

AT STAMFORD  
123 HOYT STREET  
STAMFORD, CT 06905

DOCKET NO.: FST-FA-21-5025596-S : SUPERIOR COURT

GREGORY JUSTIN POTTINGER P 12:43 JUDICIAL DISTRICT  
2024 JUN -6 OF STAMFORD/NORWALK  
v. : AT STAMFORD

KYRSTEN AMBER-ROSE MARSH : JUNE 6, 2024

MEMORANDUM OF DECISION AND FINAL CUSTODY JUDGMENT

The plaintiff Gregory Justin Pottinger commenced this custody action, returnable October 25, 2021, against the defendant Kyrsten Amber-Rose Marsh, in which he seeks sole legal custody of the parties' minor child Jayden Bernard Pottinger (Jayden), a parental access schedule and/or visitation, and child support. The defendant filed an answer and cross-complaint on April 19, 2022 (#108.00). The defendant seeks sole legal and physical custody of Jayden, child support, post-majority educational support orders, and attorney's fees in her cross-complaint.

The parties were before the court for a custody trial on July 28, 2023. The trial proceeded on the defendant's cross-complaint. The plaintiff appeared and represented himself. The defendant appeared and was represented by counsel. Counsel for the non-party witness Ana Garnecho, M.D. appeared on July 28, 2023 in connection with the defendant's motion for a qualified protective order (#129.00).<sup>1</sup> The defendant's motion for counsel fees, pendente lite (#105.00) and her motion for contempt, pendente lite (#123.00) were also reserved for the time of trial. The trial concluded on February 15, 2024.

The court heard testimony from three witnesses: Bethany Pottinger (Ms. Pottinger), the plaintiff's mother; the plaintiff; and the defendant. The court reserved decision at the conclusion of the hearing.<sup>2</sup>

<sup>1</sup> The court granted the motion for a qualified protective order and admitted Dr. Garnecho's report under seal.

<sup>2</sup> As financial matters are in dispute, the court orders that the automatic sealing of the parties' financial affidavits be terminated pursuant to Practice Book §25-59A(h).

The court has fully considered the applicable statutory criteria and case law, the evidence, the demeanor and credibility of the witnesses, the parties' proposed orders, the arguments of the plaintiff and counsel for the defendant, and the contents of the court file judicially noticed in making the following findings and in reaching the decisions that are reflected in the orders that issue below.

I

FINDINGS

The plaintiff is the father and the defendant is the mother of the minor child Jayden Bernard Pottinger, born on December 16, 2017. The plaintiff and the defendant are living separate and apart. Jayden has resided in Connecticut for his entire life. The court has jurisdiction to enter custody and visitation orders.

Jayden is six years old. He has been diagnosed with autism, attention deficit hyperactivity disorder, sensory processing disorder, social and emotional delay, and delayed receptive speech. Jayden also has sleep apnea, severe eczema, and a life-threatening allergy to tree nuts and shellfish. Jayden has an EpiPen for his allergy to tree nuts. The defendant is trained in administering the EpiPen.

Jayden receives therapeutic services in school and after school, including applied behavioral analysis therapy, behavioral therapy, and speech and language therapy. He has an Individual Education Plan. He was on a waiting list for occupational therapy as of the February 15, 2024 hearing date. The defendant arranges all of Jayden's appointments and therapy sessions.

The defendant testified that Jayden struggled with regulating himself at school and at home. He has behavioral issues. He cannot self-regulate, and he gets overwhelmed. She said that Jayden has a hard time regulating himself with transitions. Jayden's behavioral issues are

triggered by a change of routine, something unexpected, or something that he does not understand. He will kick or yell or throw himself. The defendant testified that Jayden has run out of his classroom or out of his school, crying and yelling.

The plaintiff last saw Jayden in June 2022. He reached out to the defendant by email between the July 23, 2023 and February 15, 2024 court dates to arrange parenting time with Jayden. The parties attempted to schedule a supervised visit between the plaintiff and Jayden without success. The defendant testified that she was not comfortable that the plaintiff was able to take care of Jayden because he refused to have a conversation with her about their child's evaluations and his needs.

The defendant testified that the plaintiff had not accompanied Jayden to the pediatrician since he was two years old. She said that the plaintiff had attended no more than five of Jayden's pediatrician appointments and one or two sick visits. The plaintiff claimed that he knew how to take care of Jayden because he suffered from the same conditions, and his family had neglected his mental health for years.

The defendant and Jayden lived with the plaintiff at Ms. Pottinger's home until the parties separated. Ms. Pottinger saw Jayden regularly until she moved to Orlando, Florida in June 2022. The defendant testified that Ms. Pottinger was able to video chat with Jayden whenever she asked.

On September 20, 2022, the court (*Vizcarrondo, J.*) entered a pendente lite child support order (the September 2022 order) in this custody action (#119.00). The court ordered the plaintiff to pay child support in the amount of \$36 per week pursuant to the child support guidelines. The court also ordered immediate income withholding. The plaintiff completed the paperwork for the income withholding order (#120.00) but neglected to conclude the process to have the child

support payments directly withheld from his income. To date, the plaintiff has not paid any child support for Jayden pursuant to the September 2022 order. An income withholding order has not been entered.

The September 2022 order also provided that the plaintiff was to pay 30 percent of Jayden's unreimbursed medical expenses and contribute 20 percent of the cost of work-related child care. The plaintiff has not paid anything toward these expenses. The defendant acknowledged on cross-examination that she once told the plaintiff that she would take care of these expenses herself if he paid child support.

The defendant filed a motion for contempt, pendente lite (#123.00) arising from the plaintiff's failure to comply with the September 2022 order. In her motion, the defendant contends that the plaintiff has not paid any child support. She testified that the total child support arrearage, for the seventy-two weeks from September 20, 2022 through February 15, 2024, was \$2,736. According to the court's calculations, however, the total arrearage for seventy-two weeks of unpaid child support is \$2,592.<sup>3</sup> She said that the plaintiff had not paid for any of Jayden's unreimbursed medical expenses or contributed to the cost of his child care.

The plaintiff testified on February 15, 2024 that he had just started a new job. He was in training to become a school bus driver. He expected to earn \$30 per hour when he completed his training. He left his previous job on December 28, 2023. He was not earning any income as of the February 15, 2024 hearing date, but he intended to apply for unemployment compensation.

The defendant testified that her gross weekly income was \$510. She worked at Bunny Village in Bethany, Connecticut. Bunny Village is a daycare facility. She worked approximately thirty hours per week to allow her time to take Jayden wherever he needed to go.

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<sup>3</sup> It appears that the defendant calculated the total arrearage based on child support of \$38 per week, while the September 2022 order was for child support of \$36 per week.

## II

### ORDERS

*Custody:* General Statutes §46b-56(a) provides in relevant part that “[i]n 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 .... General Statutes §46b-56(a). Section 46b-56(a) “provides the court [with] broad authority to make or modify any proper order regarding the custody, care, education, visitation and support of minor children in dissolution actions.” (Internal quotation marks omitted.) *Balaska v. Balaska*, 130 Conn. App. 510, 515, 25 A.3d 680 (2011).

Under General Statutes §46b-56(b), the court shall consider “the rights and responsibilities of both parents” and “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 ... (2) the award of joint parental responsibility of a minor child to both parents ... (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.” General Statutes §46b-56(b).

Our Supreme Court has observed that “[i]t is well settled in this state that, in deciding custody or visitation issues, a court must always be guided by what is in the best interests of the child.” (Citations omitted.) *Ireland v. Ireland*, 246 Conn. 413, 419, 717 A.2d 676 (1998). “[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 quotation marks

omitted.) *In re Ryan R.*, 102 Conn. App. 608, 625-26, 926 A.2d 690, cert. denied, 284 Conn. 923, 924, 933 A.2d 724 (2007).

Each party seeks sole legal custody of Jayden in his or her proposed orders. The court finds that it is in Jayden's best interests for the defendant to have sole legal custody and primary physical custody of Jayden. After consultation with the plaintiff, the defendant shall have sole decision-making authority on all major decisions relating to Jayden, which shall include decisions about his mental, emotional, medical, and/or physical health; education and course of study; tutoring; religious upbringing; camp or other organized summer activity; use of social media and a cell phone, tablet, or other technology; significant non-emergency medical or dental treatment; psychotherapy or other mental health treatment or counseling; engaging in sports, entertainment, or other activities; and obtaining a driver's license.

The parties shall communicate regarding all non-emergency matters through APPCLOSE. If a party has not registered for this service, he or she shall do so immediately.

The defendant shall solicit the opinion of the plaintiff by APPCLOSE prior to making a major decision involving Jayden. The defendant shall set forth the decision to be made, stating her views in a nonconfrontational manner, and requesting the plaintiff's response. The plaintiff shall reply by APPCLOSE as promptly as possible, also in a nonconfrontational manner, but in no event later than twenty-four hours after the defendant sends a message regarding a major decision to him. If the plaintiff fails to respond within twenty-four hours, the defendant may make the decision without the plaintiff's input.

If the defendant advises the plaintiff in her APPCLOSE message that the decision is time sensitive, the plaintiff shall respond immediately upon receipt of the message. The defendant

may make the decision without the plaintiff's input if he fails to respond within one hour after she sends him a message regarding a time sensitive decision.

*Fatherhood program:* The plaintiff shall not have parenting time with Jayden until he has actively participated in and completed a multi-session, in-person fatherhood program at The Saint Joseph Parenting Center, Fathers for Change at the Yale Child Study Center, or an equivalent fatherhood education program. The plaintiff shall pay all fees for the program. The plaintiff shall provide confirmation to the defendant that he has enrolled in a fatherhood program within five days of enrollment. The plaintiff shall confirm his participation to the defendant following each session. The plaintiff shall provide a certificate of completion to the defendant within five days of completing the program.

*Mental health treatment:* In addition to participating in a fatherhood program, the plaintiff shall engage in his own individual psychotherapy, with a qualified, licensed healthcare professional, on at least a biweekly basis. The plaintiff shall provide confirmation to the defendant that he is engaged in individual psychotherapy no later than July 5, 2024. The plaintiff shall confirm his participation to the defendant following each session.

*Written contact with Jayden:* Once the plaintiff has enrolled in a fatherhood program, he shall contact Jayden at the defendant's address by sending him an age-appropriate note, card, and/or gift on the first and the fifteenth day of each month. The plaintiff shall also send Jayden a gift for his birthday and for Christmas. He shall consult with the defendant regarding Jayden's interests before sending a gift to him. The defendant shall deliver the plaintiff's notes, cards, and gifts directly to Jayden. The defendant may review whatever the plaintiff sends to confirm that it is suitable for Jayden.

*Telephone contact, APPCLOSE video contact, and in-person supervised parenting time:*

The plaintiff must comply with the foregoing orders and demonstrate consistent contact with Jayden through notes, cards, and gifts for at least two months following the date of this memorandum of decision before having any in-person, telephone, or APPCLOSE video contact with Jayden.

If the plaintiff is in full compliance with these orders, he and the defendant shall confer on or before August 6, 2024 regarding a schedule for (i) early evening telephone and/or video contact with Jayden through APPCLOSE, and (ii) supervised parenting time with Jayden. All telephone or APPCLOSE video calls shall be of a reasonable duration, considering Jayden's age and his willingness to participate in a call.

The plaintiff's initial supervised parenting time shall be for up to two hours each week on either Saturday or Sunday afternoon. The defendant shall determine the time and the location for the plaintiff's supervised parenting time. The plaintiff must arrive on time for his supervised parenting time. If he is more than fifteen minutes late, his supervised parenting time shall be canceled. The plaintiff shall be responsible for engaging a professional to supervise his parenting time with Jayden. The plaintiff shall pay the professional supervisor's fees and expenses.

The plaintiff shall not be required to have a professional supervisor if Ms. Pottinger will also be present for his supervised parenting time with Jayden. The parties may agree to additional supervised parenting time for the plaintiff if Ms. Pottinger is available.

The parties may agree to increase the plaintiff's parenting time with Jayden after September 13, 2024 if he has consistently engaged in evening telephone and/or APPCLOSE video calls and attended all scheduled weekend supervised parenting time. The parties may also agree that the plaintiff's parenting time shall be unsupervised after that date.



In the event that the plaintiff fails to comply with any of the orders set forth above, he shall not have in-person parenting time with Jayden until further order of the court.

*Additional custody and parenting orders:* The defendant shall schedule all of Jayden's regular pediatric and dental appointments and any non-routine medical or dental visits. The defendant shall also schedule all of Jayden's occupational therapy, physical therapy, and other therapy appointments. By the fifteenth day of each month while these orders are in effect, the defendant shall provide to the plaintiff a schedule of Jayden's school events and medical, dental, and therapy appointments for the following month.

The defendant shall provide the plaintiff's name and contact information to Jayden's pediatrician, dentist, therapists, school, and/or any extracurricular programs in which he participates. The plaintiff is entitled to review all of Jayden's medical, dental, therapy, and school records.

The plaintiff shall communicate with Jayden's health care providers, including his behavioral and mental health therapists, no later than July 5, 2024 in order to become better informed regarding Jayden's needs. In the event that a therapist asks that the plaintiff participate in Jayden's therapy, the defendant shall coordinate scheduling Jayden's therapy appointments with the plaintiff.

If either party intends to relocate his or her residence prior to Jayden's eighteenth birthday so that the driving distance between the parties' residences is increased by more than twenty miles, the relocating party shall provide the other party with notice via APPCLOSE of his or her intention to relocate. Such notice shall be provided at least ninety days prior to the intended relocation. Neither party shall relocate his or her residence if the relocation increases the driving

distance between the parties' residences by more than twenty miles without the prior written consent of the other party or an order of the court.

Each party shall keep the other party informed by APPCLOSE of his or her current residential address, telephone number, email address, and place of employment as long as either party has an obligation to the other party or to Jayden.

*Child support:* The September 2022 order is incorporated herein by reference. The plaintiff shall pay child support for Jayden in the amount of \$36 per week pursuant to the child support guidelines. An income withholding order shall be entered. Until the income withholding order takes effect, the plaintiff shall make all child support payments directly to the defendant. Commencing June 10, 2024 and continuing until the income withholding order is in effect, the defendant shall pay child support each Monday through direct deposit into the defendant's checking account, by a mobile payment service such as PayPal, Venmo, or Zelle, or as agreed by the parties.

In addition to the weekly child support payments of \$36, the plaintiff shall pay \$10 per week toward the arrearage of \$2,592 for the period September 20, 2022 to February 15, 2024 until the arrearage is paid in full.

These child support orders are entered as interim orders until the plaintiff has completed his training and is working as a school bus driver or is otherwise employed. These orders shall be reviewed by the court at a hearing to be scheduled within sixty days of the date of this memorandum of decision. The court may replace these orders with updated child support orders that are based on the parties' net income at that time. The court will also address any additional child support arrearage that has accrued following the February 15, 2024 trial date. Both parties shall file updated financial affidavits no later than five days prior to the hearing.

*Unreimbursed medical expenses:* The September 2022 order is incorporated herein by reference. The plaintiff shall pay 30 percent of Jayden's unreimbursed medical expenses in accordance with the child support guidelines. These orders may be modified when the child support orders are reviewed as set forth above.

The parties shall use in-network providers for Jayden's care whenever possible. The defendant shall provide the plaintiff with a request for reimbursement of his share of Jayden's unreimbursed medical expenses at the end of each month. Such request shall include sufficient documentation so that the plaintiff can reasonably determine the cost of the service, the nature of the service, and any insurance benefits received, but original invoices are not required. The plaintiff shall advise the defendant in writing of any objection to a reimbursement request within ten days of his receipt of the request. Absent a timely objection, the plaintiff shall pay the requested reimbursement within fifteen days. Payment shall be made by direct deposit into the defendant's checking account, by a mobile payment service such as PayPal, Venmo, or Zelle, or as agreed by the parties.

If the plaintiff pays any unreimbursed medical expenses for Jayden, he shall follow the procedure set forth above to obtain reimbursement from the defendant for her share of the unreimbursed medical expenses.

*Work-related child care:* The September 2022 order is incorporated herein by reference. The plaintiff shall contribute 20 percent of the cost of work-related child care in accordance with the child support guidelines. These orders may be modified when the child support orders are reviewed as set forth above.

The defendant shall provide the plaintiff with a request for reimbursement of his share of the cost of Jayden's work-related child care at the end of each month. Such request shall include

sufficient documentation so that the plaintiff can reasonably determine the cost of the work-related child care, but original invoices are not required. The plaintiff shall advise the defendant in writing of any objection to a reimbursement request within ten days of his receipt of the request. Absent a timely objection, the plaintiff shall pay the requested reimbursement within fifteen days. Payment shall be made by direct deposit into the defendant's checking account, by a mobile payment service such as PayPal, Venmo, or Zelle, or as agreed by the parties.

*Post-majority educational support order:* The court finds that it is more likely than not that the parties would have provided support to Jayden for the expenses of higher education or private occupational school if the family were intact. The court reserves jurisdiction to determine whether to enter an educational support order and the terms thereof pursuant to General Statutes §46b-56c.

*Tax dependency exemption:* The defendant shall claim Jayden as a dependent for all income tax purposes. If necessary, the plaintiff shall timely sign and provide to the defendant Internal Revenue Service Form 8332 on or before February 15 of each year.

*Pendente lite motions:*

1. The defendant's motion for contempt, pendente lite (#123.00): The court finds by clear and convincing evidence that the plaintiff had notice of the September 2022 order, and that the terms of the September 2022 order are clear and unambiguous. The defendant has met her burden of proving by clear and convincing evidence that the plaintiff wilfully violated the September 2022 order when he failed to pay child support pursuant to the September 2022 order. The plaintiff failed to establish a defense of an inability to pay. The court finds the plaintiff in contempt. The defendant's motion for contempt, pendente lite (#123.00) is hereby granted.


The defendant is entitled to recover her reasonable attorney's fees and expenses pursuant to General Statutes §46b-87 for successfully prosecuting her motion for contempt, pendente lite. Counsel shall file an affidavit of attorney's fees, with invoices (redacted as to attorney-client privileged communications), no later than July 5, 2024.

The plaintiff shall file any objection to the affidavit of attorney's fees on or before August 1, 2024. Absent a timely objection, the court will order that the defendant's reasonable attorney's fees incurred in the prosecution of her motion for contempt, pendente lite, be paid pursuant to General Statutes §46b-87. If an objection is filed, a hearing will be scheduled.

These orders shall survive the entry of the final custody judgment.

2. The defendant's motion for counsel fees, pendente lite (#105.00): The defendant did not establish that the plaintiff engaged in litigation misconduct for which he should be held accountable under our Supreme Court's ruling in *Ramin v. Ramin*, 281 Conn. 324, 915 A.2d790 (2007). Therefore, the defendant's motion for counsel fees, pendente lite (#105.00) is denied.

BY THE COURT:

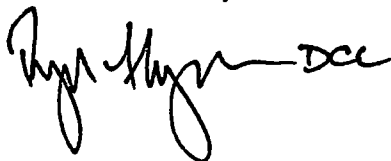


HELLER, J.

DECISION ENTERED IN  
ACCORDANCE WITH THE  
FOREGOING ON 6/6/24.

JDN SENT 6/6/24.

COPIES TO ALL SELF-REP. PARTIES



DCJ