

FAMILY COURT OF THE STATE OF NEW YORK
CITY OF NEW YORK: COUNTY OF NEW YORK

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In the Matter of a Custody/Visitation Proceeding :

CLAUDIA BRODSKY, : Docket Nos. V-12206/02
 : V-12207/02

Petitioner, :

— against — :

ORDER

PIERRE LACOUR, :

Respondent. :

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STURM, J.:

On or about November 8, 2002, by Order to Show Cause, Claudia Brodsky (hereinafter "Petitioner") filed a petition for modification of a prior Order of Custody and Visitation, entered June 27, 2002, seeking, *inter alia*, that all visitation between Camille Lacour, born December 19, 1994, and Chloe Lacour, born June 11, 1997, (hereinafter "subject children"), both of whom were born in New York, and their father Pierre Lacour (hereinafter "Respondent") be supervised by a certified social worker.

Petitioner and Respondent were married in Paris, France, on or about October 28, 1991, and separated on or about July 2, 1999. A divorce was granted on June 27, 2002, by the Supreme Court, New York County, incorporating the terms and conditions of custody and access agreed to between the parties, both of whom were represented by

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counsel, within a Separation Agreement dated March 19, 2001. Pursuant to the custody agreement, Petitioner herein was granted sole custody of the subject children, and Respondent liberal, unrestricted visitation, including alternate weekends, holidays and prolonged periods of time during summer vacations. Nonetheless, approximately four months after the entry of the divorce decree, Petitioner sought to substantially modify all access by Respondent to the subject children, raising *inter alia*, other than one "new" incident, issues that had occurred significantly before the Separation Agreement and entry of the divorce decree.

Petitioner, at all times during the pendency of these proceedings, has been represented by counsel, as has respondent, (other than for a brief period of time during which he represented himself), and a Law Guardian appointed from the inception of the proceedings. There have been numerous delays occasioned by all parties, most of which involved the respective parties' work and travel commitments, as well as delays occasioned by attempts to resolve the issues before the Court through negotiation. Additionally, there was an extensive delay relating to forensic evaluations. More precisely, because of the extremely vitriolic nature of the proceedings, the alleged emotional distress of the children, and the short period of time between the divorce and the modification petition, the Court appointed a forensic evaluator upon the consent of

the parties. In addition to the fact that the original forensic evaluation was not completed for an appreciable period of time, the Court, *sua sponte*, at the conclusion of the testimony of the forensic evaluator, struck not only his testimony, but his evaluation as well after learning of considerable improprieties and inadequacies in the manner in which the evaluation was conducted. Thereafter, due in large part to the considerable further delay to be occasioned by a supplemental forensic evaluation, and the procedural posture of the case, all parties agreed that further forensic evaluation was no longer necessary to address the salient issues.

There have been numerous interim orders entered pertaining to visitation, most of which ordered supervised visitation, in large part because the children expressed a refusal to visit without a supervisor. Noteworthy is the fact that Petitioner remained totally intransigent concerning her position that supervised visitation was necessary, despite the fact that all other parties, including the children's Law Guardian, did not concur. This Court finds on the evidence before it that Petitioner's position was clearly communicated to the children and formed the basis for their refusal to participate in unsupervised visitation with Respondent.

Trial of the issues began on October 16, 2004, and, after thirteen days of trial, five witnesses, and introduction of numerous exhibits, concluded on or about September 21,

2007. The Court also conducted an in camera "Lincoln" interview with each subject child.

After considering all of the evidence, as well as having the unique and extended opportunity to observe the demeanor of all the witnesses, most notably Petitioner and Respondent, and to assess their respective credibility, the Court finds that despite the fact that continued supervision of visitation between Respondent and the subject children is not required for their safety and physical well being, due to an on-going and escalating pattern of alienation initiated by Petitioner toward the relationship between Respondent and the children, therapeutic visitation is required, at least for the short term, to enable the father/child relationships to heal and progress.

The Court was particularly disturbed by the children's accounts of their relationship with their father elicited during the course of their respective in camera interviews. Both children claimed to remember incidents with their father, some of which allegedly occurred during infancy and early childhood. In describing the incidents, the children used virtually the same words and descriptions presented by Petitioner during her testimony. It was extremely disconcerting to the Court to observe the degree to which the children have been drawn into this litigation by Petitioner and the extent to which they have been influenced by her. In fact, the cumulative evidence

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adduced that there was only one incident which is alleged to have occurred subsequent to the entry of the divorce decree which constituted the sole basis for Petitioner's modification petition.

More specifically, Petitioner alleged that during a period of visitation with both children, Respondent, while trying to get the attention of the subject child Camille, who is hearing impaired, forcibly turned the child's head and thereby dislodged the child's cochlear implant. While Respondent admits turning the child's head to get her attention, he does not admit any action which resulted in, or could have resulted in, the dislodging of the cochlear implant. Indeed, this Court is not convinced by evidentiary standard that Respondent's actions contributed to problems with the cochlear implant, or that the incident alarmed either child or placed either of them in any danger.

The relentless pursuit of the above referred-to incident within the litigation appears to this Court to be indicative of a systematic pattern by Petitioner to alienate the subject children from their father. Indeed, Petitioner has been remarkable for her tenacity in using the Court system to obtain what can only be perceived as her desire to extinguish the subject children's relationships with their father. Indeed, Petitioner has been particularly effective in circumventing the efforts of this Court and the Law Guardian, assuring that any remedial services ordered during the pendency of this

litigation were not brought to fruition.

Noteworthy in the Court's analysis is Petitioner's almost manic need to describe in excruciating and minute detail virtually every aspect of Respondent's relationship with the subject children from birth. In connection thereto, the Court notes that the petition for an Order of Protection filed in April, 2002, on behalf of the subject children relates to incidents allegedly occurring shortly after birth of the older child in 1994 and continuing to the date of filing, all of which were rehashed during the pendency of this proceeding. Despite her protestations to the contrary, most noteworthy is the fact that Petitioner, who was represented by counsel and who is highly educated and a professor at Princeton University, nonetheless consented to liberal, unrestricted access by Respondent to the children after all of the alleged behavior occurred and which now continues to form the basis of her resistance to allow the children to "enjoy" access to their father.

This Court finds that Respondent does not present a danger to the subject children, and that it is in the best interests of the subject children to enjoy a relationship with their father. However, the Court finds that the present relationship between the subject children and Respondent is so strained as to require therapeutic, supervised visitation in order to allow the children an opportunity to relate to their father from a

more balanced and accurate perspective than the one their mother is providing them.

The Court has been extremely frustrated in its efforts to implement not only visitation orders in the children's best interests, but evaluations of the children in connection therewith. The Court notes that a referral to the Mt. Sinai Adolescent Program was not effective, in large part because of continued resistance to the program by Petitioner. The Court is very concerned that the subject children have been exposed to years of what can only be described as Petitioner's particularly virulent and egocentric point of view regarding how she perceives Respondent, and the complete lack of insight into the potential value to these children of cultivating a relationship with their father. The Court perceives this as a terrible loss, not only for the children, but for Petitioner as well, all of whom will undoubtedly feel the consequences of this behavior as the family dynamic progresses into the future. It is unquestionable that the natural right of visitation between the non-custodial parent and the child(ren) is more precious than any property right and "the best interest of the child would be furthered by the child being nurtured and guided by both of the natural parents" Young v. Young, 212 AD2d 114 (114, 628 NYS2d 957 (2nd Dept. 1995). Indeed, the court in Young at p. 115, noted that a custodial parent's interference with the relationship between the child and the non-custodial parent can be perceived as an act so inconsistent with the best interest

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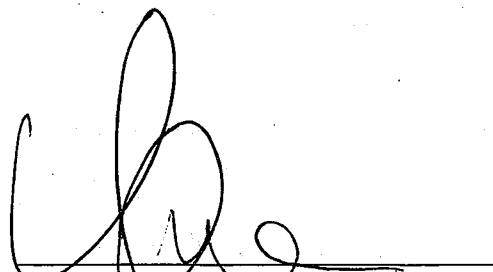
of the child as to *per se* create an inquiry into whether the offending custodian is unfit to act as such.

Therefore, Petitioner's modification petition is granted to the extent that the Court orders therapeutic, supervised visitation for a period of six months, at which time the court will review the status of the case to determine if therapeutic supervision continues to be in the subject children's best interests. The Court notes that Respondent has been opposed to supervised visitation and has recently declined to visit. The Court is optimistic that at this time Petitioner and Respondent will both appreciate the value of therapeutic visitation. The therapeutic supervisor shall implement the specific schedule, with access to occur at a frequency consistent with the supervisor's determination of the children's interests and the findings made herein.

The Court further Orders that both Petitioner and Respondent are to comply with all scheduling for such therapeutic visitation, and to share the cost of the supervisor.

Dated: New York, New York
July 23, 2008

ENTER:



Hon. Helen C. Sturm