

THE STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF McLEAN

IN RE THE MARRIAGE OF)
)
PHILLIP D. DUNPHY,)
)
)
Petitioner,)
)
)
and)
)
)
CLAIRE L. DUNPHY,)
)
)
Respondent.)

REPORT OF GUARDIAN AD LITEM

NOW COMES Todd C. Miller, Guardian *ad Litem*, and for his report to the Court, states as follows:

FACTUAL AND PROCEDURAL BACKGROUND

1. The parties are the parents of two minor children, namely, Luke, born July 19, 2003, age 14, and Alex, born October 17, 2002, age 16.
2. On March 5, 2017, the parties were awarded a *Judgment of Dissolution of Marriage* (hereinafter the "*Judgment*").
3. Pursuant to the parties' mediated agreement (hereinafter the "*agreement*"), they share joint legal custody of the children with Claire identified as the primary residential custodian, subject to Phillip's visitation.
4. Pursuant to the *agreement*, Phillip has visitation with the children on alternate weekends from Friday at 5:00 p.m. until Sunday at 5:00 p.m. and each Tuesday from 5:00 p.m. until 7:00 p.m., with the option of an overnight if the parties agree. Phillip also has the option of additional time as agreed between the parties.
5. On September 22, 2016, Phillip filed his *Petition to Modify Allocation of*

Parenting Time and parenting Responsibilities (hereinafter the “*Petition*”) and the accompanying *Affidavit of Petitioner* alleging serious endangerment.

6. The *Petition* remains unheard.

7. Also on September 22, 2016, Phillip filed his *Emergency Petition for Temporary Relief* (hereinafter the “*Emergency Petition*”).

8. On October 15, 2017, this Court entered its *Order Appointing Guardian ad Litem*. Cynthia Jewel was initially appointed to serve as G.A.L.

9. On February 4, 2018, John C. Miller was appointed to substitute for Jessica Jones as G.A.L.

INVESTIGATION

In addition to conducting a review of the court record, the circuit court record and documents provided by the parties, and visiting the homes of both parents, I have spoken to both counsel and the following individuals:

1. Claire Dunphy (Mother)
2. Phillip Dunphy (Father)
3. Luke (Parties’ son)
4. Alex (Parties’ daughter)
5. Jennifer Singer (Alex’s counselor)
6. Sally Long (Father’s girlfriend)
7. John Peters (Mother’s friend)
8. Lynn Johnson (Principal at Alex’s school)
9. Paul Godfrey (Luke’s football coach and long-time acquaintance of Claire’s)
10. Ms. Gibbens (Luke’s math teacher)
11. Ms. Smithers (Luke’s lit. & comp. teacher)
12. Mr. Kent (Luke’s social studies teacher)
13. Ms. Jenson (Intern in Ms. Gibbens’ class)
14. Detective Marie Carlos (Normal Police Department)

CLAIRE DUNPHY – There is no question that Claire loves her children and wants what is best for them. She struggles, as do all parents, from time-to-time, with what is actually best for them and how best to help them. Regarding Luke, sadly, her struggles

too frequently result in frustration and violence/aggression directed at Luke, either directly or indirectly. Examples include:

1. Pulling his hair.
2. Tackling him to the ground.
3. Putting her hands around his throat. Although only Claire and Luke were

present, this has been characterized differently, as follows:

- A. Claire said she was helping Luke take off his coat.
 - B. Luke described it as Claire putting her hands on his throat.
 - C. Alex described it as “a choke-hold.”
 - D. Sally described it as a “head-lock.”
4. Slamming his cell phone on the countertop.
 5. Stabbing his basketball with a knife (not in Luke’s presence).

When confronted with these circumstances, Claire frequently does not recall them. Claire’s professed memory lapse is alarming to this G.A.L. It is unclear to me whether Claire actually blocks out certain events and truly cannot remember them or whether her memory lapses are a means to not having confront a difficult situation. Either way, I am concerned for the children’s safety. However, as will be explained further, below, and, perhaps, strangely, I do not believe that any restrictions to Claire’s parenting time are appropriate.

Claire is quick to anger and loss of control. She has exhibited this with Luke, of late. Paul Godfrey, Luke’s football coach, experienced similar behavior with Claire’s older son from a prior relationship.

At present, Claire has a better working relationship with Alex. Time will tell how Claire reacts to Alex as she enters her teenage years.

The situation described in Phillip's *Petition*, between Alex and her mother wherein it is alleged that Claire's boyfriend, Mr. Peters, provided her alcohol, is a great concern for me. Upon the advice of Alex's then counselor, I have not discussed the situation directly with Alex. I have taken on faith the description of the events as provided by Phillip. I have not heard a complaint that what Phillip relayed as Alex's words were not, in fact, Alex's words. There is, however, a dispute over whether Alex actually drank any alcohol.

It is clear to me, after speaking to Claire, that Claire's initial instinct appeared to be to protect herself and her friend, Mr. Peters.

Claire's current work schedule allows for her to be available to the children, however, at the cost of financial security. As of the writing of this report, Claire's home is in foreclosure. Claire has recently received an offer on the house. It does appear that a sale has been approved. Claire does not yet know where she will move, but says it will be to an apartment in town. She does not want Luke to have to switch schools and wants him to attend Normal Community High School.

Claire feels that Sally, Phillip's girlfriend, does not like her. Claire believes the cause of the dislike is the fact that Claire is the "ex-wife." The two women do not have an effective working relationship.

When I speak to Claire, she frequently presents herself as utterly frustrated. She is under a tremendous amount of stress, financially. The stress of the litigation and losing her home has also taken a toll.

Claire says that she and Phillip had been able to co-parent effectively until he moved in with Sally. She believes that they can co-parent, going forward.

PHILLIP DUNPHY – Phillip, too, loves his children dearly, and wants what is best for them. His job and work schedule are such that he is financially stable, however, the

“trade-off” is his relatively limited Time with his children. Also, the free time Phillip does have must be divided between four or six children, depending on whether Luke and Alex are with Phillip, and his girlfriend, Sally. In my conversations with Sally, it appears she has happily taken Luke and Alex into the fold and is an able partner to Phillip in parenting the children.

By all accounts, Phillip is dutiful in assisting Luke and Alex with their school work and communicating effectively with school officials.

I have concerns about the way Phillip handled the situation with Alex. In my view, Claire should have been informed, right away. Rather, she was not notified until several days after Phillip became aware of the circumstances. To Phillip’s credit, he is adamant that he was acting in good faith on the advice of his counsel. I have no reason to dispute this.

Phillip says that he and Claire have never been able to co-parent any better than they do, now. He does not believe that sharing decision making is in the children’s best interests because Claire does not make good decisions.

SALLY LONG – Sally is a stay home mother of four children and supervises six children when Luke and Alex are at the house she shares with Phillip. She describes herself as the disciplinarian and “mom of all these heathens.” Her style of discipline includes time-outs, taking away games/privileges and yelling. Sally describes Claire as controlling because she goes through Luke’s phone and computer every night.

Sally says that she has tried to develop a working relationship with Claire, to no avail. Sally believes that Claire hates her, though Sally professes no ill-will towards Claire.

LUKE DUNPHY – Luke is a good kid. He is an early adolescent and seems to be

experiencing all of the trappings that go along with early adolescence. He is pushing his boundaries. He is demanding more freedoms. Luke loves his parents and is quite protective of them. Sadly, over the last several months, a rift has developed between Luke and his mother. Their disagreements have, too frequently, resulted in aggressive behavior and violence. Luke has complained to me of minor injuries as a result of the altercations. My concern is that if a change is not made, either Luke or Claire or both are going to get seriously hurt.

Luke wants to spend more time with his Father, but wants to live primarily with his Mother. Luke has told his Mother that he does not want to live with her any longer, but has explained to me that such statements were made out of anger, and are not his true feelings.

Luke's grades could, and should, be improved. His parents describe him as a bright boy. Without intending to slight Claire, I observe that, to date, she has been unable to light a fire under Luke regarding his education. Phillip suggests that he and Sally will be able to do so.

Luke informed me that Alex and he are not allowed to have pictures of Claire at Phillip's home. He said there is no similar restriction regarding pictures of Phillip at Claire's home.

ALEX DUNPHY –Alex loves her parents, appropriately. Alex's counselor's initial description of Claire's home as "hostile" is concerning to me. Since that description, the counselor indicates that the relationship has improved and that Alex may be experiencing a little "grass is greener" syndrome regarding Phillip's residence.

Alex has had some difficult experiences at school with other children that have been very disturbing to her. In the spring of 2017, a boy at her school said he wanted to

kill himself and tried to stab himself with a spork and a staple. The situation made Alex very uncomfortable. In the fall of 2017, another began making sexual comments to Alex and made sexual gestures towards her. School officials were made aware and, I am advised, over time, the situation has been neutralized. However, there was a physical altercation between Alex and the boy and Alex was quite upset by the whole affair. I am not aware that these experiences have any impact on the issues before this Court.

When I first met with Alex, she wanted to live primarily with Phillip. At the time, she and Claire were having difficulties. This was closer to the time period when Alex's counselor described Claire's home as "hostile." Of late, Alex has expressed a desire to spend more time with Phillip, but live with Claire.

Alex's grades, too, could and should be improved. As with Luke, and again, not to slight Claire, Claire has been unable to light the appropriate fire under Alex regarding her education.

Alex informed me that Luke and she are not allowed to have pictures of Claire at Phillip's home. She said there is no similar restriction regarding pictures of Phillip at Claire's home.

ALEX & CENDRIC – It is apparently undisputed that on or about August 11, 2017, Alex offered alcohol to her step-brother, Cendric, age 7. It is apparently undisputed that the children have received counseling and, as of the writing of this report, there are no concerns regarding lingering effects of the contact.

The events leading up to the inappropriate contact are in dispute. Alex reported that she saw her Claire and her boyfriend Mr. Peters drinking and that they offered her some. She said that Claire made a comment that "she should have some to loosen up and not worry about her studies so much." Alex says they pushing her to take a drink.

One day when their Mother left to attend a party, Mr. Peters was left to supervise the children. Alex said that Mr. Peters fell asleep on the couch she took a flask of whiskey and tried several sips of it. While Mr. Peters does admit that at one time he had did tease Alex to loosen up a bit, both Claire and he deny that Mr. Peters was ever left to watch the Dunphy children while Claire went to a party. Mr. Peters is also adamant that he has protections on his alcohol cabinet that would prevent easy access.

In my opinion, it is of little to no significance, for purposes of this litigation, where the Alex obtained the alcohol occurred. It is of little significance, for purposes of this litigation, whether Alex saw them drinking. What is significant, for purposes of this investigation, is how both parties responded to the situation. Phillip appears to have followed instructions he was given by a counselor and his attorney. He claims he followed instructions from Detective Carlos not to let Alex see Claire, alone, however Detective Carlos denies giving such instructions. He informed Claire of the events, when he was told to. Claire, on the other hand, while concerned about the occurrence, appears to be more concerned with deflecting any blame away from Mr. Peters or herself.

EMILY SINGER – Ms. Singer counseled Alex following the event with Cendric. Ms. Singer suggested that it would not be advisable for me to question Alex regarding what happened with Cendric. I did not.

When I first interviewed Ms. Singer in June of 2017, she described Alex and Claire’s relationship as “tumultuous.” She said Claire has very high expectations for Alex and Alex fails to meet them. For example, Alex is required to ask for permission for everything – turning on the television set, getting a drink, etc. If Alex grabs jelly beans along with her drink, she gets in trouble.

Ms. Singer described Alex as easily influenced by her peers and said Alex does

not think through to the consequences of her actions. While concerning, Ms. Singer sees this behavior as age-related and not related to any specific life-circumstances.

Ms. Singer described Claire's home as feeling "kinda hostile." She described Phillip as easier going and seeming to handle Alex well. She suggested it might be appropriate for Phillip to have "authority" over Alex.

By the time I interviewed Ms. Singer, again, in September of 2017, she said that Alex and Claire's relationship was improved. She further stated that Alex may be experiencing a little "grass is greener on the other side" with respect to life with Phillip.

JOHN PETERS – Mr. Peters is a friend of Claire's. Whether the two are in a relationship, and to what extent, depends on who is asked. It is undisputed that at one time, the two were romantically involved.

Phillip has made allegations of domestic violence between Claire and Mr. Peters, sometimes occurring in the presence of the children. I have been made aware of no such occurrences.

From my perspective, Mr. Peters' only involvement in this matter stems from Alex's assertion that she saw on Mr. Peters' and Claire drinking and that she took some of his alcohol while he was drinking. Alex asserts that Mr. Peters was left to watch Alex while Claire went to a party. Mr. Peters fell asleep and Alex accessed his alcohol. Alex further asserts that offered her step-brother, Cendric, alcohol as well.

LYNN JOHNSON – Ms. Johnson is the Principal at Fairview Elementary, where Alex goes to school. Ms. Johnson expressed concern that Alex has complained to her that Claire hits, yells at and swears at both Alex and Luke.

Ms. Johnson described Claire as very quiet and reserved when she has spoken to her. Ms. Johnson said that Phillip seems to know Alex better and is better able to express

his knowledge of Alex's wants and needs than Claire is able. Ms. Johnson does acknowledge that this observation may be the result of personality differences and not a reflection on Claire. She did say though, that in her experience, it is not uncommon for a parent who is accused of yelling and screaming and cussing in private to be demure in school conferences.

Ms. Johnson said that there is noticeable tension between Claire and Phillip. Phillip is more open. Claire is more introverted. Claire's demeanor is the same whether or not Phillip is present. She noted that she has noticed the smell of alcohol on Claire on various occasions she has been to the school.

She said that Phillip "owns who Alex is." Alex has social and emotional issues. Phillip recognizes these issues and asks for suggestions and follows through. Ms. Johnson knows that Phillip follows through because he tells Ms. Johnson that he does and because Ms. Johnson sees changes in Alex's behavior relative to the suggestions made. As an example, Ms. Johnson said that, in advance of P.A.R.C. testing, she suggested that Phillip complete study packets with Alex. Phillip told Ms. Johnson that he did so and Alex's P.A.R.C. test results were better than prior test results.

On the other hand, Ms. Johnson said that Claire does not ask for assistance. Ms. Johnson makes suggestions, anyway. Claire does not indicate to Ms. Johnson whether she follows through with the suggestions. Ms. Johnson does not notice changes in Alex in light of the suggestions. The study packets were sent to Claire, as well. Ms. Johnson does not know if Claire used them.

Ms. Johnson said that in her experience it is uncommon for a girl Alex's age to want to spend more Time with dad than with mom.

Ms. Johnson described Alex as needy, full of drama and craving attention, but not

disruptive. Ms. Johnson's observations suggest that Phillip gives Alex the attention she deserves; Claire does not.

PAUL GODFREY – Mr. Godfrey is Luke's football coach. I first spoke to him on March 11, 2017. Luke had called me that evening from his phone. He said that Claire had arrived 50 minutes late to pick-up Luke from football practice. She was "unhinged," to use Luke's word. Claire yelled at Luke and pulled his hair. Luke said he did nothing to provoke Claire.

Suddenly, Claire was on the phone. She was noticeably shaken. She said that Luke was being very disrespectful. She admitted to pulling his hair. I asked Claire to put Luke back on the phone. Luke was mid-sentence when an adult male suddenly appeared on the phone.

I asked the man how he got Luke's phone. He replied that Luke gave it to him. I asked to speak to Luke.

Luke said that Claire had pulled the phone out of Luke's hand and had given it to the adult male who I was then told was Paul Godfrey, Luke's football coach. I asked to speak to Claire, again.

I asked Claire what was going on and how did Mr. Godfrey get Luke's phone? Claire said she did not remember. She said, though, that Luke was "throwing it in her face" that they were all talking to me.

I then spoke to Mr. Godfrey at some length. He informed me that he was Luke's football coach. That he was at home, after practice, when Claire, Alex and Luke suddenly appeared, unannounced. He said that he lives only a few blocks from Claire.

Mr. Godfrey said that his oldest son and Claire's oldest son (not Phillip's child) were friends. Mr. Godfrey's son described Claire as out of control, emotionally.

Mr. Godfrey said he was Claire's oldest son's football coach. He said Claire's son told Mr. Godfrey in 8th grade that he wanted to live with his father. The son described Claire as unstable.

Antwan said that, in the past, he had heard Claire yelling on a couple of occasions, as he approached the house. When Claire saw him, he said her demeanor changed, instantly.

I interviewed Mr. Godfrey, again, on March 31, 2018. He said has known Claire and Luke all of Luke's life.

Regarding the events of March 11, 2017, Mr. Godfrey's wife answered the door. Mr. Godfrey was on the phone. Claire was very adamant about seeing Mr. Godfrey. Claire was fidgety, red-faced and shaky. She appeared mentally rattled. He face showed stress. Her lips were tight. Mr. Godfrey said he has seen her like this, multiple Times.

In the six years he has coached Luke, Mr. Godfrey has seen Claire come to football practice 5 or 6 Times per season in a rage or having a fit. She screeches her tires, speeds, etc. She is red-faced and shaky. He has smelled alcohol on her on numerous occasions. Mr. Godfrey never asks her what is wrong. He does check with Luke the next day to make sure Luke is ok. He said Luke is very guarded of his mother.

Mr. Godfrey said that Alex was in Claire's car, terrified. She did not want to talk to Mr. Godfrey, even when he approached the car she was in, so he could talk to Luke. He said that Alex just sat in the back of the car and stared at Claire.

Mr. Godfrey said that he did not observe Luke do anything that seemed like Luke was "throwing it" in Claire's face that Luke was on the phone with me.

LUKE'S TEACHERS – I met with Ms. Gibbens, Ms. Smithers, Mr. Kent, and Ms. Jenson, *en masse*, at the suggestion of counsel. The teachers all agreed that Luke has

an attitude with the gym teacher, who was not present. They all had met with Claire and Phillip regarding Luke's attitude. None of the teachers made any pertinent observations.

DETECTIVE MARIE CARLOS – Detective Carlos of the Normal Police Department was involved immediately following the incident between Alex and Cendric. I spoke with her to confirm the statements Phillip alleged she made regarding contact between Alex and Claire.

Detective Carlos said that she advised Phillip not to ask Alex a bunch of questions before she was interviewed by the Children's Advocacy Center. She denied telling Phillip not to send Alex to Claire. She said her report would have further detail.

I asked counsel to get me a copy of the report. As of February 23, 2018, I have not seen Detective Carlos's report.

STATUTORY ANALYSIS

The following substantial changes in circumstances have arisen since the entry of the existing order:

1. The children are older, more mature and better able to give input as to their desires regarding parental responsibility and parenting time
2. Claire's home is in foreclosure and her future living arrangements are unknown.
3. Phillip now shares a home with his long-time girlfriend, her children and children he shares with her.
4. Alex and Luke have both expressed a desire to spend additional time with Phillip.
5. A series of violent interactions have occurred between Claire and Luke.

In my opinion, and as further described below, a modification of certain aspects of the

allocation of parental responsibilities is in the children's best interest.

750 ILCS 5/602.5 sets forth the various factors the court must assess in determining the children's best interests relative to the allocation of decision-making authority. My analysis of each such factor is:

1. *The wishes of the child, taking into account the child's maturity and ability to express reasoned and independent preferences as to decision-making* – The children did not specify a preference regarding the allocation of decision-making authority, *per se*, but each child expressed a desire that Phillip have a greater role in each of their lives. Pursuant to the terms of the existing order, the parties share "joint custody." This factor is neutral relative to allocating decision-making authority.

2. *The child's adjustment to his or her home, school, and community* – The children seem comfortable in both and Claire and Phillip's homes, however, there is a palpable presence of stress at Claire's home. Alex's counselor described the environment at Claire's home as feeling "kinda hostile." Both children have had some difficulties as school. Alex has had some challenging social interactions with her classmates and Luke has had some behavioral challenges. Both children appear to be adequately integrated into their "communities." Furthermore, a reallocation of decision-making authority would not impact the children's school or community lives. Pursuant to the terms of the existing order, the parties share "joint custody." This factor is neutral.

3. *The mental and physical health of all individuals involved* – No significant mental or physical health issues of any individuals involved has been brought to my attention. This factor is neutral.

4. *The ability of the parents to cooperate to make decisions, or the level of conflict between the parties that may affect their ability to share decision-making* – For the most part, Phillip and Claire are able to set aside their differences and make decisions regarding the children on a cooperative basis. During this litigation, I get the sense that Claire has felt "under the microscope" and that every action on her part will be used against her. Claire suggests that, prior to the litigation, the parties were routinely able to make decisions together. Phillip, on the other hand, says they have never been able to co-parent than they co-parent, right now. I refuse to believe that putting this litigation behind the parties will not have an improving effect on their co-parenting abilities. I do believe that a better distribution of parenting Time between the parents will aid in their abilities to co-parent. This factor is neutral.

5. *The level of each parent's participation in past significant decision-making with respect to the child* – Both parents have been active participants in past decision-making. This factor is neutral.

6. *Any prior agreement or course of conduct between the parents relating to decision-making with respect to the child* – Pursuant to the terms of the existing order, the parties share “joint custody.” This factor is neutral.

7. *The wishes of the parents* – Phillip's petition requests a reallocation of decision-making authority with the majority of such authority being assigned to him. Claire has expressed a desire to maintain the current sharing of decision-making authority. This factor is neutral.

8. *The child's needs* – The children need two parents who they know love and care for them. There are no extraordinary needs that have been brought to my attention. This factor is neutral.

9. *The distance between the parents' residences, the cost and difficulty of transporting the child, each parent's and the child's daily schedules, and the ability of the parents to cooperate in the arrangement* – Claire is presently in the process of moving. She has informed me that she does not intend to move out of the school district she currently resides in. If Claire does, in fact, move to a nearby residence, she and Phillip will continue to reside just minutes from one another. No scheduling or transportation difficulties have been brought to my attention. This factor is neutral.

10. *Whether a restriction on decision-making is appropriate under Section 603.10 [750 ILCS 5/603.10]* – No such restriction is appropriate. This factor is neutral.

11. *The willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child* – Both parents have expressed a willingness and, I believe, past conduct shows the ability of each parent to foster the relationship between each child and the other parent. This factor is neutral.

12. *The physical violence or threat of physical violence by the child's parent directed against the child* – The physical altercations between Luke and Claire are of great concern to me. I am not convinced, however, that eliminating all or a portion of Claire's decision-making authority will solve the underlying problem. This problem, in my assessment, is better addressed in realm of parenting time. Because there has been a short history of violence, this factor favors Phillip.

13. *The occurrence of abuse against the child or other member of the child's household.* I question whether the altercations I have referenced above would fall under the heading of “abuse.” If they do not, this factor is neutral relative to allocating decision-

making authority. If the altercations do constitute abuse, this factor favors Phillip, but as I noted in 12, above, in my assessment, the remedy lies in the realm of parenting time, not decision-making authority.

14. *Whether one of the parents is a sex offender, and if so, the exact nature of the offense and what, if any, treatment in which the parent has successfully participated* – To my knowledge, neither parent is a sex offender. This factor is neutral.

15. *Any other factor that the court expressly finds to be relevant.* None. This factor is neutral.

A simple mathematical breakdown would suggest that it would be in the children's best interests to award most or all of the decision-making authority to Phillip, as factors 12 & 13 favor him, and the rest of the factors are neutral. However, as I noted, I do not believe that removing decision-making authority from Claire will solve the problems that are exhibiting themselves through her physical altercations with the parties' teenage son.

I believe the altercations are:

1. Symptoms of Claire's frustration and a sense of a loss of control fueled by this litigation.
2. Symptoms of Luke's rough entry into adolescence.

Furthermore, I am not convinced that any modification to the existing equal allocation of decision making authority, pursuant to the "joint custody" award would be in the children's best interest.

750 ILCS 5/602.7 sets forth the various factors the court must assess in determining the children's best interests relative to the allocation of parenting time. My analysis of each such factor is:

1. *The wishes of each parent seeking parenting time* – Phillip's petition requests a reallocation of parenting time with the majority of such time being assigned to him. Claire has expressed a desire to maintain the current parenting time schedule. The factor is neutral.

2. *The wishes of the child, taking into account the child's maturity and ability to express reasoned and independent preferences as to parenting Time* – Both children express themselves maturely and articulately. Both children have expressed a desire to spend more time with Phillip but to live primarily with Claire. This is significant to me considering the altercations between Luke and Claire. One might think that a child's knee-jerk reaction in such a situation would be a desire to live with the other parent. These children love their parents, dearly and, Luke appears to be very protective of his mother, even when she lashes out at him. This factor favors expanding Phillip's parenting time.

3. *The amount of Time each parent spent performing caretaking functions with respect to the child in the 24 months preceding the filing of any petition for allocation of parental responsibilities or, if the child is under 2 years of age, since the child's birth* – The existing order is what might have previously been considered "standard parenting time" – alternate weekends with an evening mid-week. The order also provides for additional Time as the parties agree. It is my understanding that the parties have cooperated with one another, to a large extent, regarding parenting Time. This factor is neutral.

4. *Any prior agreement or course of conduct between the parents relating to caretaking functions with respect to the child* – See number three, immediately above. This factor is neutral.

5. *The interaction and interrelationship of the child with his or her parents and siblings and with any other person who may significantly affect the child's best interests* – Luke and Alex get along well with one-another. They also get along well with Sally's children and Sally and Phillip's children. Although the inappropriate interaction between Alex and Cedric should not be overlooked, it should not be used as a weapon, by either side, to extract parenting time from the other. The children appear to have a good relationship with Sally, although they both say she yells a lot. For the most part, the children have good relationships with their teachers. The parents currently reside in the same school districts. Luke's behavioral issues at school may be easily remedied by more interaction with Dad. Certainly, I have no reason to believe that expanding Dad's parenting Time would exacerbate Luke's behavioral issues. This factor favors Phillip.

6. *The child's adjustment to his or her home, school, and community* - The children seem comfortable in both and Claire and Phillip's homes, however, there is a palpable presence of stress at Claire's home. Alex's counselor described the environment at Claire's home as feeling "kinda hostile." Both children have had some difficulties as school. Alex has had some challenging social interactions with her classmates and Luke has had some behavioral challenges. Both children need to improve their grades. Phillip suggests that he will be able to provide the support and assistance necessary to improve the children's grades. So far, Claire has been unable to do so. Both children seem appear to be adequately integrated into their "communities."

As noted in 5, immediately above, Luke's behavioral difficulties at school may be easily remedied by spending more Time with Dad. This factor favors Phillip.

7. *The mental and physical health of all individuals involved* - No significant mental or physical health issues of any individuals involved has been brought to my attention. This factor is neutral.

8. *The child's needs* – All things being equal, I believe that children should have significant time with both parents. The children herein have both expressed a desire to spend more time with Phillip. As Luke continues towards manhood, I believe he needs to be spending significant Time with his father. Alex, as well, would benefit from more interaction with her father. In my assessment, the tension that exists in Claire's home is, in large part, the result of Claire not having anyone to turn to. I absolutely do not say this as an indictment of single mothers. My assessment is limited strictly to the facts and circumstances of this case. Certainly, while this litigation has been pending, Claire does not appear comfortable turning to Phillip for assistance for fear that such a reaching out would be used against her. I also believe that Luke's acting out in school might be tempered by a stronger one-on-one relationship with Phillip. This factor favors Phillip.

9. *The distance between the parents' residences, the cost and difficulty of transporting the child, each parent's and the child's daily schedules, and the ability of the parents to cooperate in the arrangement* - Claire is presently in the process of moving. She has informed me that she does not intend to move out of the school districts she currently resides in. If Claire does, in fact, move to a nearby residence, she and Phillip will continue to reside just minutes from one another. No scheduling or transportation difficulties have been brought to my attention. This factor is neutral.

10. *Whether a restriction on parenting time is appropriate* – I am aware of no circumstances that would warrant a restriction on parenting time. This factor is neutral. Claire has indicated a willingness to attend outpatient alcohol treatment.

11. *The physical violence or threat of physical violence by the child's parent directed against the child or other member of the child's household* – There have been physical altercations between Luke and Claire, ranging from Luke pulling items out of Claire's hand to Claire tackling Luke and dragging him to the floor. I view these altercations to be evidence of a parent at her wit's end and utterly frustrated. As I have noted before, I think Claire feels that she cannot effectively reach out to Phillip for parental support for fear that doing so will be used against her in this litigation. This factor favors Phillip.

12. *The willingness and ability of each parent to place the needs of the child ahead of his or her own needs* – In my assessment, the children need to be spending more Time with their father. Claire's desire is for the parenting Time schedule to remain

as previously ordered, with her having the majority of the parenting time. She believes there are simply too many children at Phillip's home. Also, when Claire was made aware of the incident between Alex and Cendric, it appears that her initial desire was to confront Alex with her then boyfriend. I am also concerned with the manner in which the Alex/Cendric incident was handled by Phillip. I do not believe that Alex's best interests were necessarily at the heart of the decision to wait several days to tell Claire about the incident that occurred under Phillip's watch. However, it appears that Phillip was, in good faith, following the advice of counsel. I think Claire's desire to keep the children from spending more time with Phillip is more detrimental to the children than Phillip's decision to withhold information from Claire turned out to be. Although both parents have acted in a fashion that may not be in their children's best interest, I believe that both parents possess the ability to place the needs of the children before their own needs. This factor favors Phillip.

13. *The willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child* – I am greatly concerned that the children do not believe that they are allowed to have photos of Claire at Phillip's house. While Phillip denies that this is the case, the children understand, differently. I have been shown no reason to believe that the parents do not possess the ability contemplated by this factor. This factor favors Claire.

14. *The occurrence of abuse against the child or other member of the child's household* – As I noted under the decision-making heading, I question whether the altercations between mother and son qualify as "abuse." If they do, this factor favors Phillip. If they do not so qualify, the factor is neutral.

15. *Whether one of the parents is a convicted sex offender or lives with a convicted sex offender and, if so, the exact nature of the offense and what if any treatment the offender has successfully participated in; the parties are entitled to a hearing on the issues raised in this paragraph (15)* – I am not aware of either party being a convicted sex offender or living with a convicted sex offender. This factor is neutral.

16. *The terms of a parent's military family-care plan that a parent must complete before deployment if a parent is a member of the United States Armed Forces who is being deployed* – Neither parent is in the military. This factor is neutral.

17. *Any other factor that the court expressly finds to be relevant* – Claire's stabbing of Luke's basketball with a knife cannot be overlooked. It was an action not directed at a person and, as I understand, not in the presence of Luke. It could be categorized as "abuse," but under the circumstances, I think that such a categorization is a stretch. Accordingly, I do not see that the incident falls into one of the specific factors. However, it is further evidence, in my view, that Claire's hands are too full. This factor favors Phillip.

Here, a simple mathematical analysis would suggest that Phillip's parenting time should be expanded. In this instance, I happen to agree with the mathematical breakdown.

RECOMMENDATIONS

I recommend that Phillip's request for a reallocation of parental-decision making authority be denied. I am aware of no impediment to these parents ability to make decisions together for the benefit of their children. These two parents have different styles. It may not be easy for them to co-parent, but I am not aware of sufficient facts or circumstances to make me believe that one of the parties should have decision-making authority to the exclusion of the other. More specifically, I recommend:

1. Education – To be jointly decided by the parties. Each parent should have full access to the children's school records and teachers, school staff and administrators and should be identified as a parent on all school records.

2. Healthcare –

- A. Routine, minor healthcare needs should be the purview of the on-duty parent. Pertinent information regarding same should be relayed to the other parent in a timely fashion. The parties should cooperate in scheduling health related appointments so that both parents may attend, if they wish to.

- B. Emergency healthcare should be sought by the on-duty parent. The other parent should be notified of the specifics of the emergency as soon as practicable.

- C. Major medical decisions should be made jointly. If no agreement can be reached, the parents should follow the recommendations of the primary care

provider. Alternatively, if no agreement can be reached, after consulting with the primary care provider, either parent may seek a second opinion. If a majority opinion exists after seeking a second opinion, the majority opinion shall prevail. If no majority opinion exists after seeking a second opinion, the parties should equally divide the cost of a third opinion. If the third opinion results in a majority opinion, the majority opinion shall prevail. Additional opinions should be sought, and the costs equally divided, until a majority opinion is reached.

D. Each parent should have full access to the children’s health records and providers.

3. Extracurricular Activities – To be decided jointly between the parties. Each party should be allowed to participate in all of the children’s extracurricular activities. The on-duty parent should be responsible for transporting the children to and from his and her respective activities.

4. Religion – To be decided jointly between the parties. In the event the parties cannot agree on matters or religious training, each parent should be allowed to pursue such religious beliefs and they see fit during his and her respective parenting Time.

I recommend that Phillip’s request for a reallocation of parenting Time be allowed. I am aware of no legally recognized reason why these parents should not share approximately equal Time with their children. Specifically, I recommend the following two week schedule to be incorporated into an *Allocation Judgment*:

<u>SUN.</u>	<u>MON.</u>	<u>TUES.</u>	<u>WEDS.</u>	<u>THURS.</u>	<u>FRI.</u>	<u>SAT.</u>
CLAIRE	PHILLIP	PHILLIP	CLAIRE	CLAIRE	PHILLIP	PHILLIP

PHILLIP	CLAIRE	CLAIRE	PHILLIP	PHILLIP	CLAIRE	CLAIRE
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Additionally, I recommend the following be incorporated into an *Allocation Judgment*:

1. The bi-weekly schedule set forth above should be followed, year round.
2. Each parent should be allowed a total of 14 uninterrupted days of extended parenting Time during the summer break from school. Unless agreed otherwise by the parties, from Time-to-Time, the 14 days should be divided into two groups of 7 days each with each such 7 day grouping either beginning or ending with the parent's regularly scheduled weekend.
3. Holidays should be divided as provided in the parties' original mediated agreement.
4. The parent commencing his/her parenting Time should be responsible for transportation arrangements.
5. The parents should be ordered to mediate any future disputes regarding allocation of parental responsibilities before proceeding to court.
6. Solely for purposes of Section 606.10, 750 ILCS 5/606.10, Phillip should be denominated the parent with the majority of the parenting Time.
7. Phillip's address should be utilized for school attendance purposes. However, the children should continue to attend Unit 5 schools so long as at least one parent resides in the Unit 5 school district.
8. Each parent's address, phone number, employer and employer's address & phone number.
9. A requirement that each parent notify the other, in writing, within 60 days of a change of address, unless such notice is impracticable or unless otherwise ordered by

the court. If such notice is impracticable, written notice shall be given at the earliest date practicable. At a minimum, the notice shall set forth the intended date of the change of residence and the address of the new residence.

10. A requirement that the parents notify one another of all emergencies, health care, travel plans, or other significant child-related issues.

11. A provision that each parent be allowed reasonable electronic communication with the children during regular waking hours.

12. A provision that a parent who is not on duty should be afforded the right of first refusal before third-party child care is sought if the on duty parent will not be available to care for the children, or a child, for a period of 8 hours or more. The on duty parent should notify the other parent as soon as practicable after learning that he or she is unavailable to care for the children, or a child, as contemplated in this paragraph. A parent retrieving a child, shall provide transportation.

In closing, I want to express that I have struggled greatly with these issues. I am firm in my recommendations, as set forth herein, but getting here was a challenge. I cannot shake a feeling that Phillip is motivated in large by the financial benefit that shared-parenting might afford him. However, I cannot identify a single conversation I had or document I reviewed that would support this “feeling.” Additionally, one could argue that it is nonsense since Phillip filed his petition well in advance of the implementation of the new child support protocols. In any event, it is something that has dogged me from early on and I would be remiss to not at least mention it.

Respectfully submitted,

Guardian ad Litem

