

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

PROBATE AND FAMILY COURT  
DOCKET NO.: 08W-0621-CA1

|                       |   |
|-----------------------|---|
| JOANNA MANNION,       | ) |
| f/k/a JOANNA L. FICO, | ) |
| Plaintiff             | ) |
|                       | ) |
| v.                    | ) |
|                       | ) |
| DANIEL A. DITTLER,    | ) |
| Defendant             | ) |

**DEFENDANT FATHER’S MOTION TO RESTORE PARENTING SCHEDULE**

Now comes Defendant (hereinafter referred to as Father) in the above-captioned matter and respectfully requests that this Court restore the parenting schedule agreed upon by the parties and entered as a Judgment of this Court on April 6, 2011. As grounds therefor, Father states:

**I. Background**

1. On December 1, 2009, Plaintiff (hereinafter referred to as Mother) filed a Complaint for Modification in which she sought both to suspend all of Father’s overnight parenting time with Tyler until he completed a parenting course<sup>1</sup> and to terminate all of Father’s weekend parenting time once Tyler started school.

2. Mother later admitted to the GAL that she didn’t really want to end Father’s overnight parenting time, but that she had filed the Complaint for Modification because she was angry at Father; and she subsequently withdrew her request to end Father’s overnight parenting time.<sup>2,3</sup>

3. On April 6, 2011, the parties resolved Mother’s December, 2009 Complaint for Modification by written agreement, which Agreement was incorporated into the

<sup>1</sup> The parties later agreed that both parties would take Court-approved parenting courses pursuant to a recommendation of the then Guardian *ad litem*.

<sup>2</sup> Deposition of Maura Hardiman, Guardian *ad Litem*, March 22, 2011, page 198, line 13 through page 199, line 24.

<sup>3</sup> “Guardian Ad Litem Report,” *Mannion v. Dittler*, Norfolk Probate & Family Court docket 08W-0621-CA1, June 25, 2010, page 7, second full paragraph. “She further stated that she requested that relief because she was angry about Mr. Dittler’s actions surrounding the Thanksgiving holidays and she no longer feels that suspension or termination of overnight visitation is necessary.”

Court's Judgment of Modification of the same date. The Agreement provided for *substantially increased* parenting time for Father with Tyler.

4. On October 15, 2014, Mother filed another Complaint for Modification in which she again seeks to eliminate Father's overnight parenting time with Tyler. This is the Complaint currently before the Court.

## **II. Judge Moriarty's Temporary Order**

5. On March 9, 2015, in response to Mother's motions to suspend Father's overnight parenting time and to amend the parenting plan, and after hearing, Judge Moriarty severely reduced Father's parenting time.

6. Judge Moriarty entered this Order because she felt, *inter alia*, that Tyler was "under some stress ...."<sup>4</sup>

7. Judge Moriarty reduced the time that Tyler was with Father from 6 out of 14 overnights in a two week cycle to only 1 out of 14 overnights in a two week cycle.<sup>5</sup>

8. The change ordered by Judge Moriarty was intended, *ab initio*, to be a brief, stopgap measure. Judge Moriarty specified that the change she ordered would be brief in duration, saying, "... with the expectation the prior parenting schedule may be able to be resumed in the near future."<sup>6</sup>

## **III. Mother's Allegations**

9. In her pleadings, Mother makes numerous serious and alarming allegations about Father, Tyler and their relationship, including, *inter alia*, that:

- a. "Since the entry of the Modification Judgment in 2011, Father's attitude, behavior, and temper, have contributed to a deteriorating relationship between he [*sic*] and Tyler."<sup>7</sup>

---

<sup>4</sup> March 9, 2015 "Order On Motions To Suspend Overnight Visitation And Amend Parenting Plan," introductory paragraph on the first page.

<sup>5</sup> March 9, 2015 "Order On Motions To Suspend Overnight Visitation And Amend Parenting Plan," paragraphs 1-3 on the first page.

<sup>6</sup> March 9, 2015 "Order On Motions To Suspend Overnight Visitation And Amend Parenting Plan," paragraph 7 on the second page.

<sup>7</sup> Mother's "Motion to Appoint an Attorney to Represent Tyler Fico," October 15, 2014, ¶5.

- b. Tyler is fearful of Father's rage<sup>8</sup> and "outbursts."<sup>9</sup>
- c. Tyler expressed "dread" regarding going to Father's house as early as 2012.<sup>10</sup>
- d. Father's anger is out of control, citing as an example that at one of Tyler's Little League games, "Father displayed a serious verbal outburst and lost control of his temper in front of Tyler, Tyler's friends, coaches, and other parents."<sup>11</sup> Elsewhere, Mother describes a rage in Father as, "He was visibly shaking. His face was red[ ]"<sup>12</sup> when he was allegedly yelling at Tyler.
- e. Father was both verbally<sup>13</sup> and physically<sup>14</sup> abusive towards Mother before Tyler was born (Tyler is now ten years old); and, as a result, Mother is concerned about whether Father will similarly abuse Tyler.<sup>15</sup>

10. Not only does Father deny the abuse alleged by Mother above in paragraph 10(e), but he is astounded that Mother now wants to use alleged instances of abuse which, even if the allegations are believed, happened decades ago, as a reason for denying all contact between Tyler and Father *now*.

11. Further, she repeatedly cites the advice of Dr. Richard Monahan, Tyler's therapist, in requesting that all of Father's overnight parenting time with Tyler be eliminated.<sup>16</sup>

12. However, as this matter has developed, information has come to light which refutes essentially all of Mother's allegations and shows that, contrary to what Mother alleges, it is Mother who is responsible for Tyler's stress and who is acting contrary to Tyler's best interests.

13. In fact, it is a working hypothesis of Dr. Monahan that Mother is simply trying to excise Father from Tyler's life.<sup>17</sup>

---

<sup>8</sup> Mother's "Motion for Temporary Orders," October 15, 2014, ¶3.

<sup>9</sup> Mother's "Motion for Temporary Orders," October 15, 2014, ¶5.

<sup>10</sup> Deposition of Joanna Mannion, April 7, 2015, page 28, lines 4-12.

<sup>11</sup> Mother's "Motion for Temporary Orders," October 15, 2014, ¶4.

<sup>12</sup> Deposition of Joanna Mannion, April 7, 2015, page 32, line 15.

<sup>13</sup> Deposition of Joanna Mannion, April 7, 2015, page 30, line 7 *et seq.*

<sup>14</sup> Deposition of Joanna Mannion, April 7, 2015, page 70, lines 12-18.

<sup>15</sup> Deposition of Joanna Mannion, April 7, 2015, page 81, lines 8-19.

<sup>16</sup> Mother's "Motion for Temporary Orders," October 15, 2014, ¶3. "However, after further conferring with both parties and with Tyler, [Dr. Monahan] suggested that overnights should be suspended."

<sup>17</sup> Transcript of deposition of Dr. Monahan, May 18, 2015, page 163, lines 14-17.

**We Now Know More, Much More, About The Situation**

14. As Mother's allegations are subjected to detailed scrutiny, it becomes apparent that they are specious.

15. (In an effort to keep this Motion to a reasonable length, it does not address each and every allegation made by Mother. Rather, counsel for Father has attempted to select a representative sample of Mother's more serious allegations.)

**III. Some of Mother's Allegations**

**A. Tyler's Relationship With Father Has Allegedly Been Deteriorating Over the Past Several Years, Since 2011 or 2012**

*Tyler expressed "dread" regarding going to Father's house as early as 2012.*<sup>18</sup>

*"Since the entry of the Modification Judgment in 2011, Father's attitude, behavior, and temper have contributed to a deteriorating relationship between he [sic] and Tyler."*<sup>19</sup>

16. While Mother alleges in her pleadings that Father's relationship with Tyler has been deteriorating since the 2011 Modification Judgment, she has reported the opposite to Dr. Monahan. In fact, she told Dr. Monahan that the previous parenting schedule worked well until September, 2014.<sup>20</sup>

17. Tyler told Dr. Monahan the same thing.<sup>21</sup>

18. In short, there is no years' long history of problems as alleged by Mother.

---

<sup>18</sup> Deposition of Joanna Mannion, April 7, 2015, page 28, lines 4-12.

<sup>19</sup> Mother's "Motion to Appoint an Attorney to Represent Tyler Fico," October 15, 2014, ¶5.

<sup>20</sup> Transcript of deposition of Dr. Monahan, May 18, 2015, page 106, lines 1-4.

<sup>21</sup> Transcript of deposition of Dr. Monahan, May 18, 2015, page 44, line 14 to page 45, line 1, and page 106, lines 1-7.

B. Tyler's Alleged Fear of Father's Temper

*Tyler is fearful of Father's "rage" and "outbursts."*

19. Mother alleges that Father's temper is virtually uncontrollable and that Father is prone to rage and outbursts, frightening Tyler.

"Tyler has specifically indicated that he is fearful of Father's rage."<sup>22</sup>

"Father's outbursts have also made Tyler uncomfortable and fearful around Father."<sup>23</sup>

20. In fact, Dr. Monahan established in his conversations with Tyler that Father *doesn't* display visible anger. It is Mother who yells when she is angry.

"He said his mother can get upset, yell but it is over in an hour."<sup>24</sup>

21. When Father is quiet, Tyler assumes that it is because he is angry at Tyler. Dr. Monahan's notes reflect what Tyler told him about this.

"Dad doesn't talk. He's quiet. ... I can tell he's in a bad mood. It must be something I did."<sup>25</sup>

22. Dr. Monahan believes that Tyler "absolutely" [mis]interprets Dan's being quiet as his being angry all the time.<sup>26</sup>

23. Once Dr. Monahan made Father aware that his staying quiet is being misinterpreted by Tyler as Father's being angry at Tyler all the time, Father stopped doing it. Tyler reports that that is working.<sup>27</sup>

---

<sup>22</sup> Mother's "Motion for Temporary Orders," October 15, 2014, ¶3.

<sup>23</sup> Mother's "Motion for Temporary Orders," October 15, 2014, ¶5.

<sup>24</sup> "Affidavit of the Child's Psychotherapist," March 5, 2015, page 4.

<sup>25</sup> Transcript of deposition of Dr. Monahan, May 18, 2015, page 42, lines 5-7.

<sup>26</sup> Transcript of deposition of Dr. Monahan, May 18, 2015, page 48, lines 12-17 and 20-24.

<sup>27</sup> Transcript of deposition of Dr. Monahan, May 18, 2015, page 115, lines 1-13.

### C. Father's Alleged Outburst of Temper at a Little League Game

*Father's anger is out of control. At one of Tyler's Little League games, "Father displayed a serious verbal outburst and lost control of his temper in front of Tyler, Tyler's friends, coaches, and other parents."*<sup>28</sup>

24. Not only does Tyler's Little League coach disagree with Mother's assessment of what happened at that game, but the coach subsequently sent an email to Father thanking him for his calm assistance in a difficult and volatile situation:

Hey Dan,

Just wanted to reiterate my gratitude for your support yesterday. Before I could even react to Dexter yelling at our team, you were on it. Moreover, you were absolutely right. The guy causes a problem at every single game he coaches....and he coaches his 4 kids....do the math. You and Tyler have been with us for 2 years and you've never said boo. I made sure the board of directors was aware of that when they came asking about it.<sup>29</sup>

25. It is particularly noteworthy that rather than Father's anger being out of control, Mr. Donovan cites Father's *lack of anger*. "You and Tyler have been with us for 2 years and you've never said boo."<sup>30</sup>

### IV. Dr. Monahan's Recommendations

26. Significantly, we now know that Mother's constantly repeated statement that she is just trying to follow Dr. Monahan's recommendations is specious. Dr. Monahan testified that the recommendation to suspend Tyler's overnights with Father, on which recommendation Mother consistently professes to rely so heavily, was taken out of context.

Well, the recommendations were taken out of context. I should say the advice was taken out of context.<sup>31</sup>

27. What's more, Dr. Monahan has stopped making recommendations or giving advice regarding the parenting schedule specifically because he fears that his

---

<sup>28</sup> Mother's "Motion for Temporary Orders," October 15, 2014, ¶4.

<sup>29</sup> Email from Mike Donovan (Tyler's then Little League coach) to Father, June 24, 2014, 12:00:25 a.m.

<sup>30</sup> Email from Mike Donovan (Tyler's then Little League coach) to Father, June 24, 2014, 12:00:25 a.m., first paragraph.

<sup>31</sup> Transcript of deposition of Dr. Monahan, May 18, 2015, page 43, line 23 to page 44, line 1.

recommendations/advice will be taken out of context again, thus limiting the extent to which Dr. Monahan is able to assist Tyler and the parties.

Q. Is one of the reasons that you stopped making recommendations or giving advice because you feared that it would be taken out of context and brought to court?

A. Right.<sup>32</sup>

#### **IV. Tyler's Grades in School**

28. Mother has made much of Tyler's most recent report card from school, and attributes improved grades solely to the reduction of time with Father.

“And he got straight A's. Flourishing under the new schedule no thanks to you.”<sup>33</sup>

29. However, the report cards, themselves, do not support that view.

30. The improvement Mother cites is that in the most recent semester (Term 3), Tyler raised two of his grades from B+ to A- (in Language Arts and Effort) compared to the preceding semester, Term 2. However, as we now understand with most, if not all, of Mother's allegations, there is more to the story.

31. In Term 2 (compared to Term 1), Tyler also had similar small changes in his grades. His grade in Mathematics went from B+ to A-. His Language Arts grade went from A- to B+. His Conduct went from B+ to A-.

32. In summary, Tyler's grades this year (4<sup>th</sup> grade) have been:

|                    | <u>B+</u> | <u>A-</u> | <u>A</u> |
|--------------------|-----------|-----------|----------|
| a. <u>Term 1</u> : | 3         | 3         | 2        |
| b. <u>Term 2</u> : | 2         | 4         | 2        |
| c. <u>Term 3</u> : | 0         | 6         | 2        |

33. In short, the improvements have been both consistent (each subsequent semester has been better than the previous one), and incremental (grades improved from B+ to A-), regardless of which parenting plan was in effect at any particular time.

34. Tyler has shown himself to be an above average performer in school who consistently demonstrates improvement through the academic year. Any attempt by

---

<sup>32</sup> Transcript of deposition of Dr. Monahan, May 18, 2015, page 44, lines 7-11.

<sup>33</sup> SMS text message, Mother to Father, April 30, 2015, 7:54 a.m.

Mother to assert that Tyler's school performance has improved markedly under one parenting plan compared to another is not supported by his grades.<sup>34</sup>

35. Significantly, the comments of Tyler's teachers have also been consistent this academic year.<sup>35</sup>

36. Teacher's comment from Term 1:

Tyler is off to a very good start in 4<sup>th</sup> grade. He is a very bright boy and he has a great sense of humor. I will continue to encourage him to seek help when needed and to contribute more often in class discussions. He has so much to offer! Good job, Tyler.

37. Teacher's comment from Term 2:

Tyler has had a great 2<sup>nd</sup> term. He seems engaged and he is producing great work. I am encouraging him to focus on his written responses and to ask for help if needed.

38. Teacher's comment from Term 3:

Tyler continues to have a great year in 4<sup>th</sup> grade. He is very solid academically in all areas. His creative writing is great and he seems to enjoy it. I would love to see him actively engage and participate more often. Good job, Tyler.

## **V. Note Written By Tyler**

39. On May 4<sup>th</sup>, just as the three month parenting plan review which Mother's counsel had requested was approaching, Mother tells of Tyler suddenly coming to discard a note which he allegedly wrote several months earlier. The note was dated February 24<sup>th</sup>.

40. The note was, on its face, disturbing. As Mother characterized it:

---

<sup>34</sup> Tyler's third and fourth grade report cards reflect similar, consistent, incremental semester-over-semester improvement from a student who is an above average performer. Similarly, his teacher comments in the third grade were also quite positive for all semesters.

<sup>35</sup> All grades and teacher comments taken from "Pupil Progress Report – Grade 4, Milton Public Schools, Milton, MA 02186. School: Collicot. Student's Name: Tyler Fico. Teacher's Name: Mr. Doyle. School Year 2014 to 2015."



It was written in February and it was quite sad and disturbing. The note requested that if there is time travel, that “Future Tyler” go back in time to convince his father (Dan) that Tyler was dead.<sup>36</sup>

41. The note is subject to question on a number of levels. First, as Dr. Monahan confirmed, the note was written immediately after a meeting between Tyler, Dr. Monahan and Father during which they all watched one of Father’s home videos in which Tyler was clearly having fun at Father’s house although he denied that to Dr. Monahan.<sup>37</sup> (See more about video evidence later in this motion.)

42. Second, the timing seems too perfect. Judge Moriarty had anticipated that the reduced parenting schedule she put in place would be in effect for a very limited period, “... with the expectation the prior parenting schedule may be able to be resumed in the near future.”<sup>38</sup>

43. Mother, herself (through counsel), had requested that the parenting schedule implemented by Judge Moriarty be reviewed three months after it was ordered,<sup>39</sup> which would have been near the start of the second week of June. Mother allegedly discovered the note just a few weeks prior to that.

44. While only Mother can know with certainty the truth about the genesis of this note and its coincidentally timely “discovery,” the Court in this instance, as always, must make a credibility determination. Given the number of times that Mother has misstated facts in making her allegations, many of which are detailed herein, Father suggests that the Court apply the doctrine of *falsus in uno, falsus in omnibus*, holding that the finder of fact may disregard entirely the testimony of someone who is found to have lied in any aspect of her testimony, which doctrine enjoys widespread acceptance, both in Massachusetts and elsewhere.<sup>40</sup>

## **VI. Father’s Home Videos**

45. Like many parents, Father takes home videos of his family, including Tyler. If anything, he is more conscious of this now that his time with Tyler has become so much more precious, after the severe reduction imposed by Judge Moriarty’s Temporary

---

<sup>36</sup> Email from Mother to Dr. Monahan, May 4, 2015 at 12:48:16 p.m.

<sup>37</sup> Transcript of deposition of Dr. Monahan, May 18, 2015, page 74, lines 13-18.

<sup>38</sup> March 9, 2015 “Order On Motions To Suspend Overnight Visitation And Amend Parenting Plan,” paragraph 7 on the second page.

<sup>39</sup> Transcript of hearing before Judge Moriarty, March 9, 2014, page 29, lines 20-22.

<sup>40</sup> *E.g., Ducharme v. Holyoke Street Railway Company*, 203 Mass. 384 (1909); *City of Boston v. Santosuosso*, 307 Mass. 302 (1940); *In re Last Will and Testament of Coviello*, 2007 WL 926343 (N.Y. Surrogate Court, 2007), slip op. at 15; *State v. Marshall*, 943 So. 362 (La., 2006); *Commonwealth v. Vicens-Rodriguez*, 911 A.2d 116 (Pa.Super., 2006).

Order. He seeks only to preserve for the future, memories of the little time he is permitted to spend with Tyler.

46. These videos belie the central theory and theme of Mother's allegations, indeed her entire case.

47. The central theory of Mother's case is that Father is abusive to Tyler, which has caused Tyler to fear Father and Father's alleged rage and anger. Mother alleges that Father has a virtually uncontrollable temper, of which Tyler is terrified, that Tyler wishes only to get away from Father.

48. Yet, nothing could be further from the truth, as Father's home videos show.

49. Counsel for Father provides brief descriptions of the videos submitted herewith as exhibits/attachments for contextual purposes:

Video 1: (2 min., 28 sec.) (February 13, 2015) Mother often speaks about how close Tyler is with his half siblings at her house, *i.e.*, her children with her husband. She has described Tyler as indifferent to his siblings at Father's house. This is a tender video of Tyler holding Ryan, his newborn brother (Father's son), close and cuddling with him.

Video 2: (3:55) (February 24, 2015) This is a video of Father reading to Tyler one of the stories Tyler wrote. (Tyler likes to write stories.) Tyler spontaneously cuddles up to Father from behind (at 28 seconds into the video), resting his chin on Father's shoulder and smiling as Father reads. (Due to a technical glitch, there is no sound to this video.) Significantly, this is the same day as the date on the note referenced in Section V, Note Written by Tyler. Tyler apparently wrote that note when he returned to Mother's residence after this visit with Father.

Video 3: (2:08) (February 16, 2015) In this video, Father's family (including Tyler) is gathered around the kitchen table celebrating Ryan's birth.

Video 4: (1:58) (February 16, 2015) Another video of Father's family (including Tyler) gathered around the kitchen table celebrating Ryan's birth.

Video 5: (1:35) (February 16, 2015) Another video of Father's family (including Tyler) gathered around the kitchen table celebrating Ryan's birth. In this video, there is a cake with a candle, the

family sings Happy Birthday to Ryan; and Tyler can be seen wanting to be close with Ryan.

Video 6: (1:42) (April 27, 2015) Video of the family singing Happy Birthday to Keira. Tyler is seen clearly in this video smiling, clowning and nose-to-nose with his sister.

Video 7: (7:47) (December 25, 2014) Opening presents Christmas morning. This video is significant because this was during the Christmas school vacation when Mother alleged that Tyler was being held against his will and coerced to stay at Father's house.

Video 8: (2:20) (May 3, 2015) Tyler singing a song about states and their capitals to Keira.

Video 9: (2:50) (February 14, 2015) Valentine's Day. Tyler seen playing with Keira.

Video 10: (3:17) (February 13, 2015) This is the weather forecast video which Dr. Monahan watched with Tyler and Father during one of Tyler's therapy sessions.<sup>41</sup>

## **VII. Mother's Inappropriate Discussions With Tyler**

50. Mother's parenting of Tyler is unacceptable by any reasonable standard looked to by judges or psychologists in the context of custody litigation. For example, Dr. Monahan reports that:

- a. "[Tyler] has said he thinks his father is bankrupting his mother with legal expenses. He must have heard this directly or indirectly in mother's home."<sup>42</sup>
- b. "The parenting plan came up and Tyler thinks it will change in June. He said he learned of this from Mother."<sup>43</sup>

51. Dr. Monahan believes that such a discussion of the court process with children "adds more stress"<sup>44</sup> to their lives.

---

<sup>41</sup> "Affidavit of the Child's Psychotherapist," March 5, 2015, page 5, three lines from the top. "In our most recent meeting with father, [Tyler] denied enjoying himself even while we all watched a video made of his weather report where he appeared very happy."

<sup>42</sup> March 5, 2015 "Affidavit of the Child's Psychotherapist," page 4.

<sup>43</sup> Transcript of deposition of Dr. Monahan, May 18, 2015, page 56, lines 19-21.

<sup>44</sup> Transcript of deposition of Dr. Monahan, May 18, 2015, page 56, line 24 through page 57, line 8.

### **VIII. Law**

52. Temporary Orders during the pendency of a Complaint for Modification are controlled by statute, G.L. c. 208, §28A which, in relevant part, provides:

Every order entered relative to care and custody shall include specific findings of fact made by the court which clearly demonstrate the injury, harm or damage that might reasonably be expected to occur if relief pending a judgment of modification is not granted.<sup>45</sup>

53. The standard to be applied, therefore, is that there must be clearly demonstrable injury, damage or harm which would likely befall Tyler should this Court order that the parties revert to the previous parenting schedule. Absent such clearly demonstrable injury, harm or damage, the brief period envisioned by Judge Moriarty is over, and this Court should revert to the previous schedule.

54. In the course of this review, the Court must determine if Tyler is at risk when he is with Father.

55. If the Court determines that Tyler is not at risk with Father, then the Temporary Order entered by Judge Moriarty should be vacated.

### **IX. Discussion**

56. This case started with Mother making serious allegations about Tyler, his relationship with, and his treatment by, Father. While Father knew that the allegations were false, he had no way of proving that.<sup>46</sup> The Court, faced with serious allegations concerning Tyler's welfare and no proof to the contrary, reacted to protect Tyler.

57. But now we know more. For example, while Mother has stated in pleadings in this matter that problems with Tyler's time with Father date back several years, to 2011 or 2012, both she and Tyler told Dr. Monahan that everything went smoothly until 2014.

58. Mother alleges that Tyler is afraid of Father's rage and outbursts. Yet Tyler told Dr. Monahan that Tyler fears that he has done something wrong when Father is quiet and requested that Father just tell him when he (Father) is upset. Tyler now reports that Father is doing this and the problem has been solved.

---

<sup>45</sup> G.L. c. 208, §28A.

<sup>46</sup> Father did not understand until recently that videos are admissible into evidence.

59. Mother alleged that Father lost control of his temper at a Little League game; yet Tyler's coach sent Father an email in which he thanked Father for handling that difficult situation appropriately. Tyler's coach also noted that Father, rather than being out of control as Mother alleges, had been quiet for the preceding two years that Tyler had been participating in Little League.

60. We now know that Mother's constantly repeated statement that she is just trying to follow Dr. Monahan's recommendation is specious. Dr. Monahan believes that Mother took his recommendations/advice out of context and inappropriately used them in court in her efforts to reduce or eliminate Father's parenting time with Tyler. As a result of Mother's action, Dr. Monahan now refuses to provide any advice or recommendations to the parties, thus reducing his effectiveness for Tyler.

61. Mother has inappropriately shared information about the litigation with Tyler. Dr. Monahan testified that this increases stress for children in Tyler's situation.

62. Father believes that the evidence and information adduced thus far, even months in advance of any possible trial and while discovery is not yet complete, point clearly and unequivocally to Mother's attempting to alienate Tyler from him.

63. Consistent with this, Dr. Monahan reports that one of his working hypotheses is that Mother is trying to excise Father from Tyler's life.<sup>47</sup>

64. Mother reports that when Tyler is with her, he is in nearly constant stress about seeing Father. Yet it appears that Tyler only evidences stress in this regard when he is with Mother or someone with whom he knows that Mother speaks about the parenting schedule, Dr. Monahan and Attorney Maiona. Father's home videos show clearly that Tyler experiences no stress when he is at Father's residence.

65. In fact, the video evidence shows that Tyler is relaxed, happy and has fun like a normal, well-adjusted child of like age when he is with Father.

66. The Court should return the parenting schedule to the schedule agreed upon by the parties pending trial. There is no harm to befall Tyler when he is with Father.

## **X. Conclusion**

67. In its analysis, the question for the Court to consider is not whether there is sufficient reason to return to the original schedule. G.L. c. 208, §28A essentially mandates that in this situation, the question for the Court to consider is *whether there is sufficient reason not to return to the original schedule.*

---

<sup>47</sup> Transcript of deposition of Dr. Monahan, May 18, 2015, page 163, lines 14-17.

68. Father suggests that, given the numerous inconsistencies and mischaracterizations in Mother's allegations, given the degree to which Tyler is seen in Father's home videos as obviously comfortable, enjoying his time with Father, and *not at all in fear of Father*, the only possible answer to the question is NO, there is no reason not to return to the previous schedule pending trial.

WHEREFOR, Father requests that this Court reinstate the previous parenting schedule pending trial or settlement.

DANIEL A. DITTLER

By his attorney:



---

Paul S. Neustadt  
BBO No.: 553546  
[PSNeustadt@aol.com](mailto:PSNeustadt@aol.com)  
Counsel for Defendant  
Helman & Neustadt  
1340 Centre Street, Suite 205  
Newton Centre, Mass. 02459-2453  
617-243-0000

Dated: June 15, 2015

**CERTIFICATE OF SERVICE**

I certify that on June 5, 2015 I served the preceding Defendant Father's Motion to Restore Parenting Schedule on plaintiff Joanna Mannion f/k/a Joanna L. Fico by causing a copy of same to be delivered to the office of counsel for plaintiff, Patrice E. Morse at Casner & Edwards, 303 Congress Street, Boston, Massachusetts 02210 and on Tyler Fico by causing a copy of same to be delivered to the office of counsel for Tyler Fico, Justin G. Maiona at Maiona & Maiona, P.C., Suite 300, 57 River Street, Wellesley, Massachusetts 02481.

---

Jonathan S. Helman  
BBO No.: 229820  
[HelmanLaw@aol.com](mailto:HelmanLaw@aol.com)  
Counsel for Defendant  
Helman & Neustadt  
1340 Centre Street, Suite 205  
Newton Centre, Mass. 02459-2453  
617-243-0000

Dated: June 5, 2015