:

In making or modifying any order as provided in subsection (a) of this section, the rights and responsibilities of both parents shall be considered and the court shall enter orders accordingly that serve the best interests of the child and provide the child with the active and consistent involvement of both parents commensurate with their abilities and interests. Such orders may include, but shall not be limited to: (1) Approval of a parental responsibility plan agreed to by the parents pursuant to section 46b-56a; (2) the award of joint parental responsibility of a minor child to both parents, which shall include (A) provisions for residential arrangements with each parent in accordance with the needs of the child and the parents, and (B) provisions for consultation between the parents and for the making of major decisions regarding the child's health, education and religious upbringing; (3) the award of sole custody to one parent with appropriate parenting time for the noncustodial parent where sole custody is in the best interests of the child; or (4) any other custody arrangements as the court may determine to be in the best interests of the child.

² *See Szczerkowski v. Karmelowicz*, 60 Conn. App. 429, 433 (2000) (“Although the defendant claims that the court was required to find that a substantial change of circumstances existed before modifying the plaintiff's visitation, this is a misreading of our law. The defendant cites no case, and our independent research discloses none, that requires a court ruling on a motion to modify visitation to find as a threshold matter that a change of circumstances has occurred.”)

incumbent on the court that its order be guided by the best interest of the child standard..."

Szczerkowski v. Karmelowicz, 60 Conn. App. 429, 432 (2000).

In considering the best interests of the child, this court has been guided by the statutory factors enumerated at Conn. Gen. Stat. 46b-56(c), including, but not limited to, the following:

... (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 recognizes that some of these criteria are not at issue in the present case. In balancing all of the applicable factors, the court is also guided by the principle that "[t]he best

interests of the child include the child's interests in sustained growth, development, well-being, and continuity and stability of [the child's] environment.” (internal citations omitted) *Schult v. Schult*, 241 Conn. 767, 777 (1997). With these principles in mind, the court turns to consideration of the parties' respective claims and defenses.

The parties share three minor children, S.M., born October 16, 2017, H.M. born June 26, 2019, and C.M. born October 22, 2013. The parties have had a difficult co-parenting relationship, and a particularly toxic romantic relationship before their separation from each other in 2019. Father credibly describes mother as eager to exclude him from the children's lives after the parties' romantic relationship ended. Even a cursory review of the file reveals significant periods of co-parenting conflict and litigation between the parties. Mother was pregnant with the parties' youngest child when the parties ended their romantic relationship and separated from each other. Mother would initially not permit father to see the children, particularly the youngest child, after the parties' separation. The parties eventually reached an agreement, entered as the judgment in this matter in November of 2019, in which father had two weeknights a week with the two older children, for dinner parenting access time, and alternating Sundays from noon to 6 p.m., with the youngest child to join this parenting access time for two hours, only if father had an additional adult present. The parties' co-parenting relationship, leaving the present dispute aside, has been rife with conflict, frequent police intervention to document mother's refusal to cooperate with father's court-ordered access, and significant litigation.

In 2020, the parties, after much litigation and with the assistance of a Guardian Ad Litem (GAL) entered into a new agreement, providing father with midweek dinner and alternating weekend overnight access with the two older children, with the youngest child joining father's access time for a few hours on the Sunday portion of his alternating weekend access. This was the access schedule the parties were following in August of 2022, at the time of the incident giving rise to this decision.

Mother previously made a 2020 Department of Children and Families (DCF) report against father, ultimately unsubstantiated, when the minor child S.M. incurred a minor burn while in father's care. During the ensuing conflict, mother withheld parenting access from father for several months. A police report from June of 2020, summarizing an incident in which mother was withholding access from the children in violation of court orders, notes that mother was "less than cooperative" and stated "that she does not care that there is a court order." The day before the incident that gives rise to these proceedings, mother had become angry with father because he arrived at the exchange of the children with a "hickey" or "love bite" visible on his neck. Mr. Margiotta had been engaged in a new romantic relationship, and Ms. Scanlon had heard, without knowing, that his girlfriend had recently contracted COVID-19. During this argument, mother threatened to call DCF to report father for endangering the children, claiming that he was exposing the children to COVID-19 because of his new relationship.

On August 27, 2022, pursuant to the parties' custody agreement, father had overnight access with the two older children. On Sunday, August 28, 2022, father returned to mother's

home, with the intention of picking up the parties' youngest child for the continuation of his access time with all three children. While father waited in his vehicle, the minor child S.M. went into mother's home, for the purposes of having mother braid her hair. While mother was braiding her hair, the minor child allegedly reported that her father had touched her. When mother asked further questions, the minor child pointed to her vagina. Mother's significant other, Richard Spina, and the parties' older child, C.M., were present for this conversation. Mr. Spina then proceeded to confront father about the child's revelations outside of the home. Mother continued to ask the child a number of questions, including some leading questions, such as whether it was "yuck." When confronted by Mr. Spina, father asked to speak to mother directly, who then came out of the house as well, holding the minor child S.M.

An argument ensued about these allegations, with Mr. Spina, Mr. Margiotta, Ms. Scanlon, and the minor children all present, and the argument escalated quickly. At some point in this heated argument, Ms. Scanlon asked the child to repeat her statement to father, to which father became upset and asked the child why she was lying. The minor child, who was just 4 years old at the time, was significantly and understandably distressed throughout this interaction, although she did run back to her father before he left to hug him and tell him that she loved him. Father contacted the police to intervene, who arrived, and eventually asked father to leave. The police would continue to investigate the underlying allegations of sexual abuse, but ultimately determined that they did not have grounds to take further action against father.

Mother contacted DCF the same day to report the incident. A DCF social worker met with mother and the child on August 30, 2022, and interviewed the minor child, S.M.. The child reported, in response to a question about her weekend, that “Daddy was being mean to Mommy” and that her father was yelling at mother. When asked what father and the child did during the weekend, the minor child reported that father touched her, pointed to her vaginal area when asked where, and indicated that the touching took place in her father’s bedroom.

Following this interview, DCF scheduled a forensic interview of the child on September 6, 2022. During the forensic interview, the child initially reported that “Daddy was being mean” and that two policemen arrived at her home. Upon questioning, the minor child initially denied any touch that was “not okay.” She was then asked whether “something happened with bodies” to which she nodded her head. The child was then shown a picture, and pointed to the vaginal area of the picture and stated, “daddy touched me there.” According to the DCF records, the child also indicated that father used his whole hand, and that it felt like “yuck” and that the touch occurred inside and not outside.

The DCF record of the forensic interview has limited value, as it is presented in a single narrative paragraph, consisting of the DCF worker’s summary of the interview. It is not clear from this narrative description, with the exception of a few brief quotations drawn from the child’s statements and from the questions that were asked, what the child stated, and how the child “indicated” the various facts that are contained in that summary. In reviewing the summary, however, it is clear that the child was quite distressed by the argument that she witnessed at mother’s home, as she opened the interview and closed it with a reference to

witnessing her father “being mean” to her mother. This was also the first incident the child reported when she was asked by the DCF worker, at the in-home interview, what had happened during the weekend of August 27, and 28, 2022. It is noteworthy that the child initially denied any touch that was “not okay,” only revealing the allegation of alleged sexual abuse when shown a picture and under further prompting by the interviewer. DCF ultimately substantiated the allegations of sexual abuse by the minor child against father. The court does not give weight to this conclusion, for the reasons more fully discussed herein.

The parties’ oldest child, C.M., suffers from an intellectual disability. Unfortunately, she was present during mother’s questioning of the minor child S.M. during her initial disclosure in the bathroom while mother was braiding her hair, and present during the parties’ verbal altercation after S.M.’s revelation. The child C.M. discussed the events of August 28, 2022 in school shortly thereafter, telling her speech therapist that her father had “put things into [S.M.]’s ‘hoo-ha³.” The older minor child’s presence, and her knowledge and subsequent exaggeration of the allegations, highlight the lack of sensitivity and discretion in the manner in which these initial revelations were handled within mother’s household. C.M. and S.M. are close to each other, and S.M. relies upon C.M. for comfort. The older child’s contemporaneous awareness of the allegations, her elaboration upon the facts, and her free discussion of these sensitive issues with S.M. and others, raise serious questions. It is unclear what impact such

³ Mother reported to DCF that this is the term that she uses in the home to refer to the children’s genitalia.

reinforcement and elaboration would have had on the minor child S.M.'s mind and her recollection of the operative events.

Following the August 28, 2022 incident, C.M. engaged in efforts to touch S.M.'s vaginal area during a bath. The minor child S.M. also attempted to touch two boys in their genitals while at her preschool. These incidents all occurred shortly after the events of August 27, and 28, 2022. Following August 28, 2022, the minor child S.M. has shown behavioral changes in school and at home. She reported to her teachers that she could not see her father anymore because he says bad words, and she has become more emotionally volatile at school and at home, particularly in the months following the incident. Mother testified that the child experiences difficulty sleeping at night and displays episodes of sadness and withdrawal.

In October of 2022, the minor child began to attend sessions with her current therapist, who submitted a letter to the court, in February of 2023, stating that she had "no doubt that [the minor child] had been molested." She described father as a "predator" in her letter, and states "I have no doubt whatsoever that [the minor child] has been sexually abused. I adamantly state that Mr. Margiotta have no contact with [the minor children]. In addition, he may pose a threat to children other than his own." These conclusions are based only on her sessions with the minor child, and her discussions with the plaintiff mother, and not based upon any interaction with the defendant father. The court does not find these conclusions to be credible. The GAL has noted, in her testimony and recommendations, that the child was treated from the outset of this current therapeutic relationship as a victim of child sexual abuse and has recommended that the child be transferred to the care of a new therapist.

The minor children have not seen their father since August 28, 2022. Mother is now in a new romantic relationship, of eight months, with her current significant other, Nicholas Wood. She testified that the minor children have asked if they can call Mr. Wood "Daddy" because they tell mother that they do not have a father. Mother appeared to relish making this statement in open court, and presented as supportive of this idea, despite the relatively short length of this current relationship. At the hearings of this matter, mother remained emphatic in her position that father should have no access with the minor children.

Prior to the parties' separation from each other in 2019, mother had been in a relationship with the defendant father for thirteen years. She reported to the Department of Children and Families (DCF) that she never had any concerns of sexual misconduct by father. At the hearings of this matter, mother testified to her surprise at the child's initial allegation, as she did not believe that Mr. Margiotta would be capable of engaging in such conduct. When interviewed as part of father's psychosexual evaluation, mother reported that she is "not sure if it was intentional or not" and that she had not previously known Mr. Margiotta to express any sexual interest in minors. Despite these repeated expression of doubt, mother is firm in her stance that father should have no access with the minor children, and is not supportive of the children taking any steps to reunify with father.

During the weekend in question, father had picked up the children for his usual overnight access. He took the two older children to see a movie, and then assisted the children in getting dressed after their evening showers. The children fell asleep on the couch, and father carried them to their beds. The children have their own bedroom in father's home, with

bunkbeds. During their overnight visits with father, the children would frequently wake him in the mornings by running into his room and jumping on him enthusiastically, at which time father would occasionally engage in some affectionate and innocent horseplay. On the morning in question, August 28, 2022, the children ran into his room while he was sleeping and woke him up with a pillow fight.

Father has consistently denied that he touched the minor child in an inappropriate way or that he touched her in her vaginal area during the August 27-28, 2022 visit. The court has had the opportunity to observe Mr. Margiotta over multiple hearings, and finds him to be credible in his denials, and in his genuine confusion over the origin of these allegations. The court notes that when these allegations were first presented to Mr. Margiotta by mother's boyfriend, he called the police himself, seeking their involvement immediately in the situation. At the time of this accusation, father was in discussions with mother in an effort to expand his access with the youngest child, H.M., who had not yet joined the other children in overnight access with father.

Mr. Margiotta underwent a comprehensive psychosexual evaluation with the Yale School of Medicine Department of Psychiatry. This evaluation involved a review of the relevant documents and reports from law enforcement and DCF, an evaluation and psychological testing of Mr. Margiotta, interviews of Ms. Scanlon, Mr. Margiotta's therapist, Mr. Margiotta's sister, and his stepmother, and two interviews of Mr. Margiotta, along with a separate psychological testing session. The court gives great weight to the report and conclusions of this evaluation. The evaluator opines that Mr. Margiotta's "history and

evaluation did not suggest any psychological or psychiatric proclivity towards inappropriate touching of his daughter,” that he “does not currently meet criteria for any psychiatric diagnoses, including no indication of antisocial personality disorder or pedophilic disorder;” and that “there was no evidence of malingering, feigning symptoms, or omission of important details.”

The GAL has met with the children, and reports that the children, and particularly the minor child S.M. appeared happy, well cared-for, and active in extracurricular activities. The child presented to the GAL as a “typical six-year-old little girl” and did not appear to be forlorn or withdrawn on any visit. She described the children, and particularly S.M., as closely bonded to Ms. Scanlon. The GAL also indicated that father’s extended family, particularly his stepmother and older sister, have been very supportive of him, and that she believes it is in the children’s best interests to have some contact with father’s side of the family.

The court has considered the facts of this case very carefully. Given the nature of the allegations, and the impact upon the child, her siblings, and both parties, this is not a decision that could be taken lightly. The court finds that father, Michael Margiotta, did not engage in sexual abuse of the minor child, and did not engage in intentional and inappropriate touching of the minor child. The court finds that an act of inadvertent touching took place, likely while the children were engaged in a pillow fight with their father on the morning of August 28, 2022. Given the child’s extremely young age at the time, and the lack of an unbiased and clear recounting of the child’s statements, the court cannot determine that her initial disclosure, even if recounted accurately, indicated sexually inappropriate touching. The minor child initially

revealed that she was touched, and then was subjected to interviewing by mother, a DCF social worker, and a DCF forensic interview. Leading questions were used during these interviews, including the introduction of the idea that the touching was “yuck.” This does not, in and of itself, clearly establish that the child disclosed sexually inappropriate touching, rather than inadvertent touching that she did not understand how to process and disclose.

The court does not doubt the sincerity of mother’s convictions and beliefs. The court notes, however, that those convictions and beliefs are consistent with a pattern, throughout this custody dispute, of believing the worst about father, and seeking to control and limit his access to the children. At the time of the initial disclosure, mother had just confronted father the day before over his new romantic relationship, and threatened to call DCF on father to claim that his relationship with his significant other was presenting a threat to the children, even though there was no indication that father’s girlfriend would be present during his access time. After the child’s disclosure on August 28, 2022, mother contacted the father of Mr. Margiotta’s girlfriend’s children, to share the information and conclusion that Mr. Margiotta presented a danger to those children. This individual then filed an ex parte application for emergency orders of custody against Mr. Margiotta’s significant other, seeking emergency orders of custody concerning their children.

Mother’s handling of the initial disclosure by the child is deeply concerning to the court. The child was questioned repeatedly by mother with others present, and the allegations were broadly shared within the household. The allegations were immediately the subject of an intense family conflict and verbal altercation, in which the police were involved. The child was

forced to confront her father with these allegations amidst this conflict. The child's older sister immediately learned of these allegations, and has discussed them freely in the house and at school. The child was questioned about her allegations by her mother, her father, and a DCF social worker, and likely discussed the allegations with her sister, before her forensic interview. The court notes that during both DCF interviews (the worker interview and the forensic interview), and in her reports to school, the child's primary concerns about the weekend of August 28, 2022 relate to the verbal altercation at her home, which she understood as her father being "mean" to her mother. It is clear that this verbal altercation, in which there was yelling, strong language, police intervention, and the suspension of her access with her father, was a traumatic event for the minor child. For a child at such an impressionable age, it is impossible to determine what impact these events would have had on her recollection of the underlying allegations, and to the critical question of whether the touching at issue was intentional, sexual, or otherwise inappropriate in nature. Unfortunately, the manner in which the allegation was initially handled, and subsequently treated by her current therapist, present serious concerns as to how the child will react to the resumption of access with her father, without appropriate therapeutic safeguards. Regardless of what actually happened, the child now believes that she was sexually abused, and that belief has been reinforced by multiple significant individuals in her life, including her mother, older sister, and current therapist. The court's orders below are addressed to these concerns, in careful consideration of all of the facts and circumstances of this case, and the best interests of the three minor children, and in particular those of the minor child S.M.

ORDERS

1. The orders entered on the Application for Emergency Ex Parte Order of Custody (Thomas, J.) are hereby vacated.
2. The minor children shall visit father's stepmother's home for two hours, from noon until 2 p.m., every Sunday, beginning on June 16, 2024. Paternal grandfather, step-grandmother, and paternal aunt, and/or paternal uncle may be present for these visits initially. Mother may be present for the first two of these visits. Father shall not be present for these visits until further order of the court. The purpose of this order is to prepare the children for the resumption of parenting access with father, and does not create any right of visitation or access to the children for any third party, including the identified members of father's extended family. The parties may reschedule this appointment to another two-hour block of time each week, by agreement of the parties confirmed in writing.
3. The GAL shall recommend an appropriate new therapeutic provider for the minor child S.M. to the parties, after discussion of the issue with the parties and consideration of their input and perspectives. The parties shall cooperate to transfer the therapeutic care of the minor child S.M. to this new provider recommended by the GAL. The transition to this new therapeutic relationship shall take place within thirty (30) days of the date of this decision. The GAL shall work with the parties to identify and select a therapist who accepts the parties' health insurance. If an appropriate therapist is not covered by insurance, the parties shall share equally in all expenses associated with the minor child's therapy, including any portion of such expenses not covered by health insurance.

4. The parties shall enroll the minor children in family therapy, addressed to the resumption of father's access with the minor children, within thirty (30) days of the date of this decision. The parties shall discuss and attempt to reach agreement upon a family therapist, in consultation with the GAL. If the parties are unable to agree, the parties shall abide by the recommendations of the GAL as to this issue, and enroll the children with a family therapist recommended by the GAL. The GAL shall work with the parties to identify and select a therapist who accepts the parties' health insurance. If an appropriate therapist is not covered by insurance, the parties shall share equally in all expenses associated with the minor child's therapy, including any portion of such expenses not covered by health insurance.

5. Father's access shall only occur in a therapeutic context, as recommended by the family therapist, until further order of the court. When father resumes parenting access with the children, his access shall be supervised at all times, in the interests of ensuring appropriate safeguards from allegations of inappropriate contact or behavior, and not because the court has determined that father presents a danger to the minor children.


6. This matter shall be set down for case date hearings within thirty, sixty, and ninety days of the date of this decision. The court reserves jurisdiction to increase or decrease father's access time at each of these case dates, in the best interests of the children, and in consideration of the children's therapeutic progress in individual and family therapy.

7. Defendant father shall be fully responsible for the GAL fees accrued through the date of this decision. Future GAL fees shall be allocated 70% to father, 30% to mother.

8. All other orders, not modified or otherwise inconsistent with these orders, shall remain in full force and effect.

SO ORDERED.

BY THE COURT,

A handwritten signature in black ink, appearing to be 'CJT', written over a horizontal line.

Judge Cecil J. Thomas