DOCKET NO. MMX FA-12-4018627-S	:	SUPERIOR COURT
TANYA TAUPIER	:	J.D. OF MIDDLESEX
V.	:	AT MIDDLETOWN
EDWARD TAUPIER	:	DECEMBER 13, 2018

MEMORANDUM OF DECISION RE:
PLAINTIFF'S MOTION FOR MODIFICATION (234.00)
DEFENDANT'S ORAL MOTION FOR APPOINTMENT OF GUARDIAN AD LITEM
ORAL MOTION FOR PERMISSION TO WITHDRAW APPEARANCE FOR DEFENDANT

BACKGROUND

A hearing on all of the above motions was conducted on December 5 and 6, 2018, the parties being the only witnesses.

The marriage of the parties was dissolved on August 28, 2015, by a judgment entered after a contested trial. In pertinent part, the judgment awarded sole legal and physical custody of the parties' two minor children, Sara (born March 23, 2007) and Gabriel (born November 4, 2005), to the plaintiff (sometimes referred to herein as the mother). The court further ordered a schedule of parenting time with the children for the defendant (sometimes referred to herein as the father). Under the schedule, the children were to be with the father on alternating weekends and two weekday afternoons each week while school was in session, and for alternating weeks during the summer school vacation. The judgment also provided for holiday and school break parenting time.

On October 9, 2016, the mother filed a motion to modify the parenting provisions of the judgment (Motion #219.00). In her motion, she alleged that since the date of judgment circumstances had changed in that "the Defendant has so psychologically damaged the children that it is not in their best interests for them to be with the Defendant unsupervised." She sought a modification of the orders to change the father's parenting time to supervised visitation in a clinical setting.

Following the filing of Motion #219.00, the parties reached an agreement on January 17, 2017, for the completion of psychological evaluations of both parties and the children, which was approved and made a court order (Entry #225.00). Pursuant to that order, the court entered a further order on February 24, 2017 (Entry #226.00), naming Dr. Bruce Freedman as the mental health professional to perform the evaluations.

More recently the parties have filed a variety of further motions. The hearing held on December 5 and 6, 2018, concerned the above captioned motions and several other motions which were pending at the time, but not including the prior motion for modification by the plaintiff (Motion #219.00), which remains pending. Upon the conclusion of evidence and argument, the court issued oral rulings from the bench on all of the motions heard except for the motions cited in the above caption, which are decided herein. All findings of fact are made on the basis of a preponderance of the evidence unless otherwise noted.

PLAINTIFF'S MOTION FOR MODIFICATION (234.00)

In her current motion for modification, the mother alleges that the parenting schedule ordered in the judgment is no longer in the best interests of the children. She further alleges that Dr. Freedman finished his evaluation to the extent possible on July 7, 2017, but that his work

was incomplete because of the failure of the father to participate in the process, rendering Dr. Freedman unable to make recommendations as to changes in custody or visitation. In her motion, the mother seeks an order that the father's personal and telephone contact with the children be suspended until he cooperates in the completion of a psychological evaluation with Dr. Freedman.

FINDINGS

As a threshold issue, the defendant argues that the plaintiff's motion should be denied for lack of a substantial change in circumstances since the entry of the most recent custody and access orders, namely the orders contained in the judgment of August 28, 2015. While the finding of a substantial change in circumstances is generally necessary before modifying custody orders, it has been held that no such finding is required before modifying visitation orders in the best interests of the children. *Szczerkowski* v. *Karmelowicz*, 60 Conn. App. 429, 433 (2000).

In any event, even if the requirement of a substantial change in circumstances applies to the present motion, it has been met. Since the date of judgment, the father has been convicted of criminal charges arising from three separate incidents, either after trial or by entry of a plea. As the result of his convictions, he has been incarcerated continuously since August 11, 2017. The father anticipates the completion of his term of imprisonment and release from incarceration in late December 2018 or early January 2019.

Therefore, as of the date of the hearing the father had been in prison for a period of almost sixteen months during which he had neither seen nor spoken with either of the children. His incarceration has made the parental access orders in the judgment physically impossible to follow for an extended period of time. His total absence from the community for so long during his

incarceration, rendering him unable to follow the access plan originally ordered, is found to constitute a substantial change in circumstances, without regard to the reason for his incarceration.

The court must next determine whether and in what manner the modification of the custody and visitation orders would be in the best interests of the children. In making that determination, the court has considered all the evidence, on the basis of which the court makes the following additional findings.

Since the date of his divorce judgment, the father has expressed on multiple occasions his criticism of the Connecticut family court system. There is a direct relationship between the manner in which he has sometimes expressed his deep-rooted beliefs about this issue and some of his criminal charges. Between the date of judgment and the commencement of his incarceration, the father sought to inculcate similar anti-family court views in his children.

For example, he filmed the video admitted into evidence as Plaintiff's Exhibit 1. The video begins with a telephone conversation between the defendant and Sara, who was nine years old at the time.[1] During this beginning segment, the father is in his home as he stands in front of the camera and conducts a phone conversation with his daughter. He holds the phone receiver out in front of him, so that he may be seen and heard in the video and Sara's responses to him may also be heard.

The father's side of the conversation with his daughter in the video could hardly be more inappropriate. The defendant's statements to his young child might best be described as chilling.

[1] The defendant could not recall the precise date of the video. However, in his recorded conversation with the child, the defendant refers to allegations made by the mother in a pending motion for which the defendant says he must soon return to court. The allegations so described are consistent with the motion for modification filed by the plaintiff on October 9, 2016, and the defendant's statements about when he must return to court are consistent with the court file regarding that motion. The court concludes that the video was made at some point during the months of October or November, 2016.

He pontificates at length about the unfairness and insensitivity of the family courts, also making disparaging remarks about the mother. He manipulates his daughter by repeatedly suggesting that if she and her brother don't want to call and come to see him more often then it may be best for them to end all contact.

The defendant's most troubling statement in the video occurs when he tells his daughter that "the judges want you dead." After he ends the telephone conversation, the defendant turns to speak directly to the camera and embarks on a diatribe directed at the courts, naming numerous judges who have issued rulings in his family and criminal cases. He assures the judges that when the children who have been affected by the court system grow up they will want to kill them, a task for which he professes an eagerness to train them. He also describes his goal of becoming the governor of Connecticut, with his first priority upon taking office being the arrest and imprisonment – permanently, without trial, in a secret jail – of state judges and their entire families. At some point after completing the video, the defendant posted it on his Facebook page for others to view via the internet.

For purposes of this proceeding, the first portion of the video is the most relevant and troublesome. The father has the First Amendment right to express his opinions in any lawful manner, and the court does not base its present decision on the content of his opinions. His statements to his daughter on the video violate the orders in the judgment which prohibit him from discussing court proceedings and orders in this action with her, but this is not a motion for contempt of those orders. The court's primary question in discerning the best interests of the children is the following: What has been the impact upon the children of the father's conduct and statements to them or in their presence?

A second video admitted into evidence provides insight into the answer to that question.[2] The video was made by Sara during the summer of 2016, also when she was nine years old, as she sat alone in her bedroom at her father's house. Although Sara made the video prior to the conversation captured in Plaintiff's Exhibit 1, the viewpoints she expresses about the family court system are the same as her father's.[3] The theme of the video is the "hell" of Connecticut family court. Sara speaks to the camera, expressing her feelings about the family court system and parroting the father's talking points about how the system has "failed her family." She speaks of her father and herself as a team. She makes veiled threats to the effect that children like her will one day strike back in revenge at the lives of the judges who have decided their cases. Most disturbing of all, Sara talks about committing suicide.

The defendant testified at the hearing that Sara, not he, produced what he describes the "creative content" of the video, that is, the words that she uttered. He admits that he viewed the video after Sara had created it and that he approved of her posting it on YouTube to be viewed by others on the internet. The court credits the defendant's testimony on these points.

It would be concerning enough if the defendant had written a script for his daughter in which she threatens harm to others and discusses taking her own life, and had then encouraged her to make a video of the statement to post on the internet. The court would have viewed that as a gross abuse of the father's parental authority to recruit a young child to his mission, without regard to the effect on the child's emotional and mental well-being. But it is even more troubling to consider that Sara composed and filmed these statements, intended for public consumption,

---

[2] Plaintiff's Exhibit 2.

[3] The evidence shows that the child's only information about family court has come from her parents, and only the father has stated opinions which are similar to those repeated by Sara in the video.

on her own. The video is evidence of the successful indoctrination of the child into her father's extreme beliefs.

Perhaps most disturbing of all, the incident is evidence of the father's misguided priorities as a parent. Faced with a child who has filmed her own unsolicited statement that includes suicidal thoughts, the defendant does not pursue medical or mental health professional help for her. Instead, apparently proud that she has made a monologue mirroring his own beliefs, he gives her permission to post it on the internet. He has no concerns about Sara's video, saying that he did not want to criticize her for speaking her mind. It would be more accurate to say that the defendant was pleased that Sara was speaking **his** mind. The defendant is more concerned about having Sara advance his anti-court agenda than he is about her mental health, safety and well-being. The court could better accept the father's lack of concern if he had written the lines wherein the daughter discusses suicide and then persuaded her to read them, as terrible as that would be, since at least then he would have known that the suicidal thoughts were not her own. It cannot understand the lack of concern demonstrated by a father whose nine-year-old child, with no prompting, talks about taking her own life.

With regard to the prior order for psychological evaluations by Dr. Freedman, it is undisputed that the defendant has not participated in the evaluation. In testimony relating to the plaintiff's motion for contempt, the defendant stated his belief that he was prevented from doing so by the conditions of the house arrest he was under at the time the evaluation was ordered. The conditions of his release on the criminal charges may well have complicated efforts to cooperate, although it is far from clear that they made it impossible. But if the defendant was unable to participate in the evaluation for those reasons, he was pleased by the inability. The letter to Dr. Freedman dated June 4, 2017, purportedly from the children but obviously not written by anyone

so young, is filled with the defendant's typical allegations of impropriety on the part of everyone involved in the family court process besides himself. It is also extremely vulgar. The letter appears to include the children's photographic images, email addresses, and signatures, but the court finds based on all the evidence that the letter was authored by the defendant, who then either had the children sign his screed or signed their names to it himself.

There is more direct evidence of the father's statements and conduct toward Sara than toward Gabriel. However, based on all of the evidence the court finds that Gabriel has been subjected to similar influence by his father. In making this determination, the court has considered that the father had the same postjudgment access schedule with both children, who both were generally with him at the same times until his incarceration; that some of the statements made by Sara and her father were also posted on the internet; that the father included Gabriel as a signatory to the above described letter to Dr. Freedman; and that the plaintiff observed significant improvement in Gabriel's disposition and academic performance after the cessation of conduct with his father. Moreover, the evidence shows that the defendant is eager to discuss his anti-family court views with virtually anyone who will listen. It is extremely unlikely that he refrained from doing so during his parenting time with a captive audience like his son, while doing so with his daughter during the same parenting time.

The father attempted to send several letters to the children during the early months of his incarceration. The children never saw them. After opening the letters, reading them, and consulting with the children's therapist, the mother decided that their content was inappropriate and declined to give them to Gabriel and Sara. After reviewing the letters, which were admitted into evidence, the court shares the mother's assessment. The letters do contain expressions of the father's affection for the children, as well as some discussion of topics like proper nutrition

and current movies. But those comments are sprinkled among the defendant's ongoing rants which disparage the legal system and the mother and bemoan his unfair legal fate. In one letter, after noting with glee that the mother's family law attorney had died, the defendant exhorts the children to pray for the deaths of others like the judge and prosecutor in one of his criminal cases. In short, even after not seeing his children for several months, the defendant's letters to them were first and foremost about himself and his martyr-like struggle against the legal system.

The court further finds that the children have benefitted from the cessation of their exposure to the father's influence. The court credits the testimony of the plaintiff about her observations of the children after their contact with the defendant ceased. Prior to the father's incarceration Sara often spoke of suicide, especially after visits with him. She no longer does. Her behavior and academic performance at school have improved. Gabriel has had more success in focusing on his school assignments and has improved significantly in his academic performance. He also has been acting happier and spending more time with friends. Neither child has made any recent inquiry about seeing the father.

CONCLUSIONS

The court does not doubt the defendant's love for his children. It would be in the children's best interests to have a positive and meaningful relationship with him. However, the court concludes that the contact between the children and their father since the date of judgment has been harmful to them. The father argues that he was only trying to teach the children to question authority. In reality, he was abusing his own parental authority to enlist them as foot soldiers in his war against the family court system.

His intense conversation with Sara, captured on video, demonstrates the fear tactics he used to try to instill his beliefs in them. After being subjected to the father's harangues, it is highly unlikely that Sara would have dared to create and present to her father a video extolling the virtues of the family courts. Clearly, the father was not merely encouraging his children to think and speak for themselves.

There is no persuasive evidence that the defendant would refrain from similar conduct with the children upon his release from incarceration if given the opportunity. When asked if he intends to resume his "crusade" against the family court system upon his release, he replied that at this time he has no reason to do so. That answer and his testimony in general persuade the court that his campaign against the legal system will be renewed the first time he disagrees with a judicial decision in this case. That, in itself, is not reason to restrict his access to his children. But the court also concludes based on all the evidence that, if left to his own devices, the defendant would not change his behavior toward his children regarding this subject. The important issue for purposes of this proceeding is not whether the defendant has the First Amendment right to make the kinds of statements he has made in the past, however radical. The issue is the effect on the children when he makes the statements to them.

In the best of circumstances, a separation between a parent and young children as long as the one in this case, regardless of the reason, would typically require therapeutic assistance in connection with reunification efforts. It would be an understatement to say that this case does not present the best of circumstances, and nothing less is required here. To put it simply, the re-establishment of a successful relationship between the defendant and his children does not require the defendant to abandon his beliefs about the failings of the family court system. But it does require him to stop imposing his views on the children and trying to conscript them for his cause.

Based on all the evidence, the court concludes that the father needs, at a minimum, the guidance and assistance ordered herein to build a successful relationship with the children.

The court has considered the facts of this case in light of the applicable statutes and case law, including but not limited to the factors set forth in General Statutes §46b-56. It gives special weight to the factor relating to the length of time a child has lived in a stable and satisfactory environment and the desirability of maintaining continuity in that environment.

In this case, the best interests of the children require that their current stable environment, including the lack of negative influence by the father, be maintained until there is sufficient evidence that the defendant's past conduct with them will not recur or, alternatively, that the children will not be harmed, mentally, emotionally, or physically, by that conduct. Psychological evaluations may provide such evidence if re-ordered and completed. The investigation and hearing on the plaintiff's earlier, still pending motion for modification (Motion #219.00) will provide an opportunity for the presentation of all evidence relevant to this issue. In the meantime, the court enters orders intended to maintain the well-being of the children, provide supervised access to them by the father after his release from incarceration, and gather additional information pertinent to the resolution of Motion #219.00.

ORDERS

For the foregoing reasons, the court orders that the terms of the judgment are hereby modified as follows:

1. Until further order of the court, the defendant shall have no in-person access with either of the children, and he shall not communicate or attempt to communicate with them in

any manner, including by telephone, email, text message, video or internet call, social media, or by any other written or electronic means.

2. Upon further order of the court following the supplemental hearing ordered herein (hereinafter referred to as the "Supplemental Hearing"), the defendant shall have access to the children only with therapeutic supervision in a clinical or similar setting. The primary purposes of the therapeutic supervision shall be to facilitate reunification between the father and the children after his extended absence from their lives, and to assist the father in developing the ability to interact with the children without injecting his personal views on topics such as the court proceedings in which he is or has been involved, the criminal and family court systems, the character and actions of the plaintiff, or any other topic that the supervisor determines to be inappropriate in light of the ages of the children and other pertinent considerations. At the Supplemental Hearing the court will consider evidence, and may issue further orders, as to the appropriate details of such supervised visitation, including but not limited to the identity of the supervisor; the location of the visits; the length, parameters, and frequency of the visits with each child; the allocation of the cost of the visits between the parties; and the transportation of the children to and from the visits.

3. After the selection of a therapeutic supervisor of visits, unless and until otherwise ordered by the court, the father may write letters intended for the children or either of them and deliver such letters only to such supervisor. The supervisor shall read and review each such letter and determine, in his or her sole discretion, whether it would be appropriate and consistent with the goals of the therapeutic supervision to forward the letter to the child or children for whom it is intended. If the supervisor makes such determination in

the affirmative, he or she shall cause the delivery of the letter to such child or children, and the plaintiff shall not interfere with such delivery.

4. At the Supplemental Hearing the court will also consider evidence, and may issue further orders, as to the any or all of the following:

    a. The ordering of psychological evaluations of either or both of the parties and the children;

    b. The ordering of mental health therapy for either or both of the parties and either or both of the children;

    c. The appointment of a guardian ad litem for the minor children; and

    d. Such other matters as may be reasonably related to the orders issued herein or the stated purposes of the Supplemental Hearing.

5. Upon the defendant's release from incarceration, the defendant's attorney shall contact the plaintiff's attorney to give notice of such release. Promptly after the receipt of such notice by the plaintiff's attorney, counsel for the parties shall communicate with the Caseflow Coordinator to obtain a date and time for the Supplemental Hearing ordered herein. Said Supplemental Hearing shall be limited to the purposes set forth herein, unless at or before the time of the hearing the parties agree and the court approves the consideration of other issues. The hearing date shall be set with due consideration for the parties' need to prepare for compliance with the provisions of Paragraph 6 of these orders, although nothing in these orders shall preclude the parties from commencing their preparations immediately in anticipation of the defendant's release from incarceration. The parties shall comply with the Standing Trial and Hearing Management Order as to the Supplemental Hearing, including but not limited to the exchange at least ten (10) days

in advance of any documents or exhibits each intends to present pursuant to the requirements of said Paragraph 6.

6. In addition to any other evidence presented at the Supplemental Hearing, the parties shall file or be prepared to address, as the case may be, the following:

    a. Each party shall file a current financial affidavit.

    b. The defendant shall provide the court with current information about the terms of his probation and about the status and terms of any criminal protective order in which the plaintiff or either child is a protected party.

    c. The name and other information pertinent to these orders of any providers of therapeutic supervision services proposed by each party.

    d. The information required by the provisions of Public Act No. 18-177 with respect to any qualified, licensed health care provider whom each party proposes to be considered in the event the court orders any psychological evaluations.

    e. The name, address, proposed fee basis, and eligibility and willingness to accept appointment of any person whom each party proposes for appointment as a guardian ad litem for the minor children.

DEFENDANT'S ORAL MOTION FOR APPOINTMENT OF GUARDIAN AD LITEM

Before the commencement of evidence at the hearing on the present motions, the defendant orally moved for the appointment of a guardian ad litem for the minor children. The court denied the motion without prejudice to the reconsideration of the issue after the hearing. Upon the conclusion of evidence, the defendant orally renewed his motion for the appointment of a guardian ad litem. The plaintiff expressed general agreement that the appointment of a

guardian ad litem would be appropriate but skepticism that, in light of the history of this case, an eligible and willing guardian ad litem could be found. The court having already ordered that it will consider the appointment of a guardian ad litem at the Supplemental Hearing, no further orders are made at this time with respect to the defendant's oral motion. As indicated by the foregoing orders, the court expects that prior to the Supplemental Hearing the parties will make reasonable inquiry of potential guardians ad litem, keeping in mind the requirements of Practice Book Section 25-62 regarding eligibility for appointment to that position.

ORAL MOTION FOR PERMISSION TO WITHDRAW APPEARANCE FOR DEFENDANT

Prior to the commencement of the evidence at the present hearing, the court heard a previously filed written motion by counsel for the defendant, Norman A. Pattis, Esq., for permission to withdraw his appearance. The defendant was heard on the motion, stating his preference that he be represented by his attorney for purposes of the hearing. The court denied the motion for permission to withdraw.

Prior to the hearing, Attorney Pattis had filed only a limited appearance concerning one of the motions scheduled for the present hearing, namely the defendant's motion for contempt. The court appreciates counsel's candor and professionalism in stating to the court that despite the limited appearance it had been understood by himself, his client, and opposing counsel that he was in fact undertaking to represent the defendant on all of the motions scheduled for the hearing. Upon the court's denial of his motion for permission to withdraw his limited appearance, Attorney Pattis filed a general appearance and proceeded to represent the defendant zealously throughout the hearing on all motions, for which the court commends him.

Upon completion of the hearing, defendant's counsel orally renewed his request for permission to withdraw his appearance. Opposing counsel and the defendant consented to having the court hear argument on the motion immediately while all were present.

Defendant's counsel argues that it would be overly burdensome for him to continue to represent the defendant in what may become a protracted custody dispute, in light of his other professional responsibilities and in particular the demands of his criminal practice.[4] The burden would be exacerbated by the defendant's present financial circumstances which make it questionable whether counsel would be paid for his efforts. Although the defendant had objected to allowing Attorney Pattis to withdraw from representation before the present hearing was held, he does not object to the withdrawal as to further proceedings. The plaintiff did not state any objection to the renewed motion for permission to withdraw appearance.

Having considered the arguments of counsel in light of the nature of this proceedings, the court concludes that it would be overly and unfairly burdensome to counsel to require his continued, indefinite representation of the defendant under these circumstances. However, the court is concerned that permitting him to withdraw his appearance immediately, leaving the defendant unrepresented, would likely cause disruption and delay in the scheduling and completion of the Supplemental Hearing ordered herein, and in the necessary preparations for that hearing on the part of the defendant. In particular, the court's hope is that the parties will commence immediately to prepare the information and submissions required of them for the Supplemental Hearing by the court's orders today. Without counsel, it would be extremely difficult for the defendant to do so before his release, and only somewhat less difficult thereafter.

---

[4] Defendant's counsel in this matter also represented him in his recently concluded criminal cases, and continues to represent him in efforts to have the United States Supreme Court consider an appeal of one of his criminal convictions.

The court therefore grants the motion to withdraw appearance, but defers the permission to withdraw until, at the latest, the completion of the Supplemental Hearing necessary to enter orders intended to effectuate the decision rendered today. The court recognizes the additional burden this places on counsel, but given the limited scope of the Supplemental Hearing the court concludes that the burden is outweighed by the need to avoid the potential adverse impact upon the defendant of leaving him without counsel during a critical transitional period.

ORDERS

The defendant's attorney, Norman A. Pattis, Esq., is hereby granted permission to withdraw his appearance on behalf of the defendant in this matter upon the earlier of the following two events:

1. The completion of the Supplemental Hearing ordered hereby; or
2. The filing of an appearance on behalf of the defendant by new counsel.

The court further reserves to Attorney Pattis the right to file a new motion for permission to withdraw his appearance in the event of unforeseen circumstances or unreasonable delay in the occurrence of either of the foregoing two events.

BY THE COURT,

Albis, J.