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STATE OF VERMONT
RUTLAND COUNTY

LISA MILLER-JENKINS,

Plaintiff,

v.

JANET MILLER-JENKINS,

Defendant

Rutland Family Court
Docket No. 454-11-03Rddm

FILED

NOV 20 2009

Rutland Family Court

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This matter came on before the Court on defendant Janet Jenkins's Motion to Modify Parental Rights and Responsibilities, filed May 28, 2009. A hearing was held on August 21, 2009. Both parties filed post-hearing memoranda.

Plaintiff Lisa Miller was not present at the hearing and was represented by Stephen Crampton, Esq. Defendant Janet Jenkins was present and represented by Sarah Star, Esq. and Lisa Chalidze, Esq. The minor child ("IMJ") was not present and was represented by her attorney Michelle Kenny, Esq. and guardian ad litem Tara Devine.

At the conclusion of the hearing the Court found plaintiff Lisa Miller in willful contempt of the orders of the Rutland Family Court regarding visitation between IMJ and defendant Janet Jenkins. The Court also ruled that based on the evidence presented there had been a real, substantial and unanticipated change in circumstances based on plaintiff Lisa Miller's continued interference with defendant Janet Jenkins's right to parent child contact with IMJ.

FINDINGS OF FACT

1. Lisa Miller is currently a resident of the Commonwealth of Virginia.

2. Janet Jenkins is currently a resident of Fair Haven in Rutland County, Vermont.
3. In December 2000, while Ms. Miller and Ms. Jenkins were residents of Virginia, they traveled to Vermont and obtained a civil union pursuant to Vermont law.
4. Ms. Miller and Ms. Jenkins both changed their last name to "Miller-Jenkins."
5. In June 2007, the Court decreed that both parties were permitted to retake their pre-union names, "Lisa Miller" and "Janet Jenkins."
6. Ms. Miller and Ms. Jenkins have one minor child, IMJ, born April 16, 2002.
7. In August 2002, the Miller-Jenkins family moved to Fair Haven, Vermont.
8. In September 2003, Ms. Miller moved with IMJ to Virginia. Ms. Jenkins helped Ms. Miller and IMJ make the move, and then returned to the home in Vermont.
9. On or about November 8, 2003, Ms. Miller filed a complaint to dissolve the civil union in Rutland Vermont Family Court.
10. On June 17, 2004, this Court awarded temporary legal and physical responsibility for IMJ to Ms. Miller, and granted parent-child contact with IMJ to Ms. Jenkins on a specific schedule.
11. After initially complying with the Contact Order, Ms. Miller refused to allow Ms. Jenkins her court-ordered parent-child contact with IMJ. Ms. Miller was held in contempt of that order, and, after remand from the Vermont Supreme Court, on December 8, 2006, was ordered to pay Ms. Jenkins compensatory sanctions. The Order included an on-going fine for further non-compliance.
12. A trial on the merits was held April 2-5, 2007.

13. At the time of trial in April 2007, Ms. Miller continued to refuse to allow Ms. Jenkins contact with IMJ, although Ms. Miller testified that she would comply with such an order after trial.
14. At the time of trial in April 2007, Ms. Miller had made statements to IMJ critical of Ms. Jenkins's lifestyle, sexual orientation, and religious persuasion. The Court found in its Order of June 15, 2007, that these statements were likely to have an adverse effect on IMJ's relationship with Ms. Jenkins.
15. In the June 2007 Order, the Court found that Ms. Miller had good parenting skills and demonstrated her ability to care for IMJ.
16. The Court also found that Ms. Jenkins had extensive experience and training in caring for children. She demonstrated this ability through her care of IMJ and of other children in her daycare.
17. The Court found that Ms. Jenkins had a commitment to IMJ as demonstrated through her ongoing efforts to exercise her rights to parent-child contact with IMJ in the face of Ms. Miller's obstruction of such contact. Ms. Jenkins incurred substantial expenses in her attempts to visit IMJ and continued to incur such expenses. Her testimony with respect to her attachment to IMJ and commitment to parenting IMJ was credible.
18. The Court found that Ms. Jenkins demonstrated an ability to foster a relationship between Ms. Miller and herself, and Ms. Miller and IMJ. Ms. Jenkins refrained from accusatory statements with respect to Ms. Miller's parenting abilities and indicated a willingness to respect Ms. Miller's religious and moral instruction of IMJ.

19. Pursuant to 15 V.S.A. § 665(b)(4), the Court found that the factor of the quality of IMJ's adjustment to her present housing, school and community and the potential effect of any change, weighed in favor of Ms. Miller. The Court was mindful, however, "of the danger of creating an incentive for one parent to remove a child from her former home and community and to deny parenting time to another parent in order to weight this factor in the moving parent's favor."
20. Pursuant to 15 V.S.A. § 665(b)(5), the Court found that Ms. Jenkins had the ability to foster a positive relationship and frequent and continuing contact between Ms. Miller and herself, and IMJ and Ms. Miller, including physical contact. However, Ms. Miller had demonstrated through her contemptuous refusal to permit to permit parent-child contact and her statements to IMJ regarding Ms. Jenkins that she was not able to foster such a relationship with Ms. Jenkins.
21. The Court found that all other factors weighed evenly between Ms. Miller and Ms. Jenkins.
22. The Conclusions of Law regarding Parental Rights and Responsibilities, issued on June 15, 2007, stated: "The Court concludes that it is in the best interest of IMJ that Ms. Miller exercise parental rights and responsibilities. In the Court's view, the potential harm that would result from uprooting IMJ from the environment to which she has adjusted outweighs the potential harm from Ms. Miller's inability to foster a relationship with Ms. Jenkins. Nevertheless, this is a close case. Continued interference with the relationship between IMJ and Ms. Jenkins could

lead to a change of circumstances and outweigh the disruption that would occur if a change of custody were ordered.”

23. In the June 2007 Order, the Court set forth a reunification plan involving liberal visitation between IMJ and Ms. Jenkins. This plan included initial parenting time in Virginia on June 30, 2007 and July 7, 2007; parent-child contact in Virginia, July 13-15, 2007 and July 27-29, 2007; parent-child contact in Vermont, August 19-25, 2007; after August 25, 2007, parent-child contact every other weekend, alternating between Virginia and Vermont; and parent-child contact during Thanksgiving 2007 in Vermont.
24. Parent-child contact between IMJ and Ms. Jenkins occurred in accordance with the June 2007 Order until August 25, 2007.
25. The parenting time ordered every other weekend, alternating between Virginia and Vermont, did not occur.
26. Ms. Miller was found in contempt for her refusal to allow the alternating contact to occur.
27. On December 31, 2007, the Court issued an Order regarding Modification of the Visitation Schedule. The Court ordered parent-child contact between IMJ and Ms. Jenkins in Vermont, March 28 - April 5, 2008; contact in Vermont, May 31 - June 7, 2008; contact in Vermont, June 14-21, 2008; contact in Vermont, July 5-19, 2008; and contact in Vermont, August 2-9, 2008.
28. None of the parent-child contact ordered by the Court in the December 31, 2007 Order occurred.

29. In its Contempt Order issued April 30, 2008, the Court found that Ms. Miller was not in contempt for the missed contact which was to occur March 28 – April 5, 2008.
30. The Court later found Ms. Miller in contempt for her refusal to allow contact between IMJ and Ms. Jenkins for the periods May 31 – June 7, 2008, and June 14-21, 2008.
31. In the Contempt Order issued April 30, 2008, the Court ordered one week of make up time between IMJ and Ms. Jenkins for the missed days March 28 – April 5, 2008. This contact was to be in Vermont, within 60 days of the Order, in addition to visitations set forth in the December 31, 2007 Order.
32. The one week of make-up time ordered on April 30, 2008, did not occur.
33. On November, 7, 2008, the Court issued an Order regarding Contempt and Parent-Child Contact.
34. In that Order, the Court found Ms. Miller in contempt for her refusal to comply with the ordered make-up time from the April 30, 2008 Contempt Order.
35. The Court also ordered parent-child contact between IMJ and Ms. Jenkins in Virginia for the Thanksgiving holiday, November 26-29, 2008; contact in Vermont, December 27 – January 2, 2009; contact in Virginia, January 17-19, 2009; and contact in Vermont, March 7-14, 2009.
36. The only parent-child contact from the November 7, 2008 Order which occurred between IMJ and Ms. Jenkins was approximately 24 hours of contact in Virginia during the January 17-19, 2009 visitation.

37. The Court found Ms. Miller in contempt for her refusal to allow parent-child contact over Thanksgiving 2008.
38. A hearing regarding parent-child contact was held on January 28, 2009.
39. At the hearing, the Court explicitly warned Ms. Miller that failure to comply with the ordered visits could lead to a transfer of custody. Ms. Miller testified that she would comply with the ordered visits.
40. Subsequently, the Court issued an Order regarding Parent-Child Contact on February 10, 2009. The Court ordered contact between IMJ and Ms. Jenkins to occur as provided in the November 7, 2008 Order regarding the contact in Vermont, March 7-14, 2009.
41. The Court further ordered parent-child contact at Ms. Jenkins's parents' home (IMJ's grandparents, "The Jenkins") in Virginia, May 22-25, 2009, and contact in Vermont for five weeks during the summer, from July 10, 2009 – August 8, 2009.
42. The March 7-14, 2009 parent-child contact did not occur because IMJ was ill.
43. On April 9, 2009, the Court issued an Order regarding Make-Up Parent-Child Contact Time.
44. The Court ordered make-up time for the missed March 2009 visit to occur in Vermont, April 9-13, 2009.
45. The make-up time ordered in Vermont, April 9-13, 2009, did not occur.
46. On May 8, 2009, the Court issued an Order regarding Make-Up Parent-Child Contact Time for the missed March 2009 and April 2009 visits.
47. The Court ordered parent-child contact between IMJ and Ms. Jenkins in Vermont, May 23-29, 2009, in anticipation of the five week visit during the summer, from

- July 10 – August 8, 2009. This ordered visitation superseded the original order for contact in Virginia at Ms. Jenkins's parents' home, May 22-25, 2009
48. The Court also ordered parent-child contact between IMJ and Ms. Jenkins in Virginia, June 6-8, 2009.
 49. The parent-child contact ordered from May 23-29, 2009, did not occur.
 50. At the hearing held on August 21, 2009, on the record, the Court found Ms. Miller in contempt for her refusal to comply with the ordered parent-child contact from May 23-29, 2009.
 51. The parent-child contact ordered from June 6-8, 2009, did not occur.
 52. At the hearing held on August 21, 2009, on the record, the Court found Ms. Miller in contempt for her refusal to comply with the ordered parent-child contact from June 6-8, 2009.
 53. The parent child contact ordered for five weeks from July 10 – August 8, 2009, did not occur.
 54. At the hearing held on August 21, 2009, on the record, the Court found Ms. Miller in contempt for her refusal to comply with the ordered parent-child contact from July 10 – August 8, 2009.
 55. At the Status Conference held on September 4, 2009, the Court ordered a three day visit in Virginia the weekend of September 25, 2009.
 56. On October 7, 2009, the Court received a letter from Ms. Jenkins's counsel indicating that the visit ordered for the weekend of September 25, 2009, did not occur.

57. In 2008, IMJ and Ms. Jenkins had parent-child contact for approximately 24 hours.
58. Thus far, in 2009, IMJ and Ms. Jenkins have had parent-child contact for approximately 24 hours.
59. Ms. Jenkins has made numerous trips to Virginia to visit IMJ, only to have the ordered parent-child contact not occur due to contemptuous non-compliance by Ms. Miller.
60. Ms. Miller has no justification for denying parent-child contact between Ms. Jenkins and IMJ.
61. Ms. Miller has asked Ruth Jenkins, Ms. Jenkins's mother, to stop referring to herself and Ms. Jenkins's father ("The Jenkins") as "Mom-mom" and "Pop-pop" in front of IMJ.
62. Ms. Miller has also instructed the Jenkins to refrain from contact with IMJ.
63. The Jenkins have seen IMJ a total of four times in 2008 and 2009, despite living nearby in Virginia.
64. Prior to the break-up of the relationship between Ms. Miller and Ms. Jenkins, the Jenkins saw IMJ regularly.
65. IMJ's middle name is Ruth. She was named for Ruth Jenkins, Ms. Jenkins's mother.
66. Ms. Miller changed IMJ's name to eliminate the word "Jenkins." No notice of the name change was provided to Ms. Jenkins.
67. There is no evidence that if Ms. Jenkins were to have primary custody of IMJ, that she would block Ms. Miller or Ms. Miller's family out of IMJ's life.

68. Ms. Jenkins testified that she would allow IMJ to continue to attend church events with Ms. Miller, in addition to regularly scheduled contact.
69. Ms. Jenkins testified that if she were to have primary custody of IMJ, she would continue to allow Ms. Miller to make decisions regarding IMJ's religious education to the greatest extent possible; including making sure IMJ could attend a Baptist Church in the area, even if Ms. Jenkins, herself, was not welcome there.
70. Ms. Jenkins runs a licensed daycare program from her home. She cares for two twin girls in her daycare that are IMJ's age. The girls met IMJ during IMJ's one visit to Vermont.
71. Ms. Jenkins is involved in activities at the local elementary school as a result of her work, and she has knowledge and experience with activities and education of children IMJ's age.
72. Ms. Jenkins's employment arrangement allows her to be available as a full-time parent.
73. Ms. Jenkins has the parenting skills to be able to care for IMJ's educational and developmental needs.
74. Ms. Jenkins has the ability to foster a positive relationship and frequent and continuing contact between IMJ and Ms. Miller, including physical contact.
75. Ms. Miller has demonstrated time and time again, by her willful refusal to comply with parent-child contact ordered between IMJ and Ms. Jenkins, that she does not have the ability to foster a positive relationship between herself and Ms. Jenkins, and IMJ and Ms. Jenkins.

76. At the present time, Ms. Miller has provided no assurances to the Court that she intends to comply with future visitation orders.
77. At the hearing regarding Modification of Parental Rights and Responsibilities, held August 21, 2009, Ms. Miller chose not to testify. Ms. Miller did not appear in person or by phone.
78. There is currently no evidence before the Court regarding Ms. Miller's employment, schedule, or her present ability to meet IMJ's educational or developmental needs.
79. There is no evidence of abuse of IMJ by either Ms. Miller or Ms. Jenkins.
80. IMJ is currently 7 years old.
81. There is no evidence that IMJ's adjustment to a new town and a new school would present any difficulties which are out of the ordinary for a 7 year old.
82. The ongoing constant non-compliance is extremely harmful to IMJ, and is not in IMJ's best interest, as it deprives IMJ of the opportunity for maximum continuing physical and emotional contact with both parents.

CONCLUSIONS OF LAW

I. Real, Substantial and Unanticipated Change of Circumstances

The Court may modify a parental rights and responsibilities order upon a showing of real, substantial and unanticipated change of circumstances where the modification is in the child's best interest. *Sundstrom v. Sundstrom*, 2004 VT 106, ¶ 28, 177 Vt. 577 (mem.) (citing 15 V.S.A. § 668). "The Court must make a threshold finding of a real, substantial and unanticipated change of circumstances before it can examine the merits of the parties' claims and reconsider the best interest of the child." *Id.* (citing *Wells v.*

Wells, 150 Vt. 1, 4 (1988)) (internal quotations omitted). There are no fixed standards to determine what constitutes a substantial change in circumstances; the Court is guided by a rule of very general application that the welfare and best interests of the child is the primary concern in determining whether the order should be changed. *Id.* (citing *Wells*, 150 Vt. at 4).

“The moving party bears a heavy burden to prove changed circumstances, and the court must consider the evidence carefully before making the threshold finding that a real, substantial and unanticipated change of circumstances exists.” *Sundstrom*, 2004 VT 106, ¶ 29 (quoting *Spaulding v. Butler*, 172 Vt. 467, 476 (2001)). “Willful, repeated interference with visitation rights may constitute a legally significant change of circumstances.” *Id.* (quoting *Wells*, 150 Vt. at 4).

Ms. Miller has repeatedly interfered with the visitation rights of Ms. Jenkins to the point where Ms. Jenkins is no longer a part of her daughter IMJ’s life. The non-compliance by Ms. Miller has been willful and calculated, and the Court has found her in contempt of numerous orders which set forth specific dates and locations for parent-child contact between Ms. Jenkins and IMJ. There is no justification for Ms. Miller’s interference with Ms. Jenkins’s visitations rights.

Ms. Miller’s willful non-compliance comes in the face of a warning by the Court in its Order of June 15, 2007, that continued interference with the relationship between IMJ and Ms. Jenkins could lead to a change of circumstances, and an explicit warning at the January 2009 hearing that failure to comply with the ordered visits could lead to a transfer of custody. At that hearing, Ms. Miller testified that she would comply with the ordered visits. Ms. Miller has proven this testimony to be wholly untrue; she has

willfully disobeyed every subsequent Court order regarding visitation and there has not been parent-child contact between Ms. Jenkins and IMJ since that hearing date. Also, this issue of non-compliance first appeared as far back as 2004 and has been discussed with both parents, Ms. Miller and Ms. Jenkins, on numerous occasions.

Over ten months have passed since Ms. Miller has complied with an order regarding visitation between Ms. Jenkins and IMJ. During the year 2009, over eight weeks of visitation between IMJ and Ms. Jenkins have been willfully interfered with by Ms. Miller. In calculating this time period, the Court does not count the March visit which was cancelled due to IMJ's illness. As was the case in 2008, Ms. Jenkins and IMJ have had approximately 24 hours of parent-child contact this year.

By her repeated willful non-compliance with Court orders, even in the face of explicit warnings from the Court and her own testimony promising compliance, Ms. Miller has demonstrated that she will not comply with court orders regarding parent-child contact between Ms. Jenkins and IMJ. Thus, the Court finds that it is Ms. Miller's intent to cease all parent-child contact between Ms. Jenkins and IMJ. Ms. Jenkins has carried her burden in showing that a real, substantial and unanticipated change in circumstances exists. See *Sundstrom*, 2004 VT 106, ¶ 29.

II. Parental Rights and Responsibilities

When the Court finds that there has been a real, substantial and unanticipated change of circumstances, it must consider if a change in parental responsibilities is in the child's best interest. *Sundstrom*, 2004 VT 106, ¶ 37 (citing 15 V.S.A. § 668). The Court must consider the statutory factors set forth in 15 V.S.A. § 665(b). *Id.* "The moving party bears the burden of showing that a transfer of custody is in a child's best interest,

and due to the value of stability in a child's life, it is a heavy one." *Sundstrom*, 2004 VT 106, ¶ 37 (quoting *Habecker v. Giard*, 2003 VT 18, ¶ 5, 175 Vt. 489 (mem.)) (internal quotations omitted). The Court has broad discretion in determining a child's best interests. *Id.* (citing *Spaulding*, 172 Vt. at 475).

Obstruction of visitation and attempts at parental alienation are not in a child's best interests, and they may form the basis for a change of custody; however, willful interference with court ordered visitations, no matter how deplorable, cannot be made the basis for an "automatic" change of custody. *Id.* at ¶ 38 (citations omitted). "The primary consideration is a child's best interests, and in making its determination, the court must consider all of the relevant evidence, including whether the harm caused by one parent's obstruction of visitation outweighs the harm that could be caused by a change in custody." *Id.* (citing *Wells*, 150 Vt. at 4-5). The relevant factors to guide the Court's analysis of a child's best interests are set forth in 15 V.S.A. § 665(b).

The relationship of the child with each parent and the ability and disposition of each parent to provide the child with love, affection, and guidance;

IMJ has a good relationship with Ms. Miller and Ms. Jenkins. In the June 15, 2007 Order, the Court found that the relationship between IMJ and Ms. Jenkins had been significantly affected by Ms. Miller's refusal to allow parent-child contact. This situation has only become worse since that time. As the Court did in its previous Order, it views the evidence of Ms. Jenkins's relationship with IMJ from the perspective of the time preceding Ms. Miller's initial termination of parent-child contact.

The evidence indicates that both Ms. Miller and Ms. Jenkins have a loving and nurturing relationship with IMJ. Both cared for her extensively in her infancy and after. Both parents have the ability and disposition to provide her with love and affection. Both

parents have extensive training and experience in child development and care, and have cared for children through their daycare ventures.

However, as the Court noted in the June 2007 Order, Ms. Miller did have issues with enmeshed parenting which could later prove detrimental to the relationship. This concern by the Court has proven to be true. In particular, the Court is concerned with the ability and disposition of Ms. Miller to provide IMJ with guidance in light of her willful and calculated non-compliance with orders which this Court deemed to be in IMJ's best interests, and her willingness to provide false promises of compliance under oath to this Court. As the Vermont Supreme Court has noted, "[t]o deliberately sabotage visitation rights calculated to serve the best interests of children bears adversely on the fitness of the custodial parent, whose conduct most certainly does not go unnoticed by the children." *Wells v. Wells*, 150 Vt. 1, 4 (1988) (quoting *Rosenberg v. Rosenberg*, 504 A.2d 350, 352 (Pa. Super Ct. 1986)). Due to her superior ability to provide guidance for IMJ, this factor weighs in favor of Ms. Jenkins.

The ability and disposition of each parent to assure that the child receives adequate food, clothing, medical care, and other material needs and a safe environment;

Both parents have the ability and disposition to assure that IMJ receives adequate food, clothing, medical care, other material needs and a safe environment. The evidence supporting this conclusion is essentially the same as that supporting the previous factor.

This factor is evenly weighed between the parents.

The ability and disposition of each parent to meet the child's present and future developmental needs;

Both parents have the ability and disposition to meet IMJ's present and future developmental needs. Both parties have extensive training in caring for children and

meeting their developmental needs. Both parents are disposed to do so. This factor is evenly weighed between the parents.

The quality of the child's adjustment to the child's present housing, school and community and potential effect of any change;

IMJ is well adjusted to her present housing, school and community. Potentially, a change of custody would have an uprooting effect on her. While IMJ may experience difficulties in the short term that any 7 year old would experience with a change in housing, school and community, the Court does not find that such uprooting would cause great harm. This includes a potential change in custody in the mid-point of the school year.

The Court is mindful of the danger of creating an incentive for one parent to entrench a child in that parent's home and community and to deny parenting time to the other parent in order to weight this factor in her favor. Nevertheless, viewing the best interests of IMJ, this factor weighs in favor of Ms. Miller, but only to the same extent it did in the Court's June 2007 Order.

The ability and disposition of each parent to foster a positive relationship and frequent and continuing contact with the other parent, including physical contact, except where contact will result in harm to the child or to a parent;

Ms. Jenkins has the ability and disposition to foster a positive relationship and frequent and continuing contact with Ms. Miller, including physical contact. Ms. Jenkins would not block Ms. Miller or Ms. Miller's family out of IMJ's life. Furthermore, there is no evidence Ms. Jenkins would not comply with orders that this Court deems to be in IMJ's best interests. Neither Ms. Miller nor Ms. Jenkins has abused or harmed IMJ.

Ms. Miller does not have the ability and disposition to foster a positive relationship and frequent and continuing contact with Ms. Jenkins, including physical

contact. Ms. Miller intends that there be no relationship between IMJ and Ms. Jenkins. This is evidenced by Ms. Miller's constant contemptuous refusal to permit parent-child contact. IMJ and Ms. Jenkins have had approximately 48 hours of parent-child contact over the past two years. They have not seen each other in over ten months. Ms. Miller has made no assurances to this Court that she intends to comply with any further orders regarding visitation which this Court deems to be in IMJ's best interests.

The Vermont Supreme Court has repeatedly observed that "a child's best interests are plainly furthered by nurturing the child's relationship with *both* parents, and a sustained course of conduct by one parent designed to interfere in the child's relationship with the other casts serious doubt upon the fitness of the offending party to be the custodial parent." *Bell v. Squires*, 2003 VT 109, ¶ 18, 176 Vt. 557 (mem.) (quoting *Begins v. Begins*, 168 Vt. 298, 301 (1998)) (emphasis in original). Accordingly, this factor weighs heavily in favor of Ms. Jenkins.

The quality of the child's relationship with the primary care provider, if appropriate given the child's age and development;

As the Court found in the June 2007 Order, Ms. Miller and Ms. Jenkins are equally IMJ's primary care provider for purposes of this criterion. Prior to their separation, both parents cared for IMJ on an equal basis. Since the separation, Ms. Miller has cared for IMJ almost exclusively.

However, mere custody of the child during the time the parents are separated to satisfy the "living apart" requirement for a divorce does not bestow the status of primary care giver on one parent. *Nickerson v. Nickerson*, 158 Vt. 85, 89-90 (1992). The *Nickerson* Court stated as a rationale for this rule that the opposite holding would encourage primary care givers to uproot the children from the home for strategic

purposes inimical to the their best interest. *Id.* at 90. Here, as the Court found in the June 2007 Order, Ms. Jenkins’s opportunity to care for IMJ again has been limited by Ms. Miller’s contemptuous refusal to allow parent-child contact. Therefore, in keeping with the rationale set forth in *Nickerson*, the Court views this factor from a pre-separation standpoint in regards to Ms. Jenkins.

The Vermont Supreme Court has held that if one parent is the primary caregiver, the additional weight to be accorded to that factor depends on the “likely effect of a change of custodian on the child.” *Porcaro v. Drop*, 175 Vt. 13, 17 (2002) (citing *Payrits v. Payrits*, 171 Vt. 50, 55 (2000)). As the Court previously noted, a change in custody may produce difficulties for IMJ in the short term consistent with those that any 7 year old would experience with a change in housing, school and community. However, viewed from a pre-separation standpoint, both Ms. Miller and Ms. Jenkins acted as primary caregivers. This factor is equally weighed between the parents.

The relationship of the child with any other person who may significantly affect the child;

In the June 2007 Order, the Court found that there was no reason to think that IMJ would have more contact with Ms. Jenkins’s family if IMJ resided with one party rather than the other. This finding is no longer the case.

IMJ’s grandparents, the Jenkins, have seen IMJ four times in the past two years, despite also living in Virginia. Prior to their daughter’s separation from Ms. Miller, the Jenkins saw IMJ regularly. Ms. Miller requested that the Jenkins stop referring to themselves as “Mom-mom” and “Pop-pop” in front of IMJ. Ms. Miller then further requested the Jenkins to refrain from contact with IMJ. It is the intent of Ms. Miller to cease all contact between IMJ and her grandparents, the Jenkins.

If Ms. Jenkins were to have custody of IMJ, she would not block IMJ from seeing Ms. Miller's family. This factor weighs heavily in favor of Ms. Jenkins.

The ability and disposition of the parents to communicate, cooperate with each other and make joint decisions concerning the children where parental rights and responsibilities are to be shared or divided;

Neither party has requested shared parental rights and responsibilities. This factor bears no weight in this case.

Evidence of abuse as defined in section 1101 of 15 V.S.A. and the impact of abuse on the child and on the relationship between the child and the abusing parent;

There has been no abuse in the family and the Court does not weight this factor to either parent.

Conclusion

Taking into consideration each of the above factors, the Court concludes that it is in the best interest of IMJ that Ms. Jenkins exercise parental rights and responsibilities. In the June 2007 Order, this Court stated that continued interference by Ms. Miller with the relationship between IMJ and Ms. Jenkins could lead to a change of circumstances and outweigh the disruption that would occur if a change of custody were ordered. Ms. Miller's interference with the relationship between IMJ and Ms. Jenkins has become so pervasive that it now outweighs the potential harm that could occur to IMJ by a change of custody.

The Court does not take this change of custody lightly and it is not intended to punish Ms. Miller. See *Renaud v. Renaud*, 168 Vt. 306, 309 (1998) (stating "[c]hildren are not responsible for the misconduct of their parents toward each other, and will not be uprooted from their home merely to punish a wayward parent."). As always, "[t]he best interests of the child remains the paramount consideration." *Id.* at 310. As previously

noted, “a child’s best interests are plainly furthered by nurturing the child’s relationship with *both* parents, and a sustained course of conduct by one parent designed to interfere with the child’s relationship with the other casts serious doubts upon the fitness of the offending party to be the custodial parent.” *Bell*, 2003 VT 109, ¶ 18.

Both parents are primary care providers. Both are capable of providing love and affection to IMJ. Both can provide a safe environment with proper food, clothing, and medical care for IMJ. Both are able to meet IMJ’s present and future developmental needs. However, Ms. Miller no longer has the ability or disposition to foster a positive relationship with Ms. Jenkins, including physical contact. Parent-child contact between Ms. Jenkins and IMJ has ceased to exist and there is no evidence that it will resume while Ms. Miller has custody of IMJ. Contact between IMJ and her grandparents, the Jenkins, has also ceased to exist. Furthermore, Ms. Miller’s non-compliance with court orders and willingness to provide false promises under oath, cast doubt upon her ability to provide proper guidance for IMJ. To the contrary, Ms. Jenkins will be able to foster a positive relationship with Ms. Miller and Ms. Miller’s family.


The change in custody will affect IMJ as she is well adjusted to her present housing, school and community. However, this disruption will not provide any short term difficulties out of the norm for a 7 year old. As the Vermont Supreme Court has stated, “although stability is undoubtedly important, the short term disruption occasioned by a change of custody may be more than compensated by the long-term benefits of a healthy relationship with both parents.” *Renaud*, 168 Vt. at 310. In the long term, the change in custody will be in IMJ’s best interests as she will have the opportunity for maximum continuing physical and emotional contact with both parents. See 15 V.S.A.

§ 650.

ORDER

- 1) Defendant Janet Jenkins's Motion to Modify Parental Rights and Responsibilities, filed May 28, 2009, is GRANTED.
- 2) Janet Jenkins SHALL have sole physical and legal custody of the minor child IMJ.
- 3) Transfer of the minor child IMJ SHALL occur at the home of Janet Jenkins's parents in Virginia on January 1, 2010, at 1:00 P.M. The attorney and guardian ad litem for the minor child IMJ shall assist in making an orderly transition.
- 4) Janet Jenkins SHALL submit a plan within 90 days, with the assistance of the attorney and the guardian ad litem for the minor child IMJ, contemplating education, religious and health needs of the minor child IMJ. This plan SHALL include appropriate visitation time for Lisa Miller.

Dated at Rutland, Vermont this 20th day of Nov, 2009.


Hon. William Cohen
Superior Court Judge