

NO: FST-FA16-4029843S
FST-FA15-6026880S

: SUPERIOR COURT

MIKAYLA HERZOG
v.
GEOFF HERZOG

: JUDICIAL DISTRICT
STAMFORD/NORWALK

ROBIN HERZOG
v.
GEOFF HERZOG

: AT STAMFORD, CONNECTICUT
: AUGUST 19, 2016



BEFORE THE HONORABLE THOMAS COLIN, JUDGE

A P P E A R A N C E S :

Representing the Plaintiff:

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Representing the Defendant(s):

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1 rightfully or wrongfully attribute to their father.

2 Section 46b 56a provides that in any controversy
3 before the Superior Court as to the custody or care
4 of minor children, the Court may make or modify any
5 proper order relating to the custody, care, or
6 visitation of minor children.

7 The Statute also says the Court shall enter
8 orders that serve the best interest of the children,
9 and provide the children with the active and
10 consistent involvement of both parents, commensurate
11 with their abilities and interests.

12 So I'm going to exercise my authority under that
13 statute to enter an order as to the custody, care and
14 visitation of the minor children, and this order is
15 going to be entered in the dissolution file, not in
16 the restraining order file, since I'm denying the
17 application for a restraining order.

18 So this order will be entered in docket number
19 FA15-6026880. That's the dissolution file. This
20 order was based upon my view that the best interest
21 of the children, and perhaps Mr. Herzog's best
22 interest, as well as Ms. Herzog's interest at this
23 time, would be served by these orders on a temporary
24 basis, at least until a final custody decision is
 rendered when the Court hears all of the evidence in
 this case.

 It appears that at some point this hearing took

1 on the effect of a child custody trial, as opposed to
2 a 46b 15 hearing, which is really all it was intended
3 to be. These orders also take into consideration the
4 well-known principle that as a general rule -- with
5 some exceptions -- but as a general rule, the longer
6 children go without having meaningful contact with a
7 parent, the greater the likelihood of irreparable
8 harm being done to that relationship.

9 Now I would note that, I am concerned about the
10 nature of Mr. Herzog's chatroom discussions in this
11 case. And particularly the evidence I heard about
12 the discussions related to sexual conduct between a
13 father and a child. I found that extremely
14 concerning.

15 That doesn't mean that I have concluded Mr.
16 Herzog is guilty of anything. To the contrary; the
17 record should be clear that I have made no such
18 finding that he is guilty of anything.

19 But that testimony is concerning. And I heard
20 Attorney Plancher describe Mr. Herzog's explanation
21 for why one would engage in that type of behavior.
22 And it could be completely innocent fantasy. It
23 could not be. I just don't know.

24 But putting aside all the allegations and sexual
25 abuse, which have not been proven, if nothing else,
26 those discussions -- a reasonably prudent mother,
27 similarly situated would have to be concerned by

1 reading those chatroom discussions. I don't think
2 any objective observer could think otherwise.

3 So these are my temporary orders. Number one,
4 I'm not going to give custody to the grandparents.
5 And I think asking me to give custody to Mr. Herzog
6 and make the supervision limited and supervised with
7 mother would be an extreme remedy that may have
8 further problems. So I'm not doing that either.

9 So these are the orders: Number one) the mother,
10 Ms. Herzog shall have temporary, primary physical
11 custody of all three children. Mr. Herzog will be
12 permitted to see the children in the presence of a
13 mutually agreed upon third party, which may be his
14 parents. I find that to be totally appropriate under
15 these circumstances.

16 This is to protect a few things. Number one, it
17 would protect the children to some degree, because I
18 have no reason to believe that the grand-parents are
19 going to stand silent while someone sexually abuses
20 their grand-children. I can't see that happening.

21 Number two) it also protects Mr. Herzog so that
22 there's some other individual present, albeit a
23 family member, who could to some degree, protect him
24 from what he believes may be false allegations. And
25 hopefully, it would provide some degree of comfort to
26 Ms. Herzog to know that, someone else is there,
27 albeit, maybe not the particular individuals that she

1 may want.

2 Mr. Herzog, is free to have some other third
3 party supervisor there, provided that is cleared with
4 and approved by the Guardian Ad Litem in advance. As
5 I said, this is in a dissolution file, not in the
6 restraining order files -- these orders.

7 The visitation parenting schedule is going to be
8 this, but it cannot take effect until two things
9 happen. One is the criminal protective order will
10 need to be modified. When is the next court date?

11 ATTY. JENNINGS-LAX: Tuesday, Your Honor.

12 THE COURT: All right. So upon the modification
13 of the criminal protective order; that's number one.
14 And secondly, upon the guardian's verification to
15 both parties, in writing that all computer-related
16 devices that the children may have access to, in Mr.
17 Herzog's home, are password protected, such that the
18 children shall not have access to them in their
19 father's home.

20 Provided those arrangements are made and
21 confirmed by the Guardian, that would include any
22 tablets, laptops, desktops, etc. I don't want the
23 children to have access to any computers in Mr.
24 Herzog's home for the time being.

25 So once that happens and it's verified by the
26 Guardian. And once the criminal protective order's
27 modified, his parenting time will be the following:

1 Every Tuesday from 3 p.m. to 7 p.m.; every Thursday
2 from 3 p.m. to 7 p.m.; every Saturday from 10 a.m. to
3 4 p.m.; every Sunday from noon until 6 p.m.

4 So if that criminal protective order is modified
5 on Tuesday morning, and if the guardian's able to
6 verify all this by Tuesday, then his time will
7 commence immediately at three o'clock that day.

8 Now if school is in session, then it would be
9 right after school or three o'clock, whichever is
10 applicable.

11 Additional orders: Mr. Herzog is prohibited
12 from engaging in any chatroom or internet discussions
13 during his parenting time. Next, the Guardian shall
14 be permitted to inspect Mr. Herzog's computers
15 randomly, only if she wants to, to ensure compliance
16 with these orders; to make sure they're protected.

17 Number three) in the event the parties agree
18 upon any third party person being present for the
19 parenting time, which they have the right to agree
20 on. But if they do, it will be a 50/50 split of the
21 cost without prejudice of their right to seek a
22 different allocation.

23 The passports and birth certificates should
24 continue to be held by the Guardian until further
25 agreement of the parties or a court order. And
26 finally, I would like to schedule a status conference
27 for a report-back on this to see how things are

1 going, and to see whether some of these restrictions
2 should be lifted; whether the parenting time should
3 be expanded for approximately six weeks after the
4 Tuesday court date in criminal court.

5 That would be Tuesday, October 4th.

6 ATTY. JENNINGS-LAX: Your Honor, that's Rosh
7 Hoshana.

8 THE COURT: I'm looking at my State of
9 Connecticut handy-dandy calendar, and it doesn't say
10 anything on it. So let's pick a different date.

11 ATTY. JENNINGS-LAX: How about October 6th, Your
12 Honor?

13 THE COURT: That's a Thursday.

14 ATTY. NEEDLE: Could we do October 7th since
15 October 6th is short calendar in Bridgeport?

16 THE COURT: Well, I'm not sure I want to go that
17 far out. How about --

18 ATTY. JENNINGS-LAX: What about the 30th, Your
19 Honor.

20 THE COURT: Friday, September 30th, that's a few
21 days before October 4th.

22 ATTY. NEEDLE: That's fine.

23 ATTY. JENNINGS-LAX: Your Honor, can I ask you a
24 question --

25 THE COURT: I'm going to give each party a
26 chance to ask a question. Oh yes. The last thing I
27 wanted to say -- and I'm not going to make this an

1 order, but I'll make this observation.

2 It might be helpful -- this is sort of stealing
3 a page from criminal court, and the way we do things
4 in the GA, it might be helpful that when you come
5 back on the status report, if there was some type of
6 report provided that deals with the issue of Mr.
7 Herzog's internet chatroom habits, particularly the
8 ones I mentioned, the ones where he -- the ones
9 dealing with the incest.

10 I'm not ordering it. I'm not saying Dr. Israel
11 has to do it. I'm not ordering it. I just think it
12 might be helpful if there was some input for the
13 Court to deal with that issue, because as I said,
14 that's concerning to me.

15 ATTY. JENNINGS-LAX: Your Honor, I had disclosed
16 an expert, Dr. Greenfield in the dissolution file,
17 who I did not call for the restraining order hearing,
18 because it was a restraining order hearing, not a
19 custody hearing.

20 THE COURT: All right. So if you have a report
21 -- obviously we wouldn't have an evidentiary hearing,
22 but --

23 ATTY. JENNINGS-LAX: What would be the
24 admissibility of the report? I don't want to ask
25 somebody to prepare something if I can't actually get
26 it in front of the Court, Your Honor.

27 THE COURT: No, I understand. The ironic thing

1 is, when you're sitting downstairs -- and Attorney
2 Needle, your colleague won't remember this. When
3 you're sitting downstairs, and you're making
4 decisions -- releasing people from jail, or not, you
5 get handed reports. The judge reads them, and makes
6 a decision.

7 Here we are. We don't have that situation. But
8 I suspect that if you tried to hand me something, we
9 may have an evidentiary battle that you're trying to
10 head off now.

11 ATTY. JENNINGS-LAX: That is exactly right, Your
12 Honor.

13 ATTY. NEEDLE: One of the things that I would
14 suggest is, rather than having a report from an
15 expert who's been paid \$18,000 by Mr. Herzog, perhaps
16 we can come up with a name of someone who can provide
17 that information to Your Honor when we come back.

18 ATTY. JENNINGS-LAX: Your Honor, that person
19 will still need to be paid. And the whole -- would
20 be that that person would have some kind of
21 background in an internet pornography, internet role-
22 playing usage, which is how my expert ultimately --
23 sorry. How my expert ultimately was noticed.

24 ATTY. NEEDLE: I'm sure that we'll be able to
25 work through the issue with Attorney Plancher.

26 THE COURT: Yes. As I said, I'm not going to
27 order it. I'm going to leave it to your all to

1 figure it out. I think you understand what I'm
2 looking for.

3 ATTY. PLANCHER: Yes, Your Honor.

4 THE COURT: Because that's an important
5 consideration in my entering these orders. That
6 finishes my orders. Any questions? Let me start
7 with -- first with Attorney Needle since you were the
8 applicant. Any questions?

9 ATTY. NEEDLE: Yes. A question. You said that
10 Mr. Herzog would have access to the children every
11 Saturday and every Sunday?

12 THE COURT: Correct.

13 ATTY. NEEDLE: And we had requested every other
14 weekend. So that does not leave the mother any
15 weekend time with the children.

16 THE COURT: I disagree with that statement. But
17 the order I entered is what I entered.

18 ATTY. NEEDLE: Okay. I was just wondering --

19 THE COURT: I took that into consideration. If
20 we need to adjust it in six weeks, we'll adjust it.

21 ATTY. NEEDLE: Okay.

22 THE COURT: But I -- I considered that. But
23 this is what I think is best under the circumstances.
24 I know you may not agree with it, but it comes with
25 the job.

26 ATTY. NEEDLE: Okay, well I didn't know -- I
27 just wanted to make sure that that's what you

1 intended.

2 THE COURT: Every Tuesday, every Thursday, every
3 Saturday, every Sunday.

4 ATTY. NEEDLE: Okay. And if Mrs. Herzog does
5 not agree to one of the third parties, is that
6 something we talk about with Attorney Plancher, and
7 come up with a name?

8 THE COURT: Well, I think I said the
9 grandparents are fine.

10 ATTY. NEEDLE: Okay.

11 THE COURT: But if they're not available or
12 something, and you need to have another third party,
13 it's a good question. If you can't find someone
14 else, then I'm going to say, the guardian picks it
15 without prejudice to either party's right to
16 challenge that selection in court at the appropriate
17 time.

18 ATTY. NEEDLE: Thank you.

19 THE COURT: Yes.

20 ATTY. JENNINGS-LAX: Your Honor, just a couple
21 of quick things. First, this order is being entered
22 upon modification of criminal protective order. Is
23 the Court willing to enter an order that requires the
24 plaintiff in the dissolution action to cooperate in
25 having the criminal protective order modified so as
26 to allow this contact?

27 (Pause)

1 THE COURT: Your position, Counsel?

2 ATTY. NEEDLE: Excuse me?

3 THE COURT: I was asking you what your position
4 is in response to this request.

5 ATTY. NEEDLE: Well again, Your Honor, I'm not
6 involved in the criminal case. So I need to confer
7 with my client.

8 THE COURT: So what I would say about that --
9 Oh, I'm sorry. You're going to do it now? Okay.

10 ATTY. NEEDLE: Yes.

11 **(Whereupon Atty. Needle briefly conferred with her client)**

12 ATTY. NEEDLE: Mrs. Herzog will agree to
13 cooperate -- to get the criminal protective order
14 modified so that the orders you just entered can come
15 into play.

16 THE COURT: Very well. Okay.

17 ATTY. JENNINGS-LAX: Your Honor, I would note
18 though that, it has to be done in a way so that the
19 criminal protective order can be further modified.
20 Really, it should be done in a way so the criminal
21 protective order is not extended anymore to the kids,
22 so that the -- so that --

23 THE COURT: Well, whoever the judge is dealing
24 that next Tuesday will know how to do that.

25 ATTY. JENNINGS-LAX: Okay. Thank you, Your
26 Honor. Second, given that there is currently a
27 criminal protective order between the plaintiff and

1 defendant, and I understand that the plaintiff is
2 occasionally at the children's school, can you please
3 identify who may be permitted to pick the children up
4 from school?

5 THE COURT: Is it a full no contact order
6 between the parents?

7 ATTY. JENNINGS-LAX: It is, Your Honor.

8 ATTY. NEEDLE: Yes, Your Honor.

9 ATTY. PLANCHER: Your Honor, prior to today's
10 date, I had suggested to the parents that we consider
11 some sort of arrangement, maybe it's through Our
12 Family Wizard, but also that the protective order be
13 modified to allow the parents to discuss only
14 schedules, as it relates to the children, and things
15 like that, but that they could communicate by Our
16 Family Wizard, and that they could be -- both be
17 present at school if there's a school function at
18 which all parents were invited to attend.

19 So I have asked the parents to consider those
20 towards the modifications. We didn't get into the
21 weeds of that today, Your Honor -- you know -- with
22 me as a witness --

23 THE COURT: Right. Well, I'm going to say this.
24 Since the State of Connecticut has a right to be
25 heard in all this as well I suppose, it would seem to
26 me it would make sense for the parties to work out
27 some arrangement dealing with that protective order,

1 and have that all done by Tuesday so you can
2 implement this plan.

3 ATTY. JENNINGS-LAX: In the absence of that,
4 Your Honor, is it acceptable to the Court that we're
5 soon to be ordered that my client have parenting time
6 on Tuesdays and Thursdays after school that, if the
7 criminal protective order is still in effect as a no
8 contact order between the plaintiff and him, that his
9 parents, or another agreed upon third party be the
10 ones to retrieve the children from school, so as to
11 insure that there is no violation of that order.

12 THE COURT: That seems fair. Right?

13 ATTY. NEEDLE: What -- We'll be able to make
14 arrangements, Your Honor. When there was supervised
15 visitation and no contact between the parties in
16 December, there was not really an issue with making
17 appropriate arrangement.

18 THE COURT: If for some reason the criminal
19 protective order remains in effect, I don't -- with
20 the no-contact, then the parents can do the pick-up
21 and drop off.

22 ATTY. NEEDLE: Very good. Thank you, Your
23 Honor.

24 ATTY. JENNINGS-LAX: Thank you.

25 THE COURT: Any further questions?

26 ATTY. JENNINGS-LAX: I think that's it, Your
27 Honor.

1 THE COURT: Attorney Plancher, any questions?

2 ATTY. PLANCHER: Nothing, Your Honor. Thank
3 you.

4 THE COURT: Okay. The -- We're not going to get
5 today to the request for a Porter Hearing, so that's
6 going to have to -- I'm sure it's go up on the short
7 calendar, since you just filed it. And you'll deal
8 with it then.

9 ATTY. NEEDLE: I have no problem just doing it
10 on the next short calendar day, marking it ready and
11 --

12 THE COURT: Yes. Whenever it hits the calendar
13 -- Now if I'm not here --

14 ATTY. NEEDLE: Well are you -- I'm gone for the
15 next two weeks until after Labor Day, Your Honor.

16 THE COURT: The other thing I should say too,
17 for the record is, I think it would be unfair to any
18 other judge, or these parties, frankly, or the
19 lawyers, to have to start over again with another
20 judge on some other issue. So I'm going to retain
21 jurisdiction over the case, absence some emergency
22 when I'm not here.

23 So we'll have to deal with the Porter hearing
24 request on some Monday in September.

25 ATTY. NEEDLE: Thank you, Your Honor.

26 ATTY. JENNINGS-LAX: Very good, Your Honor.

27 Your Honor, there's also a pretrial conference

1 scheduled in this matter, on Wednesday of next week.
2 That was scheduled in time, but I believe the Court
3 envisioned that all of this would have been resolved
4 in some way, shape or form, and all we would be
5 dealing with was financial discovery.

6 Given that Attorney Needle is also out of state
7 next week on vacation, my client would have no
8 objection to a continuance at this juncture, of any
9 such pretrial. Also, if this case ends up going to
10 Middletown, I don't know that -- It's difficult, as
11 Your Honor knows, to deal with a financial pretrial
12 without all the other pieces in place.

13 THE COURT: I'll just mark it off, and you can
14 contact Mr. Diamond -- when you come back in on that
15 September date, we'll figure out a new date for the
16 pretrial.

17 ATTY. JENNINGS-LAX: Very good. Thank you, Your
18 Honor.

19 THE COURT: 8/24 date's off.

20 ATTY. NEEDLE: And Your Honor, I just want to
21 clarify, when we argue the motion with regard to the
22 Porter hearing, we wouldn't immediately then start
23 the Porter hearing, because of course, would need Dr.
24 Smith, and --

25 THE COURT: Correct. And we're go into short
26 calendar too, and the Porter hearing, if it happens
27 will probably be on a non-Monday.

1 ATTY. NEEDLE: Okay. I just wanted to confirm
2 that.

3 THE COURT: So you don't need to have the
4 experts come on the issue of whether we're going to
5 have the Porter hearing.

6 ATTY. NEEDLE: We can't afford it.

7 (Chuckle)

8 ATTY. JENNINGS-LAX: Your Honor, can my client
9 also be excused from that court date? He is hopeful
10 that he is going to be getting employment, hopefully
11 next week, depending on what happens in criminal
12 court. So would my client be able to be excused from
13 a short calendar day that does not require evidence?

14 THE COURT: Any objection?

15 ATTY. NEEDLE: No, as long as the same
16 accommodation will be afforded to my client if she
17 chooses not to be here.

18 THE COURT: So for the issue of the -- whether
19 there's going to be a Porter hearing or not only,
20 both parties' presence is optional.

21 ATTY. NEEDLE: Thank you, Your Honor.

22 ATTY. JENNINGS-LAX: Thank you, Your Honor.

23 THE COURT: All right? Anything else?

24 ATTY. NEEDLE: No.

25 THE COURT: Attorney Plancher, anything else?

26 ATTY. PLANCHER: Nothing further, Your Honor.

27 THE COURT: All right. We're adjourned.

ATTY. JENNINGS-LAX: Thank you.

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