

At PART 2 of the New York State Family Court in and for the County of Suffolk at Central Islip, New York, on April 26, 2010

PRESENT: HON. ANDREW G. TARANTINO, JR.  
J.F.C.

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In the Matter of		NN-13176-07/10E
		NN-13177-07/09C,D
D. D., III,		NN-13177-07/10E
M. D. ,		NN-13178-07/09C,D
A. D.		NN-13178-07/10E

Children adjudicated to have been neglected by

DECISION AND ORDER  
(corrected)

D. D., II,

Respondent

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This Court was asked to rule on three applications:

1. Child Protective Services filed a petition to extend supervision of the Respondent Father,
2. the Children’s Attorney filed a petition seeking to suspend visitation supervised by the paternal grandparents upon the allegation that the grandparents are not properly supervising the visitation, and
3. the Children’s Attorney filed a petition seeking incarceration of the Father for failing to obtain a mental health evaluation.

The Father applied to modify visitation under the parties divorce judgment, seeking supervised overnight visits. Because of the ongoing supervision under the N-docket, the Court has dismissed the V-docket as premature, and has taken the Father’s testimony as a modification application under the N-dockets. The hearing was conducted over a course of four days. The court received testimony from both parents, the paternal grandparents, the father's probation officer, and the father's current therapist as well as the children’s therapist. The court took judicial notice of all prior proceedings in this matter, and together with this new testimony, and the parties demeanor in court, the court renders this decision.

C. C. was the first witness on behalf of the Children’s Attorney. The witness was a social worker from the Children’s Attorney’s office. She testified that in December 2009,

she saw the paternal grandmother and the child M. The child informed the social worker that they saw Santa, went to parks, and that the Father plays music on his computer when the children are visiting. The child also told the social worker that she dances with the Father, and the computer is located in the Father's bedroom. According to the social worker, M. stated that nobody else is around when she is in the bedroom with the Father. On cross examination, the social worker acknowledged that she did not inquire who was around during the visitation. Although the social worker testified that the child informed her that they "dance all the time," the caseworker provided no real answer as to when this dancing actually occurred. The visit with Santa occurred at a local mall.

The children's attorney next called F. G., a Suffolk County detective. The purpose for this witness was to establish why the Father is a registered sex offender. It was in July 2007 that the mother found child pornography on the Father's computer. Nineteen photographs were introduced into evidence which were the photographs found on the computer. The photographs were all of younger girls between the ages of 12-16 years; in his criminal case, the Father pled guilty to possession of child pornography.

L. C. is the Nassau County probation officer supervising the Father. The Father's probation started in 2008 at which time he was placed under sex offender conditions. According to the witness, the Father could go to the mall for shopping, but cannot loiter. The probation officer stated that the Father should be at no parks where there are children. The witness believed that it was inappropriate for the Father to have pictures of his children taken with Santa. The witness testified that the father is compliant with his treatment, and compliant with all terms of probation. Probation will expire in 2018.

The children's attorney rested her case on the modification application. The court indicated to all attorneys that the Children's Attorney's case relied solely upon hearsay, and that the court planned on meeting with the children. The Father then proceeded with his application for overnight visitation.

The father first testified describing his visitation which occurs on Sundays from 10AM-6PM at the paternal grandparent's home. The family has breakfast waiting for the children when they arrive. A paternal aunt lives a couple of blocks away. The Father is seeking supervised overnight visitation because the children are asking for it and it affords the children more time with the Father. The Father reports to probation every Wednesday and has been on probation since July 2008. The Father described the alleged violation of the Family Court order of protection in May 2009. During that visit, the Father followed the grandfather to pick the children up at the mother's home. To assist

the grandfather buckling the child in the car, the Father exited his car and helped the grandfather. At that point, the mother approached the Father at the car, the Father did not approach the house or the mother. The mother filed the alleged violation after that event. The Father explained how he attends night group meetings every Tuesday. His son, D. D. III, has special needs; he has delayed speech and has been diagnosed with autism. The Father explained how at the end of his visits with the children they express a desire to want to stay with the Father longer. He freely discussed that in December 2009 while with the children in the Nassau County, he stopped at a local ice skating rink with the children and saw the Christmas tree. On cross examination by the Children's Attorney, the Father acknowledged that there is an order of protection from criminal court for the benefit of the mother until 2016. When asked why M. states she is alone with the Father in the bedroom during visitation, the Father explained how the grandfather sits in the hallway immediately outside the door from a point where the grandfather can observe everything in the bedroom. The Father explained how he was told that as long as someone could observe him with the children, his visitation was being properly supervised. It was also around Christmas time that the Father went to Sears for shopping, and the children saw Santa in the mall. The Father acknowledge that he waited on line with his children so that they could have their picture taken with Santa. He described that if overnight visitation was approved, the daughter would sleep in an upstairs bedroom, and the son would sleep on the same floor as the grandparents.

The next witness was T. M. the children's therapist. The witness is a licensed certified social worker who has worked with children for about 10 years. The court denied qualifying the witness as an expert because the credentials had not been fully established. The court did provide the children's attorney an opportunity to cure the lack of foundation, but no further attempt was made. The witness proceeded as a fact witness. The witness described how in 2005 he provided couple counseling for both the mother and the father. In 2008, the witness then counseled the mother alone for about one year. The child D. D., III was aggressive, and acting out, and the child M. was, as the mother described to the counselor, over-affectionate. To address the child D. D. III's aggressive behavior, the witness used play therapy. He then described how over the last year, he has seen no change in M. The child D. D., III's aggression would increase when, and have difficulty expressing his anger, usually the result of a routine change. An example was when the child had to change schools after the mother moved her residence. The witness did state that the children like to see the Father. He stated how

the child D. D., III cannot put feelings into words. However, the child D. D., III does give accurate descriptions of events in his life, and can accurately report good and bad events. He continued describing how M. gives accurate information, but likes to play around, joke, and sometimes say things that did not really happen. His experience is that M. could accurately report good and bad events. On cross examination, he reaffirmed how the child D. D., III likes seeing his father and grandparents. Upon cross examination by the father's attorney, the witness described M. as a typical four year old in her communication skills.

Next was C. A. This witness is the certified sex offender therapist who has been working with the Father. Based upon her 20 years experience, and other foundational basis, this witness qualified as an expert. This witness was illuminating not just to the information received about the therapy for the Father, but also providing a description of the trends in sex offender therapy. The witness described that the normal course of treatment is group therapy, followed by individual therapy as needed. She describe cognitive behavioral therapy, which is therapy that addresses what motivated the behavior. Also, there is rehabilitative relapse prevention therapy, wherein participants discussed triggers. In each of these, group therapy is the best practice. In what the witness described as a containment model, there are three prongs to therapy:

- 1) probation supervision
- 2) therapy
- 3) 3 types of polygraph
  - (a) instant offense polygraph,
  - (b) a historical polygraph used for treatment,
  - (c) a maintenance polygraph to monitor compliance.

The Father started his therapy 15 months ago with weekly group meeting on Tuesday evenings. The Father has been compliant, has made some significant progress in communication, has never missed a session, arrives early, and is always prepared. She described how no polygraph has been taken of the Father because the Father never denied the allegation. He has been open about the situation. Therefore, the historical polygraph has not been used. Currently, the Father's therapy is finishing with the completion of the maintenance polygraph. The normal course of a sex offender therapy is two years of weekly meetings, then stepped down to monthly, all dependent upon the progress of the individual. The Father has acknowledged having a sex addiction. But there it this does not believe that the father is a predator, and as with all addictions, the

causes have been addressed, and reduced. At no time during his therapy as the Father expressed a desire for under aged children. An important indicator and the success of therapy, is that the Father also has expressed remorse for what he has done. Regarding the discussion of triggers, the therapist repeated that the Father was never interested in children sexually.

The mother, I. K., next testified. She first stated her concern that if the Father takes the children to a store and another person sees the Father with the children, people may say something to the children. She is concerned about the children being exposed to inappropriate pictures. She did know that in May 2009 she did file a violation of the order of protection against the Father. Despite her concerns, she stated that she wanted the Father to have visits with the children, and that he has a good relationship with the children. The criminal court affidavit was submitted into evidence. The court notes that although the violation occurred in May 2009, the mother did not file her complaint with authorities until August which was subsequent to the parties appearing in Family Court in June to clarify the terms of the order of protection and address the May incident. The mother also admitted that she is the person who called probation to report that the father took the children to a skating park. She knew she has made other calls to probation regarding the Father when she believed that the Father was violating his probation terms. On cross examination by the children's attorney, the mother acknowledged that the parties divorced in 2007. She also stated that M. danced with the Father and no one was around, basing this information on statements made by the children. She also described how one time she walked past the children's bedroom (in the past), and overheard the Father tell the young daughter to have "sexy time" with the Father. Although the mother made this statement, it does not appear to have been corroborated by any other source.

The paternal grandmother, L. D., testified. She stated that the Father has been residing with her since the divorce. She described how "we follow him like a puppy" when she described supervising visitation between the Father and the children. She described how the hallway is 10 to 15 feet long from the Father's room, and that the children are always in full sight of either the paternal grandmother or paternal grandfather during the visits. She then described the sleeping room arrangements, the daughter would have a bedroom upstairs, and the son would have a room on the second floor with the grandparents. Upon cross examination, the grandmother described when they took the children ice skating. Aware that the Father is not permitted to be in areas where there are

children, she stated that there were no children at the ice skating rink when they were there. After referring back to the pictures introduced into evidence by the children's attorney, it was noted that there are no pictures of other children at the rink. Regarding the visit to Santa at the mall, the mall was empty and the children wanted to see Santa. There was no line, and the pictures were taken relatively fast.

At the conclusion of the witnesses, on the last day, the court met with the two children and the children's attorney. Although the children's testimony is sealed, the court takes the information received from the children in consideration for this decision. It is the Court's opinion that the Children's attorney's position against supervised overnight visitation is contrary to the desires of the children.

This case presents with the issue of when and if a sex offender should be able to have a normal relationship with his children? On one hand, the Court recognizes that the Father is a registered sex offender. With that are the inherent concerns, sometimes justly, that a sex offender may sexually abuse his own children. On the other hand, the Court recognizes the needs of children to have and develop as near normal as possible a relationship with a parent who will always bear the label of a sex offender. These children are innocent victims of these sad circumstances. In the mix is the children's mother who has been deeply hurt by the father's transgression, and whose concern for the safety of the children is also understandable. In this case, the Court must also recognize that this Father has progressed in his therapy, has been in therapy for almost 20 months, and based upon the children's attorney's own expert witness, the Father is not a sexual predator. What caused some concern in the court's mind was the probation officer's position that the father should not have been in the mall waiting on the line to have his children take a picture with Santa. The officer was concerned that there would have been children present. But when the court asked if the father was prohibited from entering a mall, the probation officer explained that sex offenders needed to continue with their lives, and as long as the Father went to the Mall, shop, and left without loitering, it would not be a concern. In the court's opinion, there is a flaw in this logic. On one hand is the sex offender who would be standing on a line in clear view of other adults while those adults are accompanying their children to take a picture with Santa; that, according to probation, is not permissible. Yet, a sex offender can enter the mall unaccompanied to shop, enter any store where children could be roaming unaccompanied by an adult

where that child could fall prey to a sexual predator; yet , that unaccompanied sex offender shopping in a store would be permissible. While the court still struggles to see the logic in these two situations, it bears little impact to the issues at hand.

The Father is not seeking unsupervised overnight visitation. But, because of the distance between the parent's homes, the unavailability of the mother to assist with transportation, the Father is requesting that his visitation be expanded to a supervised overnight to allow the children more time with their Father. The Father still would be subject to these terms of probation, and be subject to the Family Court terms of supervision. The Court finds that the testimony of the grandparents was credible. In order not to intrude upon the few hours of visitation that children have with the Father, the grandfather observes the children from the hallway. At no time are the children outside of the view of the supervisors. But it is understandable how a four-year-old girl may state that no one is with them during visitation when this four-year-old child is not aware that an adult is in the hallway observing her. More important, is that the supervisors observe the Father. And as the grandmother described, they "follow him like a puppy dog". Even the children's mother describes how she wants the Father to have a relationship with the children and have visitation. Critical in the court's decision is the testimony of the fathers sex offender therapist. In her opinion, the father is not a predator. This is significant. The Father's diagnosis is that of a sexual addict. This accounts for the quantity of pornography on his computer. But as described by the therapist, similar to an alcoholic who is never cured of the disease, but learns how to deal with the trigger points to drinking, the sexual addict must learn how to deal with the trigger point that leads him to the pornography. In the opinion of the therapist, the father has addressed this appropriately.

The allegations raised against the father having additional visitation were that he brought his children for a photograph with Santa, took the children to an ice skating rink, and that he is permitted to be alone with his children in his bedroom. Based upon the witnesses, the Court now has logical explanations for these events. There is a fourth allegation which was raised which the court did not understand; a mere allegation that the Father danced with the child M. No information was given to the Court to indicate that the Father was prohibited from having a normal relationship with his children, and without more, cannot read anything sinister into this activity. Not forgetting that the grandparents are observing the visitation, the children are entitled to grow with and have as normal relationship with their Father as is possible under these circumstances. To consider

sinister every activity in which there may be contact may approach paranoia in some circumstances. This court cannot render a decision based upon paranoia. The father has had ongoing visitation with the children without event.

The court is denying the children's attorney's application to suspend the grandparent's supervision of the visitation between the children and the Father. In the Court's opinion, based upon the credible testimony, the grandparents have been appropriate, and vigilant, supervisors. The court is granting the Father's application for supervised overnight visitation. The children are now almost 2 years older than when the Father was placed under his probation conditions. As described by the children's therapist, each are capable of reporting good and bad events to other people. The court did explore beginning with visitation on Saturday and Sunday with the children being returned to the mother for the overnight Saturday. However, because of the distance between the parents' homes, this would create an undue disruption in the children's routine. And it does not seem to be as much concern about the Father's daytime supervised visits as there is concern about the overnight visit. Based upon the evidence before the Court, the grandparents have set up sleeping accommodations with the children would be away from the father. While the grandparents each are vigilant in their supervision of the Father during visitation, and because the families appear to be computer literate, there is no reason that a video camera could not be set up in the children's bedrooms with a live feed so that the mother may periodically check on the children herself possibly providing her with more peace and comfort regarding the children.

The Court finds that it is in the children's best interests to continue with the visitation, and expanding the visitation to supervised overnight to afford the children with a more normal, and developing, time with their Father.

Based upon the above it is hereby

ORDERED that the application seeking to incarcerate the Father for failure to complete a mental health evaluation is denied because the Father is currently in therapy; and it is further

ORDERED that the application seeking to suspend the paternal grandparents from supervising visitation between the children and the Father is denied; and it is further

ORDERED that the application to extend supervision of the Father is extended until October 26, 2010, to monitor completion of sex offender therapy and progress of visitation; and it is further

ORDERED that the application seeking supervised overnight visitation between the children and the Father is granted to the extent that the children shall be permitted to begin weekend visitation from Saturday 12:00PM through until Sunday 6:00PM beginning May 1, 2010, and continue every other weekend thereafter.

This constitutes the Order of the Court.

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J.F.C.

**PURSUANT TO FAMILY COURT ACT SECTION 1113, AN APPEAL FROM THIS ORDER MUST BE TAKEN WITHIN 30 DAYS OF RECEIPT OF THE ORDER BY APPELLANT IN COURT, 35 DAYS FROM THE DATE OF MAILING OF THE ORDER TO APPELLANT BY THE CLERK OF COURT, OR 30 DAYS AFTER SERVICE BY A PARTY OR THE LAW GUARDIAN UPON THE APPELLANT, WHICHEVER IS EARLIEST.**