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JW Plaintiff v.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION: FAMILY PART BERGEN COUNTY FM-02-1542-16
WW Defendant	CIVIL ACTION OPINION

Decided: May 1, 2018

Celine Y. November, Esq and Laura Nunnink, for Plaintiff, JW
(November & Nunnink. LLC.)

John Finnerty, Esq., for Defendant, WW
(Finnerty, Canda & Concannon, P.C.)

T. P. Bottinelli, J.S.C.

The court, in its discretion, utilizes initials in place of the names of the parties and children.

This pre-judgment case comes before the court and raises the following issues:

1. Cause of Action;

2. Parenting time and Child Support;

3. Alimony (Rehabilitative and Limited Duration);

4. Equitable Distribution of assets and allocation of debt;

5. Counsel Fees.

This opinion addresses all of the above and outlines a number of factors applied by the Court in addressing the topic of contested parenting time.

A trial was conducted on March 22, March 26, March 27, March 28, March 29, April 9, April 10, April 11, April 12, April 13, 2018.

Witnesses and Documentary Evidence.

The following witnesses were called to testify by Plaintiff:

Plaintiff, J.W.

Judith Greif, D.S.W., a Joint Expert on Parenting Time (as stipulated by the parties) testified in support of her position that it is in the best interests of the children that they be given an opportunity to cultivate relationships with each of the parents.

The following witnesses were called to testify by the defendant:

Defendant, W.W.;

Defendant's mother, K. W.

In determining credibility of the various testifying witnesses, the Court took into consideration the following:

1. The witness' interest, if any in the outcome of the case;
2. The accuracy of the witness' recollection
3. The witness' ability to know what he/she is talking about;
4. The reasonableness of the testimony;
5. The witness; demeanor on the stand;
6. The witness' candor or evasion;
7. The witness' willingness or reluctance to answer;
8. The inherent believability of the testimony;
9. The presence of any inconsistent or contradictory statements.

In addition to witness' testimony, the parties agreed to place in evidence volumes of documents. Those exhibits marked into Evidence are listed on the attached Evidence Logs. Contested documents were ruled upon by the Court and, if admitted into Evidence, noted on said Logs.

Defendant also presented recordings of a conversation which took place on September 10, 2016. This segment was part of recordings which spanned more than five hours which occurred with individuals other than the children after the defendant had finished conversing with the children via FaceTime. Despite having put the audio through Court Smart as well as through the built-in computer speaker

and amplified by the Bose system installed in the courtroom, the recordings presented were largely garbled, unintelligible and provided no meaningful information to the Court. The Court Smart recordings, as requested by the defendant, were reviewed once again.

The discernable portions of the tapes contained a discussion between the plaintiff and her father about a relative, Rachel, and her giving her children sugary drinks rather than water.

Defendant asserts that this sole conversation, between two adults which did not have the subject of the children of the parties and which spanned less than two minutes, demonstrates the existence of a hostile environment in the household.

The Court finds that this unclear conversation, without context, is stale and provides no meaningful assistance to the Court with regard to the issues in this action.

Based upon the testimony presented, documents reviewed and Evidence submitted during the course of this litigation, the Court makes the following findings of fact and conclusions of law.

Issue One: Cause of Action.

Plaintiff comes to court seeking a divorce from her husband based on irreconcilable differences. Even though the plaintiff, J.W., presently 37, moved to Missouri with the three children of the marriage in March, 2016, the defendant,

W.W., presently 39, has maintained a residence in New Jersey. The parties had previously lived in Mahwah but, during the course of the pendency of this action, that home was sold on October 1, 2016..

Jurisdiction, therefore, is properly in the State of New Jersey and Venue set in Bergen County.

The parties were initially married in a civil ceremony on February 7, 2008 in New York. Thereafter, according to the plaintiff, they went through three "wedding vow renewal" ceremonies. The first was in New York City on February 9, 2008 which was a Muslim ceremony attended by friends of the parties; the next took place in Pakistan on March 7, 8 and 9, 2008 where the plaintiff was introduced to the defendant's family and friends who resided in Pakistan. That ceremony was also religious in nature and finally a ceremony on April 19, 2008 in Missouri which was presided over by plaintiff's cousin, a Baptist minister, and was attended by the plaintiff's family.

Thereafter, certain differences developed between the parties which caused a breakdown in the marriage. The plaintiff testified that those differences are irreconcilable, that is, there is no reasonable prospect for reconciliation. Those irreconcilable differences existed for at least six months before the Complaint was filed on January 14, 2016 and the Counterclaim filed by the defendant on February

23, 2016. Those differences have resulted in a marriage which is irretrievably broken down.

There are three children of the marriage: a son, Son (born October 1, 2010) and daughters Daughter 1 (born April 20, 2012) and Daughter 2 (born February 3, 2015). By consent of the parties, mother and children have lived with the plaintiff and her parents, in Chillicothe, Missouri since in March, 2016.

There were actions between these parties in both New Jersey as well as Missouri concerning the marriage and allegations of Domestic Violence. The first, filed in New Jersey, was withdrawn and the parties entered into "Civil Restraints" which terms included plaintiff being permitted to move to Missouri with the three children of the marriage. That Consent Order was entered on February 29, 2016. She and the children continue to live in Missouri in her parent's house.

Other actions between the parties and/or their family members and/or local law enforcement alleging criminal conduct in Missouri did not result in an Order of Protection and, according to the defendant, the criminal charges against him brought by the police were dismissed after a jury trial.

During the course of this trial, the defendant withdrew his counterclaim for divorce.

Judgment is, therefore, entered in favor of the plaintiff for the grounds stated.

Issue Two: Parenting time and Child Support.

The Court considers the following factors set forth in N.J.S.A. 9:2-4 in determining custody:

1) The parents' ability to agree, communicate and cooperate in matters relating to the children;

2) the parents' willingness to accept custody and any history of unwillingness to allow parenting time not based on substantiated abuse;

3) the interaction and relationship of the children with their parents and siblings;

4) the history of domestic violence, if any;

5) the safety of the children and the safety of either parent from physical abuse by the other parent;

6) the preference of the children when of sufficient age and capacity to reason so as to form an intelligent decision;

7) the needs of the children;

8) the stability of the home environment offered;

9) the quality and continuity of the children's education;

10) the fitness of the parents;

11) the geographical proximity of the parents' homes;

12) the extent and quality of the time spent with the child prior to or subsequent to the separation;

13) the parents' employment responsibilities;

14) and the age and number of the children.

In addition to the above Custody Factors, the Court has considered additional factors including:

15. Can a plan be developed which will foster a strong relationship between the children and the children's parents?

16. Any special circumstances or needs of the children;

17. The reasonable likelihood of abuse or undue pressure placed on of a child during non-parenting time including religious proselytization.

18. The inconvenience to and burdensome impact or effect on the children of traveling for purpose of parenting time;

19. Whether a parent has frequently failed to exercise parenting time;

20. Whether there is a need to minimize the risk of abduction to a non-signatory country to the Hague Convention;

21. The impact on the defendant and his ability to worship as he sees fit;

22. Whether there should be a division of the responsibility for transportation of the children;

23. How much notice should be given when parenting time will not occur;

24. During the time a child is with a parent to whom parenting time has been awarded, what is the authority of that parent to decide routine matters;

25. Any other item which would have impact on the child having an opportunity to cultivate a positive relationship with each parent.

The parties agree that they will share Joint Legal Custody of the three children, Son, Daughter 1 and Daughter 2.

However, the underlying question raised incorporates concerns by the parties as to whether or not either parent will be named as the Parent of Primary Residence, also referred to as the Primary Caretaker of the children. See Pascale v. Pascale, 140 N.J. 583, 598-599 (1995).

The importance of this designation is stressed by defendant's desire that the children be brought up following the religious tenets of Islam while the plaintiff is a proponent of the Christian faith. Defendant asserts that is his obligation to assure that the children are brought up in his faith.

Factor One: The parents' ability to agree, communicate and cooperate in matters relating to the children.

Before their marriage, the defendant demanded that, should they have children, the children would have to be brought up practicing Islam and, if she refused to consent, he would call off the relationship. Plaintiff was not happy with

his mandate but, as the Roman poet Virgil wrote, "*Omnia vincit amor*" (love conquers all).

Plaintiff, had been raised as a Catholic and was practicing as of the time the parties started dating. There were times when the defendant would attend Catholic services even though plaintiff had initially agreed that she would study Islam.

While residing in Mahwah they did not necessarily purchase Hilal meats and would shop at both Islamic and non-sectarian food stores. If they went out for dinner, the defendant would order steak, chicken or other non-Hilal foods.

In October, 2006 plaintiff surprised the defendant when he heard her voice on a loudspeaker during a religious service. She converted to Islam. During the next two years she would participate in some of the practices, procedures and rituals of Islam, largely out of deference to the defendant, but around 2008-2009 she began questioning those more confining religious traditions, demands and beliefs foisted upon her by her husband and she started to revert to her Christian upbringing.

She also testified that as time went on, the defendant became insistent that she cover her head and arms; that she not wear shorts or tank tops; that she learn Arabic and Urdu; that she, as well as the children, have prayer mats. His faith requires that believers pray 5 times a day, face Mecca and that all prayers be said in Arabic in the Muslim tradition.

This caused considerable conflict between the parties which escalated over the years, especially after the children were born.

When plaintiff became pregnant with their third child, the defendant informed plaintiff that he was thinking about divorcing her. He blamed her for the pregnancy and insisted that she abort the pregnancy. She refused. She and the children fled to Missouri and stayed with her family.

On August 5, 2014 she retained counsel regarding her rights. Daughter 2 was born on February 3, 2015.

She noted that, following the birth of the children, she agreed that certain foods (such as pork) would continue not to be served to them.

Comments were made in front of the children by the defendant that they could only say their prayers in daddy's church, not mommy's. He did not want them practicing Christianity.

While living in Mahwah, their son, Son, and their older daughter, Daughter 1, attended Holy Cross Lutheran pre-school and the plaintiff celebrated Christmas with her family and friends.

Defendant's demands concerning religion played a significant role in the breakdown of the marriage. Plaintiff, on the other hand, was willing to accept the importance of his customs and practices but ultimately decided that she preferred Christian beliefs over Islam to the dismay of the defendant.

While in New Jersey, since the plaintiff was a stay-at-home mom, it was primarily she who was charged with, among others, preparing and planning of meals; bathing, grooming, and dressing the children; purchasing, cleaning, and caring for their clothes; assuring the children received appropriate medical care, including nursing and general trips to physicians; arranging for social interaction for the children among peers; arranging alternative care, i.e., babysitting or daycare; putting the children to bed at night, attending to the children in the middle of the night, and waking them in the morning; disciplining and educating the children.

The defendant, working from home, was able to assist with the above but primary responsibility was on the plaintiff.

Once the mother and children relocated to Missouri, Son and Daughter 1 were able to be enrolled in the local public school, Dewey Elementary, and Daughter 2 continued to be enrolled in a Catholic pre-school, Bishop Hogan.

Defendant did make it a point to speak with Daughter 2's teacher, Mrs. Hogan, to direct that the child not be served gelatin or pork for religious as opposed to medical reasons.

Now that she is in Missouri, her parental duties have continued.

Defendant had complained that the plaintiff did not advise him of a doctor's appointment with a cardiologist concerning a heart condition which Daughter 2 was born with.

Nonetheless, without consulting the plaintiff or the child's pediatrician, took it upon himself to schedule an appointment for Son to be examined by an Ear Nose and Throat (ENT) specialist as he asserted that Son had complained of earaches. He was aware that the plaintiff had already made arrangements with an ENT to examine Son. However, he wanted a doctor chosen by him to examine the child.

The initial consultation was not followed up as certain information regarding prior medical conditions (allergies) was needed. When the defendant asked plaintiff for the information, she responded with a comment to the effect, you are the boy's father – you should already know that information. His only known allergy is to penicillin. Since that time, he has not had any problems with earaches.

Unbeknownst to the plaintiff, defendant had also made arrangements for Daughter 2's cardiologist, Dr. Marans whose office is in Paramus, New Jersey, to send the child's medical chart to an affiliated cardiologist, Dr. Emil Boccha, at Columbia Presbyterian Hospital.

Defendant has never met Daughter 2's Cardiologist in Missouri and only attended one out of four appointments with her cardiologists after the child was born and was living in New Jersey. He has not met with Dr. Boccha.

These types of unilateral actions have caused considerable strife between the parties as each has complained that the other has not has been given sufficient input with regard to the children's medical care.

Defendant would prefer that the plaintiff and children relocate from Chillicothe to Kansas City. His primary reason is that he wants to be "close to my place of worship."

As an aside, he has done several hours of "internet research" regarding several schools in the area of Lees Summit, a suburb located to the south east of Kansas City and several hours from Chillicothe. That "research" was not accepted into evidence for several of the reasons explained elsewhere in this Opinion.

In determining the best interests of the child, not only considered are the schools' rankings and statistics, but examination of the peer relationships that the child has created in the original school, the continuity of friendships if the child transfers schools, and the ties that the child has with the community. Levine v. Levine, 322 N.J. Super. 558, 567 (App.Div. 1998). There has been no expert testimony concerning any of the above.

He also asserts that the education the children could receive in Kansas City is superior in a large city as opposed to Chillicothe, a community of around ten thousand residents. Although his claim is unsupported by expert testimony, he does concede that his wife received a very good education in Chillicothe, was able to graduate with a Bachelor for Arts degree from Missouri State and had been able to obtain gainful employment thereafter.

When joint custodians are unable to agree upon an educational course of action for their child, and the court must declare the child's educational future, "it is axiomatic that the court should seek to advance the best interests of the child." Asch v. Asch, 164 N.J. Super. 499, 505 (App. Div. 1978); See Hoefers v. Jones, 288 N.J. Super. 590 (Ch. Div. 1994).

The "best interests" of the child includes "the right of [the] child[] to be supported, nurtured, educated in accord with the collective available income of both parents, to require parents to keep their promises." Hoefers, *supra,* 288 N.J. Super. at 604.

Because the test to determine the best interests of the child possesses no clear guidelines and there are a variety of factors to be considered, any evaluation of a school district is "inherently subjective." Levine, *supra*, 322 N.J. Super. at 567.

Overall, if the court, after balancing the factors, determines that the child is emotionally and intellectually thriving in his or her original school, it will hold that it is in the best interests of the child to remain in his or her original school, and the court is less likely to order a transfer of schools. Levine, *supra,* 322 N.J. Super. at 568.

In deciding that the child's best interests will be met if he/she remained in his/her current school, the court held that, "just as a student cannot be summed up

by IQ, verbal skills or mathematical aptitude, a school is more than its teacher-student ratio or State ranking." Id. at 567.

Moreover, that court contended that equally, if not more importantly, in its consideration of the child's best interests, were the peer relationships that the child created at his/her current school, the continuity of his/her friends if she transferred to another school, and the emotional attachment to both the school and the community; it held that these factors must be analyzed in light of their ability to stimulate the child's intellectual and emotional growth. Id.

Under the facts presented, the Court makes no findings as to which educational institution are in the best interests of the children.

In Asch v. Asch, the court emphasized that the goal was to advance the best interests of the child and it held that although the court cannot prevent exposure to competing religions, it should consider the religious preferences of both parents at the time the child was born, looking to the educational opportunities of the competing schools, the advantages and disadvantages of the schools, and the effect that parochial education will have on the child's Jewish religion. Id. at 505.

The testimony by the plaintiff revealed that the parties had discussed raising children as Muslim. Well before the birth of Son, plaintiff had already begun to reject certain practices of Islam and reverted to Christian beliefs.

However, the parents' or the child's religious practices are not solely determinative, but rather, are only a factor in the equation of a child's best interests; more specifically, in Hoefers v. Jones, the court mandated a father to pay for his children's school tuition at a Christian school although he claimed that he was agnostic and that paying for his children's attendance not only constituted an unconstitutional involuntary support of religion but was also against public policy. 288 N.J. Super. 590, 595-96 (Ch. Div. 1994).

If a child is educationally and emotionally thriving at their respective religious school, the court should not interrupt his/her stability and progress solely because the instruction was incompatible with one of the parent's religious preferences. Id. at 619.

It is well-established law in that the First Amendment to the United States Constitution is made applicable to the states through the Fourteenth Amendment. Cantwell v. Connecticut, 310 U.S. 296 (1940). As such, citizens of the State of New Jersey are protected from state action interfering, such as by prohibiting or compelling, the exercise of religion. The New Jersey Constitution (1947), Art. 1, par. 3, as stated in Brown v. Szakal, 212 N.J.Super. 136, 139 (1986), "State action can be the effort, either affirmative or negative, permissive or prohibitive by the executive, legislative or judicial branches of our government. In re Adoption of E., 59 N.J. 36 (1971)."

The Court further explained, "A judicial decision which compels or prohibits an act is 'state action.' Such state action by a court cannot transgress constitutional protections. Thus, the decisions of this court must neither violate the mother's or the children's constitutional right to religious freedom nor permit the imposition upon the father of the mother's religion which imposition would violate the father's constitutional right of freedom of religion." *Id.* at 140 (internal citations omitted).

In determining what is in the child's best interest, the court may additionally inquire whether it is psychologically desirable for the child to be exposed to the conflicting desires of its parents insofar as its religious training is concerned.

Neither party advanced the proposition that it is psychologically desirable or undesirable for the children to be exposed to both religions.

Because of the tender ages of the children, although there has been some exposure to both of the parent's religious beliefs, the children have not been fully indoctrinated into either religion.

The view has long been expressed that as between father and mother, any question respecting the child's religion should be settled by the custody award. The Parental Right to Control the Religious Education of a Child, Lee M. Friedman *Harvard Law Review* Vol. 29, No. 5 (Mar., 1916), pp. 485, 499.

There is much to be said for the view that all other things being equal, the determining factor should be custody. There is a suggestion of this in In re Flynn, 87 N.J. Eq. 413 (Ch. 1917).

The parent to whom custody is awarded must logically and naturally be the one who lawfully exercises the greater control and influence over the child. [...] To create a basic religious conflict in the mind of the child, and between it and its custodian, would be detrimental to its' welfare. Boerger v. Boerger, 26 N.J. Super. 90, 104 (1953).

Further, Courts have held that religious and moral education are significant to positive growth and advancing a child's best interests and general welfare. Brown v. Szakal, 212 N.J.Super. 136, 140 & 141, (Ch. Div.1986).

However, Courts have specifically limited their involvement by deferring to parents to determine how religion and moral training are practiced and implemented. Hoefers v. Jones, *288 N.J.Super. 59, 610 (1994)*; Brown v. Szakal, *supra;* Boerger v. Boerger, 26 N.J.Super. 90, 97 (Ch.Div. 1953); Wojnarowicz v. Wojnarowicz 48 N.J.Super. 349, 1(Ch.Div.1958)

The Court in Asch v. Asch, *supra* 164 N.J.Super. at 505 held "courts cannot choose between religions; they cannot prevent exposure to competing and pulling religious ideas and rituals. But the courts should seek to minimize, if possible,

conflicting pressures placed upon a child and to give effect to the reasonable agreement and expectations of the parents concerning the child's religious upbringing before their marital relationship foundered, subject to the predominant objective of serving the child's welfare comprehensively."

The Court's opinion in Asch emphasizes that courts do not choose between religions and will not contemplate or entertain a view regarding same. Asch v. Asch, *supra.* This is reiterated in Feldman v. Feldman, 378 N.J.Super. 83 (2005), which held as follows:

"We do no more than seek to establish secular rules to minimize the conflicting pressures placed on the children and permit them to steer a course between the conflicting views and beliefs of their parents. This course hopefully, in furtherance of our paramount interest in the best welfare of the children and subject to that interest, will give effect to the legitimate expectations of each of the parents with respect to their children's upbringing and the legitimate right of the children to understand their heritage. The orders which we affirm endorse neither the religion nor the culture of either parent but are intended to insure that the children have the opportunity to participate in the cultural household routine and religious practices of both parents." *Id.* citing McCown v. McCown, 277 N.J.Super. 213, (App.Div.1994).

During the course of trial, these parties had agreed that the children will be exposed to both religions.

Factor Two: The parents' willingness to accept custody and any history of unwillingness to allow parenting time not based on substantiated abuse.

Plaintiff is trying to advance her financial future by attending college to become a respiratory therapist. She explained that this career-path will provide her with opportunities to work in rehabilitation facilities, hospitals, nursing homes, extended care facilities and so forth.

Her endeavor includes clinical work at the Hedrick Medical Center located in Chillicothe and it is anticipated that her educational endeavor will cost around $48,000. Thus far, this schooling has been funded by student loans.

She testified that her application for admission into the program included her giving the school a list of three locations where there were hospitals for her to gain her clinical experience. For obvious reasons the school chose Chillicothe for completion of the clinical component.

In Chillicothe, the maternal grandparents are available to care for the children when the plaintiff has class or needs to study; the children are given an opportunity to cultivate relationships with the grandparents and are able to continue to maintain

school friendships, participate in school and community related activities and other recreational activities.

It is the plaintiff who concurs that the defendant should be able to develop and improve his relationship with the three children by spending every other weekend with them in Missouri while he chooses to remain in New Jersey.

There were limited visits by the defendant to Missouri for the purpose of parenting time from March, 2016 to October, 2016. Since October, 2017, defendant has spent alternate weekends with the children in accordance with the various parenting time entered by the Court.

He has made all but a couple of weekends for parenting time with the children and those couple of times were for reasons beyond his control.

The parenting time has frequently been around Kansas City but, unfortunately and presumably because of the distance between the Kansas City and Chillicothe, the defendant has too often declined to bring the children to pre-scheduled activities and events on his weekends.

There have been some concerns raised by the plaintiff that the defendant, rather than spending time to cultivate relationships with his children, has chosen to spend holidays with his friends or alone and has visited Peru, Ecuador, Brazil,

Germany, England, Japan, Vietnam, Hawaii, Miami and Key West without affording the children to be exposed to new lands and cultures. However, the defendant points out that the trip to Ecuador and Peru were in 2014 and taken with the plaintiff's consent and the trip to Japan was a 2014 business trip with customers of Mitsubishi.

On the one hand defendant wants to make sure the children fit in and seeks to have them relocate to a city where they may feel more comfortable with people who dress in garb consistent with his religious beliefs. He also wants the children to fit in in the local community in Chillicothe. Yet, he also complained to the school administration that he believed that his children should not be subject to, for example, holiday festivities in which a Santa's Helper may appear.

He has, however, unilaterally and without consultation with his wife, chosen to respond to the children (now ages 3, 5 and 7) that Santa Claus, the Tooth Fairy and the Easter Bunny are not real.

He admitted that has told the children that "evil will hide in the toilet."

Even more concerning, Dr. Greif testified that Daughter 1 confided that her father told her that he may remarry and she, Daughter 1, would have a new mommy.

The child responded to the father "I already have a mommy."

If and when the defendant decides to move to Missouri, plaintiff has suggested that his current alternating weekend parenting time be expanded to include mid-week dinner and ultimately additional week-night overnights should this be able to be accomplished without negative impact on the children's sleep/school/social schedule.

The parties are unlikely to be able to reside in the same community. Dr. Greif reported that the plaintiff expressed concerns to her that she needed some separation from the defendant because he has been verbally and emotionally abusive to her. She testified at trial in a similar way.

It must be mentioned that the defendant suggested that rather than having alternating weekends, he have two out of three weekends with the children.

His position is, quite clearly, a veiled attempt to give himself two consecutive weekends with the children as this would promote his own interests in having the children have weekend exposure to his religious beliefs with greater frequency than with the mother's. Such a plan would be contrary to the children's right to be exposed to the religions of each of the parties.

In addition to interfering with the parties' right to expose the children to each of the parent's religious beliefs, his proposal would disrupt the children's activities

and social events; deprive the plaintiff of her opportunity to spend meaningful week-end time with the children and would be troublesome in planning and maintaining the children's social, athletic and extracurricular activities.

The Court is satisfied that his suggestion is a rather insincere attempt to control and influence the religious education of the children rather than fostering the best interests of the children.

Factor Three: The interaction and relationship of the children with its parents and siblings.

There was no testimony presented which would lead the Court to believe that the children have anything other than a good relationship with each of the parents and each other.

Factor Four: The history of domestic violence, if any.

This factor was previously noted.

Factor Five: The safety of the child and the safety of either parent from physical abuse by the other parent.

Not applicable as to the physical safety of the children.

There has been testimony from the plaintiff, and reports to Dr. Greif by her, that she had been subjected to physical and emotional abuse by the defendant which included him slapping her, giving her a black eye, him yelling at her and the children and imposing unilateral time periods for her to respond to questions posed to her electronically. He has, quite simply, attempted to control the plaintiff.

Dr. Greif also testified that the defendant was cordial and respectful to her but she noted that anecdotal remarks made to her during her investigation revealed that he engaged in a negative way with the plaintiff in front of the children to the point where Daughter 1 pleaded "mom, dad, stop arguing."

Dr. Greif expressed concern that the defendant will try and control the plaintiff and the children as he is a controlling and intimidating person.

Factor Six: The preference of the child when of sufficient age and capacity to reason so as to form an intelligent decision.

Not applicable as these children are ages three, five and seven.

Factor Seven: The needs of the child.

The Court concurs with the findings of Dr. Greif that the needs of the children have been more than adequately addressed by them living in Chillicothe with their mother and maternal grandparents.

Plaintiff does not intend to live with her parents forever but needs financial assistance from the defendant in order to move from her parent's home.

Factor Eight: The stability of the home environment offered.

The Court is satisfied that the children remaining with their mother provides a loving, stable environment which, coupled with regular visitation and nightly electronic communication through Skype or Facetime (or similar methodology) will help the children to foster a meaningful relationship with their father.

Factor Nine: The quality and continuity of the child's education.

At this point in their young lives, the children have just begun their educational journey. There was no testimony presented which would lead the Court to conclude that their educational experience is sub-par or detrimental to their ultimate educational goals as may be set by their parents.

Factor Ten: The fitness of the parents.

This factor is addressed throughout.

It is undisputable that the plaintiff is a fit and capable parent. It is also incontrovertible that the defendant loves his children very much. He, however,

throughout the proceedings, was unable to bring himself to compromise in developing a workable parenting plan.

Factor Eleven: The geographical proximity of the parents' homes.

So long as the defendant chooses to remain in New Jersey, that choice will have the effect of causing a negative impact on his ability enjoy the many experiences which the children will enjoy in their day to day lives. His parenting time must, of necessity, be limited to weekends and vacation times as weeknight dinners or weeknight overnights are nigh impossible to arrange without impacting the children's regular routines.

The cost of travel between New Jersey and Missouri every other weekend has been substantial. Defendant estimated the cost to be between $1,000 and $1,400 per parenting weekend for food, airfare, hotel and car rental.

These parties do not have the financial wherewithal to continue the present arrangement long term.

However, in light of his job with Mitsubishi which allowed him to change territories from the New Jersey, New York, Pennsylvania area to a mid-America territory which includes North and South Dakota, Nebraska, Iowa, Kansas and Missouri, there is no reason why he cannot move to Missouri.

He has responsibility to oversee salespeople in those states. He no longer has customer responsibility with entities located in the NY/NJ metropolitan area. He is able to communicate with clients by phone, web conference or otherwise. He does not have an office as he works from home.

Since accepting the new territory in October 2016, he has been able to perform his job and testified that his evaluations have noted that his performance has exceeded the expectations of his supervisors.

The defendant and his mother both testified that they have family residing in New Jersey. However, for the reasons discussed at length in this Opinion, the plaintiff and the children will be remaining in Missouri.

Should defendant choose to relocate to Missouri, as explained by Dr. Greif, he should be able to experience at least one weeknight dinner with the children so long as their journey home will not interfere with their routines. Plaintiff does not object.

It would be unreasonable to expect that the plaintiff relocate from her parent's home in Chillicothe at this time. Such a move would result in an uprooting of the children; interfere with plaintiff's ability to finish her education and clinical work at the local hospital and negatively impact the children as far as their education,

socialization, after school and weekend events. Moreover, she does not have the funds to presently relocate.

As part of his employment contract he had agreed to relocate from New Jersey to Missouri in the fall of 2016. He has not fulfilled this obligation. As part of the Consent Order of February 29, 2016 he had also agreed to relocate to Missouri. He has broken both of these agreements.

Factor Twelve: The extent and quality of the time spent with the child prior to or subsequent to the separation.

Since their move to Missouri in March, 2016, the defendant has only been able to experience raising the children on weekends or during vacations. Dr. Greif noted, for example, that the defendant only saw Daughter 1 twice in a seven month period of time.

The plaintiff has no objection to the defendant spending more time with the children so long as there is no detrimental impact to them or their routines. This would, of necessity, require the defendant to relocate closer to the children.

Prior to her relocation, the plaintiff did complain that the defendant favored his only son, Son, and chose to spend more time with him than with the daughters.

If that is true, he and the children are missing out on many important life experiences.

Factor Thirteen: The parents' employment responsibilities.

As noted throughout, the plaintiff is currently a full-time student through the California College for Health Sciences and anticipates finishing her 26 month educational endeavor in the fall of 2019. She anticipates having a career as a respiratory therapist. She testified that she expects to be able to earn around $50,000 per year.

In addition to receiving the appropriate training to be licensed in that field, she will receive the additional benefit of receiving an Associate's degree.

After the plaintiff graduated from Missouri State with a Bachelor of Arts Degree she entered into the world of Fashion marketing where she worked in New York City. She was initially employed by Estee Lauder and later on found a job with UGG. She had made around $50,000 per year from 2004-2010 and the highest amount earned in one year was $60,000..

In order to use her acquired skills in the fashion industry, she testified that she would have to be located in either New York City or Los Angeles as those cities are the centers of the fashion world in this country.

Defendant has a Bachelor's degree and is working towards a Master's in Business Administration which is done online through Rutgers.

Defendant is employed by Mitsubishi Electric Power Products as a Territory Sales Manager. He started with the company in 2008 and currently earns around $165,000 annually.

At his request, after signing the Consent Order to allow relocation of his family to Missouri, his employer granted defendant's request to change his territory from New Jersey, New York and Pennsylvania to the Mid-America Region.

Because he does not need a base office, he can live anywhere. Although his offer letter from Mitsubishi accepts his statement that he was to move to Kansas City by October, 2016, this provision has been honored in the breech.

Despite that clause, he testified that he need not relocate to Kansas City proper, but a suburb would be acceptable to his employer. It is negotiable.

His testimony on the witness stand is at odds with his certification of September 16, 2016 wherein he stated "I **will** be moving to Missouri the first week in October." (Emphasis supplied).

He also testified that he did not move to Missouri as such a move is "beyond my control." That statement is false.

There is nothing preventing him from moving to Missouri except his own insistence that the children be returned to New Jersey. He has had many opportunities to address his position through mediation and several settlement conferences with the Assignment Judge.

The fact of the matter is that he chose to remain in New Jersey only because he did not want to have the trial of this case moved to Missouri. This is another example of his unwillingness to act reasonably.

He asserts that he has declined to apply for more lucrative positions with Mitsubishi which have opened up on the South East region and California as those positions would negatively impact his ability to parent.

Contrary to the actual testimony of the plaintiff, he asserted that she refuses to discuss additional parenting time should he relocate to Missouri. Her testimony was exactly opposite!

His credibility was frequently called into question. By way of example, promised he would move to Missouri in the Order of February 29, 2016; he promised his employer he would move to Missouri by October 2016 in his employment agreement and he certified that his move to Missouri was definite as expressed in his Certification of September 16, 2016. He is frequently a fabulist.

Factor Fourteen: The age and number of the children.

Three, ages 3, 5 and 7.

Factor Fifteen: Can a plan be developed which will foster a strong relationship between the children and the children's parents?

The primary concern in setting up a parenting plan is the best interests of the children. Here, although Dr. Greif testified that she recommended every other

weekend with a periodic review as the children get older, she was not able to make a stronger statement. Her report is, by her own admission, stale. It was written more than a year ago and has not been updated since that time.

In order to foster this relationship between the parties and the children, the Court is satisfied that the defendant should have parenting time every other weekend from Friday after school until Sunday, one hour before the youngest child's bedtime.

Once the defendant has moved to Missouri (and provided he moves within a reasonable distance, such as 45 minutes driving time from the children) he should have weekly mid-week overnight parenting time on Wednesdays from after school or after completion of scheduled activities by the children with drop-off at their school the next morning.

As the children get older and the plaintiff is out of the grandparent's home, the expectation is that the children will be able to enjoy an additional overnight on the Monday after the non-parenting weekend from after school/scheduled activity until drop off at school on Tuesday morning. That overnight parenting time is dependent upon many factors not the least of which is the defendant's choice of residence. The suggested 45 minute driving time as well as the drop off one hour before the youngest child's bedtime would continue. He would be able to continue with the Wednesday overnights as well.

The Court accepts the recommendation of Dr. Greif that parenting time should be reviewed when Daughter 2 enters kindergarten. The schedule should also be reviewed when plaintiff relocates outside her parent's home.

Factor Sixteen: Any special circumstances or needs of the children.

Not addressed by the parties other than to note that Daughter 2, who was born with a heart defect called ventricular septal defect (VSD), continues to receive medical monitoring in Missouri.

Factor Seventeen: The reasonable likelihood of abuse or undue pressure placed on a child during non-parenting time including religious proselytization.

In light of the balancing of factors, the court can consider the religious practices of the child and his or her parents when determining the best interests of the child, however, again, the court looks to where the child is thriving. Asch v. Asch, 164 N.J. Super. 499, 505 (App. Div. 1978).

The Court is particularly concerned that the defendant will attempt to indoctrinate the children to his religious views during plaintiff's parenting time.

In the past he has regularly attempted to direct their mode of worship, prayer, etc. in his electronic visual communication (FaceTime) with the children.

The Court directs that neither party is to attempt to proselytize during any such electronic communication.

When the children are physically present with either of the parents, that parent may instruct the children in their religious beliefs and practices but shall refrain from making any derogatory remarks or opinions concerning the religious beliefs or practices of the other parent.

Factor Eighteen: The inconvenience to and burdensome impact or effect on the children of traveling for purpose of parenting time.

The parenting plan must contain safeguards to protect the rights of the children to cultivate relationships with each of their parents. Parenting time must, of necessity, be adjusted to take into consideration pre-planned activities of the children. Those activities must not, however, be intentionally scheduled to conflict with parenting time of the other parent.

The parents, knowing that there will be alternating weekend parenting time, are to endeavor not to schedule events during the other parties' parenting time to the extent reasonably foreseeable.

In order to help the parents meet the obligations to each other with regard to parenting time, it is suggested that they mutually sign up for an online program such as My Family Wizard onto which the parties can post the children's schedules; can communicate with each other without fear of spoofing; can post awards; advise of upcoming events and generally keep each other up to date about the children, their ongoing educational, medical and social activities and schedules.

In the alternative or in addition, they could, as recommended by Dr. Greif, retain a person to act as an intermediary or coordinator should they be unable to work out parenting time issues between the two of them.

Factor Nineteen: Whether a parent has frequently failed to exercise parenting time.

Defendant has regularly exercised parenting time since October, 2017. Prior to that time his parenting was spotty, at best.

Factor Twenty: Whether there is a need to minimize the risk of abduction to a non-signatory country to the Hague Convention.

The Court does have concerns that two of the defendant's sisters reside in Pakistan, his father lives in Pakistan although he sometimes ventures to Canada and his sister and mother reside in Canada.

The children of this marriage were all born in the United States and are United States Citizens. Both parties are US Citizens.

The parties are to cooperate in obtaining United States Passports for the children and both parents are prohibited from obtaining a passport for the children from any country other than the United States.

Once obtained, the parties are to register each child's passport in the Children's Passport Issuance Alert Program (CPIAP) which registration will allow the Department of State's Office of Children's Issues to contact the enrolling

parent(s) to verify whether the parental consent requirement for minor passport issuance has been met when a passport application has been submitted for an enrolled child.

In addition, upon a child's enrollment in the CPIAP, Department of State may alert the enrolling parent(s) of a pending passport application and past passport issuances for the children.

The children's passports are to be held by the plaintiff, who is designated as the Parent of Primary Residence (or primary caretaker).

Absent written agreement between the parties, the children are prohibited from traveling to any country which is both:

(a) not a signatory to the Hague Convention on the Civil Aspects of International Child Abduction **and**

(b) not a U.S. Treaty Partner under the Hague Abduction Convention.

Both requirements must be met before international travel.

Factor Twenty-One: The impact on the defendant and his ability to worship as he sees fit.

Although this factor has been addressed throughout, there is necessarily going to be an impact on the children.

The defendant and children are entitled to have a meaningful relationship. However, the religious needs of the defendant cannot be satisfactorily addressed at

the same time addressing the both parent's rights and children's right to have a meaningful relationship with each parent.

The children live and will continue to live with their mother in Chillicothe. The father will need to relocate closer to the children but has expressed concern that there is no mosque nearby Chillicothe. The closest mosque to the children is around St. Joseph, MO, a distance of approximately 100 miles from Chillicothe.

As outlined in other considerations herein, in order for the defendant to have both a mosque to worship in and have a reasonable distance by both mileage and time to transport the children, he will need to make a decision where to live and must keep in mind the ages of the children, their ongoing routines for meals, bedtime, school, activities etc. Their wellbeing is paramount.

The Court recognizes that his work entails some travel (approximately "20 – 25% of the time") and he will also, by necessity, need to relocate to an area where he will have access to air travel.

Factor Twenty-two: Whether there should be a division of the responsibility for transportation of the children.

The parties must pick out a mutually convenient drop off location for the children to be transferred between the parents. There is, at this time, only one vehicle equipped to transport the children. In fairness, it would be best for the plaintiff/mother to transport the children to the drop-off location and, until such time

as the defendant obtains a vehicle which will safely accommodate the children consistent with Missouri law, change cars.

Until the defendant acquires a suitable vehicle suitable for transporting the children, he must, of necessity bring the children back to the agreed upon location sufficiently in advance to assure that they can be transported back to the mother's home consistent with the time periods established herein.

Factor Twenty-three: How much notice should be given when parenting time will not occur?

Absent emergency, the parties should communicate with each other no less than 24 hours in advance of the time needed to bring the children to the agreed upon drop off area.

The children have the right to expect parenting time will occur and the parties should do their best not to disappoint them by cancellation.

Factor Twenty-four: During the time the children are with their father, what are his decision-making rights?

During that parenting time, the father is to decide all routine matters concerning the children, including religious observance. He must seek to minimize the conflicting pressures placed upon the children and to give effect to the reasonable agreement and expectations of the plaintiff, who is, considering all of the above factors, designated as the Parent of Primary Responsibility.

Although both parents have responsibility for the children, the parent of primary residence (primary caretaker) has the greater physical and emotional role. Primary, rather than secondary, caretaker: is charged with preparing and planning of meals; bathing, grooming, and dressing; purchasing, cleaning, and caring for clothes; medical care, including nursing and general trips to physicians; arranging for social interaction among peers; arranging alternative care, i.e., babysitting or daycare; putting child to bed at night, attending to child in the middle of the night, and waking child in the morning; disciplining; and educating the child in a religious or cultural manner. Pascale, *supra,* 140 N.J. at 598.

Factor Twenty-five: Any other consideration which would have impact on the children having an opportunity to cultivate a positive relationship with each parent.

Defendant brought several anecdotal experiences to the Court with regard to incidents involving his in-laws and how he has been treated by them since the divorce Complaint was filed. Unfortunately, since the filing of the divorce pleadings, it is undeniable that the maternal parents have been less than amiable to their son-in-law.

While it would be in the children's best interest that the adults act like adults, their animosity has infiltrated the relationship. Their ill feelings are human nature

and their inability to hold their tongues and attempt to put on a good face for the benefit of the children has not gone un-noticed by the Court.

It is recommended that the grandparents contact a health care professional to help them deal with the divorce and to help them recognize that, no matter how disappointed they may be, their grandchildren have the right to not only know what is good in each of their parents, they are entitled to cultivate a relationship with both.

While the defendant now challenges the good faith of the mention of possible "reconciliation" in the Consent Order of February 29, 2016, he does acknowledge that he filed a Counterclaim seeking a divorce on February 23, 2016, only six days before entering into the Consent Order, in which he certified that there was no reasonable prospect for the parties to reconcile.

In addition, the Court has referred to other documents wherein he confirmed that it was his intention to relocate from New Jersey.

He argues fraud in the inducement and desires to vacate that Consent Order. His request was not supported by objective proof.

In order for the court to vacate such a voluntary agreement which was entered into with advice of counsel, he must prove the presence of fraud by "clear and convincing evidence." Nolan v. Lee Ho, 120 N.J. 465, 472 (1990). Defendant has not met this burden.

With regard to forcing the mother and children to relocate from Missouri to New Jersey, plaintiff has no support system in New Jersey for herself or the children and her husband consented to her moving back to her home state, Missouri. For all of the reasons expressed herein, his request that the children be uprooted and brought back to New Jersey is denied.

After considering all of the aforementioned, the Court finds that it is in the best interests of the children that the plaintiff, J.W., be designated as the Parent of Primary residence (Primary Caregiver) for the three children. See: Bisbing v. Bisbing, 230 N.J. 309 (2017).

The Court agrees with Dr. Greif that the future parenting schedule should be addressed and adjusted by the parents, hopefully with a trained professional, once Daughter 2 turns enters kindergarten.

Should the defendant relocate to Missouri he must be within 45 minutes driving time to the children's home.

Child Support is set pursuant to the attached Child Support Guidelines.

Holiday and Vacation Schedule

Unless the parties agree, in writing, to modify this schedule it is set as follows:

MLK (Monday) shall be with and attach to the preceding weekend until 6:00pm Monday if this is a school holiday.

President's Day (Monday) shall be with and attach to the preceding weekend until 6:00pm Monday if this is a school holiday.

Good Friday will be with and attach to the weekend. If it is the father's weekend, he may pick the children up earlier than the regular time if he is so available. He must text message the mother as soon as he knows his schedule.

Easter Sunday will be with the Mother in all years

Memorial Day (weekend) will be with and attach to the preceding weekend until 6:00pm Monday.

Independence Day (July 4th) will be with the Mother in even years and the Father in odd years from 10:00am until 10:00pm or after fireworks.

Labor Day (weekend) will be with the Father every year.

Columbus Day (Monday) shall be with and attach to the preceding weekend until 6:00pm.

Thanksgiving will be with the Father in odd years and the Mother in even years from Wednesday after school until Friday 6:00pm. Regular weekend schedule will resume.

Christmas Eve (December 24th) and **Christmas Day** (December 25th) shall be with the Mother every year.

New Year's Eve (December 31st) shall be with the Mother in even years and with the Father in odd years starting at 3:00pm overnight to January 1st.

Mother's Day will be with the mother every year starting at 10:00 am if it is not already her parenting week.

Father's Day will be with the father every year from 10:00 am until 7:00 p.m. if it is not already his parenting week.

Children's Birthdays – Each parent shall be entitled to a block of time with the children on their respective birthdays. The parties agree to communicate with one another one week prior to each birthday to determine the time frame for each parent. Any parties shall be planned on the parents own respective weekend with the children. In the event that the parents decide to plan a join birthday party for the child(ren), they shall discuss all options in advance.

Mother's Birthday will be with the mother every year starting at 10:00 am if it is not already her parenting week.

Father's Birthday will be with the father every year starting at 10:00 am if it is not already his parenting week.

Eid Al Fitr and Eid Al Adha will be with the father, all years, starting at 10 a.m. if it is not already his parenting week.

School Breaks, School Closings

Teacher's Convention (Thursday and Friday) shall be determined by the parties.

December Break: The father will have the children from the close of school until Christmas Eve at 1:00pm.

February recess shall be determined by the parties. Father can have parenting time during the break if he has days off.

Spring Break – shall be determined by the parties. Father can have parenting time during the break if he has days off.

Summer Break- In August of each year, the mother will have the children from August 1st through the 15th. The father will have the children August 15th through Labor Day.

Alimony

There are four different types of alimony authorized by law: open durational alimony, rehabilitative alimony, limited duration alimony and reimbursement alimony.

Plaintiff requests rehabilitative and limited duration alimony only.

The Court considers the evidence in relation to the following factors as enumerated in N.J.S.A. § 2A:34-23(c):

(1) The actual need and ability of the parties to pay;

(2) The duration of the marriage.;

(3) The age, physical and emotional health of the parties;

(4) The standard of living established in the marriage and the likelihood that each party can maintain a reasonably comparable standard of living, with neither party having a greater entitlement to that standard of living than the other;

(5) The earning capacities, educational levels, vocational skills and employability of the parties;

(6) The length of absence from the job market of the party seeking maintenance;

(7) The parental responsibilities for the children;

(8) The time and expense necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment, the availability of the training and employment, and the opportunity for future acquisitions of capital assets and income;

(9) The history of the financial or non-financial contributions to the marriage by each party including contributions to the care and education of the children and interruption of personal careers or educational opportunities;

(10)The equitable distribution of property ordered and any payouts on equitable distribution, directly or indirectly, out of current income, to the extent this consideration is reasonable, just and fair;

(11)The income available to either party through investment of any assets held by that party;

(12)The tax treatment and consequences to both parties of any alimony award, including the designation of all or a portion of the payment as a non-taxable payment;

(13)The nature, amount, and length of *pendente lite* support paid, if any; and

(14) Any other factors which the court may deem relevant.

N.J.S.A. 2A:34-23 b.

Duration of marriage is a key factor in determining alimony awards. N.J.S.A. 2A:34-23(b).

Limited duration alimony, which is, in addition to rehabilitative alimony, being sought by the plaintiff, is generally awarded when open durational alimony is inappropriate due to the duration of the marriage, "but where, nonetheless, economic assistance for a limited period of time would be just." Cox v. Cox, 335 N.J. Super. 465 at 476 – 478 (App. Div. 2000.

Limited duration alimony is intended for short term marriages where an economic need has been established. Id. at 476.

The legislature has mandated that the length of alimony cannot, except in exceptional circumstances, exceed the length of the marriage. See: N.J.S.A. 2A:34-23 c.

Plaintiff has not presented testimony nor evidence with regard to the minimum eight factors to demonstrate "exceptional circumstances" which would warrant extension of the maximum authorized statutory term.

Here, the licensed marriage ceremony took place on February 7, 2008 and the Complaint for divorce was filed on January 14, 2016 – period of 7 years, 11 months and 9 days.

"Limited duration alimony, like open durational alimony, reflects the important policy of recognizing that marriage is an adaptive economic and social partnership, and an award of either validates that principle." Cox v. Cox, *supra,* 335 N.J. Super. at 479.

Limited duration alimony is intended to recognize the contributions to a marriage made by a dependent spouse to a short-term marriage where the dependent spouse "possesses the ability to return to the workforce and achieve a reasonably comparable lifestyle." Crews v. Crews, 164 N.J. 11, 27 (2000).

Age, education and work experience are considered to be important factors in this regard. Heinl v. Heinl, 287 N.J. Super. 337 (App. Div. 1996). Here both parties are college educated. Plaintiff is 37 and defendant is 39.

Unlike open durational alimony awards, limited duration alimony awards do not require the Court to attempt to make the dependent spouse "whole." Cox , supra, at 476.

Limited duration alimony is not intended to facilitate the earning capacity of a dependent spouse or to make a sacrificing spouse whole, but rather to address those circumstances where an economic need for alimony is established, but the marriage was of short-term duration such that open durational alimony is not appropriate. Id.

Limited duration alimony is an equitable remedy meant to address a purely economic need. Id. at. 476. The Court considers the statutory factors relevant to alimony and the purpose of limited duration alimony, which is to address an economic need after a marriage of short-term duration. Elliot v. Prisock-Elliot, 2009 N.J. Super. Unpub. LEXIS 1327, 15 (citing Cox, supra, 335 N.J. Super. at 479, 483).

Among the factors to be considered are the length of the marriage in context with the other statutory factors including the recipient spouse as principal caregiver of children, the health of the parties, prolonged economic dependence, income disparity, education and work experience of the recipient spouse.

In determining the length of the term of limited duration alimony, the court shall consider the length of time it would reasonably take for the recipient to improve her earning capacity to a level where limited duration alimony is no longer appropriate. N.J.S.A. 2A:34-23(c).

"Rehabilitative alimony is an appropriate consideration in instances in which the marriage is relatively short and the recipient spouse is capable of full employment based on experience, additional training or further education." Finelli v. Finelli, 263 N.J.Super. 403, 406 (Ch.Div.1992).

Rehabilitative alimony is a short-term award meant to enable the former spouse to complete the preparation necessary for economic self-sufficiency (i.e. a spouse who gave up her education to support the household now needs a short-term award to engage in gainful employment). Cox, supra, 335 N.J. Super. at 475 (citing Hill v. Hill, 91 N.J. 506, 509 (1982); Milner v. Milner, 288 N.J. Super. 209, 213-14 (App. Div. 1996)).

The parties' respective position as outlined in their written summations is as follows:

Plaintiff: Rehabilitative alimony in the amount of $50,000 per year until January 1, 2020.

Limited Duration Alimony in the amount of $37,000 per year until January 1, 2025.

Plaintiff gives no credit for the *pendente lite* support paid to her as Ordered on February 20, 2016 ($300 per week) and October 6, 2016 which increased support by an additional $315 per week for a total of $615 dollars per week.

Defendant: He "stipulates" that he will pay two years of Limited Duration Alimony at $42,500 per year to be followed by two years of $30,000 annually. He asserts that he has already paid two years of *pendente lite* support totaling around $34,000 per year.

Statutory Analysis

Factor One: The actual need and ability of the parties to pay;

In the within matter it has been the defendant who has been the sole bread winner for the family since the plaintiff stopped working in 2010.

Because of the existing circumstances, the parties have been very fortunate that the maternal parents have opened up their home to their daughter and grandchildren providing them with shelter at no cost to the parties. The anticipated shelter expenses (Schedule A) for when the plaintiff and children move out are contained in her Case Information Statement (CIS).

After the filing of the Complaint and Counterclaim, on February 20, 2016 and again on October 6, 2016, defendant was Ordered to pay certain of the plaintiff's expenses and additional sums totaling $615. Once the plaintiff and children moved to Missouri his contribution has been limited although he has been paying insurances, unreimbursed medical expenses for the plaintiff and the children, pre-school expenses and has provided plaintiff with use of a credit card to be used in the event of emergency.

The defendant has been paying Transportation costs (Schedule B) such as contributing to gas for the family 2009 Honda Odyssey mini-van together with repairs and maintenance for that vehicle. Plaintiff will need to be in a position to provide transportation for the children now and in the foreseeable future.

Plaintiff claims a need for $9,295 per month – an amount that clearly is overly generous taking into account that this claim, if paid, would result in nearly $112,000 net expenses annually. Such a sum would leave the defendant with little or no money to live on.

Factor Two: The duration of the marriage;

Approximately eight years.

Factor Three: The age, physical and emotional health of the parties;

Previously addressed.

Factor Four: The standard of living established in the marriage and the likelihood that each party can maintain a reasonably comparable standard of living, with neither party having a greater entitlement to that standard of living than the other;

The Court has reviewed the various Case Information Statements marked into evidence by the parties. Unfortunately, the lifestyle established during the marriage is no longer applicable. The parties sold their house. Plaintiff moved to Missouri and the defendant is renting a room in a townhouse in Somerset County.

Expenses listed on plaintiff's CIS are anticipatory as her actual expenses are significantly less than when the parties were married since she and the children have been living with her parents. The parents are shouldering many of the expenses customarily paid by parties because of their benevolence. In the future, however, when plaintiff and the children move from the parent's house, her expenses will significantly increase.

Factor Five: The earning capacities, educational levels, vocational skills and employability of the parties;

Previously addressed. Once she graduates from school, she anticipates being able to earn around $50,000 a year as a respiratory therapist.

Factor Six: The length of absence from the job market of the party seeking maintenance;

Plaintiff has been out of the work force since the birth of their oldest child, Zane, in 2010.

Factor Seven: The parental responsibilities for the children;

As noted throughout, the plaintiff has been the primary caregiver of the three children since she moved to Missouri in March, 2016.

Prior to March, 2016, some of the responsibilities for raising the children were shared with the defendant as noted herein.

Factor Eight: The time and expense necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment, the availability of the training and employment, and the opportunity for future acquisitions of capital assets and income;

Plaintiff testified, and the Court accepts her representations, that she is enrolled in a course of study which will lead her to a new career as a respiratory therapist. By the fall of 2019, she will have completed her course work as well as her clinical practice. She expects that she will be able to earn at least $50,000 per year in her chosen field which presents her with more opportunities to earn than her previous work experience in the fashion industry.

Factor Nine: The history of the financial or non-financial contributions to the marriage by each party including contributions to the care and education

of the children and interruption of personal careers or educational opportunities;

Defendant has been the sole breadwinner since 2010 when their oldest child was born. See previous discussion points.

Factor Ten: The equitable distribution of property ordered and any payouts on equitable distribution, directly or indirectly, out of current income, to the extent this consideration is reasonable, just and fair;

Addressed in the discussion of Equitable Distribution hereinafter.

Factor Eleven: The income available to either party through investment of any assets held by that party;

Investments are limited to retirement plans.

Factor Twelve: The tax treatment and consequences to both parties of any alimony award, including the designation of all or a portion of the payment as a non-taxable payment;

Alimony paid by the defendant to the wife will be tax deductible to him, tax includible to her.

Factor Thirteen: The nature, amount, and length of *pendente lite* support paid, if any;

See previous discussion addressing *pendente lite* support. On February 20, 2016 defendant was ordered to pay certain scheduled expenses plus $300 per week. On October 6, 2016 that additional monetary contribution was raised by $315. Since that time he has been paying a total of $615 per week.

Factor Fourteen: Any other factors which the court may deem relevant.

The Court is mindful that the maternal grandparents are providing much needed support for the children by providing before and after school babysitting so their daughter can tend to her educational endeavors. However, once plaintiff moves from her parent's home, it may be necessary to have paid caregivers once the plaintiff moves out. This expense, should it develop, must be taken into consideration in computing future child support.

Upon consideration of all of the above factors, Rehabilitative Alimony is awarded to the plaintiff from May 1, 2018 until January 1, 2020 in the amount of $945 per week payable from the defendant to the plaintiff.

Thereafter, in recognition of her anticipated completion of her respiratory therapist program, alimony will be lowered to $735 per week for the remainder of the limited term support which support will terminate on April 30, 2023.

The Court imputed income to the plaintiff of $50,000 per year beginning January 1, 2020 and reflects her ability to provide more funds towards her own lifestyle.

The Court is satisfied that the quantum of these payments will allow the plaintiff to continue with her education, find suitable housing and continue to maintain a lifestyle which is not in excess of the lifestyle of the defendant. The sums awarded also take into account the amount of the *pendente lite* unallocated payments made by the defendant to the plaintiff.

Child support calculations are attached hereto but will need to be re-calculated on January 1, 2020 to account for plaintiff's earnings, actual or imputed.

The parties are to share unreimbursed medical expenses as well as extracurricular activities in accordance with the percentages found on line 7 of the Child Support Guidelines.

Child support may have to be recalculated should the plaintiff need to provide before-care or after-care for the children while she is engaged in the clinical aspects of her training and having moved out of her parent's residence.

In the event the defendant relocates to Missouri and he is able to provide before or after-care for the children, this would be taken into consideration in recalculating child support.

Equitable Distribution

Statutory Factors under N.J.S.A. 2A:34-23.1 include the following:

1. The duration of the marriage;
2. The age and physical and emotional health of the parties;
3. The income or property brought to the marriage by each party;
4. The standard of living established during the marriage;
5. Any written agreement made by the parties before or during the marriage concerning an arrangement of property distribution;
6. The economic circumstances of each party at the time the division of property becomes effective;
7. The income and earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children, and the time and expense necessary to acquire sufficient education or training to enable the party to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage;
8. The contribution by each party to the education, training or earning power of the other;
9. The contribution of each party to the acquisition, dissipation, preservation, depreciation or appreciation in the amount or value of

the marital property, or the property acquired during the civil union as well as the contribution of a party as a homemaker;

10. The tax consequences of the proposed distribution to each party;

11. The present value of the property;

12. The need of a parent who has physical custody of a child to own or occupy the marital residence or residence shared by the partners in a civil union couple and to use or own the household effects;

13. The debts and liabilities of the parties;

14. The need for creation, now or in the future, of a trust fund to secure reasonably foreseeable medical or educational costs for a spouse, partner in a civil union couple or children;

15. The extent to which a party deferred achieving their career goals; and

16. Any other factors which the court may deem relevant.

Factor One: The duration of the marriage;

Previously addressed.

Factor Two: The age and physical and emotional health of the parties;

Previously addressed.

Factor Three: The income or property brought to the marriage by each party;

Not addressed by the parties.

Factor Four: The standard of living established during the marriage;

Until the sale of the marital residence, these parties enjoyed a middle class lifestyle. The marital home was sold in October, 2016. In preparation for sale, the parties expended a total of approximately $5,000.

Factor Five: Any written agreement made by the parties before or during the marriage concerning an arrangement of property distribution;

None.

Factor Six: The economic circumstances of each party at the time the division of property becomes effective;

Addressed throughout.

Factor Seven: The income and earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children, and the time and expense necessary to acquire sufficient education or training to enable the party to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage;

Addressed throughout.

Factor Eight: The contribution by each party to the education, training or earning power of the other;

As to the plaintiff, previously addressed. As to the defendant, not applicable.

Factor Nine: The contribution of each party to the acquisition, dissipation, preservation, depreciation or appreciation in the amount or value of the marital property as well as the contribution of a party as a homemaker;

Addressed throughout.

Factor Ten: The tax consequences of the proposed distribution to each party;

Tax consequences were not addressed by the parties and they are left to discuss same with their respective tax advisors.

Factor Eleven: The present value of the property;

Addressed hereinafter.

Factor Twelve: The need of a parent who has physical custody of a child to own or occupy the marital residence or residence shared by the partners in a civil union couple and to use or own the household effects;

Not applicable as the marital home has been sold. Plaintiff makes no claim for the items currently in storage.

Factor Thirteen: The debts and liabilities of the parties;

Not addressed by the parties.

Factor Fourteen: The need for creation, now or in the future, of a trust fund to secure reasonably foreseeable medical or educational costs for a spouse or children;

The parties have established 529 accounts for the children and the Court is satisfied that they will maintain health insurance in accordance with New Jersey law for the children.

Factor Fifteen: The extent to which a party deferred achieving their career goals; and

Not applicable.

Factor Sixteen: Any other factors which the court may deem relevant.

By letter of April 19, 2018 from defendant's counsel, the following Stipulations were made:

1. The parties agreed that there will be an $80,500 value rollover from defendant's 401K into plaintiff's Decker 401K plan from Fidelity, Defendant's 401K plan. Defendant will retain the balance of his plan and the plaintiff will retain her plan.
2. The parties' Roth IRA's will be equalized as of rollover date, which means that a check for one-half the difference between the IRA's

will be forwarded to the party who has a lesser balance, or deposited in that parties' IRA rollover.

3. The defendant's TD Ameritrade account has a distributable value of $5,000 and will be equally divided.
4. The parties have agreed that the defendant's life insurance policy of $500,000 will be designated for the benefit of the plaintiff and the children until alimony is concluded after which time, the policy will be for the benefit of the children with the plaintiff to serve as trustee until the children's respective emancipation, allocated proportionately per child. Plaintiff will obtain, if she does not have it already, $200,000 of life insurance on her life for the benefit of the children, payable to the defendant as Trustee until their emancipation with the same proportionately per child.
5. The parties agree that the 529 accounts will be used for college and that contributions will be in accordance with the financial circumstances closer to the event with discussion and review, if necessary, during the junior year in high school of each child.

Regarding the approximately $5,000 obligation for storage of furniture and costs associated with readying the former marital home for sale, the parties are to each bear one-half of those costs and expenses i.e. $2,500 each.

Regarding the Wells Fargo account, the parties are to divide the balance of that account, approximately $30,078, equally.

The balance of the funds kept in defendant's counsel's Trust Account from the sale of the Mahwah house, approximately $18,000, is to be paid to the plaintiff in order to provide her with monies needed to locate and obtain a new home, acquire furniture and household appliances and help defray the costs of her education.

Title to the minivan operated by the plaintiff (2009 Odyssey) is to be transferred to her. She, in turn, will pay the defendant for one-half of the value of the vehicle as contained in the most recent NADA listing utilizing the "trade in value" and actual mileage to establish the price.

Upon transfer, the plaintiff will be solely responsible for all costs associated with the vehicle.

Similarly, the plaintiff will sign over any interest she may have in the vehicle operated by the defendant, the 2005 Accord, using the same methodology established for valuing the minivan. Defendant will pay her one- half of the trade in value for the vehicle.

Counsel Fees

Both parties have requested an award of Counsel fees. In determining whether or not to award fees, the Court considers the factors outlined in R. 5:3-5 as well as R. 4:42-9.

Factor One: The financial circumstances of the parties.

The finances are outlined throughout this opinion. Plaintiff is a full time student and the defendant is the sole breadwinner.

Factor Two: The ability of the parties to pay their own fees or to contribute to the fees of the other party.

Plaintiff is not in a financial position to contribute to the fees of the defendant nor should she

Factor Three: The reasonableness and good faith of the positions advanced by the parties.

Prior to the commencement of this trial, both were requested to submit a sealed envelope with their final offer of settlement. They were advised that, at the end of the case, the envelopes would be opened and their respective positions reviewed and could be used as a factor in awarding counsel fees.

The Court had requested that the parties put their last and final offer in a sealed envelope.

With the consent of the attorneys, the Court opened the envelopes on April 30, 2018. The documents were marked C-P and C-D (plaintiff and defendant).

During the course of trial, plaintiff's testimony revealed that she was more than willing to enter into a parenting time agreement which would protect the children's right to cultivate a relationship with both parents.

It was the defendant who would not negotiate, taking a position that he wanted the children to be returned to New Jersey; contrary to the recommendation of the joint expert that he be granted status as primary caregiver of the children and demanded a parenting schedule which included two out of every three weekends with him.

His envelope with his last proposal was for the parties to have shared parenting time – seven days with each of the parties.

It was clearly his unwillingness to act reasonably which caused the plaintiff to incur substantial attorney's fees in presenting a case which spanned eleven trial days.

Factor Four: The extent of the fees incurred by both parties.

Plaintiff incurred counsel fees in the amount of $156,381.26 plus costs of $3,920.90. Total amount of fees/costs incurred is $160,302.16 from

inception, September 5, 2014 through the events of April, 2018. Partial fees and costs totaling $106,258.76 have been paid.

Defendant incurred counsel fees and costs for the time period of August 5, 2016 through April 10, 2018 of $249,054.50 and $7,148.84 in costs.

That total ($256,203.34) was then supplemented from the time period April 11 through April 19, 2018 for an additional $30,027 in fees and costs of $479.29

The Grand Total for the defendant is $286,709.63.

Factor Five: Any fees previously awarded.

Not applicable.

Factor Six: The amount of fees previously paid to counsel by each party.

See Factor Four.

Factor Seven: The results obtained.

Addressed throughout.

Factor Eight: The degree to which the fees were incurred to enforce existing orders or to compel discovery.

Not applicable.

Factor Nine: Any other factor bearing on the fairness of the award.

Addressed throughout, but the defendant asserts that he withdrew more than $41,200 from his Wells Fargo marital account to pay his attorneys.

In addition to the aforementioned factors, the Court has also considered the factors contained in R. 4:42-9.

Factor A: The time and labor required, the novelty and difficulty of the questions involved and the skill requisite to perform the legal services properly.

This case presented questions of the court which are not significantly different than in Family Court Dissolution matters.

Factor B: The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.

The attorneys involved in this litigation are not solo practitioners. There is nothing submitted which would lead the Court to conclude that either firm was significantly impacted by taking on these clients.

Factor C: The fee customarily charged in the locality for similar legal services and the experience, reputation and ability of the lawyers performing the services.

All attorneys involved in this case were highly experienced, well regarded and highly skilled. The hourly rates charged were commensurate with same and are not out of the ordinary.

Factor D: The amount involved ant the results obtained.

The financial aspects of this case were largely resolved between the parties and counsel. The more significant issues concerned the children and their best interests.

Factor E: The time limitations imposed by the client or by the circumstances.

Not applicable. The Court worked with the attorneys' and the clients' schedule to accommodate their needs.

Factor F: The nature and length of the professional relationship with the client.

There was no longstanding attorney client relationship with either party and their lawyer before commencement of this action

Factor G: Whether the fee is fixed or contingent:

Hourly, by rule.

After considering all of the aforementioned, the Court is satisfied that the positions advanced by the defendant resulted in a trial. For the most part,

the final offer of the plaintiff is consistent with what the Court has found in this Opinion.

The Court Orders the defendant to contribute $40,000 to the plaintiff to cover the additional expenses incurred by her as a result of his failure to act in good faith and failing to consider the recommendations of the expert.