

DOCKET NO: WWM-FA21-5012275-S : SUPERIOR COURT
ASHLEY L. CYRUS **FILED** JUDICIAL DISTRICT OF WINDHAM
v. MAY 17 2024 AT PUTNAM
EDWARD S. BANAS, II SUPERIOR COURT
JUDICIAL DISTRICT OF WINDHAM MAY 17, 2024

**MEMORANDUM OF DECISION RE: PLAINTIFF'S CUSTODY APPLICATION
(#100.30) AND DEFENDANT'S CROSS COMPLAINT (#130.00)**

This action involves a custody application (#100.30) filed by the Mother, Ashley L. Cyrus, on April 1, 2021, and a cross complaint (#130.00) filed by the Father, Edward S. Banas, on November 1, 2021. The court conducted a trial over eight days.¹ The Mother was represented by counsel; the Father was self-represented. The court heard testimony from the parties, many witnesses, and the Guardian ad Litem, and received many exhibits as evidence. The court also received proposed orders from the parties, Guardian ad Litem, and the State of Connecticut. This matter is also subject to IV-D Child Support Enforcement Services.

I
FINDINGS

"The [fact-finding] function is vested in the trial court with its unique opportunity to view the evidence presented in a totality of the circumstances, i.e., including its observations of the demeanor and conduct of the witnesses and parties . . ." (Internal quotation marks omitted.) *Cavolick v. DeSimone*, 88 Conn. App. 638, 646, 870 A.2d 1147, cert. denied, 274 Conn. 906, 876 A.2d 1198 (2005). "The sifting and weighing of evidence is peculiarly the function of the trier [of fact]. . . . The trier is free to accept or

¹ February 24, 2023, June 1, 2023, June 12, 2023, September 25, 2023, November 13, 2023, December 13, 2023, January 22, 2024, and March 8, 2024.

Copies mailed to all parties and counsel of record on 5/17/2024.
J. Sullivan, Jr.

reject, in whole or in part, the testimony offered by either party. . . . That determination of credibility is a function of the trial court.” (Citations omitted; internal quotation marks omitted.) *Heritage Square, LLC v. Eoanou*, 61 Conn. App. 329, 333, 764 A.2d 199 (2001). “Credibility must be assessed . . . not by reading the cold printed record, but by observing firsthand the witness’ conduct, demeanor and attitude. . . . [I]t is the [fact finder] . . . [who has] an opportunity to observe the demeanor of the witnesses and the parties; thus [the fact finder] is best able to judge the credibility of the witnesses and to draw necessary inferences therefrom.” (Internal quotation marks omitted.) *State v. Lawrence*, 282 Conn. 141, 155, 920 A.2d 236 (2007).

“It is the sole province of the trial court to weigh and interpret the evidence before it and to pass on the credibility of the witnesses. . . . It has the advantage of viewing and assessing the demeanor, attitude and credibility of the witnesses and is therefore better equipped than we to assess the circumstances surrounding the dissolution action.” (Emphasis omitted; internal quotation marks omitted.) *Zahringer v. Zahringer*, 124 Conn. App. 672; 679-80, 6 A.3d 141 (2010).

Thus, in reaching its decision, the court has listened to the witnesses and assessed their credibility. The court has reviewed and considered the information and recommendations of the Guardian ad Litem. The court has reviewed the exhibits and given them the appropriate weight. The court has applied all applicable law and statutory criteria. The court unseals all financial affidavits and takes judicial notice of the pleadings in the court’s file. Accordingly, the court makes the following findings of fact by a preponderance of the evidence and by clear and convincing evidence on all contempt matters.

At the time this action was commenced, the parties had been in a relationship for approximately thirteen (13) years. The parties have two (2) minor children: Makayla Banas (DOB: August 29, 2008); and Edward S. Banas III (DOB: July 22, 2016). They lived together as a family in Moosup, Connecticut, in a home owned by Mother, until the parties separated in February 2021. The Mother had developed increasing concerns regarding the Father's behavior involving the abuse of non-prescribed drugs. She claims to have found a morphine pill in a jar in their son's bedroom, amongst other places. After a short period of time, the Father returned to the Mother's home until March 26, 2021, when she again observed him acting under the influence of drugs. As a result, the Mother called the local police to intervene due to his behavior, which she described as agitated and unusually groggy. She also described him as nodding off as the police attempted to conduct an interview. Apparently, the minor children have also witnessed the Father under the influence and nodding off, at one time while operating a motor vehicle. The Father left the home on March 28, 2021, and has not returned.

On March 29, 2021, the Mother was granted a restraining order on an ex parte basis due to the Father's drug use and leaving pills within the reach of the minor children. However, a judgment of dismissal was entered in the restraining order matter on April 6, 2021, with a notation that an agreement was to enter in the parties' custody case. In the interim, on April 1, 2021, temporary custody was granted to the Mother. The Father was granted supervised visitation with the minor children at the Mother's discretion. On April 6, 2021, the Father was ordered, by agreement, to begin paying the Mother child support of \$200.00 per week and his access time with the minor children was to be supervised by his sister.

The Father eventually received and successfully completed treatment for his drug problem. This treatment also included periodic drug testing, which continued into 2022. The father commenced individual therapy in February 2021, which has since concluded. The minor children also began receiving therapy.

On September 2, 2021, The Children's Law Center was appointed, with all duties, as Guardian ad Litem (the "GAL") for the minor children by agreement of the parties. Attorney Alexander Puzone assumed the assigned duties and remained the GAL throughout the pendency of this matter.

In November 2021, the Father's access time with the minor children became unsupervised. While the Father's access time with Edward was scheduled to increase and include overnights, Makayla remained reluctant and required more time to work with her therapist. In January 2022, the parties agreed that Makayla would engage in reunification therapy with Amy Korte. As part of this process, it was contemplated that Korte would speak with the minor children's therapist. Upon doing so, Korte learned that the therapist did not possess the requisite credentials/licensure in Connecticut to provide such services to the minor children. The Father has maintained that the selection of this unlicensed therapist was intentionally done by the Mother to essentially undermine the therapeutic process. The Father has referred to this therapist as the "mercenary therapist." The court has found no credible evidence to support these claims or theories made by the Father.

The reunification therapy did not occur as contemplated by the order. The Mother indicated that it was Makayla that thwarted the process and did not wish to engage with her Father. Korte believed that the Mother was influencing Makayla and not supporting her daughter in the reunification process. In any event, the reunification

efforts ceased without the Father ever having any meaningful access time with Makayla. The Father's access time with Edward continued to increase and began to include vacation time. Given the length of time this matter was pending, the parties continued to cobble together temporary or interim agreements to address, amongst other things, the Father's ongoing access time, while continually filing and pursuing new and additional allegations against one another.

For example, in August 2022, the parties filed competing applications for ex parte orders of custody. For the first time, the Mother made allegations that the Father had abused the minor children, including abuse of a sexual nature as to Edward. The Department of Children and Families did not substantiate these allegations and closed its file. After two days of trial, the court dismissed both ex parte applications and accompanying motions, adopted the previous orders of July 29, 2022, and entered additional orders. The additional orders included the selection of a new reunification therapist for Makayla, which was to be undertaken by Mary Davidson-Reed, an independent licensed therapist.

The second reunification efforts began in late-November 2022 with an intake of both the Father and Makayla. The reunification therapist met separately with Makayla during 2 or 3 sessions with the goal of having the Father join later. In January 2023, the Father and Makayla participated in a joint session with the reunification therapist. The therapist thought the session went "pretty good." Ultimately, Makayla participated in a dinner visit the Father, together with her grandfather and aunt. This visit also appeared to go well. The reunification therapist described the process as successful in its goal. However, the process did not evolve into more access time for the Father given Makayla's ongoing reluctance and resistance. The therapist indicated that Makayla was

traumatized by the things she saw and experienced in the home and had concerns that the Father's past behaviors would return.

In June 2022, Makayla also began individual therapy with a new therapist, Carly Futoma. Makayla was diagnosed as suffering from unspecified anxiety disorder. The therapist indicated that the trauma experienced by Makayla was the result of physical and emotional abuse by the Father, as well as the reunification process itself. The therapist did not believe that Makayla was being influenced by the Mother. Rather, the therapist found Makayla's position to be consistent: she did not want to reunify or have a relationship with the Father. Put simply, Makayla remained anxious and scared to be around the Father.

In October 2022, Edward began individual therapy with a new therapist, Shawna Salce-Pellerin. She described Eddie as pleasant, calm, and engaging. The Father was consistently involved throughout Edward's treatment. Despite the various allegations, and corresponding disruptions in access time, the therapist indicated that Edward did not report any transition issues that she could recall. Put simply, as a general statement, Edward wished that his family would stop fighting. The Father continued to enjoy ongoing access time with Edward.

The GAL, Attorney Puzone, has been involved in this matter since September 2021. Attorney Puzone described this matter as involving a very high conflict family. For more than the last year, the quality of communication between the parties has steadily declined. Everything is considered a battle by the parties and communication between them has gone downhill. Attorney Puzone indicated that the parties must reduce their hostilities with one another as the minor children sense and pick up on these interactions, which continues to have a negative impact on each of them.

According to Attorney Puzone, dysregulation occurs when the minor children become caught in this ongoing custody battle, or pickup on their parents' many disagreements. Attorney Puzone believes that the minor children's continued participation in therapy is very important given the family dynamic. He also believes the parties would benefit from another attempt at coparenting counseling, despite the lack of positive results from the first attempt. The Father claims that Attorney Puzone has been intentionally withholding information and shielding the Mother. The court has found no credible evidence to support these claims or theories made by the Father.

The Father has, in detail, attempted to cast the Mother in a negative light and portray her as the reason for the damage that has occurred to the family, especially to Makayla. In support thereof, the Father refers to the several filings and unsubstantiated allegations the Mother has made during these proceedings, some of which he claims coincide with either certain court events, or the start of his new relationship. In further support, the Father also refers to the Mother's attempts to unnecessarily involve third parties, such as the police, in their disputes, which has only escalated tensions. The Mother repeatedly refers to the Father's past verbal abuse and lack of respect, which she claims has continued throughout. The Mother also refers to the different ways in which the Father's past and continuing behaviors have affected and caused ongoing problems for the minor children, which she is left to address on her own.

Clearly, the parents love the minor children. However, it is their ongoing conflicts and inability to coparent that has caused the current set of circumstances. One parent is no more responsible than the other for this dysfunction. Unfortunately, it cannot be said that either parent was continually focused on acting in the best interests of the minor children, both before and after their separation.

By her application, the Mother seeks sole legal custody and primary residence of the minor children. Conversely, by his cross complaint, the Father seeks joint legal custody of the minor children, with a parental physical access schedule and/or visitation.

By her proposed orders, the Mother seeks joint legal custody and primary residence of the minor children, with final decision-making authority. Conversely, by his proposed orders, the Father seeks sole legal custody and primary residence of Edward. He further proposes that the parties share joint legal custody of Makayla, with the Mother having primary residence. The State has proposed that any issues relating to child support and/or the State's interest be referred to the Family Support Magistrate Court for adjudication. The GAL recommends joint legal custody, and primary residence of both minor children with the Mother. The court agrees with the general recommendations of the GAL. However, the court finds that the Father's proposed orders with respect to custody, primary residency, and access time are not in the best interests of the minor children.

II

ORDERS

"The authority of a court to render custody, visitation and relocation orders is set forth in General Statutes § 46b-56. In making or modifying any order with respect to custody or visitation, the court shall . . . be guided by the best interests of the child. . . . The best interests of the child include the child's interests in sustained growth, development, well-being, and continuity and stability of its environment. . . . The trial court is vested with broad discretion in determining what is in the child's best interests."

(Footnote omitted; internal quotation marks omitted.) *Gina M.G. v. William C.*, 77 Conn. App. 582, 587-88, 823 A.2d 1274 (2003).

The court has carefully reviewed the evidence to determine the best interests of the minor children considering the factors set forth in General Statutes § 46b-56 and the relevant case law. Based on the foregoing and the evidence as a whole, the court enters the following orders:

A. Custody and Parental Access

1. Custody. The parties shall share joint legal custody of the minor children, Makayla Banas (DOB: 08/29/2008) and Edward Banas III (DOB: 07/22/2016). The parties shall follow the recommendations of any involved professionals if they are unable to reach agreement regarding major decisions affecting the minor children. The parties shall engage the services of a coparenting counselor prior to filing any motions with the court in the event of disagreement. The Mother shall have primary physical custody of the minor children.
2. Parental Access. There shall be no access schedule set for the minor child, Makayla. During the school year, the Father shall have continued access time with the minor child, Edward, as follows: (a) alternating weekends commencing on Friday at 4:00 p.m. until Sunday at 6:00 p.m.; (b) every Wednesday at 4:00 p.m. into Thursday morning with drop-off at school; and (c) alternating Monday's from 4:00 p.m. to 7:00 p.m. following the Mother's weekend. Commencing the Summer of 2024, the Father's access time with the minor child, Edward, for the school summer vacation shall transition to a 2-2-3 parenting schedule as follows: (a) Week One—

the Mother shall have access time with Edward from Monday Morning to Wednesday Morning; the Father shall have Wednesday morning to Friday morning; Mother shall have Friday morning to Monday morning; (b) Week Two—the Father shall have access time with Edward from Monday morning to Wednesday morning; the Mother shall have Wednesday morning to Friday morning; and the Father shall have Friday morning to Monday morning. During the Spring recess, access time with Edward shall follow the regular school year schedule. The parties shall remain flexible for activities during all times of the year, especially during the holiday schedules.

3. Transportation. During the school year, transitions shall occur in the mornings, with drop-off at the minor child's school, when applicable. Otherwise, transitions shall continue to be pick-up/pick-up, unless agreed to differently by the parties. If the Father is unable to bring the minor child, Edward, to school in the morning, then the transition shall take place the evening before to allow the minor child to take the bus from the Mother's home. During the Summer, transitions shall occur at summer camp when applicable, unless otherwise agreed to by the parties. Neither party shall have any discussion with, or make any disparaging remarks to, the other parent during exchanges.
4. Vacation. Commencing the Summer of 2024, each party shall be entitled to one (1) week of vacation time during the summer months with the minor child, Edward. Each party shall notify the other of her/his intended week of vacation, as well as an itinerary, no later than June 1st of each year. In

the event of any conflict, the Father shall have first choice in even years and the Mother in odd years.

5. Holidays. As to the minor child, Edward, the parties shall share the following holiday schedule:
- a. Easter—the parties shall alternate this holiday yearly, with the Father having from 10:00 a.m. to 4:00 p.m. and the Mother having 4:00 p.m. to 8:00 p.m. in odd-numbered years, and switching in even-numbered years.
 - b. Halloween—the parties shall follow the regular access schedule, unless otherwise agreed to by them.
 - c. Thanksgiving Day—the parties shall alternate this holiday yearly, with the Mother having from 10:00 a.m. to 4:00 p.m. and the Father having from 4:00 p.m. to 8:00 p.m. in odd-numbered years, and switching in the even-numbered years.
 - d. Christmas—The parties shall alternate this holiday each year as follows: in odd-numbered years, the Mother shall have holiday access with the minor child from 10:00 a.m. to 4:00 p.m. on Christmas Eve; the Father having from 4:00 p.m. on Christmas Eve to 12:00 p.m. Christmas Day; and the Mother having from 12:00 p.m. to 8:00 p.m. Christmas Day; and switching in even-numbered years.
 - e. New Year's—The parties shall alternate this holiday each year as follows: in odd-numbered years, the Father shall have holiday access with the minor child from 10:00 a.m. to 4:00 p.m. on New

Year's Eve; the Mother having from 4:00 p.m. on New Year's Eve to 12:00 p.m. New Year's Day; and the Father having from 12:00 p.m. to 8:00 p.m. New Year's Day; and switching in the even-numbered years.

- f. Labor Day—The parties shall alternate this holiday yearly, with the Father having 10:00 a.m. to 4:00 p.m. in odd-numbered years and the Mother having the even-numbered years.
- g. Memorial Day—The parties shall alternate this holiday yearly, with the Mother having 10:00 a.m. to 4:00 p.m. in odd-numbered years and the Father having the even-numbered years.
- h. Mother's/Father's Day—The Mother shall have Mother's Day weekend from Friday to Monday, and Father shall have Father's Day weekend from Friday to Monday, each year.
- i. All other holidays not specifically provided for herein shall follow the regular access schedule, unless otherwise agreed to by the parties. Makayla may share holiday access time with the Father if she so chooses.

6. Communication with the Minor Children. The parties shall have at least one (1) FaceTime call with the minor child, Edward, before bed nightly. The parent exercising access time shall initiate the FaceTime call. The parties shall not communicate with each other during these scheduled calls. The Father shall have reasonable phone/text communication with the minor child, Makayla. Any such communications shall take into consideration the desires and schedules of the minor children.

7. Affections. Each parent shall use all reasonable efforts to maintain and promote free and unhampered contact, including telephone contact, between the minor child, Edward, and the other parent. Neither parent shall make any derogatory comments about the other to or within the hearing of the minor children. Neither parent shall say or do anything intended or likely to have the effect of estranging the minor children from the other parent, injuring the opinion of the minor children toward the other parent, or impairing the natural development of the minor children's love and respect for the other parent. Neither parent shall discuss adult issues or court matters with the minor children.
8. Decisions. Each parent shall have a full and active role in making any decisions in the minor children's lives, including, but not limited to, education, religious training and practices, major medical treatment, and dental treatment (including orthodontic). These orders shall not prevent either parent from making a bona fide emergency medical decision for the minor children without first consulting with the other parent, so long as the other parent is informed and consulted as soon as is practicable given the nature of the emergency. The parents shall consult with each other regarding all major decisions in the minor children's lives and shall provide each other with any authorizations requested to allow both parents to obtain medical and educational information about the minor children. Each parent shall notify the other of pending events concerning the minor children's medical conditions, education, extracurricular activities, religious and social life, and shall provide the other with copies of any documents in his or her possession relating to

these areas. In reaching any major decisions pertaining to the minor children, the parents shall be guided by the best interests of the child. Neither parent shall unreasonably withhold consent to a proposed major decision pertaining to the minor children.

9. Communication between Parties. The parents shall utilize the AppClose co-parenting application (or another mutually agreed upon co-parenting application) to communicate as to all matters concerning the minor children, their respective parenting time, notifications required by these orders, and related issues, and shall share equally in the expense thereof. Each parent shall respond to any requests made by the other parent within forty-eight (48) hours of such request. Any parent who schedules an educational, therapeutic, or medical appointment for the minor children shall notify the other parent within twenty-four (24) hours of scheduling the appointment, including the provider's name, address, telephone number, and the nature of the appointment. Each parent shall notify the other by telephone of any emergency situation involving the minor children, to be followed, when circumstances reasonably allow, by additional notification via the co-parenting application. The parties shall refrain from blocking the other's cell number for emergency calls and texts. The parties shall only call or text the other parent's cell in case of an emergency. The parties shall communicate with one another in a respectful manner, in person, by cell, and in writing. The parties shall refrain from emotional outbursts, the use of expletives, insults, and other denigrating or dismissive language in their communication with each other.

B. Legal Fees

Each party shall be responsible for the payment of his or her own legal fees.

C. Other

- a. The minor children shall continue to engage in their current therapy/counselling until determined to be no longer therapeutically necessary. The minor child, Makayla, shall not continue in reunification therapy with the Father at this time.
- b. All financial/support issues shall be immediately referred to the Family Support Magistrate Court for adjudication. In the interim, all prior financial/support orders, including, but not limited to, child support, shall remain in full force and effect until otherwise ordered by the magistrate or the court.
- c. The parties shall consult with a licensed professional therapist to seek and secure coparenting counselling/therapy. The parties shall mutually agree on the selection of the therapist. The parties shall contact the counsellor of their choice within fifteen (15) days of the date of this order and shall use good faith efforts to schedule appointments. The counsellor shall recommend the commencement, frequency, and duration of the therapy. The parties shall attempt to resolve, in good faith, major disagreements regarding the minor children with the assistance of the counsellor before filing any motions with the court.
- d. Should the minor children have extra-curricular activities, school events, or reasonable social engagements during the parties' respective access

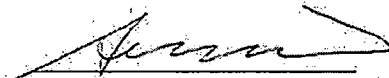
time, the party with the access time shall ensure the minor child's attendance at same.

- e. Each party shall keep the other informed of their residence and phone number and shall promptly notify the other of any changes.
- f. The parties shall not use physical discipline on the minor children.
- g. Neither party shall engage outside agencies in coparenting issues unless there is a threat to the safety of the party or minor child(ren). Coparenting issues/concerns are not limited to the scope of this order but apply to all issues regarding the minor children that should be resolved between the parties.
- h. The appointment of the Guardian ad Litem shall be terminated. The Guardian ad Litem fees beyond the initial retainer of \$2,500 shall be allocated as fifty percent (50%) by the Mother and fifty percent (50%) by the Father, and shall be paid by the parties within sixty (60) days of the date of this order.
- i. The Father shall claim the parties' minor children as a tax exemption/credit on state and federal income tax returns for tax years 2024, 2025, and 2026. Thereafter, the parties shall alternate claiming the minor children, beginning with the Mother for tax year 2027, so long as the benefit is available. Once Makayla may no longer be claimed as a tax exemption/credit, then the parties shall alternate claiming Edward so long as the benefit is available.
- j. All other previously filed and pending applications and motions are hereby denied.

- k. Unless otherwise specifically set forth herein, these orders are effective immediately.
- l. A trial was held in the above-captioned case at which financial issues were in dispute. Accordingly, the automatic sealing of the parties' sworn statements of income, expenses, assets, and liabilities filed with the court pursuant to Practice Book Section 25-30 is terminated in accordance with Practice Book Section 25-59A(h) with respect to all such sworn statements now on file with the court.

SO ORDERED.

BY THE COURT,



Chadwick, J.