

Superior Court of New Jersey - Appellate Division

Letter Brief

Appellate Division Docket Number: A-002959-24

James Laborante

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08/18/2025

Letter Brief on behalf of: JAMES LABORANTE

CHRISTY P. DORNACKER

Plaintiff

V.

JAMES LABORANTE

Defendant

Case Type: Family

County/Agency: Ocean

Trial Court/Agency Docket No: FD-15-1008-16

Trial Court Judge/Agency Name: JUDGE BRIAN WHITE

Dear Judges:

Pursuant to R. 2:6-2(b), please accept this letter brief in support of my appeal in this matter.

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LIST OF PARTIES

Party Name	Appellate Party Designation	Trial Court/ Agency Party Role	Trial Court/Agency Party Status
James Laborante	Appellant	Defendant	Other
Christy P. Dornacker	Respondent	Plaintiff	Other

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PRELIMINARY STATEMENT

This appeal arises from the April 11, 2025 decision of the Ocean County Family Part denying Appellant, James M. Laborante, any parenting or phone contact with his minor son. The decision was based solely on Appellant's inability to continue paying a private reunification therapist and was entered without updated expert evaluation, without a plenary evidential hearing, and without specific findings under New Jersey law. This brief outlines the legal and constitutional errors underlying that decision and requests appropriate appellate relief.

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06/07/2024	Supplementa l Order	Court	Other	A-26
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STATEMENT OF FACTS

Appellant, James M. Laborante, is the biological father of a nine-year-old son. He has maintained continuous sobriety since November 2021. (A-2; A-5; A-6; A-7; A-8; A-9; A-10) This is supported by three separate hair follicle drug tests submitted on May 31, 2023, August 29, 2023, and December 20, 2024 (A-13; A-15; A-29), all confirming sobriety (T15:20-22). In addition, Appellant successfully completed outpatient programs in March and June of 2022 (A-3; A-4) and underwent two substance abuse evaluations in 2023 (T15:17-19).

From July 2024 through February 2025, Appellant participated in reunification therapy with his son under the care of Dr. Danielle Forshee. (A-27; A-28; A-31; A-34) The sessions were documented as successful. Dr. Forshee's letter dated December 26, 2024 described the December 18 session as a "successful initial reunification" and recommended continued bi-monthly sessions at her office (A-31; T32:25-33:3; T34:1-4). Despite these successes, reunification was discontinued only due to Appellant's inability to afford a third \$4,500 retainer (A-34), after having already paid over \$12,000 for therapy and evaluations (A-35; T11:6-11; T15:23-25).

During one therapy session, the Plaintiff, Christy Dornacker, both verbally and in writing, encouraged the reunification. In the document titled "Christy & Scott's Narrative," she stated: "You have our permission to want to get to know your birth father and meet him again...this is why we are here with Dr. Danielle to help us through it. (A-29) These sentiments contradicted the trial court's later designation of the case as one of "estrangement" (T33:1-5), despite multiple successful in-person sessions where the child reportedly showed excitement and engagement (T12:7-10; T13:1-5).

Appellant submitted a written parenting time proposal to the court on January 27, 2025 (A-32), requesting to advance from supervised to unsupervised visitation. However, the trial court denied all contact—physical, phone, or virtual—without holding a plenary hearing, without updated expert evaluation, and without findings under N.J.S.A. 9:2-4 (T40:1-20).

The court stated on the record that it could not authorize further parenting time until Appellant returned with financial means to resume therapy, effectively conditioning access to his child on economic status (T42:1-7). This judicial position arose despite acknowledgment that Appellant had been on a payment plan and was unaware that services would be halted without a lump sum payment until the day of the session (T11:9-20; T35:9-18).

The court also failed to account for Appellant's financial submissions and his stated inability to continue payments (T9:1-11), and refused to order an updated report from Dr. Forshee

despite the occurrence of multiple post-report therapy sessions (T42:2-6). Furthermore, the court denied even telephonic contact with the child without identifying any specific behavioral risk (T40:11-20), contrary to due process and case law requirements for such findings.

In summary, despite successful therapeutic engagement and clear intent to comply with reunification, Appellant was denied all contact with his son based on unresolved billing and financial hardship—without updated expert input, a plenary hearing, or statutory findings addressing the child's best interests.

LEGAL ARGUMENT

POINT 1

THE FAMILY COURT VIOLATED CONSTITUTIONAL LAW BY CONDITIONING PARENTAL ACCESS ON ECONOMIC MEANS

(T42:1-7)

Appellant's constitutional rights under the Due Process and Equal Protection Clauses of the U.S. and New Jersey Constitutions were violated when the court conditioned access to his son on financial capacity. In the April 11, 2025 hearing, the court stated it would not consider reinstating visitation unless Appellant demonstrated the ability to pay for therapy. (T42:1-7). Conditioning parenting time on wealth infringes on fundamental parental rights. See *MLB v. S.L.J.*, 519 U.S. 102,

111 (1996); Troxel v. Granville, 530 U.S. 57, 65 (2000);
Slawinski v. Nicholas, 448 N.J. Super. 25, 35 (App. Div. 2016).

POINT 2

**THE COURT FAILED TO MAKE FACTUAL FINDINGS
REQUIRED BY STATUTE AND COURT RULE**

(T40:1-3)

Under N.J.S.A. § 9:2-4 and R. 1:7-4(a), the trial court was required to make specific factual findings regarding the best interests of the child before denying parenting time. In the hearing (T40:1-3), the judge declined to make further orders yet failed to conduct any statutory analysis or assess risk or safety. See Hand v. Hand, 391 N.J. Super. 102, 112 (App. Div. 2007) (trial courts must explain conclusions based on evidence and law).

POINT 3

**THE COURT MISCHARACTERIZED THE REUNIFICATION
REPORT AND IMPROPERLY FOUND "ESTRANGEMENT"**

(T33:3-5; T34:1-13)

The trial court incorrectly interpreted Dr. Forshee's December 26, 2024 report as negative and labeled the case one of "estrangement." (T33:3-5). In fact, Appellant and his son

participated in multiple documented sessions that were successful. (T13:1-5; T35:1-9). Dr. Forshee made no legal recommendations and explicitly stated she could not ethically do so. Misreading her neutrality as a negative finding was erroneous. See *D.A. v. R.C.*, 438 N.J. Super. 431, 452 (App. Div. 2014) (courts may not infer conclusions absent expert recommendation).

POINT 4

THE COURT VIOLATED PROCEDURAL DUE PROCESS BY
DENYING A PLENARY HEARING AND FAILING TO UPDATE
THE EXPERT RECORD

(T42:2-6)

Parental rights cannot be terminated or restricted without a full and fair opportunity to be heard. The court denied all parenting and phone contact without holding a plenary hearing or calling expert testimony—even though multiple sessions occurred after the last written report. (T42:2-6). This omission deprived Appellant of due process. See *In re Guardianship of K.H.O.*, 161 N.J. 337, 349 (1999); *R.K. v. D.L.*, 434 N.J. Super. 113, 135 (App. Div. 2014).

POINT 5

MULTIPLE ADDITIONAL ERRORS APPEAR ON THE FACE OF
THE RECORD

(T33:1-T42:7)

The transcript reveals numerous procedural and legal errors:

T33:1-5: The court improperly labeled the case as "estrangement" despite evidence of successful sessions.

T35:9-18: It denied visitation based on an unresolved billing dispute without finding willful noncompliance.

T9:1-11: The court ignored financial hardship documentation submitted by Appellant.

T40:11-20: Phone contact was prohibited without a finding of risk or harm.

T41:5-11: Substance abuse was dismissed as non-issue, yet used to justify denial.

T38:3-18: The court erroneously distinguished Slawinski as applying only to grandparents.

T30:13-22: Parenting time authority was improperly delegated to a third-party therapist and custodial parent.

Each error on its own is reversible; together, they demonstrate a pattern of disregard for statutory and constitutional safeguards. See *Caplan v. Caplan*, 182 N.J. 250, 270 (2005); *Pascale v. Pascale*, 140 N.J. 583, 595 (1995).

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court:

1. Reverse the Family Part's April 11, 2025 denial of parenting and phone time;
2. Remand for a prompt plenary hearing with appropriate findings under N.J.S.A. 9:2-4;
3. Order reinstatement of interim parenting time and phone contact pending further proceedings.

Respectfully submitted,
S/James Laborante

Dated: August 18, 2025



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October 30, 2025

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Re: *Christy P. Dornacker v. James Laborante*
Docket No. A-002959-24T1

Honorable Judges of the Appellate Division:

Pursuant to *Rule 2:6-2(b)*, please accept this letter brief in lieu of a more formal submission on behalf of amicus curiae the American Civil Liberties Union of New Jersey (“ACLU-NJ”) in the above-captioned matter.

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PRELIMINARY STATEMENT

This case concerns one of the most fundamental rights long recognized by our legal system: the right of a parent to form and maintain a meaningful relationship with their child. Courts across the nation, alongside psychologists and child-development experts studying the impact of parent-child separations, have consistently held that the bond between parent and child is a cornerstone of a child's emotional well-being, stability, and development. This Court has similarly repeatedly affirmed that the parent-child relationship is a constitutionally protected liberty interest, one that may be interfered with by the state in only the most compelling of circumstances.

In this case, despite Appellant's consistent efforts to exercise his parental rights and be an active participant in his son's childhood, the family court has denied him visitation for the last five years. The judge has cited various reasons over time, all of which have been addressed and eliminated. Most recently, the trial court has introduced arbitrary conditions, including financial barriers, to Appellant's reunification with his son—essentially placing Appellant's financial status above the best interest of the child. Despite being aware of the father's financial status, the court has refused to work within his means to ensure protection of his right to family integrity. With no alternative recourse available, the father has filed this appeal to secure *any* continued communication with his

son. The result of the family court's order has been devastating not only to the father, but also his son, who has been deprived of a relationship with a fit and loving parent, not because of any danger or risk, but because of the parent's financial status.

Under the state constitution, the Appellant, Mr. Laborante, is entitled to a relationship with his son. This right is wholly separate from his financial status and any unsubstantiated opposition from third parties. Where the best interest of the child is served by a relationship with his parents of origin and can be fostered with the aid of the state, the trial court must work to achieve this goal, rather than unnecessarily and unconstitutionally inhibiting the relationship by creating arbitrary barriers.

For these reasons, this Court should overturn the trial court's decision to deny Mr. Laborante any and all contact with his son and allow him to restore his ability to begin participating in his son's life. Granting reasonable and consistent visitation is not only consistent with Mr. Laborante's constitutional rights as the father, but, importantly, also serves the child's best interests by fostering the healthy parent-child relationship that he deserves.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Amicus curiae adopts the facts and procedural history laid out in Appellant James Laborante’s brief filed with the Appellate Division on August 18, 2025, adding the following for clarity.

Mr. Laborante was a devoted and consistent presence in his son’s life until around April of 2020. Until then, visits were regular, often supervised by Mr. Laborante’s mother, with whom he resided. See A-14¹ at 2. These visits were stable and positive, giving the child a meaningful connection with his father. A-14 at 5, ¶ 3. April 2020 marked the last time that Mr. Laborante was permitted liberal parenting time. *Id.* at 2, ¶ 2. In June 2020, Respondent was granted a temporary restraining order when Mr. Laborante appeared at their home asking to see his son. *Id.* at 2, ¶ 3. In November of 2021, Mr. Laborante was arrested on drug charges and the court immediately suspended all parenting time. *Id.*

This was a turning point for Mr. Laborante. He resolved to turn his life around—not only for himself, but for the sake of his child whom he loved deeply and for whom he wanted to be a role model. In 2022, Mr. Laborante entered residential treatment at Discovery Institute. A-8. He successfully completed multiple levels of the program, earning certificates of completion and letters of support from his counselors. A-2 (letter from Discovery Institute showing that

¹ “A” refers to the appendix to Appellant’s Appellate Division brief.

he completed residential treatment Level 2 and tested negative for all substances); A-4 (certificate of completion from Discovery Institute); A-8, A-9, A-10 (letter from Discovery Institute counselor and confirmation of program completion). Since completing treatment, he has submitted to every random drug test required by the court and has tested negative for all. A-13 (results from May 31, 2023), A-15 (results from August 29, 2023), A-30 (results from December 20, 2024).

Mr. Laborante's commitment has gone far beyond basic compliance. His treatment providers have praised his progress and his ability to mentor others in recovery. Friends and family confirm that Mr. Laborante is a changed man—responsible, sober, and deeply committed to being a safe, positive influence in his son's life. A-5, A-6, A-7 (character references from individuals familiar with Mr. Laborante's growth and success in not only becoming sober, but also using his experience to become a positive influence on others facing similar struggles).

Most recently, the court ordered reunification as the next step towards parenting time for Mr. Laborante. This was based on a custody neutral assessment ("CNA") report from July 13, 2023, stating that reunification therapy should commence as soon as possible. A-14 at ¶ 6. The court subsequently issued an order denying any interim contact between Mr. Laborante and his son, but also stating that reunification therapy may begin once the parties agree on a

therapist. The order stated that in the case where the parties cannot agree to a provider, the court shall make a selection no later than October 5, 2023. A-17 (court order dated September 9, 2023).

In response to this court order and eager to pursue the next step to full parenting time with his son, Mr. Laborante researched several reunification therapists that fell within his budget, were accredited and experienced, were close in geography to both parents, and were available to begin sessions as soon as possible. He listed the possible options for therapists in several letters that were sent to both the court and to opposing counsel. A-18 (letter to opposing counsel on September 21, 2023 explaining that their options were too far and expensive and providing three alternatives); A-19 (letter to the court on September 28, 2023 explaining the same); A-24 and A-25 (letters to the court on February 2, 2024 and February 4, 2024 again making clear that he could not afford the suggested therapist). Despite the court order from September stating that the court would select a therapist *no later than* October 5, the court delayed the selection, putting Mr. Laborante in a position where he had to beg for not only a therapist that worked within his budget and timeline, but *any* therapist that could begin sessions and allow Mr. Laborante time with his son. A-20, A-22, A-23 (letters to the court on October 4, 2023, November 2, 2023, and November 26, 2023, pleading the court to enforce their own order to select a

therapist). During this interim period, Mr. Laborante remained completely alienated from his son with no recourse.

On June 7, 2024, the court finally—and notably, 8 months after its own deadline—ordered Dr. Forshee to be the family’s reunification therapist. A-26. Given Dr. Forshee’s waitlist, the family was not able to be seen until over six months later, where Mr. Laborante was at last reunited with his son in a “successful reunification” session. A-31 (Dr. Forshee’s notes on the session). However, Mr. Laborante’s initial concern about finances remained, and in February 2025, he was no longer able to pay for the thousands in retainer fees needed to continue with the therapy. A-33 (email from Dr. Forshee after missing one of the installment payments, noting that \$900 would be required immediately to keep that day’s and the following day’s appointments, and full payment would be required for future appointments and a court report). While Mr. Laborante was on a payment plan of \$300 weekly until this point, Dr. Forshee no longer entertained this payment plan when his retainer account emptied, instead requiring full upfront, payment that he would not be able to cover. Tr. at 11, ¶ 3. Desperate for any contact with his son, and having no alternative options, Mr. Laborante filed for visitation and provided a suggested parenting time schedule to the court and to opposing counsel, which was denied

by the court on April 11, 2025 on the basis that reunification therapy with Dr. Forshee was “incomplete.” A-1 at 2.

The reunification therapy sessions have thus far been successful (A-31, a report from the reunification therapist dated December 26, 2024, discussing next steps after the “initial successful reunification that occurred on December 18, 2024”), and Mr. Laborante has addressed and eliminated every issue raised in the past five years of this case including his sobriety (A-2, A-4, A-8, A-10, A-13, A-15, A-30, letters from Discovery Institute showing completion of program, dated March 31, 2022 through March 30, 2023, and subsequent negative drug tests dated between May 31, 2023 and December 20, 2024), necessity for therapy (A-14 at 5, noting that Mr. Laborante reported beginning individual psychotherapy in or around July 2023), and now, cost-prohibitive reunification therapy despite all genuine risk of harm having already been addressed. The trial court has refused to work within Mr. Laborante’s means in providing options that encourage and support the father-son relationship, instead issuing orders that Mr. Laborante has repeatedly expressed will not be sustainable for him. Despite there being no risk of harm to his son, Mr. Laborante has been denied a significant element of his fundamental rights as a parent for half a decade now.

STANDARD OF REVIEW

Generally, a family court's factual findings “should not be disturbed unless

‘they are so wholly insupportable as to result in a denial of justice[.]’” *In re Guardianship of J.T.*, 269 N.J. Super. 172, 188 (App. Div. 1993) (quoting *Rova Farms Resort, Inc. v. Invests. Ins. Co. of Am.*, 65 N.J. 474, 483-84 (1974)). See also *N.J. Div. of Youth & Fam. Servs. v. F.M.*, 375 N.J. Super. 235, 259 (App. Div. 2005). However, reversal of the trial court’s determination is appropriate when a trial judge's findings are “so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice.” *Rova Farms*, 65 N.J. at 484 (quoting *Fagliarone v. Township of North Bergen*, 78 N.J. Super. 154, 155 (App. Div. 1963)). Moreover, the trial judge's “interpretation of the law and the legal consequences that flow from established facts” are not subject to deference and are reviewed de novo by this appellate court. *Manalapan Realty, L.P. v. Twp. Comm. of Manalapan*, 140 N.J. 366, 378 (1995).

With regard to visitation, the role of the trial judge is to find the facts and state conclusions of law. *R.* 1:7-4. The purpose and philosophy of *Rule* 1:7-4 “requires such findings to be made even where there is no formal trial.” *Wilke v. Culp*, 196 N.J. Super. 487, 500 (App. Div. 1984). Accordingly, a family court’s failure to make explicit findings and clear statements of reasoning “constitutes a disservice to the litigants, the attorneys and the appellate court.” *Kenwood Assocs. v. Bd. of Adjust. of Englewood*, 141 N.J. Super. 1, 4 (App. Div. 1976).

Judged by that standard, the trial court’s decision to deny parenting time was an error and should be reversed.

ARGUMENT

I. The trial court’s order denying Appellant any contact with his son violates substantive due process principles.

Article I, Paragraph 1 of the state constitution contains a substantive due process component that “protects individuals from the ‘arbitrary exercise of the powers of government.’” *Felicioni v. Admin. Off. of the Cts.*, 404 N.J. Super. 382, 392 (App. Div. 2008) (quoting *Daniels v. Williams*, 474 U.S. 327, 331 (1986)); *see N.J. Const.* art. I, ¶ 1. In evaluating a substantive due process challenge under the state constitution, a court must apply a balancing test in which it weighs “the nature of the affected right, the extent to which the governmental restriction intrudes upon it, and the public need for the restriction.” *Visiting Homemaker Serv. of Hudson Cnty. v. Bd. of Chosen Freeholders*, 380 N.J. Super. 596, 610 (App. Div. 2005) (quoting *Greenberg v. Kimmelman*, 99 N.J. 552, 567 (1985)). Substantive due process principles hold that the state action at issue must “not be unreasonable, arbitrary or capricious, and that the means selected bear a real and substantial relationship to a permissible legislative purpose.” *Taxpayers Ass’n of Weymouth Twp., Inc. v. Weymouth Township*, 80 N.J. 6, 44 (1976), *cert. denied*, 430 U.S. 977 (1977) (citing *Nebbia v. New York*, 291 U.S. 502, 525 (1934)).

The trial court's order has severely intruded upon Mr. Laborante's fundamental right to visitation as a father. No demonstrated need justifies this extreme level of intrusion. Furthermore, the trial court has arbitrarily imposed a financial condition on Mr. Laborante's exercise of this right, violating the father's substantive due process rights.

A. Visitation between a parent and their child is a longstanding fundamental right.

The fundamental nature of a legal parent's right to maintain contact with their child is amply supported by case law and legislation and regularly reiterated by state courts.² *In re Guardianship of K.H.O.*, 161 N.J. 337, 347 (1999); *In re Adoption of Children by L.D.B.*, 134 N.J. 127, 132 (1993); *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *Santosky v. Kramer*, 455 U.S. 745, 787 (1982) (recognizing that “[f]ew consequences of judicial action are so grave as

² It has been suggested by some courts that parenting time is a right belonging not only to the parent, but also to the child. *See, e.g., Cooper v. Cooper*, 99 N.J. 42, 50 (1984) (discussing the “mutual right of the child and the . . . parent to develop and maintain their familial relationship”); *R. v. F.*, 113 N.J. Super. 396, 402 (J. & D.R. Ct. 1971) (discussing the “natural right” of a child to spend time with each parent). This right is necessarily limited by the “extent that [the child's] natural [parent] thus consents,” which is not the issue in the case at hand. *Shambaugh v. Wolk*, 302 N.J. Super. 380, 406 (Ch. Div. 1996). *See also* U.N. Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, which includes among basic children's rights “the right to know and be cared for by his or her parents” as far as possible, and to “maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.”

the severance of natural family ties.”). Recognizing the importance of family integrity and the maintenance of parent-child ties, the New Jersey Legislature has also declared that “[t]he preservation and strengthening of family life is a matter of public concern as being in the interests of the general welfare.” *K.H.O.*, 161 N.J. at 347 (quoting N.J.S.A. 30:4C-1(a)).

The fundamental nature of the right to family integrity requires careful consideration prior to affirmative government interference. As such, where the state has exercised the powers of the government to intrude upon the protected parent-child relationship, a court must apply the above balancing test to determine whether the intrusion is constitutional.

B. The trial court’s order places a heavy burden on Mr. Laborante’s exercise of his right to visitation.

The second factor in the state substantive due process balancing test—the extent to which the governmental restriction intrudes upon the protected right—is evident in the amount of contact that Mr. Laborante has been granted with his son since addressing all outstanding concerns. The complete denial of contact, including even any form of electronic communication, is tantamount to total alienation between father and son, similar to the consequences that stem from a termination of parental rights. *See Wilke*, 196 N.J. Super. at 501 (holding that the trial court’s judgment denying the father any visitation had the effect of “cut[ting] off forever the child from his natural parent.”).

Here, Mr. Laborante repeatedly begged the court to consider alternative therapists that were not only more affordable, but also closer, more available, and equally qualified as the only therapist that opposing counsel approved and whom the court ultimately appointed. A-18, A-19, A-20, A-22, A-23, A-24, A-25. Without giving any reason or justification for the selection, the court ignored, and in fact, opposed, Mr. Laborante's numerous options for an alternative therapist. A-26 (court order dated June 7, 2024, ordering Dr. Forshee as the reunification therapist). It was made clear to all parties from the beginning that Mr. Laborante would not be able to afford this therapist in the long term, thus it was only a matter of time before he would again be left with no choice but to remain fully alienated from his child. The extent of governmental restriction here, denying all forms of contact with an unsatisfiable condition, is far on the extreme end of the spectrum and thus must be justified by a strong showing by the State of the public need for this restriction.

C. There is insufficient justification for the denial to Mr. Laborante of his fundamental right to have contact with his son.

For noncustodial parents who lack physical custody, visitation is an especially critical component in the maintenance of long-term parent-child ties, and any restriction on it thus must be justified by a strong public need to do so beyond the mere desire to maintain status quo in opposition to the natural parents' desires. Indeed, absent a right to visitation, such a parent may not have

any other means available to maintain a relationship with their children, resulting in circumstances that are contrary to the public interest in children's well-being. *L. 2021, c.154*, § 1(d) (holding that “[p]arental rights must be protected and preserved whenever possible.”).

Courts have held that even the public's interest in ensuring that children of separated parents receive the financial support that they need to thrive is not sufficient justification to deny a parent's rights to contact with their child. *Fiore v. Fiore*, 49 N.J. Super. 219, 227 (App. Div. 1958) (finding that “the duty of a father to support his children and the right of a father to visitation . . . are not dependent upon or connected with each other.”). Thus, “visitation rights are enforceable even independently of the support obligation.” *In re Adoption of Two Children by J.J.P.*, 175 N.J. Super. 420, 430 (App. Div. 1980).

Failure to pay support by the noncustodial parent is an unsound reason for denying visitation in most other jurisdictions as well. One court has highlighted the need for children to maintain a relationship with their natural parents even in the face of the parent's failure to support the child financially, stating that “it is unnecessary to include in the decree conditions which make visitation contingent upon payment of support . . . and any attempt to do so would have the effect of permitting a parent to bargain with the rights of the child.” *Griffin v. Griffin*, 177 S.E.2d 696, 698 (Ga. 1970). *See also Howard v.*

Howard, 143 So. 2d 502, 503 (Fla. Dist. Ct. App. 1962); *Chaffin v. Grigsby*, 293 So. 2d 404, 405 (Fla. Dist. Ct. App. 1974). Another court has said that because the father's visitation rights with his child were promulgated with a view to doing what was in the child's best interests, it was improper to condition those rights upon the father's payment of child support. *Davis v. Davis*, 573 N.Y.S.2d 162, 162 (App. Div. 1991). The majority view acknowledges that a child's best interests are not served by making visitation dependent upon the payment of money. *Olson v. Olson*, 398 So. 2d 491, 491 (Fla. Dist. Ct. App. 1981); *Acker v. Acker*, 365 So. 2d 180, 181 (Fla. Dist. Ct. App. 1978); *Ledsome v. Ledsome*, 301 S.E.2d 475, 479 (W. Va. 1983); *Bonnilla v. McCuen*, 858 N.Y.S.2d 732, 733 (App. Div. 2008). In fact, the duty to support has been found independent of visitation. *Raymond v. Raymond*, 345 A.2d 48, 52 (Conn. 1974); *Hester v. Hester*, 663 P.2d 727, 728 (Okla. 1983). Thus, a noncustodial parent's visitation arrangements cannot be conditioned on compliance with child support obligations. *In re the Marriage of Cox*, 878 P.2d 903, 907 (Mont. 1994). *See also Perkinson v. Perkinson*, 989 N.E.2d 758, 762 (Ind. 2013). While the state may assert a public need to incentivize parents to stay current on child support payments so children can ensure basic necessities, courts find that there must be a greater public need before preventing a parent from maintaining communication with their child.

Certainly, there are cases in which there exists actual or a risk of harm to a child where a court must rule against visitation. In such a case, the public need for the restraint—namely, a child’s need for a healthy, safe environment—may outweigh the constitutional right to family integrity and justify the high level of intrusion upon this right by the court. However, there has been no finding of such circumstances here, and instead, the condition for continuing reunification therapy amounts to a financial precondition to contact between the father and son. The court here has also failed to fully consider the case law and New Jersey Legislature’s explicit stance on the importance of maintaining parent-child ties as well as the extensive social science research showing the long-term harms of such conduct under the third factor of the balancing test, thus failing to justify the restriction on Mr. Laborante’s visitation rights.

The social science on parent-child separations dates back to World War II, showing the long-term harms of such conduct. *See, e.g.,* James Rusby & Fiona Tasker, *Long-Term Effects of the British Evacuation of Children During World War 2 on Their Adult Mental Health*, 13 *Aging & Mental Health* 391 (2009). More recently, studies show that parent-child separation has long-term effects on child well-being even if there is subsequent reunification. After being separated, reunited children can experience difficulty with emotional attachment to their parents, self-esteem, and physical and psychological health. Andrea

Smith et al., *Serial Migration and Its Implications for the Parent-Child Relationship: A Retrospective Analysis of the Experiences of the Children of Caribbean Immigrants*, 10 *Cultural Diversity & Ethnic Minority Psych.* 107, 110 (2004); Zoya Gubernskaya & Joanna Dreby, *US Immigration Policy and the Case for Family Unity*, *J. on Migration & Hum. Sec.* 417, 420 (2017). For some children, time does not appear to fully heal these psychological wounds. Jack Shonkoff et al., *The Lifelong Effects of Early Childhood Adversity and Toxic Stress*, 129 *Am. Acad. Pediatrics* e232, e238 (2012). Parental separation is considered a toxic stressor, an experience that engages strong and prolonged activation of the body's stress-management system. Anne Bridgman, *Social Policy Report Brief: How Abuse and Neglect Affect Children's Minds and Bodies*, *Soc'y for Rsch. Child Dev.* Mar. 1, 2014, at 2. The physiological and psychological toll of early life stress, including parental separation, changes how the body responds to stress in the long term, disrupting higher-order cognitive and affective processes as well as negatively altering brain structures and functioning (Sonia Lupien et al., *Effects of Stress Throughout the Lifespan on the Brain, Behaviour and Cognition*, 10 *Nature Revs. Neurosci.* 434, 434 (2009); Pia Pechtel & Diego Pizzagalli, *Effects of Early Life Stress on Cognitive and Affective Function: An Integrated Review of Human Literature*, 214 *Psychopharmacology* 55, 57 (2011). Such stressors put children at greater risk

for a multitude of health and psychological impairments, including anxiety, depression, post-traumatic stress disorder, lower IQ, obesity, immune system functioning, physical growth, cancer, heart and lung disease, stroke, and morbidity. Christine Heim & Charles Nemeroff, *The Role of Childhood Trauma in the Neurobiology of Mood and Anxiety Disorders: Preclinical and Clinical Studies*, 49 *Biological Psychiatry* 1023, 1024 (2001); Jayanthi Maniam et al., *Early-Life Stress, HPA Axis Adaptation, and Mechanisms Contributing to Later Health Outcomes*, *Frontiers in Endocrinology*, May 2014, at 3; Pechtel & Pizzagalli, *Effects of Early Life Stress on Cognitive and Affective Function*, *supra*, at 65; Elizabeth Shirtcliff et al., *Early Childhood Stress Is Associated with Elevated Antibody Levels to Herpes Simplex Virus Type 1*, 106 *Proc. Nat'l Acad. Scis. USA* 2963, 2964 (2009).

When studying the effects of the most extreme form of parent-child separations—terminations of parental rights—children have been shown to maintain “significant psychological ties” to their families of origin even after adoption to a new family, despite the legal severance of the parent-child relationship. Matthew B. Johnson, *Examining Risks to Children in the Context of Parental Rights Termination Proceedings*, 22 *N.Y.U. Rev. L & Soc. Change* 397, 414 (1996).

The scientific evidence on parent-child separation is conclusive: not only does separation prevent the strengthening of an irreplaceable familial bond and creation of lifelong memories, but also causes a host of psychological, social, physical, and mental challenges for the child that do not necessarily resolve fully upon reunification. These ties to the original family, particularly parents, cannot be easily erased or replaced.

These harms are contrary not only to the public interest of ensuring a child's well-being, but also to established public policy. *See In re Baby M*, 109 N.J. 396, 435 (1988) (“[New Jersey’s] policy, however, has long been that to the extent possible, children should remain with and be brought up by both of their natural parents.”). Accordingly, this Court has also recognized that long-term separation of a parent and their child is detrimental, and that “depriving children of all contact with their father is an extreme measure that, if improperly imposed and maintained for a lengthy period of time, could cause severe injury to the children.” *S.M. v. K.M.*, 433 N.J. Super. 552, 557 (App. Div. 2013). Outside of rare cases of actual harm or risk of harm, it is therefore in the best interest of the child—and the public—to continue fostering such relationships.

Reunification therapy and other services requiring a payment are, in some contexts, appropriate for families. Mr. Laborante has not denied this, nor has he denied that reunification therapy for him and his son would be helpful in

strengthening their relationship. He was more than willing to find and contact several therapists within his means that also met the qualification requirements communicated by opposing counsel. A-25 (letter from Mr. Laborante with alternative options for therapists and explanation for why opposing counsel's recommendations were not feasible or unavailable). But continuing to order the only reunification therapist that is outside of the parent's means when other, equally qualified alternatives are available (see A-18, 19, 20, 21, 23, 24 for letters to the court from Mr. Laborante with suggested alternatives and their respective credentials, as well as reasons against appointment of Dr. Forshee including a long waitlist, the significantly higher cost, and long travel distance), is an improper exercise of judicial power that infringes excessively on Mr. Laborante's rights as the father.

A father with greater economic means in the same situation could continue meeting with his son and build the relationship towards eventual unsupervised, unrestricted visitation. The only difference between such a hypothetical father and Mr. Laborante is their ability to pay \$300 weekly in addition to a retainer fee in excess of \$5,000. A-24 (noting the retainer cost and waiting list for Dr. Forshee). Visitation, as a fundamental right, cannot be arbitrarily conditioned on a father having such threshold means; both fathers in this hypothetical scenario, absent harm to their child, are equally entitled to an opportunity to foster the

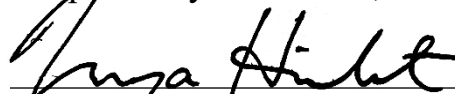
parent-child relationship. The public need justifying a burden on a fundamental right does not increase when a father has less economic means.

Mr. Laborante has now spent several thousand dollars in fees and can no longer afford sessions, leaving him with no alternative opportunities to see or communicate with his son. His son has enjoyed reconnecting with his father, but for seemingly no reason and out of the blue, as far as the son knows, his father has again lost that relationship for an indefinite period of time. The inconsistency of his father's presence is at best, confusing, and at worst, harmful, for Mr. Laborante's son—certainly not in alignment with the public's need to ensure children's well-being and in violation of the father's substantive due process rights.

CONCLUSION

The trial court erred in denying Mr. Laborante's application for visitation because it violates Mr. Laborante's substantive due process rights as the father and because there was no risk of harm to his son. Accordingly, the Court should reverse the trial court's decision.

Respectfully submitted,



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