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SUPERIOR COURT OF NEW JERSEY
ESSEX VICINAGE
CHANCERY DIVISION, FAMILY PART
DOCKET NO. FD-07-1995-23

M.G.F.,

Plaintiff,

v.

M.G.M. and
N.F.,

Defendants.[1]

Decided: June 23, 2025

Shari Lee Genser, Esq., for Plaintiff (Ross & Calandrillo, L.L.C.)

Daniel Figueroa, Esq., for Defendant N.F. (Cardan Partners LLC)

Defendant M.G.M. appeared *pro se*

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[1] The parties', child's and other relevant individuals' names are abbreviated or changed in this opinion to preserve confidentiality. For ease of reference, the court uses "M.G.F.," "M.G.M.," "N.F.," "N.M.," and "M.A." to refer to the child's maternal grandfather, maternal grandmother, natural father, natural mother and maternal aunt – the first three of which are parties to this case.

DUGAN, J.S.C.

This case requires the court to apply prong one of the psychological parent test under V.C. v. M.J.B., 163 N.J. 200 (2000), by analyzing the extent to which a child's biological father's prolonged inaction in asserting his parental rights following the death of the mother is tantamount to consent to a parent-child relationship between a grandfather and the child, despite the father's long-expressed objections to the grandfather's ever having custody of the child. The extensive history in this case requires the court to weigh and balance two competing considerations. First, the court considers the various hurdles the father cited to having the child in his custody, including his service in the U.S. military, prior court orders giving the grandfather significant time with the child and the father's physical distance from the child. Second, the court weighs those considerations against (1) the father's failure to undertake a parental role in the child's life even in a limited capacity considering the circumstances, his delays in taking legal action and later failure to prosecute his claims and his refusal to cooperate with the grandfather's expert in this litigation, (2) the serious psychological harm the child would likely suffer if removed from the grandfather's custody and (3) ultimately, the child's best interests.

For the reasons set forth below, the court awards (1) primary residential custody of J.C.T., born November 1, 2018, to his maternal grandfather, Plaintiff

M.G.F.; (2) joint legal custody to M.G.F. and J.C.T.'s biological father, N.F., and (3) parenting time and visitation to N.F. and J.C.T.'s maternal grandmother, M.G.M.[2]

PROCEDURAL HISTORY

The procedural history in this case is lengthy. It involves numerous proceedings starting in New York dating back to late April 2019 leading up to this case, which M.G.F. filed on March 13, 2023. Much of the procedural history is directly relevant to the court's decision as further addressed below. In short, this case involves competing claims for residential and legal custody asserted by M.G.F. and N.F., with M.G.M. appearing as an interested party seeking continued visitation with J.C.T.

After various delays in this action associated with N.F.'s defaults by missing scheduled court appearances, N.F.'s and M.G.M.'s prolonged failure to cooperate with M.G.F.'s expert, routine adjournment requests and matters otherwise concerning the court's calendar (including a change in the judge assigned to the matter), the court held trial on March 20, April 2, April 3, April 10 and May 9, 2025,

[2] The court thanks counsel for their excellent presentations in this case, including their organization and efficiency, and for achieving the right balance of zealous advocacy coupled with civility to each other and to the parties in this complicated, hotly contested case.

with counsel providing summations on May 9, 2025 at which time the court reserved decision.

EXHIBITS ADMITTED INTO EVIDENCE

The court admitted the following exhibits into evidence on consent:

Plaintiff's Exhibits: P-1 through P-28, P-30 and P-31

Defendant N.F.'s Exhibits: D-1 through D-3, D-5 and D-6

Joint Exhibit: J-1

Additionally, the court admitted into evidence over N.F.'s objection a police report dated December 3, 2022 (Exhibit P-29) for the limited purpose of corroborating M.G.F.'s testimony that he had to resort to seeking police intervention when M.G.M. did not return J.C.T. to M.G.F. as required under the then-existing "access" (i.e., parenting time) order a New York court had entered. The court does not rely on Exhibit P-29 for the truth of the matter asserted to establish that M.G.M. or N.F. committed a civil infraction, crime or court order violation.

The court also admitted into evidence over N.F.'s objection a report from the court's Probation Child Support Enforcement Unit of the Superior Court concerning N.F.'s unpaid child support pertaining to J.C.T. (Exhibit P-32). Although M.G.F. did not present testimony from a custodian of records to authenticate the report, the court itself maintains these records (accessible through NJ KIDS), and, thus, has no reason to doubt their reliability any less than it would if a representative from

Probation had testified. The court's records further show that as of the last day of trial, May 9, 2025, the total arrears on N.F.'s child support obligation to M.G.F. and M.G.M. totaled over $9,000.00.

CREDIBILITY OF THE PARTIES AND OTHER WITNESSES

The court is the finder of fact in custody disputes. Before rendering its findings of fact and conclusions of law, the court must assess the credibility of all witnesses who testified at trial. Some custody disputes turn on credibility more than others. In some instances, the court will find all the parties equally credible or that no disputed facts of consequence exist but that the parties simply have differing views on what custodial arrangement would best serve the child's interests. This case turns to some extent on credibility as set later set forth in the court's findings of fact and conclusions of law.

In determining credibility, the court may consider: (1) the witness' interest, if any in the outcome of this case; (2) the accuracy of the witness' recollection; (3) the witness' ability to know what they are 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; and (9) the presence of any inconsistent or contradictory statements. Model Jury Charge (Civil), 1.12K, "Credibility"

(approved Nov. 1998). With respect to each witness who testified at trial, the court makes the following credibility determinations.

M.G.F.

The court finds M.G.F. credible. His testimony was straight-forward and appropriately detailed in, for example, describing the care and love he has provided for J.C.T. He did not embellish his testimony. M.G.F. was candid in describing the relationship between him and M.G.M. as tumultuous for many years. Although M.G.F. attributed the problems largely to M.G.M.'s conduct, he did not try to sanctify himself. He was quick to acknowledge making mistakes in the past and having poor judgment at a young age from which he has since learned to become a better person.

M.G.F. withstood a professional cross-examination. He was calm, and his testimony was consistent with his direct examination testimony. In responding to questions concerning some instances where he could have communicated better with N.F., M.G.F. was direct and did not attempt to evade the question or hedge on his responses. M.G.F. was particularly careful to ensure he fully understood counsel's questions before responding.

N.F.

The court finds N.F. less credible than M.G.F. Although N.F. appeared sincere in his desire to obtain custody of J.C.T., certain aspects of N.F.'s testimony and litigation conduct undermined his credibility. Several examples are as follows.

First, N.F. grossly exaggerated the number of times he saw J.C.T. throughout J.C.T.'s life. On direct examination, N.F. testified he saw J.C.T. over fifty times. On cross-examination, he admitted having exaggerated that number. In fact, N.F. had gone to New York to see J.C.T. only a couple times, and the testimony showed N.F. had seen J.C.T. only a "handful" times in Georgia.

Second, after defaulting on M.G.F.'s Complaint through failing to appear at a July 31, 2023 hearing, N.F. took no action until two months later, when he filed an emergency application on October 4, 2023 alleging J.C.T. had been abused and/or neglected in M.G.F.'s care and requesting immediate custody of J.C.T. During the October 4, 2023 emergency hearing, N.F. testified that the most recent instance of alleged abuse had been in the summer of 2022 – well over a year prior to N.F.'s appearance on his precipitous application. N.F.'s sworn application was disingenuous and struck the court as an unfortunate example of gamesmanship poorly designed to end run the judicial process that N.F. has failed to properly participate in since the outset (as discussed below). This conduct negatively impacts N.F.'s credibility.

Third, N.F. testified on direct examination that he had resided at his current address for about three years. On cross-examination, however, N.F. admitted that he had provided two or three other addresses in the past three years in sworn pleadings and applications filed with the court. N.F. claimed certain of these addresses belonged to his girlfriend to whose home(s) he would travel back and forth while holding his primary residence. It makes no sense that N.F. would provide any address other than his own, primary address on a court application if in fact that is where he had resided the past three years. N.F.'s contradictory statements on what should be such a straightforward issue impact his credibility.

Fourth, counsel questioned N.F. on cross-examination concerning the substantial arrears on his child support obligation owed to both M.G.F. and M.G.M. for J.C.T. N.F. testified he was consistently paying the entirety of his obligation to M.G.M. despite court orders requiring him to pay M.G.F. half of the required amount (and later to pay through the court). N.F.'s testimony that he paid M.G.M. because he believed could choose from multiple payment methods identified on the paperwork he had received from the court is incredible. Certainly, the list of court-approved, third-party vendors through whom N.F. could pay his child support did not include M.G.M. This testimony further impacted N.F.'s credibility.

Fifth, N.F. provided contradictory testimony concerning his failure to participate in the evaluation by M.G.F.'s expert, Dr. Erik Dranoff, Ph. D. N.F.

vacillated between (1) contending that Dr. Dranoff was unresponsive when N.F. attempted to schedule the evaluation and (2) admitting that he had made a conscious decision not to cooperate because he believed Dr. Dranoff would be biased and/or that the entire notion of a stranger observing his personal life is contrary to his upbringing.

Overall, even accounting for the length of the proceedings in New Jersey and New York and the tendency of even an otherwise truthful witness to testify less than perfectly, the level of contradiction and the inaccurate testimony about the basic facts above render N.F. less credible.

M.G.M.

The court finds M.G.M. less credible than M.G.F. She was calm and measured both on direct and cross-examination, testified with specific recollection of many aspects of J.C.T.'s life and was largely consistent about the underlying events. M.G.M.'s conduct toward M.G.F. and certain aspects of her testimony, however, raise credibility concerns.

First, M.G.M.'s prior conduct toward M.G.F. in connection with his alleged lack of paternity of J.C.T.'s mother, N.M., renders her not credible. M.G.M. believed M.G.F. is not N.M.'s biological father. She shared that belief with N.M. but inexplicably did not tell M.G.F. himself, much less consult with him on how they could jointly address the issue with N.M. Worse yet, M.G.M. collected child support

from M.G.F. for N.M. for many years after their separation and for years after M.G.M. had told N.M. that M.G.F. was not her biological father. M.G.F. learned of M.G.M.'s belief only from N.M. when she was age nineteen or twenty. M.G.M.'s actions demonstrate a prolonged course of dishonest dealing with a party to this action and an abuse of the court and child support system that the court must consider.

Second, for reasons still unknown, M.G.M. has unjustifiably been cagey, at best, and dishonest, at worst, about where she resides. M.G.M. never kept M.G.F. updated on where she lived even though they were sharing access or visitation with J.C.T.

Third, M.G.M. exaggerated in her testimony as part of her attempt to support N.F.'s claim for custody. For example, M.G.M. testified on direct examination that N.F. was financially stable, but cross examination made evident that she had no personal knowledge at all of N.F.'s finances and thus no basis to provide such testimony. M.G.M. also exaggerated the number of times N.F. came to New York to see J.C.T., stating he did so "plenty of times," when, in fact, N.F. later admitted he had done so only two or three times.

The court therefore finds M.G.M. to be less credible.

Dr. Erik Dranoff, Ph. D.

The court finds Dr. Dranoff credible as an expert witness. He is well qualified and provided thoughtful testimony that was clearly based on a thorough investigation and report. He did not exaggerate or embellish. He was careful to point out potential limitations of some of the utilities employed in his investigation. Similarly, Dr. Dranoff was careful not to overstate J.C.T.'s educational improvement in the West Orange school district, noting that signs of improvement within special education services are very hard to see with children on the autism spectrum.

Dr. Dranoff also made extensive efforts to be available to meet with N.F. and M.G.M., including on weekends if needed, to ensure they could have every opportunity to participate in the evaluation. As shown in Exhibit J-1, Dr. Dranoff also communicated diligently through counsel to ensure nothing had slipped through the cracks when N.F. was unresponsive to him. This level of fairness reflected positively on Dr. Dranoff's credibility.

Lastly, Dr. Dranoff withstood a professional and thorough cross-examination without any contradictions. He struggled somewhat on cross-examination in understanding the nature of a temporary custody order and admitted to speculating somewhat on the importance of such an order in his testimony concerning prong one of the psychological parent analysis, which requires that at least one biological parent consent and foster the relationship between the child and the putative

psychological parent. This flaw was not material because a nonlegal expert will not necessarily understand legal distinctions reflected in court orders as would an attorney, and Dr. Dranoff's testimony on that point was not contrived or irrational.

Erin

The court finds Erin to be credible.

Erin has been married to M.G.F. for almost thirteen years and has helped care for J.C.T. She answered questions straightforwardly and consistently on direct and cross-examination. She strongly recalled the relevant events and their timing going back several years to when N.M. was a child, in 2005 or 2006. Erin has been extremely supportive of M.G.F.'s efforts and of J.C.T. in trying to give him the best life possible. She clearly recounted her routine in caring for J.C.T. and their other child, Vanessa. She did not embellish but seemed to speak from the heart in her genuine love for J.C.T.

M.A.

The court finds M.A. to be somewhat less credible.

M.A. was polite and measured in her testimony. She was candid about the poor relationship between M.G.F. and M.G.M., both of whom M.A. acted as a messenger for at times. She did not try to sanctify M.G.M., even though M.G.M. is her sister. Nor did she gratuitously speak negatively of M.G.F., despite the clearly

acrimonious relationship between M.G.F. and M.G.M. Looking solely at M.A.'s direct examination, she would seem quite credible.

But M.A.'s responses on cross-examination were inconsistent and revealed exaggerations on her direct testimony. For example, although she is not an attorney, M.A. embellished her testimony concerning the significance of the paperwork she had received from N.M. from the Navy (Exhibit D-6). M.A. suggested that the paperwork showed N.M. wished for N.F. to care for J.C.T., when, in fact, it related solely to certain military benefits to which N.M. was entitled.

M.A. was also vague concerning how often N.F. has seen J.C.T. – a material issue in the case. Like M.G.M., M.A. exaggerated in testifying concerning N.F.'s financial stability based on limited items he had bought for J.C.T. when M.A. did not have nearly enough personal knowledge on the topic to offer such an opinion.

M.A. was initially evasive in responding to questions concerning M.G.M.'s address and whether M.G.M. has an address in Maryland. Ultimately, she outright refused on cross-examination to disclose where M.G.M. resides. M.G.M.'s location is relevant considering her request for continued visitation with J.C.T.

In the end, M.A.'s testimony did not add substantial value because it resembled purely opinion testimony more than factual testimony – namely, her opinion that J.C.T. should live with N.F. because N.F. is J.C.T.'s biological father and that N.F. was the only party that could provide stability in J.C.T.'s life. M.A.

could not offer much factually concerning N.F.'s fitness as a parent or how J.C.T. would be best served under N.F.'s, as opposed to M.G.F.'s, custody.

FINDINGS OF FACT (INCLUDING ADDITIONAL PROCEDURAL HISTORY)

With the above credibility determinations in mind, the court finds as follows.

A. The Parties

J.C.T. was born on November 1, 2018. His biological father is N.F., and his biological mother is the late N.M. M.G.M. is J.C.T.'s maternal grandmother, and the court assumes M.G.F. is J.C.T.'s maternal grandfather as no party has provided clear, documentary proof showing otherwise.

B. The Relationships Between M.G.F., M.G.M., N.M. and Erin

M.G.F. and M.G.M. met while they were both in high school and working for the summer at the Boys and Girls Club in the Bronx. They began dating and lived together in the Bronx. M.G.F. and M.G.M. never married.

M.G.M. gave birth to N.M. in 1995. Up until N.M. was age eighteen or nineteen, no one had ever shared with M.G.F. the contention or belief that he was not N.M.'s biological father. M.G.F. was identified as N.M.'s father on her birth certificate. M.G.M. never requested a DNA test from M.G.F. and never otherwise sought to disestablish his paternity.

One day in 2004 or 2005, while M.G.F. was at work, M.G.M., unknown to M.G.F., moved with N.M. out of the apartment where the three had resided. N.M. at that point was age seven or eight.

At some point following her separation from M.G.F., M.G.M. filed an application against him in New York State Court seeking child support. M.G.F. consistently paid his child support obligation, which totaled approximately $52,000 over the years.

It appears M.G.F. did not see N.M. regularly following his separation from M.G.M., due in part to M.G.M.'s not communicating with him and, it seems, from M.G.F.'s admitted mistakes of not properly asserting his parental rights in court. The point is not material as M.G.F. did have a strong relationship with N.M. when she grew older.

M.G.F. met his wife, Erin, in 2005. N.M. first met Erin in 2005 or 2006, when N.M. was ten or eleven years old. Erin and N.M. had a good relationship as N.M. had spent many weekends with M.G.F. and Erin. N.M. later moved to Florida with M.G.M. M.G.F. was unsure at times of where N.M. was living while with M.G.M. M.G.F. and Erin lived together in the Bronx and moved to New Jersey in 2020.

When N.M. was age fifteen or so, M.G.M. told her that M.G.F. was not her biological father. Then or at some point thereafter, M.G.M. identified K.C. as N.M.'s

biological father. M.G.M. and Mr. K.C. allegedly arranged for DNA testing at some point, and M.G.M. introduced Mr. K.C. to N.M.

Despite continuing to collect child support from M.G.F., M.G.M. never told M.G.F. of her belief he was not N.M.'s biological father. Instead, M.G.F. learned this allegation from N.M. herself when she was nineteen or twenty years of age. The court cannot comprehend why M.G.M. would act in such a troubling manner except because of her poor relationship with M.G.F. M.G.F. told N.M. he did not care if he was her biological father or not; she was his daughter.

C. N.M.'s Enrollment in the Navy, Her Relationship with N.F. and J.C.T.'s Birth

N.M. decided at one point to enroll in the Navy. M.G.F. spoke with her about some advantages to serving in the military, reviewed the paperwork with her and joined her in meeting with a recruiter. M.G.F. stayed in frequent contact with N.M. when she was serving in Japan.

While in Japan, N.M. met N.F., who was also in the Navy. N.M. became pregnant with J.C.T. and moved back to San Diego. M.G.F. continued to stay in contact with N.M. and visited her when he was in California on business. M.G.F. helped N.M. with her apartment, including co-signing her lease and furnishing her apartment.

After giving birth to J.C.T. on November 1, 2018, and while on maternity leave from the Navy, N.M. stayed alternating weeks with M.G.F. and M.G.M. After

her maternity leave, she went back to San Diego, where J.C.T. lived with her. N.F. never went to California to see J.C.T. but saw him only when N.M. brought him to N.F. in Virginia on what appears to be just a few occasions.

D. N.M.'s Death and the Legal Proceedings in New York, Including the Final Access Order Awarding M.G.F. and M.G.M. Roughly Equal "Access" to J.C.T.

N.M. suffered a tragic death in a car accident on April 3, 2019, when J.C.T. was just four months old. Funeral services were held in New York and California. M.G.M. brought J.C.T. back with her from San Diego to the East Coast. M.G.F. asked M.G.M. to see J.C.T. M.G.M. allowed M.G.F. to do so on occasion but unilaterally imposed restrictions on the time and manner of his visitation.

On April 25, 2019, M.G.F. reached out to N.F. to discuss J.C.T.'s future considering N.M.'s passing. M.G.F. sent a message to N.F. through Facebook messenger because M.G.F. did not have a phone number where he could reach N.F.:

> Hello [N.F.], my name is [M.G.F.], N.M.'s father. We spoke some time ago when I was visiting her; I am sure you heard the news of her passing away in a fatal car accident. That leads into why I am reaching out to you. Obviously, she left behind J.C.T., and as of right now, her mother has him. I know you two have had conversations in the past in regards to who should watch over him in case of anything. N.M. and I had a very special relationship, and I'm sure she has mentioned it to you. I want to make sure J.C.T. is given the best life possible and hope you and I can talk. Please don't think I am upset with you. As our first conversation, I understand what it's like to be a young father. I had N.M. at 21. I definitely didn't do things the right way at that time, and it's ok. We all can grow with

> time. Right now, I just need to speak with you in regards to J.C.T. and his future. I am hoping to play a key role in his life, and that may be a challenge due to circumstances. Please, [N.F.]. Tell me how we can talk. I only want the best for J.C.T., and I'm hoping you do too. Let's speak and discuss the options. I am praying to hear from you soon. I really can use your help. Speak soon.

At the end of the message, M.G.F. left N.F. his cell number, which has not changed to date. N.F., however, chose not to respond to M.G.F. despite J.C.T.'s not being in N.F.'s care at the time.

In late April or early May of 2019, M.G.F. filed an application for custody of J.C.T. in Bronx County Family Court. M.G.M. filed her own custody petition in the same court on May 7, 2019. M.G.F. was unable to serve M.G.M. with his petition, and so it appears M.G.F. and M.G.M. were initially not aware of each other's petitions. At some point, the court apparently noticed the dueling petitions and consolidated the two matters.

N.F. testified that he decided to pursue custody of J.C.T. when he got back on land – although it is not exactly clear when that was – and he was blindsided to learn that M.G.F. had filed a claim for custody. On February 18, 2020, N.F. filed a petition in Bronx County Family Court seeking to establish his paternity of J.C.T. N.F. named M.G.M. as an interested party but did not name or serve M.G.F.[3]

[3] The parties did not produce a copy of the petition itself, but M.G.F.'s initial filing date is reflected in orders later entered in the New York matter. (See Exhibits D-1 and D-3).

The record is unclear concerning the interim progress and pace of the dueling petitions M.G.F. and M.G.M. had filed or exactly what interim agreements the parties may have reached on visitation for J.C.T. in the New York matter. On March 5, 2020, however, the Bronx County Family Court entered a Final Access Order on M.G.F.'s and M.G.M.'s consent pursuant to the parties' so-ordered stipulation filed the same date. The Final Access Order allowed M.G.F. and M.G.M. close to equal access or parenting time in the manner specified in the so-ordered stipulation.

On cross-examination, N.F. initially denied being aware of the Final Access Order but later admitted that he knew something had been "put in place" because he knew J.C.T. was with M.G.F. N.F.'s knowledge early on of the Final Access Order is significant when viewed in connection with his later actions and inactions concerning J.C.T. and this litigation while he knew J.C.T. was spending significant time with M.G.F.

Although M.G.F. was not sure of the date, at some point in 2019 or 2020, when the parties were in court in New York, M.G.F. pulled N.F. aside before or after a hearing to try to establish some level of rapport. The testimony was unclear on exactly what the two discussed. Ultimately, M.G.F.'s overture did not yield the results M.G.F. was hoping for, but the discussion's existence and the fact the parties were appearing in court further suggests N.F. knew M.G.F. – and not only M.G.M. – was caring for J.C.T.

The Bronx County Family Court initially entered a December 17, 2020 order establishing N.F.'s paternity of J.C.T., but M.G.F. successfully moved to vacate the order because he was an interested party and had no notice of the proceeding. The court questions why at least M.G.M. would not have notified M.G.F. of the proceeding as they both had been sharing access to J.C.T. pursuant to the Final Access Order entered nine months prior.

On February 18, 2021, N.F. texted M.G.F.:

> Hey, good morning I am getting things situated down here on my end. That way I can come up and get J.C.T. I'm not sure exactly when, dealing with COVID, but as soon as I'm able to make that trip up, I'll do that while keeping you posted on my end. Hope everything is ok.

M.G.F. responded, "Good morning, [N.F.]." The record is unclear why M.G.F. did not say more in his response, but N.F. wrote M.G.F. again on March 1, 2021, and the following exchange took place:

> N.F.: Hey, are you busy.
>
> M.G.F.: I am available.
>
> N.F.: Ok, just a heads-up, I'll be up this weekend to get J.C.T.
>
> M.G.F.: What to you mean, "to get him?"
>
> N.F.: TO. GET. HIM.
>
> M.G.F.: Did you get court approval?
>
> N.F.: I don't think I need court approval to get him.

> M.G.F.: I think you do.
>
> N.F.: So you're denying me to get him?
>
> M.G.F.: *As of right now, I share custody with [M.G.M.]*. I am following court orders. If you have court orders, then please provide them. Thank you.
>
> N.F. replied: Hm. *I thought you all were sharing visitation rights*. I am trying to make this a smooth transition, but it seems you prefer other methods, meaning, sue for custody of J.C.T. Let me know if I'm wrong in thinking this.
>
> M.G.F.: You can call me. You can also send me your court documents.

(emphasis added).

The February 18, 2021 and March 1, 2021 text messages further confirm N.F. knew to reach out to M.G.F. because J.C.T. was in his as well as M.G.M.'s care.

N.F. was discharged from the Navy in December 2021.

On April 26, 2022, the Bronx County Family Court issued its Order of Filiation establishing N.F.'s paternity of J.C.T. M.G.F. later filed an application for child support from N.F. in that court. N.F. failed to appear for the September 13, 2022 hearing on M.G.F.'s application, and so the court entered on obligation on default of $46 bi-weekly payable directly to each M.G.F. and M.G.M. After M.G.F. filed his custody application in this court, the obligation was converted from direct pay to payment through the court (via Probation).

M.G.F. testified that he never received child support payments from N.F. other than one $630 payment N.F. made directly to M.G.F. shortly before one of the court

appearances. The child support audit from Probation shows other payments made directly by N.F. or withheld from N.F.'s wages. Those payments total a few thousand. It is unclear whether those payments ever reached M.G.F. Presumably to account for the arrears that still exist and the spotty payment history on the account, N.F. testified that he has been paying M.G.F.'s share to M.G.M. N.F. presented no receipts, and as stated above, that contention defies logic.

E. The Custody Proceedings in this Court and N.F.'s Defaults and Failure to Cooperate with M.G.F.'s Expert

After the New York courts apparently declined to exercise jurisdiction over the custody issues, M.G.F. filed his Verified Complaint in this court on March 13, 2023 seeking custody of J.C.T. The court relisted the initial hearing scheduled for June 19, 2023 because M.G.F. had difficulty locating and serving M.G.M. and N.F. The court rescheduled the initial hearing for July 31, 2023. M.G.F. arranged for personal service upon N.F. and M.G.M. of his pleading and the order setting the new hearing date.

The hearing took place on July 31, 2023. Everyone appeared except N.F., whom the court defaulted. In its August 2, 2023 order following the July 31, 2023 hearing, the court designated New Jersey as J.C.T.'s home state under the Uniform Child Custody Jurisdiction Enforcement Act and granted M.G.F. temporary sole legal custody of J.C.T. as the only party who had filed a custody application. The order further provided that the Final Access Order entered in Bronx County Family

Court stay in effect and gave M.G.M. sixty days to file her own application if she desired. She has not done so to date.

N.F. had apparently filed a custody petition in New York on July 28, 2023, just three days before he failed to appear in this court. It is unclear why N.F. chose to file in New York after being personally served with notice of the July 31, 2023 hearing on M.G.F.'s application in this court. The New York court presumably dismissed N.F.'s petition.

N.F. took no further action to vacate the default or file his own complaint seeking custody until October 4, 2023, when he filed an emergency order to show cause application seeking custody of J.C.T. on the basis that J.C.T. was suffering from abuse and negligence in M.G.F.'s care, including alleged bruises on J.C.T.'s face and forehead and burns across his fingers. N.F. alleged J.C.T. was unsafe with M.G.F. When N.F. appeared *ex parte* for his emergency hearing, he testified that J.C.T.'s most recent alleged injury had been in August of 2022, over fourteen months prior. The court denied N.F.'s emergency application finding that his delay in filing vitiated the notion of an emergency. M.G.M. had also called the New Jersey Department of Children and Families' Division of Child Protection and Permanency (DCCP) to report the situation. After its investigation, DCCP deemed the allegations unfounded.

The parties appeared in court again on January 16, 2024. That day, N.F., having retained counsel, also filed a Counterclaim seeking custody of J.C.T. along with grandparent visitation for M.G.M.

At the January 16, 2024 hearing, N.F. testified that between his discharge from the military in December of 2021 and January 16, 2024, he had traveled to see J.C.T. only three times, all while J.C.T. was with M.G.M. N.F. admitted he had not called M.G.F. to try to arrange for additional visitation but claimed he had not received M.G.F.'s phone number until November 2023. This testimony was plainly false as indicated by M.G.F.'s Facebook message to N.F. on April 25, 2019 leaving his cell number, N.F.'s initiating texts to M.G.F. in February and March of 2021 and the fact that M.G.F.'s cell phone number has remained the same this entire time. Even if N.F. had misplaced it and somehow forgot he had texted M.G.F., it defies credibility to believe N.F. could not have obtained M.G.F.'s number from M.G.M. or through an application to the court.

At the same hearing, the court modified M.G.F.'s and M.G.M.'s visitation with J.C.T. to alternating weeks. The court gave the parties thirty days to retain experts and scheduled trial for March 15, 2024.

On February 20, 2024, M.G.F.'s counsel requested a three-month adjournment of the March 15, 2024 trial date to allow Dr. Dranoff to complete his expert report. The court granted the adjournment and rescheduled trial for May 28, 2024.

On May 23, 2024, M.G.F.'s counsel advised the court that neither N.F. nor M.G.M. had completed their initial interviews with Dr. Dranoff and had not returned the required informed consent forms Dr. Dranoff needed to proceed (and which forms custody experts routinely require as part of their ethical obligations). M.G.F.'s counsel stated that she would seek a negative inference at trial based upon the Defendants' lack of cooperation.

On May 28, 2024, N.F.'s counsel requested an adjournment the day of trial due to an unspecified emergency N.F. was experiencing en route to the hearing. The court gave N.F. the option to proceed virtually. N.F., however, did not appear, and the court again dismissed N.F.'s Counterclaim without prejudice for lack of prosecution. The court directed N.F. and M.G.M. to complete their informed consent forms and return them to M.G.F.'s counsel. The court rescheduled trial for August 26, 2024.

On July 1, 2024, M.G.F.'s counsel wrote the court to advise of N.F.'s and M.G.M.'s continued failure to sign the informed consent form. Neither N.F. nor M.G.M. disputed the assertions in counsel's letter. On July 9, 2024, the court entered an order reciting that failure and stating that Dr. Dranoff may proceed with his evaluation without N.F.'s and M.G.M.'s cooperation. Shortly thereafter, N.F. and M.G.M. finally returned the signed informed consent forms to Dr. Dranoff but would later fail to cooperate with the investigation itself.

On July 18, 2024, N.F. refiled his Counterclaim seeking custody and grandparent visitation for M.G.M. with respect to J.C.T.

On August 26, 2024, the parties appeared for trial. The judge then assigned to this matter told the parties he would be unable to try the matter that day after all because, pursuant to the court's General Assignment Order issued in July, he was reassigned to the Civil Part effective September 1, 2024. The court also cited N.F. and M.G.M.'s ongoing failure to sign and return the informed consent form. Pending trial, the court again modified the visitation schedule temporarily for M.G.F. to have J.C.T. during the week and for M.G.M. and N.F. to have visitation every Friday after school to Sundays at 6 p.m. so that J.C.T. could attend kindergarten in West Orange, where M.G.F. had enrolled J.C.T.

This matter was reassigned to Judge Dugan. The parties' appearance before Judge Dugan was scheduled by the court's FD/nondissolution case management unit and placed on his calendar for November 13, 2024 as a "hearing." The delay in scheduling that appearance was likely due to the reassignment of two Family Part judges in August and September of 2024, the net shortage of one judge in the FD unit and the resulting redistribution of cases.

The delay, however, would have been inevitable because as of November 13, 2024, N.F. and M.G.M. still had not cooperated with Dr. Dranoff. Nor had either party told the court they were declining to participate as they could have done back

in the spring of 2024 to avoid further delay. The court again addressed the matter on November 13, 2024. Still, neither N.F. nor M.G.M. objected to participating in Dr. Dranoff's evaluation. The court discussed the issue extensively with counsel and set parameters to ensure the matter was scheduled promptly. The court required N.F. and M.G.M. to appear in person for their initial interviews with Dr. Dranoff but allowed them to appear virtually for any follow-up interviews Dr. Dranoff might request. The court again reiterated that if they did not cooperate, Dr. Dranoff could proceed with his report without their participation, in which case (1) the absence of data that their participation would have provided would not be construed against M.G.F.'s case and (2) the court, as appropriate and upon request of M.G.F.'s counsel, could draw the appropriate negative inferences against N.F. and M.G.M.

Trial took place on March 20, April 2, April 3, April 10 and May 9, 2025. The court learned at trial that N.F. never cooperated with Dr. Dranoff's evaluation and that M.G.M. attended only her initial meeting. Although N.F. claimed at trial that Dr. Dranoff never followed up with N.F. on scheduling the evaluation, the May 8, 2025 Stipulation Regarding the Transmission of Expert Letters from Dr. Erik Dranoff to Daniel J. Figueroa (N.F.'s counsel) (Exhibit J-1) and exhibits thereto contradicted N.F.'s testimony. N.F. reached out to Dr. Dranoff once in September 2024, the receipt of which email Dr. Dranoff acknowledged in his October 14, 2024 letter attached as Exhibit B to Exhibit J-1. Dr. Dranoff, however, had told N.F. that

he preferred to participate in person and that he was willing to work around N.F.'s schedule, including meeting on the weekend if needed. N.F. never got back to Dr. Dranoff with additional dates, even after the court addressed the matter in detail on the record during the later November 13, 2024 conference.

N.F.'s testimony on why he did not cooperate with Dr. Dranoff was inconsistent and disingenuous. N.F. tried to show Dr. Dranoff was unresponsive. But the communications attached to Exhibit J-1 flatly contradict that testimony. N.F. later admitted essentially that he did not believe participating in the evaluation was worth the effort because he believed Dr. Dranoff would be biased. N.F. also testified he simply was not raised to allow other people to intrude on his private or familial life in the manner N.F. apparently contemplated the investigation would entail. The court finds troubling that N.F., after several opportunities afforded him to cooperate with the evaluation and months of delay associated with his failure to do so without ever questioning the need to cooperate, he would vacillate at trial between blaming Dr. Dranoff for being unresponsive back in September 2024 to admitting in substance that he had no intention of cooperating in the first instance.

F. N.F.'s Failure to Exercise Meaningful Parenting Time with J.C.T. and to Support M.G.F.'s and M.G.M.'s Efforts to Ensure His Well-being

Although N.F. tried to claim that he has seen J.C.T. over fifty times, he later admitted that number was an exaggeration. In fact, in the past six and a half years

since J.C.T. was born, N.F. has seen J.C.T. only a small handful of times. N.F. saw J.C.T. a few times in the five months before N.M.'s death when N.M. took J.C.T. to see N.F. in Virginia. In the six years following N.M.'s death, N.F. has seen J.C.T. only a "handful" of times at his home in Georgia, when M.G.M. or M.A. brought J.C.T. to him. N.F. admitted that J.C.T. never spent more than one day at N.F.'s home. Although N.F. at one point claimed he had been to New York to see J.C.T. "multiple times" for one or two nights at a time, N.F. admitted on cross-examination, consistent with his testimony at the January 16, 2024 hearing, that he had seen J.C.T. only a "couple of times" in New York. N.F.'s visits with J.C.T. at his home in Georgia and elsewhere in New York and Virginia were therefore collectively minimal – a handful of times in total.

CONCLUSIONS OF LAW

I. M.G.F.'S SATISFACTION OF THE *WATKINS v. NELSON* STANDARD THROUGH PSYCHOLOGICAL PARENTAGE UNDER *V.C. v. M.J.B.*

As in any custody dispute between a biological parent and third party, the court must address N.F.'s fundamental rights as J.C.T.'s biological father. Under N.J.S.A. 9:2-5, custody of J.C.T. did not by operation of law automatically revert to N.F. upon N.M.'s death. The statute provides, in relevant part:

> In case of the death of the parent to whom the care and custody of the minor children shall have been awarded by the Superior Court, or in the case of the death of the parent in whose custody the children actually are, when the

> parents have been living separate and no award as to the custody of such children has been made, the care and custody of such minor children shall not revert to the surviving parent without an order or judgment of the Superior Court to that effect.

Although N.J.S.A. 9:2-5 eliminates N.F.'s automatic accession to custody, the statute does not enhance the status of any third party who takes over custody in the deceased parent's stead. Todd v. Sheridan, 268 N.J. Super. 387, 397-98 (App. Div. 1993). Nor does the statute itself set forth a standard to be applied in a custody dispute between a parent and third party. Watkins, 163 N.J. at 246.

But courts have long recognized a biological parent's fundamental right to raise his child. See Santosky v. Kramer, 455 U.S. 745, 753 (1982); Prince v. Massachusetts, 321 U.S. 158, 166 (1944) ("It is cardinal with us that the custody, care and nurture of the child reside first in the parents.") (quoted in Watkins, 163 N.J. at 245). Although that right is not absolute, it is well settled that a fit parent has a superior right to custody of his child as against third parties and that the law should not disturb the parent/child relationship except for the strongest reasons and only upon a clear showing of a parent's unfitness, gross misconduct, abandonment or "exceptional circumstances" affecting the welfare of the child. Watkins, 163 N.J. at 245-46 (collecting New Jersey authority on this point); accord In re D.T., 200 N.J. Super. 171, 176-77 (App. Div. 1985) (noting the operative standard of proof for establishing parental unfitness is clear and convincing evidence and that "courts

traditionally have been reluctant to deny a natural parent custody of his or her own child"); see also N.J.S.A. 9:2-9 (allowing "any person interested in the welfare" of a child whose parents are "grossly immoral or unfit" to seek relief in the Family Part pertaining to such child).

The presumption of awarding custody to the surviving biological parent can never be rebutted by a simple application of the best interests test under N.J.S.A. 9:2-4. Watkins, 163 N.J. at 237; Todd, 268 N.J. Super. at 398-99 (where a child resided with her mother after the parents' separation, the maternal grandparents with whom the child lived following the mother's death were not on equal footing with the biological father; trial court erred in applying "best interests of the child" standard in maternal grandparents' action for guardianship). Applying a simple "best interests" test equally between a parent and third party without accounting for the parent's superior legal rights carries the increased potential for a "fitness contest" by which a third party can receive custody because the judge personally disapproves of the parent's limited means or – if taken to its logical conclusion – "redistribution of the entire minor population among worthier members of the community." Watkins, 163 N.J. at 251-52. The Court in Watkins therefore adopted the above standard "to reduce or minimize judicial opportunity to engage in social engineering in custody cases involving third parties." Id. at 252.

Only when the third party rebuts the presumption set forth in Watkins does the court apply a best interest standard as it would between two fit, biological parents. Id. at 254. Even then, the court may still consider the biological parent's status as such in balancing the child's best interests – at least when all else is equal. See V.C., 163 N.J. at 228 ("The legal parent's status is a significant weight in the best interests balance because eventually, in the search for self-knowledge, the child's interest in his or her roots will emerge. Thus, under ordinary circumstances when the evidence concerning the child's best interests (as between a legal parent and psychological parent) is in equipoise, custody will be awarded to the legal parent.").

A. A *Watkins* Showing Is Required in This Case

During the parties' August 26, 2024 appearance, the judge previously assigned to this matter ruled on the record that M.G.F. would not need to make the required showing under Watkins and issued an order on August 27, 2024 memorialize that ruling. The basis for that ruling is unclear. The court may have reached its conclusion based on M.G.F.'s counsel's argument that (1) the facts in Watkins differed from those here, where N.F. had not been involved in J.C.T.'s life for several years and (2) M.G.F. was not seeking to take away all of N.F.'s rights.

The court can reconsider and revise an interlocutory order at any time before the entry of final judgment in the sound discretion of the court in the interest of

justice. Lawson v. Dewar, 468 N.J. Super. 128, 134 (App. Div. 2021). The court does so here and holds that M.G.F. must overcome the presumption in Watkins before the court will engage in a best interests analysis. In fact, the custodial relief M.G.F. as a nonparent seeks is exactly what the Court in Watkins held impacts the biological parent's fundamental rights to raise his child.

In Watkins, the Court broadly framed the issue before it as follows: "This appeal requires us to determine the appropriate standard for deciding a custody dispute between a biological parent and a third party following the death of the custodial parent." 163 N.J. at 237. The Court also held, "it is the relationship of the child to the person seeking custody that determines the standard to be used in deciding the custody dispute." Id. at 253. Although the facts in Watkins differ from those here, a party's status as a biological parent alone is sufficient to require a Watkins analysis in any custody dispute with a third party. The particular facts in any case beyond the parties' respective relationships to the child will determine whether the third party has satisfied the Watkins standard – not whether the court must apply it in the first instance.

Regarding M.G.F.'s argument that he is not looking to strip N.F. of legal custody or parenting time, a claim for primary residential custody or even shared legal custody requires a Watkins analysis. Our Supreme Court in Watkins based its analysis extensively on U.S. Supreme Court caselaw recognizing that the "*custody,*

care and nurture of the child reside first in the parents" and that a parent has a "constitutionally protected, albeit limited, fundamental right to the *companionship* of his or her child." 163 N.J. at 245 (emphasis added). That and similar language quoted at length in Watkins clearly applies to residential custody of a child.

Moreover, the Court in Pascale v. Pascale, 140 N.J. 583 (1995), described the significance of the primary caretaker as opposed to a secondary caretaker – terms that have since evolved to parent of primary residence and parent of alternate residence. The Court noted in the context of two divorced parents that, "Although both roles create responsibility over children of divorce, the primary caretaker has the greater physical and emotional role." The Court further cited with approval an opinion by the Supreme Court of Appeals of West Virginia, which identified the many routine but critical tasks that make one parent the primary rather than secondary caretaker, including:

> 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, 140 N.J. at 598 (citing Garska v. McCoy, 167 W.Va. 59, 69-70 (1981)).

These are not merely tasks a custodial parent must undertake for the child's benefit. They are rights concerning how a parent raises his child of which the court cannot deprive him without a specific showing that our Supreme Court required in Watkins. Indeed, the Court in Watkins recognized that awarding custody to a third party "destroys any pretense of a normal parent-child relationship and eliminates nearly all of the natural incidents of parenthood including everyday care and nurturing which are part and parcel of the bond between a parent and child." Id. at 253-54. These references are necessarily to primary residential custody. Therefore, a third party's agreement to allow a biological parent to serve as a parent of alternate residence and/or retain shared legal custody does not render Watkins inapplicable.[4] Moreover, although M.G.F.'s claim for residential custody is sufficient in itself to require a Watkins showing, the claim for shared legal custody would also have similar implications because N.F.'s ability to make major decisions in J.C.T.'s life without anyone else's consent is a critical right and obligation that only biological parents typically hold.

Fortunately, M.G.F. thoroughly addressed the Watkins standard through the lay and expert testimony and opening/closing arguments at trial, notwithstanding the

[4] Even awarding a grandparent mere visitation rights over a parent's objection implicates constitutional concerns and requires a threshold showing that the child will suffer harm without such visitation before the court examines the statutory factors in setting a visitation schedule. See Moriarty v. Bradt, 177 N.J. 84, 117 (2003).

court's ruling in its August 27, 2024 order. The record contains no evidence that N.F. is unfit or committed gross misconduct. And, by definition, N.F. could not have abandoned J.C.T. because he never had custody or control of J.C.T. See N.J.S.A. 9:6-1 (defining abandonment as requiring the person to have "custody or control of the child").

The remaining question is whether "exceptional circumstances" exist to overcome the Watkins presumption. Our courts have yet to define the full scope of "exceptional circumstances," and doing so may result in limitations that fail to account for the extremely fact-sensitive nature of custody disputes. The Court in Watkins therefore noted that the defined scope must await case-by-case development but that exceptional circumstances would "always require[] proof of serious physical or psychological harm or a substantial likelihood of such harm." 163 N.J. at 248. Notably, exceptional circumstances do not require a finding of parental unfitness. Id. at 247-48.

B. M.G.F. Is a Psychological Parent to J.C.T. under *V.C.*

The only published post-Watkins cases finding exceptional circumstances are those in which the third party seeking custody qualified as the child's psychological parent, on which theory M.G.F. bases his claim. Under V.C., psychological parentage arises when a third party assumes the role of the legal parent because of the biological parent's unwillingness or inability to fulfill that function. 163 N.J. at

219. "At the heart of the psychological parent cases is a recognition that children have a strong interest in maintaining the ties that connect them to adults who love and provide for them. That interest, for constitutional as well as social purposes, lies in the emotional bonds that develop between family members as a result of shared daily life." Id. at 221 (citing Smith v. Org. of Foster Families for Equality & Reform, 431 U.S. 816, 844 (1977)).

To establish psychological parentage, "(1) the legal parent must consent to and foster the relationship between the third party and the child; (2) the third party must have lived with the child; (3) the third party must perform parental functions for the child to a significant degree; (4) and most important, a parent-child bond must be forged." Id. at 223.

1. M.G.F. Meets Prong One of the *V.C.* Test Based on N.F.'s Actions and Inactions Amounting to Consent to the Parent-Child Relationship Between M.G.F. and J.C.T.

The most hotly disputed and complicated issue concerning the application of V.C. here is whether N.F. consented to the parent-child relationship between M.G.F. and J.C.T. as required under prong one. Our Supreme Court in V.C. recognized the importance of prong one:

> Prong one is critical because it makes the biological or adoptive parent a participant in the creation of the psychological parent's relationship with the child. Without such a requirement, a paid nanny or babysitter could theoretically qualify for parental status. To avoid that

> result, in order for a third party to be deemed a psychological parent, the legal parent must have fostered the formation of the parental relationship between the third party and the child. By fostered is meant that the legal parent ceded over to the third party a measure of parental authority and autonomy and granted to that third party rights and duties vis-a-vis the child that the third party's status would not otherwise warrant. Ordinarily, a relationship based on payment by the legal parent to the third party will not qualify.
>
> The requirement of cooperation by the legal parent is critical because it places control within his or her hands. That parent has the absolute ability to maintain a zone of autonomous privacy for herself and her child. However, if she wishes to maintain that zone of privacy she cannot invite a third party to function as a parent to her child and cannot cede over to that third party parental authority the exercise of which may create a profound bond with the child.

163 N.J. at 224. The Court in V.C. further explained, "fostered is meant that the legal parent ceded over to the third party a measure of parental authority and autonomy and granted to that third party rights and duties vis-a-vis the child that the third party's status would not otherwise warrant." Id.

Only one legal parent of the child must consent to satisfy prong one. K.A.F. v. D.L.M., 437 N.J. Super. 123 (App. Div. 2014). Here, the court considers only whether N.F. consented to M.G.F.'s relationship with J.C.T. N.M. sadly passed away before J.C.T. came into M.G.M.'s or M.G.F.'s care, and the testimony was conflicting concerning N.M.'s expressed wishes. In any event, even if N.M. expressed before her death that she wanted N.F. to have sole custody of J.C.T.,

M.G.F. could still establish psychological parentage of J.C.T. if N.F. consented to and fostered the relationship between M.G.F. and J.C.T.

It is undisputed that N.F. never affirmatively consented to M.G.F.'s having shared visitation of J.C.T. with M.G.M., much less temporary residential custody, or to performing the nature and extent of parenting functions that M.G.F. has performed for almost J.C.T.'s entire life. N.F. did not expressly "invite" M.G.F. into J.C.T.'s life to perform the role of a parent. See V.C., 163 N.J. at 224. Nor did N.F. affirmatively cooperate with M.G.F. in fostering that relationship financially or otherwise. During the only interaction the parties testified to with any specificity, N.F. told M.G.F. on March 1, 2021 that he wanted to "get" J.C.T. – a statement the court understood to mean N.F. wanted to take J.C.T. home with him to Georgia to live. N.F. consented only to M.G.M.'s taking care of J.C.T. in what appears to have been 2019 shortly following N.M.'s death while N.F. completed his service in the Navy. N.F. knew that period would be about two and a half years as his discharge date was in December of 2021. M.G.M. is not seeking custody of J.C.T.

But the inquiry under V.C. does not end here. Our Supreme Court, while underscoring the importance of prong one, recognized that a parent's ultimate inactions may be inconsistent with the parent's statements and relevant to examining consent:

> Obviously, the notion of consent will have different implications in different factual settings. For example, where a legal parent voluntarily absents herself physically or emotionally from her child or is incapable of performing her parental duties, those circumstances may constitute consent to the parental role of a third party who steps into her shoes relative to the child. As in all psychological parent cases, the outcome in such a case will depend on the full factual complex and the existence of the other factors contained in the test.

163 N.J. at 223 n.6; accord K.A.F., 437 N.J. Super. at 139 (quoting this footnoted language and noting "[a] parent's 'consent' to the creation of a psychological parent bond need not be explicit); P.B. v. T.H., 370 N.J. Super. 586, 598 (App. Div. 2004) (quoting the V.C.'s "explanatory footnote" and finding consent based on circumstances "consistent with the spirit of V.C.").

The Court's recognition in V.C. that consent may take various forms is rooted in Sorentino v. Family & Children's Soc'y, 72 N.J. 127 (1976) ("Sorrentino I"). In Sorentino I, the plaintiff-mother surrendered her newborn child for placement of adoption twenty-five days after the child was born under what the trial court found was undue pressure by an adoption agency. Id. at 129. The child spent about two months in foster care and then went to live with the prospective adoptive parents at about three months of age. Id.

Thirty days after the surrender of the child and within the period required to rescind the surrender, the biological parents advised the adoption agency of their

intention to reclaim custody. Id. It is not clear what occurred during that encounter with the agency, but the parents returned to the agency four months later and then again seven months after the child's birth to request return of the child. Id. The agency refused their request. Id. The biological parents waited on advice of counsel until the mother reached eighteen to file their lawsuit at which point the child was fourteen months old. Id. at 129-30.

Significantly, the trial court found that the adoption agency had, in fact, coerced the mother to surrender the child for adoption and that the agency had denied the father his constitutional rights in accepting the child without notice to him and the right to be heard. Id. at 130. The trial court ordered the child's return to the parents and reached that decision when the child was sixteen months old. Id. The prospective adoptive parents and the agency appealed. Id. The Appellate Division granted a stay of the trial court's order and ultimately affirmed the trial court's decision five months later, at which point the child was one year, nine months old. Id. The prospective adoptive parents and adoption agency sought certification from the New Jersey Supreme Court and obtained a continued stay of the trial court's order pending the Supreme Court's consideration of their petitions for certification. Id. The Supreme Court granted the petitions and continued the stay. Id. During the entire litigation and appellate process, the child remained in the custody of the

prospective adoptive parents, who had not yet commenced formal adoption proceedings because the trial court had restrained them from doing so. Id.

The Supreme Court found no reason to overturn the trial court's factual findings and held that the mother's coerced surrender of the child to the adoption agency was a legal nullity. In so holding, the Court noted that, "Ordinarily, the foregoing conclusions would call for an affirmance of the judgment of the Appellate Division and an immediate vesting of custody of the child in the natural parents." Id. at 131. But the Court found the inquiry could not stop there:

> We are given pause, however, in adjudicating such a summary and drastic change in the life circumstances of this child, now 31 months old. We are confronted with the potentiality of serious psychological injury to the child, in the evaluation of which substantial significance should attach to the length of time the child has been with the prospective adopting parents and to the quality of the developing relationship. We are not suggesting that such a potentiality suffices as a matter of law to justify a reversal in this case. However, the potentiality does require a hearing and determination on the issue.

Id. at 131-32.

The Court's holding in Sorentino I could, without more, be reasonably interpreted to render consent irrelevant once the harm to the child resulting from a change in custody would reach a clear level of seriousness. The parents there had clearly not consented to surrendering the child in the first instance, and the Court did not expressly fault the parents for any delay in taking action to assert their rights.

The court merely noted that, "unfortunately," the parents were "advised to withhold institution of action until the mother attained the age of 18" and, as a result, sued ten months after the adoption agency first refused to return the child in September of 1974 and seven months after the agency again refused in December of 1974. Id. at 129.

But less than one year later in Sees v. Baber, 74 N.J. 201 (1977), the Court in another adoption dispute specifically addressed the parents' conduct in Sorentino as contributing significantly to the outcome. In Sees, the Court held the lower courts erred in declining to award custody of the child to the biological mother, who had initially surrendered the child for adoption but changed her mind two days later and sued for custody three weeks after the child's birth. Id. at 215, 226. The court cited the very young age of the child (who was just one year old) and, therefore, the impossibility of proving severe psychological harm from a change in custody. Id. at 222.

Significantly, however, the Court in Sees also compared the parents' conduct there in contrast to that in Sorentino. 74 N.J. at 224-25. The court recognized that while the child's welfare is the "paramount and overriding concern," the court should also consider the rights of the biological and (in that case) adoptive parents, with no party having acted in bad faith and with the biological mother initiating legal action just three weeks after the child's birth. Id. at 223. The Court again compared

the mother's conduct there to the parents' conduct in Sorentino, where *"the natural parents by their own conduct contributed measurably"* to the result – an observation the Court in Sorentino I did not specifically make. Id. at 225 (emphasis added).

Moreover, after deciding Sees, in what courts have referred to as Sorentino II, our Supreme Court considered another appeal in that case following the trial court's remand proceedings pursuant to Sorentino I in which the trial court had determined that returning the child to the biological parents would likely result in serious psychological harm to the child. Sorentino v. Family & Children's Soc'y, 74 N.J. 313, 320 (1977). Unlike in Sorentino I, the court expressly considered the biological parents' conduct:

> In the case before us, the Sorentinos have had no existing relationship (save one of blood) with the child. The little girl was born on May 5, 1974, and was surrendered to defendant agency on May 30. The prospective adopting parents took custody on July 9, 1974. While sporadic requests were made thereafter for the agency to effect the return of the child, the adoptive parents were completely unaware of these developments. Plaintiffs delayed instituting their suit for custody until July 9, 1975, a full year after the Does had assumed custody. A foreseeable result from that delay was that the child would become firmly established in her adoptive home. Such equivocation and indecision on the part of the natural parents, with predictable consequences, are harmful to the well-being of the child and are relevant in the consideration of the issue of abandonment and termination. Here, the passage of time permitted the roots to be nurtured and to develop fully.

Id. at 324 (citations omitted).

The Court in Sorentino II and Sees therefore considered the conduct of at least one of the parents, including not only express consent but consent to forging the bond between the third party and child through inaction and delays even where the parents expressly object to the psychological parent relationship. The Court has not expressly overruled Sorentino. In deciding V.C. over twenty years later and articulating the four-prong psychological parentage test, the Court cited Sorentino and referred to it as a psychological parent case without suggesting the result would have been different under the then-newly articulated psychological parentage test. 163 N.J. at 219; accord Watkins, 163 N.J. at 248 (describing Sorentino as a psychological parent case); V.C., 163 N.J. 219 (same); K.A.F., 437 N.J. Super. at 130 (stating, well after V.C. was decided, that the psychological parentage theory was "first enunciated" in Sorentino).

Here, the court looks to N.F.'s actions and inactions to determine whether they amount to effective or implied consent and fostering the relationship between M.G.F. and J.C.T. The court finds that they do – in fact, much more than in Sorentino. Although N.F. has not been a stranger to J.C.T. and stated at the outset that he ultimately wished to care for his son following his discharge from the Navy, N.F. saw J.C.T. just once following J.C.T.'s birth until N.M.'s death. Over the past six years following N.M.'s death, N.F. surfaced and resurfaced sporadically for fleeting moments to formally or informally assert his custody rights, only to

effectively disappear for extended periods of time rarely even seeing J.C.T. in person. Since N.M.'s death, N.F. came to see J.C.T. two or three times in New York for no more than two nights at a time; a "handful" of times at his home in Georgia for no more than one day at a time; and twice in the evening, including for dinner in New Jersey in the spring of 2025 when he was here for trial.

The physical distance between M.G.F. and N.F. certainly created substantial obstacles to N.F.'s exercising regular parenting time with J.C.T. both in terms of time commitments and finances. Still, N.F. rarely saw J.C.T. at all. N.F. did have Facetime with J.C.T. while in M.G.M.'s care, which was previously 50% of time but much less this past year.

N.F. failed to take actions apart from seeing J.C.T. that would have cost little to nothing, such as engaging on any level with M.G.F. to ask about J.C.T.'s health, education and general well-being, or engaging with J.C.T.'s early intervention service providers while knowing J.C.T. was in M.G.F.'s care. Even giving N.F. every benefit of the doubt considering his physical distance from J.C.T. and his poor relationship with M.G.F., N.F.'s attempts to be part of J.C.T.'s life were minimal. N.F. admitted as much at trial in stating he would not "run behind" anybody asking for information about his son.

N.F.'s prolonged failure to act in court, his defaults and his failure to cooperate with Dr. Dranoff's evaluation further underscore his effective consent to and fostering of M.G.F.'s parent-child relationship with J.C.T. By way of summary:

- N.F. did not seek to establish his paternity of J.C.T. until February 18, 2020 – about ten months after N.M.'s death at a time N.F. did not have J.C.T. in his care. J.C.T. was fifteen months old.

- N.F. did not tell M.G.F. he wanted to take J.C.T. to live with him until he texted M.G.F. on March 1, 2021 – almost two years after N.M.'s death and one year after the Bronx County Family Court entered the Final Access Order giving M.G.F. almost half of the time with J.C.T. J.C.T. was two years and four months old.

- N.F. failed to appear in Bronx County Family Court for the second time on September 13, 2022 for a child support hearing following an earlier failure to appear (to which M.G.F. testified).

- N.F. took no action following the April 26, 2022 order establishing his paternity of J.C.T., instead allowing M.G.F. to file his custody application in this court on March 13, 2023 – almost four years after N.M.'s death, three years after the Final Access Order's entry and two years after M.G.F. told N.F. he would need to obtain a court order to remove J.C.T. from M.G.F.'s care and invited N.F. to call him to discuss. J.C.T. was four years and four months old.

- N.F. filed an action for custody in New York State Court on July 28, 2023 over one and a half years after his discharge from the Navy. This was the first pleading N.F. filed seeking custody of J.C.T., who was almost five years old.

- N.F. defaulted by failing to appear in this court for the July 31, 2023 hearing on M.G.F.'s custody application after being personally served with notice of the custody proceeding.[5]

- N.F. waited over two months following his default to take any action until October 4, 2023, when he refiled his custody application with this court along with his emergency order to show cause application. The court declined to enter emergency relief and relisted the matter for the parties to appear in the ordinary course.

- N.F. again failed to appear in court on May 28, 2024 for trial, resulting again in the dismissal of his application.[6] N.M. had died over five years prior; the Final Access Order had issued over four years prior; and N.F. and M.G.F. had immediately reached an impasse in their March 1, 2021 text exchange over three years prior. J.C.T. was five and one half years old.

Since at least some point in 2020 – likely early 2020 considering N.F.'s frequent contact with M.G.M. – N.F. knew J.C.T. was in M.G.F.'s care for about half of the time. N.F. knew or certainly should have known that a bond between

[5] N.F. testified at trial that his car had broken down in North Carolina en route to New Jersey. This excuse is not credible or justifiable. M.G.F. did not testify that he had even attempted to call the court, M.G.M. or M.G.F.'s attorney's office to state he could not be present, much less request a virtual court appearance. Considering the importance of this issue, the court would have expected some corroborating evidence of that occurrence preventing N.F. from attending the hearing.

[6] N.F.'s counsel wrote the court the morning of the hearing stating that N.F. had advised him of an "unforeseen exigency" preventing his appearance that day and requesting an adjournment, but the court indicated on the record that morning that N.F. had called chambers simply stating he wanted to appear virtually. The court would not permit a virtual appearance at a trial but sent N.F. the link as a courtesy so he could at least listen to the proceedings. At trial, N.F. stated he never received the link and that it had appeared in his junk mail. Again, this explanation is not credible or justifiable because N.F. never called the court to inquire about the link. M.G.M. testified that she even called N.F. before or during the appearance concerning his attendance. N.F. also had counsel at that point, who would certainly have shared N.F.'s alleged inability to access the link, had N.F. called him.

J.C.T. and M.G.F. would continue to be forged and that M.G.F. was performing significant parental duties for J.C.T. at M.G.F.'s time and expense, including addressing J.C.T.'s special needs.

It defies credibility to suggest that all other participants could attend the court appearances in this case but that N.F., who has testified his son was "kidnapped" from him, would continually default for reasons having to do with anyone but N.F. himself. To be sure, N.F. learned early on the first time he missed court on M.G.F.'s child support application that court proceedings will move forward when a litigant defaults and that the court may take adverse action against the defaulting party.

N.F. attributed his prolonged inaction in part to his service in the Navy from which he was discharged in December 2021. Although a parent should not be penalized for service in the military, which may have rigid leave requirements, N.F. did not even request any leave at any time before or after N.M.'s death to see J.C.T.; nor did he testify that vacation was never available. N.F. testified he was at sea for some period, making communication difficult at times but was very vague on the details. Moreover, N.F. told M.G.F. on March 1, 2021 – before his discharge – that he was coming to take J.C.T. to live with him. That statement undermines the notion that N.F. could not have sought J.C.T.'s custody before December 2021. In any event, his prolonged inaction, including his failure to file a custody petition until

July 28, 2023 (albeit in the wrong court), continued throughout the three and a half years following his discharge.

Lastly on this point, N.F.'s blatant and repeated lack of cooperation with Dr. Dranoff's evaluation as part of discovery in this case served to delay trial in this matter for another ten months while M.G.F. continued to play a significant custodial and parenting role for J.C.T. From the outset, N.F. did not even sign the required informed consent form provided to him in February 2024 until July 17, 2024. He then failed to cooperate with Dr. Dranoff as required under the court's orders, causing further delay, only to later try to blame Dr. Dranoff and then ultimately admit at trial for the first time that he had no intention of cooperating with Dr. Dranoff because of a perceived bias on Dr. Dranoff's part and/or N.F.'s belated objection to the entire notion of having a stranger question or observe him about his private life.

Trial could have started on May 28, 2024 if N.F. appeared in court as required and advised the court that he did not intend to cooperate with Dr. Dranoff. The court would still have drawn a negative inference against him, but he could have saved another ten months of delay in starting the trial.

In sum, the court considers the challenges associated with N.F.'s physical distance from J.C.T. and his service in the Navy that may have created additional hurdles for some period, albeit unquantified; that N.F. did not expressly consent to

M.G.F.'s having access rights; that he told M.G.F. he intended to take J.C.T. to live with him in March of 2021 to which action M.G.F. objected pursuant to the court orders; and that the litigation process generally can be lengthy.

The court would therefore strain to give N.F. the benefit of the doubt. Had he done even mostly what was realistically expected of him to assert his rights and prosecute his claim, and had the significant passage of time since J.C.T.'s birth been solely the result of judicial delays, the court would have difficulty and heightened concerns with finding consent under V.C. through his inactions.

Lastly, some of the delay in this matter was occasioned by this court's calendar. For example, the volume of other litigants with cases to be heard and the various relisting of matters due to adjournments, lack of service, reassignment of judges and the court's inability to hear the entire case on consecutive days collectively contributed to a few months' worth of delays. But N.F.'s failure to file a custody action far earlier followed by his defaults and prolonged failure to cooperate with Dr. Dranoff's evaluation were by far the greater contributor to the delays as the bond between J.C.T. and M.G.F. only strengthened.

Based on N.F.s delays and inaction, he effectively consented to the formation of a parent-child relationship between M.G.F. and J.C.T. See V.C., 163 N.J. at 223 n.6; Sorentino II, 74 N.J. at 324; Sees, 74 N.J. at 224-25. M.G.F. has therefore satisfied prong one of the V.C. test.

2. M.G.F. Meets Prong Two of the *V.C.* Test Because He Has Lived with J.C.T. in the Same Household for Several Years

Since at least March 5, 2020, J.C.T. has consistently lived with M.G.F. for almost half of every week, then for alternating weeks under this court's January 16, 2024 order and then from Monday to Friday (i.e., most of the week) under this court's August 27, 2024 order after J.C.T. started attending school. M.G.F. therefore satisfies the second prong of the V.C. test.

3. M.G.F. Meets Prong Three of the *V.C.* Test Because He Has Performed Parental Functions for J.C.T. to a Significant Degree

M.G.F. has performed parental functions for J.C.T. such as housing him, feeding him, taking him to the doctors, securing special services from the West Orange school district even without a custody order to attend to J.C.T.'s needs and ultimately enrolling J.C.T. in kindergarten. M.G.F. has also worked with J.C.T. on his overall development, including by helping with his special needs, providing him with a warm, safe environment and fully integrating J.C.T. with M.G.F.'s household. M.G.F. therefore satisfies the third prong of the V.C. test.

4. M.G.F. Meets Prong Four of the *V.C.* Test Because He Has Established a Parent-Child Bond with J.C.T.

Although M.G.F. must have functioned as a parent for long enough to develop a bond – which he clearly has for almost J.C.T.'s entire life – the crucial factor is the nature of the relationship, including what functions the third party performed and

"what period and state of the child's life and development such actions were taken." Id. at 226-27. But "[m]ost importantly, a determination will have to be made about the actuality and strength of the parent-child bond." Id. at 227.

M.G.F.'s testimony made very evident the parent-child bond he and J.C.T. have. The court carefully observed M.G.F.'s body language and genuine emotion when discussing J.C.T. M.G.F. proudly spoke of J.C.T.'s challenges, how M.G.F. has learned from J.C.T. and how M.G.F. can see J.C.T.'s growth and affection, despite his challenges. At its core, M.G.F.'s love for and bond with J.C.T. was undeniable when M.G.F. became emotional and said, simply, that J.C.T. "is the best."

A picture can tell a thousand words. To be sure, a family picture is literally but a snapshot in one's life, usually a positive one if it is to be shared. The court, however, can see the expressions in J.C.T.'s and M.G.F.'s eyes – the happiness, energy and love, supplemented by Erin's testimony as she recounted the pictured events in which J.C.T. and M.G.F. partook. The type of feelings and bond are what the court would expect to see in a parent-child relationship.

The court also found Dr. Dranoff's testimony informative on the parent-child bond here. Dr. Dranoff noted that, considering J.C.T.'s diagnosis with Autism Spectrum Disorder (ASD), one may not see the typical level of bonding between parent and child, such as a child running up to a parent or sitting on the parent's lap.

Dr. Dranoff, however, found the bond evident based on J.C.T.'s interactions with M.G.F., including, in fact, demonstrated warmth and physical affection with M.G.F. and the entire household. Dr. Dranoff observed that J.C.T. listens to M.G.F., whom Dr. Dranoff described as an authoritative parental figure who elicits structure and warmth. M.G.F. has therefore satisfied the fourth prong of the V.C. test and is a psychological parent to J.C.T.

C. Issues Concerning J.C.T.'s Psychological Well-Being Relating to the Standards Set Forth in *Watkins* and *V.C.*

The court recognizes the significant implications of placing a third party in parity with a biological parent in a custody dispute. Here, aside from finding M.G.F. has satisfied the four-prong test in V.C., the court considers that the test's underlying objective is to protect the child from the likelihood of serious psychological harm.[7] The Court in Sorentino held that, in the final analysis, this consideration prevails even over the parents' fundamental rights:

> The possibility of serious psychological harm to the child in this case transcends all other considerations. The court's responsibility in the matter is not lessened by the circumstance that plaintiffs are not alone responsible for the delay (although this suit was not commenced until 14

[7] Prong four of the V.C. test may account for these concerns because the potential severance or diminishment of the child's bond with the psychological parent is what presents the potential for serious psychological harm. Nonetheless, the Court in Watkins defined the broader concept of "exceptional circumstances," as those warranting a court's use of its *parens patriae* powers "to protect minor children from serious physical or psychological harm." 163 N.J. at 247. The larger point in a Watkins analysis, then, should not be forgotten.

> months after the infant's birth), for the appeals and stays are at least as direct a contributing cause of the critical situation confronting the child.

74 N.J. at 132; accord K.A.F., 437 N.J. Super. at 132-33 ("Plainly understood, this statement by the Court [in Sorentino] emphasizes that the transcendent importance of preventing harm to a child weighs more heavily in the balance than the fundamental custody rights of a non-forsaking parent.").

Aside from the psychological harm any child would face if separated by his long-time, primary caregiver, the court must also consider J.C.T.'s special needs. J.C.T. is on the autism spectrum and is mostly nonverbal. J.C.T. is functioning well, due in no small part, it appears, from his current environment and M.G.F.'s excellent care and advocacy on his behalf. The parties agree J.C.T. is intelligent, and he has had positive interactions with all parties. Although the court does not intend to underestimate J.C.T.'s ability to thrive, his condition presents heightened challenges associated with a potential separation from M.G.F. that the court cannot ignore.

These challenges are exacerbated not only by J.C.T.'s scant interactions with N.F. since birth but also by the significant distance between New Jersey and Georgia, to where J.C.T. would relocate if the court awards N.F. primary custody of J.C.T. J.C.T.'s inability to see M.G.F. regularly because of the parties' physical distance would make the transition even more difficult. Meanwhile, J.C.T. would likely have difficulty communicating and expressing himself to N.F. and N.F.'s partner (who

knows J.C.T. even less and would be J.C.T.'s primary caregiver).[8] No party has presented any sort of plan by which the resulting psychological harm could be mitigated, and the court can conceive of no such plan as the circumstances stand. See Watkins, 163 N.J. at 248 (citing with approval the Wisconsin Court of Appeals' decision in In re Allen, 28 Wn. App. 637 (1981), where the court held that awarding custody of a deaf, learning disabled child to a fit biological father who did not know sign language rather than to the stepmother, who knew sign language and undertook significant efforts to find special training for the child, would cause substantial harm to the child, who had resided with three siblings and the stepmother for four years).

Dr. Dranoff also credibly opined that now pulling away J.C.T. from his home and school environment would be negative and potentially harmful. Dr. Dranoff also opined that regressive behavior was inevitable considering J.C.T.'s special needs. To the extent N.F. has attempted to show there is enough of a bond between him and J.C.T. to mitigate against those effects notwithstanding his failure to exercise meaningful parenting time (however limited by the court orders in place), he refused to cooperate with Dr. Dranoff, making a meaningful evaluation impossible and, to the extent even needed here, a negative inference appropriate.

[8] The testimony was inconsistent on whether N.F.'s partner is his girlfriend or wife. The court will refer to this individual as N.F.'s partner.

It is unclear whether a court can properly grant custody of a child to a third party over the biological parent's objection where the biological parent took every reasonable step expected but where granting custody to the biological parent could nonetheless result in serious psychological harm. Our Supreme Court's mandate, as quoted above, placing the child's needs as paramount suggests such a possibility, albeit doing so would have drastic implications. This, however, is not such a case. The harm from a change in custody and N.F.'s failure to mitigate against that harm are evident, much more than in Sorentino, whether viewed under a preponderance of evidence or clear and convincing standard of proof.

II. A BEST INTERESTS ANALYSIS FAVORS AWARDING M.G.F. PRIMARY RESIDENTIAL CUSTODY OF J.C.T.

Because M.G.F. is a psychological parent to J.C.T., he stands in parity to N.F., and the court must decide this custody dispute as though it were between two fit, biological parents. See Watkins, 163 N.J. at 254. To that end, N.J.S.A. 9:2-4(c) enumerates fourteen factors this Court must consider in determining an appropriate custody arrangement. These are nonexclusive factors, but they all bear on determining the child's best interests. The court applies each factor primarily concerning whether M.G.F. or N.F. should have primary residential custody of J.C.T. In the conclusion below, the court will apply the applicable factors in more cursory fashion to address legal custody and parenting time/visitation, including with respect to M.G.M.

Factor 1: The parties' ability to agree, communicate and cooperate in matters relating to the child

Factor 1 weighs in favor of awarding M.G.F. primary residential custody of J.C.T.

Overall, communication between the parties is poor. M.G.F. and N.F. have very rarely communicated at all. N.F., fully of his own volition, decided to communicate with M.G.F. almost exclusively through M.G.M. from the outset. On April 25, 2019, shortly after N.M.'s death, M.G.F. made the first overture to N.F. through Facebook messenger to discuss J.C.T.'s future. N.F. received that message but did not respond. Although N.F. was not required to engage with M.G.F., M.G.F.'s overture reflects positively on this factor because he was creating an opportunity for the parties to start communicating about J.C.T., who the parties knew was not in N.F.'s care at the time.

In February 2021, M.G.F. obtained N.F.'s phone number after N.F. texted him stating he was coming to "get" J.C.T. In 2023, M.G.F. texted N.F. to inquire about J.C.T. when M.G.M. did not return him to M.G.F. as required under the Final Access Order. N.F., however, did not respond, causing M.G.F. to understandably worry, involve law enforcement and file an emergency application in New York to secure J.C.T.'s return.

The court understands that N.F. never expressly agreed to M.G.F.'s having shared access to or custody of J.C.T. and that N.F. barely knew M.G.F. as the two met only once in San Diego prior to N.M.'s death. N.F. did have a positive relationship with M.G.M. through whom N.F. exercised his parenting time with J.C.T. Still, the reality was that N.F. did not have J.C.T. in his care, and he came to learn that M.G.F. was exercising rights the court had awarded him concerning J.C.T., to J.C.T.'s undeniable benefit. The court therefore must look to N.F.'s failure to communicate with M.G.F. in considering Factor 1.

Furthermore, despite never inquiring with M.G.F. about J.C.T.'s schooling or general welfare during M.G.F.'s time with J.C.T., and after defaulting in July 2023 on M.G.F.'s custody complaint, N.F. chose to file an *ex parte* emergency application on October 4, 2023 seeking custody of J.C.T. based on alleged abuse and neglect by M.G.F. N.F.'s application, along with the DCCP referral M.G.M. made, was, at best precipitous, and, at worst, frivolous, particularly considering the last alleged instance of abuse or neglect under M.G.F.'s care had occurred well over a year prior.

N.F. testified that M.G.F.'s actions in obtaining "access" and temporary custody of J.C.T. amounted to "kidnapping." Although N.F. is entitled to express such an opinion, his view of the situation calls into question how cooperative he would be as a primary custodian with M.G.F. in terms of shared visitation or other rights the court would otherwise afford M.G.F. as J.C.T.'s psychological parent. See

V.C., 163 N.J. at 228-29 (in a custody dispute between a psychological parent and biological parent, visitation with the noncustodial party is the "presumptive rule" subject to the statutory best interest factors).

M.G.F.'s communication with N.F. was not flawless either. M.G.F. should have directly notified N.F. of his intention to file his access and custody applications in New York and New Jersey. M.G.F. also could have been more proactive in notifying N.F. about certain events and developments such as when M.G.F. enrolled J.C.T. to obtain early intervention and related services through the state and West Orange Township. The preferred course of action would have been for M.G.F. to update N.F. even on a general level to let him know J.C.T. was doing well even if M.G.M. and N.F. were communicating with each other.

N.F.'s engagement with M.G.F., however, was virtually nonexistent throughout this litigation. The court credits M.G.F.'s testimony that he was always available to discuss J.C.T.'s well-being and act collaboratively notwithstanding the custody dispute and that he attempted to have a discussion with N.F. outside the courtroom during at least one of the proceedings in New York where both parties were present. The court finds N.F.'s blanket statement that he could never obtain information from M.G.F. to be vague and not credible.

Further demonstrating M.G.F.'s ability to communicate and cooperate, M.G.F. credibly testified that he readily shared information with M.G.M. concerning J.C.T.'s

doctor and that M.G.M. had access to J.C.T.'s child study team through the West Orange school district, even if M.G.F. and M.G.M. at times communicated through M.A. as an intermediary. M.G.F. also described his cooperation with M.G.M. on her weekend visitation by agreeing to extend her time with J.C.T. on holidays that fall on Mondays. These examples demonstrate generally M.G.F.'s willingness to communicate, share information and be flexible and cooperative on visitation with J.C.T. The court finds by extension that M.G.F. would take the same approach with N.F., although M.G.F. rightly stated that he would need N.F. to tell him where he is living and where he will be with J.C.T. The court therefore will not construe M.G.F.'s lack of proactivity against him to any material degree.

Overall, the court is concerned with N.F.'s unwillingness to communicate with M.G.F. and how that mindset would impact M.G.F.'s ability to see J.C.T. if N.F. had primary residential custody. The court is more confident that M.G.F. would communicate with N.F. if M.G.F. had residential custody.

The parties' ability to agree, communicate and cooperate in matters concerning J.C.T. is also relevant to a shared legal custody arrangement because if the court awarded primary residential custody to N.F., it would afford M.G.F. at least some level of shared legal custody considering his significant involvement in J.C.T.'s education. Although parties can share legal custody even when they reside far apart, the party having primary residential custody is more likely to first become

apprised of the need to make certain decisions and take certain actions for the child – issues of which the primary residential custodian must inform the other party sharing legal custody. Dr. Dranoff similarly noted the importance of the rule of the primary residential custodian in facilitating a relationship between the parent of alternate residence and the child. Accord Pascale, 140 N.J. at 598. Although M.G.F. could have been more proactive in this regard, the court is more confident that M.G.F., with proper direction from the court on communication protocols, would keep N.F. appropriately apprised as the primary residential custodian than if N.F. served as such.

Factor 2: The parties' willingness to accept custody and any history of unwillingness to allow parenting time/visitation not based on substantiated abuse

Factor 2 weighs in favor of awarding M.G.F. primary residential custody of J.C.T.

As to their willingness to accept custody, both parties filed pleadings seeking custody and attended the entirety of a relatively lengthy trial, with N.F. traveling several times from Georgia to New Jersey. The parties clearly would not have done so if they were unwilling to accept custody.

But as set forth above, the court cannot overlook N.F.'s defaults throughout the litigation in New York and in this court. Nor can the court overlook N.F.'s prolonged refusal to cooperate with Dr. Dranoff despite the court's orders directing

him to do so and the court's placing N.F. on notice of a potential adverse inference the court would draw against N.F. based on his continued failure to cooperate.

The court also agrees with M.G.F. that N.F.'s text messages in February and March 2021 (after about two years following N.M.'s death) that N.F. would be coming to New Jersey to "get" J.C.T. do not in themselves demonstrate a parent's willingness to accept the responsibility associated with taking custody – especially considering N.F.'s ensuing delays in taking legal action.

Outside the litigation, N.F. has rarely engaged with J.C.T. N.F. testified he has regular Facetime calls with J.C.T., but the court finds this testimony tenuous because N.F. grossly exaggerated the amount of times he has physically seen J.C.T. Nor has N.F. attempted to contribute in any way to the numerous efforts M.G.F. undertook for J.C.T.'s development, including education. N.F. himself did not undertake much, if any, of the exploration of potential schooling in Georgia; M.G.M. did so for him. The court would have expected N.F. to take significantly more action as a party seeking custody of a young child with special needs.

By contrast, M.G.F. has done everything a person seeking custody would be expected to do, including providing for J.C.T.'s health and education in terms of both his typical and more extraordinary needs. He has also fully participated in the litigation in a manner designed to expedite rather than delay it.

Nor has M.G.F. been unwilling to allow N.F. visitation/parenting time with J.C.T. At all relevant times, M.G.F. acted in accordance with orders from the New York court and this court. N.F., however, has not always done so. Even with the small handful of times N.F. saw J.C.T. in person, M.G.F. on one occasion had to seek emergency relief from the New York court in 2023 because neither N.F. nor M.G.M. returned J.C.T. to M.G.F. as required under the Final Access Order. Worse yet, neither responded to M.G.F.'s inquiries concerning J.C.T.'s whereabouts. This was not a repeated incident, and it was remote in time. The court therefore does not place significant weight on the incident, but it weighs slightly against N.F. considering the limited number of times he saw J.C.T. in the first place and the fact such an incident arose on one of those few occasions.

N.F. testified that M.G.F. has created difficulty for him in seeing J.C.T. N.F. noted his name is not on the list at J.C.T.'s school containing individuals authorized to pick up J.C.T. even though he is J.C.T.'s father. In a typical case involving two parents who both live at least in New Jersey and exercise parenting time with at least some regularity, the court would expect both parents to appear on a school's pick-up list.

Here, though, considering N.F.'s far distance from West Orange and his scant parenting time with no schedule set or requested specifically for N.F., M.G.F. could reasonably have expected some advance communication on N.F.'s part that he was

going to see J.C.T. at which point M.G.F. could have authorized N.F. to pick up J.C.T. from school if the need to do so coincided with the time N.F. planned to pick up J.C.T. The court does not doubt that M.G.F. would have cooperated in that regard had N.F. so requested. Under the circumstances, though, allowing N.F. to appear sporadically at J.C.T.'s school with no advance notice could not only have created confusion for M.G.F. and the school officials but also for J.C.T., who, as M.G.F. and Dr. Dranoff testified, is accustomed to a routine. N.F.'s refusal to communicate with M.G.F., the 2023 incident that compelled M.G.F. to file an emergency application in New York and N.F.'s view of M.G.F. as a kidnapper further support M.G.F.'s prior decision to limit N.F.'s school pick-up access notwithstanding that he is J.C.T.'s biological father. The court therefore does not construe against M.G.F. his decision not to include N.F. on the relevant list at J.C.T.'s school.

N.F. further testified to having trouble obtaining "anything" from M.G.F. concerning J.C.T. N.F., however, did not cite any specific instance in which M.G.F. refused his request to see J.C.T., except during J.C.T.'s spring break one year when N.F. had the dates wrong and corrected his request after M.G.F. had already made plans that week involving J.C.T. N.F. has therefore not shown how M.G.F. has been uncooperative or has prevented him from seeing J.C.T.

Factor 3: The interaction and relationship of the child with the parties and his siblings

Factor 3 weighs in favor of awarding M.G.F. primary residential custody of J.C.T.

Since at least March 5, 2020, when J.C.T. was sixteen months old, J.C.T. has lived at least close to 50% of the time with M.G.F., Erin and their child, Vanessa, under the same house, starting with (a) fourteen days of each month under the Final Access Order, then (b) 50% of the time, alternating weeks with M.G.M. effective January 16, 2024, and then (c) Monday through Friday effective August 27, 2024.

M.G.F., Erin and Dr. Dranoff all testified at length concerning J.C.T.'s positive interactions with M.G.F. As set forth above concerning prong four of the psychological parentage test, M.G.F.'s relationship and interactions with J.C.T. show immense love and support.

Dr. Dranoff corroborated M.G.F.'s testimony through his own direct, professional observations, noting M.G.F. was warm and supportive of J.C.T. and that Dr. Dranoff did not see a lot of the behavioral difficulties he would have expected to see from J.C.T.

Erin further corroborated M.G.F.'s testimony through describing J.C.T.'s routine and the learning activities M.G.F. and the rest of the household perform with J.C.T. Erin also walked through many photographs of M.G.F. and J.C.T. as she described the bond and good times and the two have shared, including at events in

town such as the Black Santa event, playing during a snowstorm, napping together, eating together and swimming at the community pool.

With respect to N.F., unfortunately, he chose not to participate in Dr. Dranoff's evaluation thereby denying M.G.F. discovery and warranting a negative inference against him concerning Factor 3. Putting that inference aside, N.F. has also enjoyed positive interactions with J.C.T. during his limited time with him. N.F. testified concerning the "flow" he sees in J.C.T.; how J.C.T. likes to sing with N.F.; how the two laugh together; how they do academic activities together and how N.F. sees J.C.T.'s intelligence through those activities and otherwise.

M.G.M. corroborated N.F.'s testimony, noting that N.F. made sure to focus on both J.C.T. and N.F.'s young daughter, Alani. M.G.M. testified cursorily that the bond between J.C.T. and N.F. is evident, that J.C.T. knows who his father is and that J.C.T. runs to him, plays with him and jokes and laughs, showing love toward N.F. M.G.M. did not have much more to offer in her testimony, likely because of N.F.'s limited time with J.C.T. With respect to the extent of interactions, M.G.M.'s testimony was noticeably generic as she stated N.F. saw J.C.T. "plenty of times," when, in fact, N.F. ultimately admitted on cross-examination that his visits with J.C.T. were not at all frequent. M.G.M.'s vagueness renders her testimony less credible on this point.

M.A. further corroborated N.F.'s testimony, but, like N.F. and M.G.M., could not offer much in the way of examples. M.A. credibly testified that N.F. shows J.C.T. the love and affection he needs, including on Facetime calls, and that J.C.T. pays attention to him.

Overall, the testimony concerning N.F.'s interactions with J.C.T. was necessarily limited because M.G.M. took J.C.T. to Georgia only a "handful" of times to see N.F. and for the day only. J.C.T. has never spent the night at N.F.'s home. At most, N.F. spent up to two nights with J.C.T. in New York on the two or three occasions N.F. traveled to see J.C.T.

With respect to J.C.T.'s interactions with his siblings, M.G.F.'s and Erin's daughter, Vanessa, is nine years old. Assuming for purposes of this litigation that M.G.F. is N.M.'s biological father,[9] Vanessa is technically J.C.T.'s maternal aunt. J.C.T. and Vanessa, however, have clearly functioned as siblings for most of J.C.T.'s life. The two are just three years apart in age. M.G.F. credibly described J.C.T.'s and Vanessa's relationship as immense, testifying that Vanessa loves J.C.T. "to pieces" and is very protective of him. J.C.T. wakes up, runs to Vanessa's room and

[9] This assumption plays no role in the court's ultimate determination. The law does not restrict any nonparent/third party from seeking custody of a child, provided the third party must first make the requisite showing under Watkins. Whether or not the third party is a biological relative does not impact the Watkins analysis or the best interests analysis the court will conduct once the third party has satisfied the Watkins test. See P.B., 370 N.J. Super. at 597 (stating that the V.C. test is not limited to those having any particular familial relationship with the child).

jumps into bed with her – something that M.G.F. powerfully described as a major opening up on J.C.T.'s part to showing affection toward others. Dr. Dranoff also observed Vanessa's interactions with J.C.T. and noted the sibling bond the two share as well as Vanessa's kindness and empathy toward J.C.T. – interactions Dr. Dranoff credibly opined were good to have with an autistic child.

J.C.T. therefore has a strong sibling-like bond with Vanessa based on affection, companionship and protection as with most positive sibling relationships. This bond alone is important. But here, this sibling relationship is even more meaningful because Vanessa as J.C.T.'s peer in the same household has already helped and will likely continue to help J.C.T. develop, be open to interacting with others and show affection. Vanessa's relationship with J.C.T. is therefore critical to J.C.T.'s well-being considering the heightened challenges J.C.T. faces compared with neurotypical peers.

As to N.F.'s household, N.F. and his partner have one daughter, Alani, whose age the parties did not specify but who appears to be younger than J.C.T. M.G.M. testified that J.C.T. held Alani when she was an infant and helped make her bottle. N.F. has five other children aside from J.C.T. and Alani and sees them during parts of the summer breaks and holiday breaks because they collectively have four mothers and live in Florida and California. Of those other children, only N.F.'s youngest son has seen J.C.T.

Although J.C.T. may eventually develop a strong relationship with at least Alani if he is in N.F.'s primary custody, the limited interactions thus far between J.C.T. and his siblings preclude the court from determining there is any meaningful sibling interaction that could weigh in favor of N.F.'s having primary residential custody. The court therefore finds J.C.T. and Vanessa's sibling relationship further weighs in favor of M.G.F.'s having primary residential custody.

Factor 4: The history of domestic violence, if any

Factor 4 is inapplicable and therefore neutral because the parties have no history of domestic violence between them.

Factor 5: The safety of the child and the safety of either party from physical abuse by the other party

Factor 5 is neutral because no credible evidence exists of any safety concerns or abuse by any of the parties here.

N.F. was the only party throughout the litigation to raise any safety concerns relating to J.C.T. by way of his order to show cause application. M.G.F. also credibly disputed those allegations at trial. DCCP's investigation did not substantiate those allegations, nor does the court find them credible based on N.F.'s significant delay in bringing them to the court's attention in the first instance so precipitously and apparently with no notice to M.G.F. and because of N.F.'s general lack of credibility in this proceeding.

Factor 6: The preference of the child when of sufficient age and capacity to reason so as to form an intelligent decision

Factor 6 is neutral. J.C.T. is six and a half years old. He started kindergarten just this year, in September 2024. J.C.T. is young and mostly non-verbal. Neither party has requested an *in camera* interview of J.C.T. Dr. Dranoff credibly testified such an interview would not be helpful or appropriate considering J.C.T. is largely nonverbal at this time. The court agrees.

Factor 7: The needs of the child.

Factor 7 weighs in favor of awarding M.G.F. primary residential custody of J.C.T.

Factor 7 is broadly worded and may be largely subsumed in the court's analysis of the other best interest factors. The court, however, may look to any particularized needs of the child at issue for which its analysis may not otherwise account. Here, the court considers J.C.T.'s special needs as a largely nonverbal child with ASD. Dr. Dranoff credibly testified that a child's receiving services for ASD is critical.

Here, M.G.F. and his wife, Erin, have been over-and-above vigilant and supportive from very early on for J.C.T.'s general needs as a child and his special needs considering his autism and associated developmental delays. They had J.C.T. evaluated when he was about one year old because he did not respond well to

prompts, had very limited eye contact and was not walking yet. J.C.T. qualified for early intervention services, including speech and occupational therapy.

Aside from ensuring J.C.T. receives early intervention services, M.G.F., with Erin and Vanessa's help, works with J.C.T. on developmental activities, including doing puzzles with J.C.T. to work on his motor skills, helping him express his needs and attending to his sensory issues through the use of a trampoline. Erin and M.G.F. cited several other examples of such routine activities.

M.G.F. and Erin have also engaged with the school and local community, including collaborating with other families with autistic children. Erin serves as a class parent for a special needs class and chairs Kelly Elementary School's Diversity, Equity and Inclusion Committee, which works to ensure autistic students are included in the community. M.G.F. also enrolled J.C.T. in swimming lessons. J.C.T. has recently swum in nine feet of water. M.G.F. is very well acquainted at this point with J.C.T.'s needs and has incurred time and significant out-of-pocket expenses in having those needs examined and served – all in the most alacritous manner.

N.F. believes M.G.F. and perhaps others are "downplaying" J.C.T. or hindering his progress. N.F. even speculated that somehow M.G.F. or someone on his end is coaching J.C.T. *not* to speak. N.F. did not even attempt to explain that far-fetched statement. To the contrary, M.G.F. can and does recognize potential obstacles and limitations to J.C.T.'s functioning at this time while still recognizing

and helping J.C.T. meet his full potential. This level of insight is exactly what J.C.T. needs.

By contrast, aside from spending some time with J.C.T. on developmental activities during the limited parenting time he has exercised, N.F. has not worked to serve any of J.C.T.'s needs or even attempted to engage with M.G.F. concerning J.C.T.'s needs or how he might be able to help or support M.G.F.'s efforts. Even despite N.F.'s positive relationship with M.G.M., the record contains no evidence N.F. has provided any such assistance to M.G.M. even when she obtained some services for J.C.T. Nor did N.F. testify to ever reaching out to the service providers with whom M.G.F. was working. Lastly, N.F.'s failure to cooperate with Dr. Dranoff's investigation despite the court orders only underscores his lack of engagement because N.F. could have shared his thoughts on attending to J.C.T.'s special needs and – if nothing else – further demonstrated his commitment to this process, the objective of which is to determine what arrangement will serve J.C.T.'s best interests.

In sum, N.F.'s lack of demonstrated efforts as a parent seeking custody of his child causes doubt on his ability to meet J.C.T.'s needs and whether J.C.T. faces significant regression if he left M.G.F.'s care. Had N.F. at least attempted to better engage concerning J.C.T.'s care, the court would have more reason to conclude that

N.F.'s distance from J.C.T. limited his ability to do more and would give those limitations more consideration in analyzing this factor. But he did not.

Factor 8: The stability of the home environment offered

Factor 8 weighs in favor of awarding M.G.F. primary residential custody of J.C.T.

Factor 8 does not center around which party has the bigger home or the best amenities. A stable home environment is one that is consistent, safe (physically and emotionally) and secure. As examples, uncertainty of where a party lives or will continue to live for the foreseeable future may cause concern on the home's stability as may the presence of individuals whom the child does not know or who causes problems in the home. Here, Dr. Dranoff aptly noted that the stability of the home and a pattern in routine is particularly important for a child with ASD, even more during the school week.

M.G.F. lives with Erin, Vanessa and, currently, J.C.T., in a three-bedroom, three-bathroom house in West Orange, New Jersey. M.G.F. and Erin have lived in West Orange for the past five years and are doing well as a family. M.G.F. describes the community in town as positive and loving. The environment in the home is caring, supportive, encouraging, open, honest and "not wrapped in a lot of nonsense."

N.F. testified that he currently lives in Decatur, Georgia in a two-bedroom, two-and-a-half-bathroom home, with his partner and daughter. N.F. testified that he has lived in the home for about three years. J.C.T. would have his own bedroom if he lives with N.F. N.F. described his home positively, and the court has no reason to question the love, safety and security in the home. M.G.M. also testified to the positive relationship between J.C.T. and N.F.'s partner, whom J.C.T. playfully jumps on, gives hugs, holds her hand and walks her around the apartment. M.G.M. testified that N.F.'s partner seems caring toward J.C.T.

N.F. testified to having family available outside the home as a support system. N.F.'s sister lives two doors down from him. He has other family in Albany, Georgia, which is a little under three hours away from Decatur. M.G.M., who has been a significant part of J.C.T.'s life, testified she would move down to Georgia if the court awarded N.F. residential custody of J.C.T. because her son is graduating high school and going to college.

Although the court has no specific concerns of safety or security in N.F.'s home based on his testimony, N.F. did not cooperate with Dr. Dranoff to allow any sort of analysis on the stability of his home. Such an analysis would have had some limitations because of the distance between Georgia and Dr. Dranoff's office in New Jersey. Still, N.F. deprived M.G.F. of the opportunity to evaluate this factor to any degree, and so the court must draw an inference against N.F.

Additionally, N.F.'s testimony that he has resided in his current home for three years is questionable as demonstrated on cross-examination because he has identified other addresses in sworn applications filed with the court for the past few years. N.F. has identified those addresses as belonging to his partner and claimed he was traveling back and forth between his home and those homes at times. N.F., however, offered no plausible reason for providing any address on his application other than his own residence. Although N.F.'s having a few addresses over the past few years would not itself be problematic, the inconsistency in the information he has provided in his filings and testimony calls into question his testimony on his housing situation. Because of these concerns, Factor 8 weighs slightly in M.G.F.'s favor.

Lastly, the court acknowledges M.A.'s testimony that J.C.T. would have more stability with N.F. than with M.G.F. because M.G.F. and M.G.M. do not get along and would be sharing time with J.C.T. M.G.M., however, is not seeking custody of J.C.T. She is seeking visitation, which M.G.F. or N.F. would also have if not awarded residential custody. In any scenario, then, the parties will all need to work together for J.C.T.'s benefit. The discord between M.G.F. and M.G.M. therefore has no impact on whether the court should award custody to M.G.F. or N.F.

Factor 9: The quality and continuity of the child's education

Factor 9 weighs in favor of awarding M.G.F. primary residential custody of J.C.T.

M.G.F. took extensive if not extraordinary steps early on, even without a custody order, to enroll J.C.T. in early intervention services starting August 13, 2020 (see Exhibit P-2). M.G.F. testified how he presented his case to the West Orange Board of Education concerning J.C.T.'s need for special services from the town notwithstanding that J.C.T. would not even be receiving them full time as J.C.T. was not in M.G.F.'s care full-time. The West Orange Board of Education was extremely accommodating. J.C.T. now attends kindergarten in the West Orange school system.

Dr. Dranoff was cautious not to overstate signs of improvement on J.C.T.'s part, noting the general difficulty that arises in seeing improvement from the school's Individualized Education Program (IEP) records for a child with autism. He credibly opined, however, that the special education program in West Orange with which he is familiar seems particularly "solid" and that programs of that caliber tend to yield better results.

To N.F.'s point, the court has no reason to doubt that the types of services J.C.T. receives through the West Orange school system would also be available in the school district where N.F. resides in Decatur, Georgia. M.G.M. testified that she had sent J.C.T.'s IEP information to relevant service providers in Georgia, including

at Columbia Elementary School, where J.C.T. would attend. The school representatives there are aware of this court proceeding and are prepared to move forward with J.C.T.'s enrollment if the court awards N.F. custody. The school representatives also told M.G.M. they accommodate other children with learning disabilities. M.G.M. had a favorable impression of the school and noted that a private setting like a Montessori school could also be an option. N.F. has a Montessori school in mind for J.C.T. to which N.F. has already sent J.C.T.'s IEP. N.F. hopes J.C.T. can attend that school if still eligible at the conclusion of this proceeding.

As stated above, N.F. testified concerning learning activities he has engaged in alongside J.C.T. during their limited time together, such as doing puzzles and watching Gracie's Corner. N.F. spoke to his observations of J.C.T., including the need for some improvement in math. This level of attention is consistent with what the court would expect and hope from an engaged parent.

The problem, however, is the level of uncertainty concerning the quality and continuity of J.C.T.'s schooling and the services J.C.T. would receive if the court awarded N.F. primary residential custody. Dr. Dranoff noted the possibility, when removing a child from one school district, that the new school district may not qualify the child for special services. That uncertainly is another factor weighing in favor of awarding M.G.F. primary residential custody. Under M.G.F.'s primary

custody, J.C.T. would then not only stay in the same school district that has been very accommodating to J.C.T.; he would also have the benefit of M.G.F.'s advocacy, the institutional knowledge of his child study team and the relationship between M.G.F. and the district stemming from the ongoing interactions concerning J.C.T.'s education.

Factor 10: The fitness of the parties

Factor 10 is neutral. Neither party here is unfit.

The record contains no indication M.G.F. would be unfit as J.C.T.'s primary residential custodian. The record contains no evidence of any substance abuse or findings of neglect or abuse at any time toward J.C.T., Vanessa or N.M. As stated above, M.G.F. has competently cared for all of J.C.T.'s needs inside and outside M.G.F.'s household. Dr. Dranoff described him positively as an authoritative, loving parent.

The record contains no indication N.F. would be an unfit parent to J.C.T., either. The record contains no evidence of any substance abuse or findings of neglect or abuse toward J.C.T. or any of his other children. N.F. testified in detail concerning the meaningful interaction and learning experiences J.C.T. has had with him, although the time has been limited. His philosophy in applauding J.C.T.'s accomplishments while also being stern when necessary and instilling in J.C.T. his core values are what the court would hope and expect to see from a fit parent. N.F.

has other children, including Alani, who lives with him and his partner. He lives a balanced, responsible, low-key life. Corroborating N.F.'s testimony, M.G.M. testified that N.F. takes the necessary time to direct and redirect J.C.T., takes him to the bathroom with no issues, shares meals with him, does puzzles and has had no difficulty with J.C.T. M.G.M. described him as stern, but loving and patient.

Factor 11: The geographical proximity of the parties' homes

This factor weighs in favor of awarding M.G.F. primary residential custody of J.C.T.

Factor 11 is often neutral as to residential custody because any challenges associated with the distance between the two parties would exist regardless of who has primary custody. Factor 11 may also be relevant in determining the extent to which residential custody can be shared and in determining appropriate visitation/parenting time, including any impact the child's schooling may have on the potential arrangements. Poor communication between the parties may again factor into the analysis if the parties' distance would exacerbate the associated problems.

Here, if the court awarded N.F. primary residential custody of J.C.T., the court would still need to account for the length of time J.C.T. has resided with M.G.F., the bond he has developed with M.G.F. and his learning and other routines with M.G.F. The distance between the parties would render a change particularly difficult for

J.C.T. because J.C.T. would be unable to see M.G.F. with any realistic level of frequency. It would also render extremely difficult any viable transition plan associated with J.C.T.'s moved to Georgia – which would necessarily require M.G.F.'s frequent and physical presence – and the drastic change in environment. If M.G.F. retained custody, N.F.'s time with J.C.T. would not likely change. That reality would be understandably disappointing for N.F. but would not present any new challenges associated with a transition.

Factor 12: The extent and quality of the time spent with the child prior to or subsequent to the separation

Factor 12 weighs in favor of awarding M.G.F. primary residential custody of J.C.T.

Courts apply Factor 12 most commonly where two parents once lived together with the child and then physically separated. The court then looks to the overall amount and quality of time each parent spent with the child pre- and post-separation. In cases involving third parties versus one or more biological parents, logic dictates that the court look to the amount of time each party spent with the child since birth.

J.C.T. resided with N.M. from his birth on November 1, 2018 until N.M.'s death on April 3, 2019. J.C.T. saw N.F. only during N.M.'s trip or few trips to Virginia when she took J.C.T. to see N.F. for a few days and saw M.G.M. and M.G.F. when N.M. spent alternating weeks with them during the time she spent on the East Coast during her maternity leave from the Navy. It appears J.C.T. spent more time

with M.G.F. than with N.F. prior to N.M.'s death based on the alternating weeks N.M. lived with him. The record is unclear on exactly how often N.M. took J.C.T. to Virginia, but the testimony did not suggest these visits were frequent.

The most reliable indicator here, then, is J.C.T.'s time spent with the parties following N.M.'s death. Before M.G.F. and M.G.M. filed their respective custody petitions, J.C.T. was in M.G.M.'s primary care. It appears M.G.F. saw J.C.T. occasionally at the outset at M.G.M.'s discretion and then saw J.C.T. more regularly leading up to the March 5, 2020 Final Access Order, following which M.G.F. spent significant time with J.C.T.

M.G.F. has spent more time with J.C.T. and has had more meaningful time with J.C.T. than N.F. Although that time was largely pursuant to a court-ordered arrangement to which N.F. did not expressly agree, N.F. did not even tell M.G.F. that he intended to take J.C.T. until February of 2021 and rarely took the opportunity at any time to see J.C.T. even when he was with M.G.M. with whom N.F. had a positive relationship. On cross-examination, counsel asked N.F., "Isn't it true there was never an extended visit where J.C.T. was in your home?" N.F. first denied that fact but then admitted that J.C.T. never spent more than one day at a time in N.F.'s home. N.F. also stated he had never spent more than two nights *anywhere* with J.C.T. Thus, while the court does not seek to penalize a party based on circumstances that were

court-imposed, no injustice results here under the circumstances by weighing Factor 12 in M.G.F.'s favor.

Factor 13: The parties' employment responsibilities

Factor 13 weighs slightly in favor of awarding M.G.F. primary residential custody of J.C.T.

Factor 13 is not an inquiry of which party is more financially or otherwise successful in their career. Nor does the court seek to penalize a party for being employed, working hard and/or working nontraditional hours. The court reviews this factor to see whether any party's employment responsibilities may materially impact their ability to care for the child at issue.

M.G.F. has worked for HBO for the past seventeen years. He predominately works from home and typically goes into the office only once or sometimes twice each week. M.G.F. drops J.C.T. off to school and picks him up even on days M.G.F. must commute into the office.

N.F. works part-time at a Waffle House, where he has been employed for about six months. He works the night shift from 9 p.m. to 7 a.m. The only concern with N.F.'s overnight hours with respect to J.C.T. is that N.F.'s partner would be J.C.T.'s primary care provider with N.F.'s sister also living nearby. But neither N.F.'s partner, who met J.C.T. only three times, nor his sister, testified. N.F. also refused to participate in Dr. Dranoff's evaluation in which N.F. could have spoken to these

individuals' interactions with J.C.T. or could have enabled Dr. Dranoff to explore potentially speaking with them just as Dr. Dranoff spoke with Erin and Vanessa.

The record contains no evidence of specific concerns with either of these individuals, and parents often enough rely on the help of family members and other third parties (including daycare providers) to care for their child during work hours. Because of the question mark here that N.F. could easily have answered through the testimony of his partner and sister or at least cooperating with Dr. Dranoff by providing information concerning them, the court must find that this factor weighs slightly in M.G.F.'s favor because N.F.'s work responsibilities will require someone whom the court knows nothing about and who has rarely interacted with J.C.T. to care for him.

Factor 14: The age and number of children.

Factor 14 is neutral.

J.C.T.'s age itself does not present any unique considerations here not otherwise discussed above. J.C.T. is the only child at issue in this case.

CUSTODY DETERMINATIONS

Residential Custody

The court awards M.G.F. primary residential custody of J.C.T. First, M.G.F. has made the showing required by Watkins and V.C. of exceptional circumstances through psychological parentage to overcome the presumption of custody to which

N.F. would have been entitled as J.C.T.'s biological parent, thus requiring a best interests analysis under the fourteen statutory factors. Second, the best interest factors weigh overwhelmingly in favor of the court's awarding M.G.F. primary residential custody of J.C.T.

In short, J.C.T. has lived at least close to fifty percent of the week with M.G.F. for most of J.C.T.'s life with what the court finds to be N.F.'s effective consent under V.C. M.G.F. is particularly in tune with and has undertaken immense efforts to address J.C.T.'s special needs inside the home, in school and in the local community. Changing custody at this point would be an extremely difficult transition, particularly considering the parties' distance, and carries a real likelihood of J.C.T.'s suffering serious psychological harm and regression in his overall development. Although the law clearly favors the biological parent's having primary residential custody, J.C.T.'s best interests are paramount. Moreover, though shared legal custody (addressed below) and meaningful, court-ordered parenting time, N.F. can still play a significant role in his son's life.

Parenting Time/Visitation

N.F. should have substantial parenting time with J.C.T. to the extent practicable considering the parties' distance. Although M.G.M. has not filed her own pleading, M.G.F.'s Counterclaim (filed July 18, 2024) seeks grandparent visitation, which M.G.M. should also have on a substantial level. Considering the

distance between M.G.F.'s and N.F.'s residences, N.F.'s lack of regular parenting time with J.C.T. and with M.G.M.'s more frequent visitation with J.C.T., the most sensible approach is to combine N.F.'s parenting time with M.G.M.'s visitation, giving N.F. priority in his sole discretion for any parenting time he wishes to exercise during the allotted times. N.F. and M.G.M. have a positive relationship and should be able to cooperate in this regard. If they have any disagreements they cannot resolve, either of them may file an application with the court.

The schedule going forward shall be every other weekend from Friday after school, or starting 3 p.m. on Fridays where J.C.T. does not have school, to Sundays at 6 p.m., with the next such weekend starting June 28, 2025. N.F. or M.G.M. may pick up J.C.T. from school, and N.F. shall be added to school's pick-up list. The court will not order visitation every weekend because with M.G.F. serving as J.C.T.'s primary residential custodian, J.C.T. should spend part of the weekend at his primary residence to rest from the school week rather than undergo potentially extensive travel with M.G.M. and/or N.F. and to enjoy his local community. Even an alternating weekend schedule will likely impose some conflict with regularly scheduled weekend clubs/organizations J.C.T. may be a part of, but the court finds J.C.T.'s ability to have frequent and continuing contact with N.F. and M.G.M. to be critical.

The court's holiday parenting schedule (provided herewith and posted on eCourts) shall also govern, effective immediately, with N.F. and M.G.M. designated as "father" and "noncustodial parent" and with two exceptions. First, only N.F. may exercise Father's Day and the entire weekend on which it falls, even if the weekend would not otherwise have been N.F.'s weekend and results in consecutive weekends for N.F. If N.F. is not present, M.G.M. may not have J.C.T. on Father's Day. If N.F. cannot exercise Father's Day parenting time in any given year, M.G.F. shall have J.C.T. for the entirety of Father's Day weekend, again, even if the weekend would not otherwise have been M.G.F.'s weekend and results in consecutive weekends for M.G.F.

Second, because of the parties' distance, instead of individually allocating Christmas Eve, New Years Eve, New Years Day, Good Friday and Easter, the court will alternate holiday breaks between the parties. For 2025, N.F. and/or M.G.M. may have J.C.T. for the December break, starting the day following the last day of school preceding the break and ending two days before school resumes. The parties shall alternate the December break each year. For 2026, M.G.F. shall keep J.C.T. for spring break, which appears to fall around Easter.[10] The parties shall alternate spring break each year. The parties should meet and confer concerning any other

[10] See West Orange Board of Education 2024-25 school year calendar, at https://www.woboe.org/Page/2#calendar1/20250406/month (last visited June 17, 2025).

substantial breaks in the school calendar, with the understanding that the court would likely alternate those breaks between the parties as well.

For summer 2025, N.F. and/or M.G.M. shall have J.C.T. for two nonconsecutive weeks to be exercised in July or August. For summer 2025 only, the scheduling shall account for any trips that M.G.F. has planned as of the date of this decision, provided N.F. must receive two nonconsecutive weeks. For summers going forward, N.F. and/or M.G.M. shall (between the two) have J.C.T. for a total of four weeks between July and August, with no more than two consecutive weeks at a time. N.F. and M.G.M. may designate their weeks by March 1st each year failing which they must reach agreement with M.G.F. concerning which weeks they will exercise.

The parties shall exchange the child as they have been, which appears to have been at a rest stop or other location on or nearby the New Jersey Turnpike. The parties must be on time for the exchange failing which the court may modify its accompanying order to deal with tardiness (including requiring the offending party to travel further or changing the schedule).

Because of the communication issues in the past, N.F. and/or M.G.M. must tell M.G.F. which of them will be exercising parenting time/visitation one day prior to the start of any weekend, holiday or summer week and must tell M.G.F. where they will be staying with J.C.T. For any visit consisting of three or more overnights,

M.G.F. may speak with J.C.T. at least once per day for fifteen minutes at a time to be agreed upon.

The court will leave to the parties and counsel the task of accounting for any visitation/parenting time issues not specifically accounted for herein. For example, the parties should discuss telephone/videoconferencing time between N.F. and J.C.T. As a matter of courtesy and sound planning, N.F. and M.G.M. should also communicate to M.G.F. sufficiently in advance of holidays on which they would have J.C.T. under the holiday parenting schedule of any such time they are unable or do not wish to exercise. If these or any other issues not dealt within herein arise, the parties may file an application to set more specific parameters.

Lastly, the court notes M.G.M. has not filed her own application for grandparent visitation under N.J.S.A. 9:2-7.1. To the extent the court's decision today arguably requires any showing beyond N.F.'s consent as J.C.T.'s biological parent through his Counterclaim, the court considers M.G.M.'s significant time with J.C.T. since N.M.'s death, which, up until the court issued its August 27, 2024 order, was at least equal to M.G.F.'s time and then continued to every weekend since then. The extensive record developed at trial is more than ample for the court to conclude

that J.C.T.'s visitation with M.G.M. is necessary to avoid harm to J.C.T. See Moriarty, 177 N.J. at 118.[11]

To the extent an evaluation of the statutory factors is necessary, the record shows:

(1) J.C.T. and M.G.M. have a very close relationship considering M.G.M.'s extensive care for him and her expressed, passionate desire to remain in his life.

(2) N.F. and M.G.M. have a positive, cooperative relationship. While M.G.F. and M.G.M. do not, they have managed to the extent necessary to put aside their personal differences as shown by the extensive access/visitation schedule under which they have operated for several years and their general compliance therewith – which, although not without its hiccups, should improve with court-imposed communication parameters.

(3) J.C.T. has frequent, consistent contact with M.G.M.

[11] This showing of harm required before the court considers the eight factors under N.J.S.A. 9:2-7.1 and is intended to protect the biological parent's constitutional rights to childrearing autonomy. See Moriarty, 177 N.J. at 101. With the consent of N.F. as J.C.T.'s only living biological parent, this requirement is satisfied. With M.G.F.'s having primary residential and shared legal custody of J.C.T., some consideration of the statutory factors is arguably required even with one living parent who consents based on the references in the statute to "the child's parents or the person with whom the child is residing." See N.J.S.A. 9:2-7.1(2) and (4).

(4) Visitation will have a continued positive effect on J.C.T., particularly considering M.G.M. has not only had her own quality time with J.C.T. but has been very helpful in facilitating time with N.F. considering his distance and availability.

(5) The schedule will not interfere with any time M.G.F. or N.F. would otherwise have been able and entitled to enjoy as M.G.M. and N.F. will share the same time allotment.

(6) M.G.M.'s intentions in visiting J.C.T. are grounded in good faith, namely, her genuine desire to spend time with him with no conceivable ulterior motives.

(7) The record contains no evidence of any physical, emotional or sexual abuse or neglect by M.G.M. toward J.C.T.

(8) J.C.T.'s overall best interests are served by his ability to interact with core members of his family, including M.G.M. and her side of the family, through whom J.C.T. can have even stronger ties to N.M.'s memory.

M.G.M.'s continued visitation with J.C.T. is therefore necessary and appropriate.

Legal Custody

M.G.F. and N.F. will share legal custody of J.C.T., subject to one exception addressed below. Legal custody is the authority and responsibility for making major (not "minor") decisions regarding the child's welfare. Pascale, 140 N.J. at 596. In most cases, a fit parent has the right to at least shared legal custody. At least part of that rationale stems from a parent's fundamental right to raise his child, including having input on major decisions concerning the child. See N.J.S.A. 9:2-4 ("The Legislature finds and declares that it is in the public policy of this State to assure minor children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage and that it is in the public interest to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy.").

Although the parties have not communicated well to date, communication can be improved with time and with some parameters the court will set. N.F. deserves the opportunity to have a significant role in J.C.T.'s upbringing, including input in major decisions affecting J.C.T.'s life. If the test of time ultimately fails, the court will consider the appropriate application to modify legal custody.

N.F. shall have access to all educational, medical and other relevant information to which M.G.F. has access, including but not limited to access to J.C.T.'s school records/personnel and IEP reports. N.F. should also be notified of

and able to participate in any child study team and other meetings with school officials and doctors. To the extent N.F. does not already have access to this information or is not on a list of individuals to be noticed of events such as school meetings and doctor's appointments, M.G.F. should direct N.F. to the relevant providers (to the extent N.F. is not aware) so N.F. may ensure his right to access/notification through presenting the court's accompanying order awarding him shared legal custody. M.G.F. should cooperate as needed with the relevant providers to this end.

Notwithstanding N.F.'s right to shared legal custody, M.G.F. may alone sign all documents and approve actions concerning J.C.T.'s IEP and the related special needs services J.C.T. receives, even if the providers would otherwise require signatures from all parties sharing legal custody. This exception is for efficiency to avoid M.G.F.'s being hamstrung if he needs to take action or meet certain deadlines concerning J.C.T.'s schooling considering the parties' far distance and their difficulties in communicating thus far. M.G.F., however, shall still inform N.F. of any such actions he intends to take and receive nonbinding input from N.F. If J.C.T. continues to receive special needs services in the 2026-27 school year, N.F. may apply to the court to eliminate this exception at which point the court will consider the parties' actions and communications as they operate under the arrangement provided herein.

Communication Protocols

Effective communication between M.G.F., N.F. and M.G.M. will be particularly critical considering the parties' significant distances and the communication issues that have arisen thus far. The court also needs to have the clearest evidence of the parties' compliance with its orders so it can determine whether the parties are acting in good faith and minimize disputed facts. The best method to do so is by requiring the parties to communicate primarily, if not exclusively, in writing. The parties shall immediately download AppClose and shall ensure they do not block each other on their cell phones as they will need to link their accounts.

The parties shall communicate through AppClose concerning parenting time/visitation, including but not limited to any requests to confirm or modify the schedule and to notify the other parties of inevitable delays in traveling to the exchange location (although the parties should plan diligently to avoid delays), and memorializing any violation of the accompanying order. The parties may even wish to "check in" through AppClose at the exchange location once they are present. Because they share legal custody, M.G.F. and N.F. should communicate through AppClose concerning issues pertaining to J.C.T.'s schooling and health including notifications of any significant events and the exchange of information concerning J.C.T.'s healthcare providers.

Any party wishing to bring any communications to the court's attention at a hearing should generate and provide a transcript of the parties' communications through AppClose as transcripts are easier to follow than printouts of screenshots. The court expects the parties to adhere strictly to this requirement as it is for the parties' protection and will assist the court with a thorough and orderly disposition of the matter.

Child Support

N.F. shall continue to pay his child support obligation through the court system, except, effective the date of this order, the court will direct the entirety of N.F.'s payments to M.G.F.