

STATE OF NEW YORK
FAMILY COURT : COUNTY OF NIAGARA

PETER MARK DIARBAKERLY,

Petitioner,

-against-

Docket Nos. V-03057-18
V-03058-18
V-03388-17

KATIE LYNN RIFORD,

Respondent.

KATIE LYNN RIFORD,

Petitioner,

-against-

Docket No. V-00103-18

PETER MARK DIARBAKERLY,

Respondent.

Niagara County Courthouse
175 Hawley Street
Lockport, New York 14094
October 19, 2018

B e f o r e:

HONORABLE ERIN P. DELABIO,
Family Court Judge

A p p e a r a n c e s:

RANDY S. MARGULIS, ESQ.,
Appearing for Peter Mark Diarbakerly

ANTHONY J. CERVI, ESQ.,
Appearing for Katie Lynn Riford

JASON J. CAFARELLA, ESQ.,
Appearing as Attorney for Child

P r e s e n t:

Ashley Overholt, NYACR, NYRCR
Official Court Reporter

PETER MARK DIARBAKERLY,
Petitioner/Respondent

KATIE LYNN RIFORD,
Petitioner/Respondent

ASHLEY OVERHOLT, NYACR, NYRCR,
Official Court Reporter

1 *(Proceedings commenced at 11:33 a.m.)*

2 **THE COURT:** This is the matter of Peter
3 Diarbakerly and Katie Riford. This is with respect to both
4 having cross petitions with respect to custody and visitation.

5 In the courtroom I have Randy Margulis
6 representing Mr. Diarbakerly. I have Anthony Cervi for the
7 first time, representing Katie Riford, and Jason Cafarella is
8 in the courtroom as Attorney for Child.

9 **MR. CAFARELLA:** Good morning, Judge.

10 **THE COURT:** What I have on for calendar today
11 is -- I'm not going to get to the initial appearance on the
12 original -- on the amended petition, because I see in the
13 motion, Mr. Cervi, you're asking for the Court to dismiss the
14 petition based on the fact that you feel it's too late to
15 file, correct?

16 **MR. CERVI:** I have, Judge. I'd ask that the
17 motion for leave to amend the petition be denied, and I'll get
18 into that when the Court asks.

19 **THE COURT:** Okay. So before I even get into the
20 initial denials on that, I'll just let you guys get into your
21 motions.

22 **MR. CERVI:** Your Honor, if it pleases the Court,
23 I had the first motion. I don't know that it's opposed. I've
24 never gotten any opposing paperwork with regard to that, with
25 the exception of, I believe it was BestSelf that had --

1 **THE COURT:** Yes.

2 **MR. CERVI:** -- just asked that, generally, it be
3 denied, or if it be granted, that there be some restrictions
4 that the Court review it in camera, first, and that it not be
5 disclosed publicly.

6 Judge, I don't have any objections to their
7 request, except as it pertains to the records themselves;
8 obviously I think they should be made available to both
9 Counsel, but not to be disclosed to anyone further. With
10 that, Judge, I'm not going to belabor this.

11 **THE COURT:** I have a few questions about
12 that --

13 **MR. CERVI:** Yes.

14 **THE COURT:** -- though. I did get
15 Ms. Rogers' affidavit -- or I'm sorry, affirmation and
16 opposition to that. What is it in the child's records do you
17 see would be necessary for -- for the custody? I mean, I see
18 this as strictly a custody and visitation proceeding between
19 the parties.

20 **MR. CERVI:** Correct, Your Honor.

21 **THE COURT:** Where does the child's mental health
22 records come into play, whereby that would lead me to believe
23 that there should be no access and/or custody to either
24 parent? How does that play in?

25 **MR. CERVI:** Judge, I think the counseling

1 records will be significant, in that in the counseling that
2 the child has with the counselor, I believe that there will be
3 disclosure as it pertains to some of the issues that she
4 suffers from as a result of the visitation, as a result of the
5 lack of bond and relationship with the father.

6 Judge, if you look in our papers that we
7 submitted in opposition to Mr. Margulis's papers it is under,
8 I believe, Exhibit F, there is a letter from Kristin Cercone,
9 Ph.D. She states in pertinent part in her -- her brief
10 summary and evaluation of the child, Olivia, that she -- the
11 child endures many symptoms of depression resulting in very
12 elevated scores across most scales and sub scales. Responses
13 likely reflect anxiety and distress associated with visiting
14 dad, which now occurs without mom present.

15 She also endorsed -- the child also endorsed
16 suicidal ideation in response to thoughts that she is a bad
17 kid.

18 Judge, all of the foregoing are issues that are
19 directly related to dad, and I think those will be further
20 extrapolated from the counseling that the child is receiving
21 with BestSelf, as well as with the counselor at school and
22 otherwise, Judge, so --

23 **THE COURT:** Okay.

24 **MR. CERVI:** -- I --

25 **THE COURT:** Go ahead.

1 **MR. CERVI:** With that, Your Honor, I -- I don't
2 want to waste the Court's time. I don't think there's any
3 other objections as it pertains to any of the subpoenas that
4 we've requested -- judicial subpoenas, and if -- unless the
5 Court wishes me to state anything further, I would rest on the
6 motion and ask that the Court grant the order as it pertains
7 to counseling records and judicial subpoena duces tecum for
8 counseling records and all other records requested. Thank
9 you, Judge.

10 **THE COURT:** Okay. Yeah. I -- you can have a
11 seat.

12 I -- because I -- I want to be able to maybe go
13 back and forth a little bit. Before I ask for Mr. Margulis's
14 or Mr. Cafarella's response to that, my own question with
15 respect to that is, you submitted a subpoena with respect to a
16 security officer in the hospital. I don't think that requires
17 judicial subpoena. It's not a subpoena for medical records or
18 anything of that nature. It should be a normal judicial
19 subpoena -- or I'm sorry, a normal subpoena by your office not
20 needing a judicial signature.

21 **MR. CERVI:** I -- I don't believe that it should
22 be required, Judge, because it wouldn't get into protected
23 medical records. I just thought with a little bit of extra
24 diligence, being that we're on the eve of trial, I didn't want
25 to submit a subpoena and they come back and say we require

1 judicial subpoena. I can tell you this, Judge, they have
2 already contacted my office and they've left a message. I did
3 not discuss this matter with them, but I -- I did glean that
4 there's some issues already with not having talked to them,
5 Judge, so being that we are on the eve of trial, I would just
6 respectfully request -- just to obviate the necessity of any
7 further request or hearing on it, if we could get a judicial
8 subpoena; obviously people listen to you, Judge, a lot more
9 than they listen to me.

10 **THE COURT:** That opens up the big can of worms
11 for everybody asking me to do judicial subpoenas for everybody
12 because they don't listen to you and they listen to me, and
13 that would be overwhelming for the Court.

14 **MR. CERVI:** No question, Judge, and I guess with
15 regards to this, because it is -- you know, I don't believe it
16 should be considered protected health records, but it is a
17 record from -- that was produced as a result of my client's
18 stay at the hospital, and it would indicate, you know, some
19 information as it pertains to my client, perhaps, being in a
20 hospital room. I don't know how they would view that, Judge;
21 if they would try to redact the records or something to
22 protect patient confidentiality. Being that it is kind of
23 on -- at least a little on the borderline, I thought I would
24 request that the Court -- respectfully, that you sign a
25 judicial subpoena for same.

1 **THE COURT:** So do you think there was some kind
2 of incident record filled out, or you're not positive?

3 **MR. CERVI:** I'm pretty certain there was an
4 incident report, Judge. My client indicated to me that there
5 was security that was involved, that an incident report was
6 developed as a result of that, and I don't know who it was
7 that had developed the report, but I know with that report it
8 will not only substantiate one of the issues of domestic
9 violence, Judge, but also will let me know who the witness is,
10 if need be, if we needed to call that person to testify.

11 **THE COURT:** Okay. Mr. Margulis, with respect
12 to -- I'm --

13 **MR. MARGULIS:** So --

14 **THE COURT:** We're going to have to do these one
15 by one.

16 **MR. MARGULIS:** Sure.

17 **THE COURT:** You guys --

18 **MR. MARGULIS:** Sure.

19 **THE COURT:** -- have a lot of motions in front of
20 me.

21 **MR. MARGULIS:** With respect to the motion for
22 the subpoenas --

23 **THE COURT:** Okay.

24 **MR. MARGULIS:** -- I will somewhat take a back
25 seat to Mr. Cafarella and to Ms. Rogers, because obviously

1 they represent the child and the counseling facility; however,
2 I don't believe that it would be appropriate to produce those
3 confidential mental health records of the -- the other records
4 that Counsel was asking for, with regard to the child's
5 schooling and medical treatment. I would object to the
6 documents regarding or relating to matters that involve
7 counseling of the child.

8 Number one, the presumption under the law is
9 that they're privileged. They shouldn't be disclosed.
10 They're going to contain hearsay statements of the child which
11 would otherwise be inadmissible, and I also would
12 suggest -- and I'm not trying to change the subject, but
13 Mr. Cervi, as he suggested and has indicated, he has filed
14 responsive papers objecting to my request for leave to amend
15 the petition -- my client's custody petition, because we're
16 seeking to include events and circumstances that have more
17 recently occurred post the filing of the first petition, so
18 the very substance of what Counsel is suggesting is going to
19 be contained in these counseling records, relate to the very
20 same thing I'm suggesting, that it's more recent in time,
21 certain issues that may or may not have occurred since the
22 filing of the petition, so it just seems to me he's trying to
23 have it both ways.

24 The other reason I don't think that they're
25 appropriate, Mr. Cervi included those records, or some of

1 them, I presume, in his other response to my motion. There
2 are medical records of the child, and there are, I believe,
3 some mental health records of the child, and some of the
4 records that I saw in that submission make reference,
5 essentially, to diagnoses of the child that came not from
6 BestSelf, but they came from Ms. Riford. There are statements
7 made to the counseling center place that the -- that the
8 anxiety and the depression that Olivia is suffering is because
9 of separation, because of her father, because of visitation,
10 that were clearly communicated by the child's mother. These
11 are not independent assessment findings by a child
12 psychologist that might have been authorized or appointed by
13 the Court. We -- we -- that ship already sailed. We had a
14 discussion either before Your Honor or with your confidential
15 law clerk, and it was decided back then to use the services of
16 Dr. Tyrrell, who did whatever you call that type of
17 evaluation. We didn't go down the path of having a full
18 forensic psychological mental health evaluation where, maybe,
19 the child would have been evaluated by a clinical psychologist
20 and he or she may have rendered an opinion as to whether or
21 not the child suffers from anxiety and depression, and, if so,
22 whether it's connected to my client, or maybe it's the -- the
23 issues that are caused by the mother, so I -- I don't
24 think -- I think --

25 And on top of that, I think the records would be

1 too prejudicial because of all of that. Absent an independent
2 psychological evaluation of the child and the parties, I think
3 that they should be precluded.

4 **THE COURT:** Okay.

5 **MR. CERVI:** Just briefly, before -- Your Honor,
6 and I apologize, but I -- I want to be respectful. I wanted
7 to let him speak. Judge, he did not submit any opposing
8 papers --

9 **MR. MARGULIS:** Sure we did.

10 **MR. CERVI:** -- to my motion at all.

11 I don't recall getting any opposing papers, not
12 for my subpoenas, so I would object to anything -- any
13 arguments that would be made by Counsel, I think that it would
14 need to be made in writing, so that I would have the
15 opportunity to respond to it. And so with that, Judge, I
16 would object to him -- his response in its entirety.

17 **THE COURT:** Okay.

18 **MR. MARGULIS:** I have a written affirmation that
19 was signed by me on October 10th that I believe to have been
20 circulated.

21 **THE COURT:** I do have something in opposition.

22 **MR. MARGULIS:** I don't think that means that I
23 can't be heard, but --

24 **THE COURT:** It was an October 9th or 10th
25 response, I think I remember seeing.

1 **MR. MARGULIS:** 10th. You didn't get this?

2 *(Handing.)*

3 **MR. CERVI:** I don't recall.

4 **MR. MARGULIS:** I don't have any covered copies,
5 which means they would have been mailed.

6 **MR. CERVI:** Your Honor, it doesn't mean that he
7 didn't -- I don't recall ever seeing this; you know, it is
8 possible that it got lost in the cracks, but I don't recall
9 ever seeing this, Judge.

10 **THE COURT:** I do have it. I'm going to treat it
11 as though it's been mailed and served, and then the -- the
12 attorney affirmation, the one you submitted today,
13 Mr. Margulis is just speaking about the request to not allow
14 you to amend your petition, correct?

15 **MR. MARGULIS:** That's the --

16 **THE COURT:** That is just solely to that,
17 correct?

18 **MR. MARGULIS:** There's two; one is for his
19 motion, and the other is my reply --

20 **THE COURT:** Right --

21 **MR. MARGULIS:** -- to his response --

22 **THE COURT:** -- to --

23 **MR. MARGULIS:** -- to my motion.

24 **THE COURT:** -- his -- they each have one motion.
25 They each have oppositions to each other's motions, and now

1 Mr. Margulis has a reply to Mr. Cervi's opposition,
2 and -- attorney affirmation and opposition to his --

3 **MR. MARGULIS:** There's one reply, and it relates
4 to my motion; how is that?

5 **THE COURT:** Yeah. Okay. Mr. Cafarella.

6 **MR. CAFARELLA:** Good morning, Judge.

7 **THE COURT:** You pick which one you want to reply
8 to now.

9 **MR. CAFARELLA:** Judge, with regards to
10 Mr. Cervi's motion for judicial subpoenas, I have no objection
11 to any of them. I'd note that he is seeking judicial subpoena
12 both for Emily Robinson from BestSelf, and Kristin Cercone
13 from Oishei Children's hospitalization. I think that would be
14 the best method to -- Mr. Margulis can cross-examine each of
15 those providers to determine what information they used to
16 render an opinion regarding my client's counseling. I have no
17 objection to those subpoenas being issued.

18 With regards to the medical records in which
19 Sharyn Rogers issued opposing affirmation, I agree that the
20 records should be provided to the Court in camera. I would
21 like to review the un-redacted records myself, since Olivia is
22 my client, and of course the Court can determine which
23 portions of which documents can be utilized based on relevance
24 weighing my client's confidentiality.

25 **THE COURT:** Okay. So you have no objection to

1 anything, except you want to go along with how Ms. Rogers has
2 proposed the records be submitted to the Court?

3 **MR. CAFARELLA:** That is correct, Judge.

4 **THE COURT:** Okay. All right. And I did just
5 find, October 11th is when we received your affidavit in
6 support of -- wait a minute. What am I looking for?

7 **MR. MARGULIS:** Attorney affirmation. The title
8 just reads attorney affirmation, and the signature page is
9 dated October 10th.

10 **THE COURT:** Oh, okay.

11 **MR. MARGULIS:** The other one --

12 **THE COURT:** Let me see if I have it.

13 **MR. MARGULIS:** The other one is titled reply
14 affirmation.

15 **THE COURT:** All right. This is your motion.
16 What I received is your motion from October -- that was filed
17 here October 11th. That's what I have in front of me.

18 **MR. MARGULIS:** Oh, yes.

19 **THE COURT:** I have Attorney Cervi's motion. I
20 have the temporary orders. Okay.

21 All right. Let me speak to the judicial
22 subpoenas. Knowing now that Mr. Cafarella is actually in
23 support of most all of the subpoenas, except that -- to kind
24 of have the self -- BestSelf -- BestSelf Behavioral Health --
25 Ms. Rogers sent in an opposition -- I will sign the order for

1 judicial subpoena for that, but you need to obviously redact
2 it or amend it or edit it so that it reflects how Ms. Rogers
3 has proposed to submit her information to the Court for in
4 camera review.

5 With respect to all the other judicial
6 subpoenas, I believe that they actually do pertain to this
7 proceeding. There hasn't -- there isn't much objection to all
8 of them. The only question I brought up was the security
9 officer, but I think what I'll do is, just to -- just sign the
10 judicial subpoena, but based on -- the only reason, being, if
11 this was something filed within the hospital, and there's a
12 record that may come with that, some report, that is the only
13 reason I'm signing that judicial subpoena; otherwise, if it
14 was trying to subpoena the security officer for his testimony,
15 I would not sign it, but if there is some kind of report that
16 may have been, you know submitted and/or signed or whatever,
17 prepared, based on something that occurred in the hospital,
18 I -- I agree with Mr. Cervi that, in some respect, that
19 probably wouldn't be released based on the fact that it's
20 connected to a hospital, and her admission in the hospital at
21 that moment.

22 **MR. MARGULIS:** Does it matter that we don't know
23 the name of the security officer? It's just, kind of, left
24 blank.

25 **THE COURT:** Well, I think what we should

1 do -- well, Mr. Cervi is going to have to submit to me a
2 judicial subpoena with the name of the security officer. You
3 know, I did not realize that there was not a specific name.

4 **MR. MARGULIS:** There's not.

5 **THE COURT:** I just saw security officer. Do we
6 know the specific name of the security officer, Mr. Cervi?

7 **MR. MARGULIS:** I don't, Judge, and I won't know
8 until I get the report. Once I get the report, I can submit
9 the judicial subpoena -- actually, I can just submit a
10 subpoena for his testimony, if necessary.

11 **THE COURT:** You're looking for any records that
12 have been prepared or submitted or filed based on that
13 incident in the hospital?

14 **MR. CERVI:** That's correct, Your Honor. Yes.

15 **THE COURT:** Okay. And if there is a security
16 officer named in that report that comes out of it, you can
17 issue your own personal subpoena upon him.

18 **MR. CERVI:** Yes, Your Honor.

19 **THE COURT:** Okay. All right. That takes care
20 of Mr. Cervi's motion with respect to judicial subpoenas.

21 With respect to the motion of not allowing the
22 amended petition, I'm going to deny that motion, Mr. Cervi. I
23 agree with what's been put in motion, unless -- Mr. Cafarella,
24 is there anything you want to speak to that motion?

25 **MR. MARGULIS:** Could I interrupt, real quick?

1 **THE COURT:** Hold on.

2 **MR. MARGULIS:** I just didn't --

3 **THE COURT:** Go ahead.

4 **MR. MARGULIS:** I didn't understand your
5 terminology. You said with respect to the motion to disallow
6 an amended petition. The motion doesn't seek to -- it's my
7 motion to allow; it's his objection seeking to disallow.

8 **THE COURT:** Okay.

9 **MR. MARGULIS:** I didn't understand if you were
10 granting my motion or denying his opposition.

11 **THE COURT:** I'm denying his opposition.

12 **MR. MARGULIS:** Okay. Thank you. I'll stop
13 talking.

14 **THE COURT:** I'm -- I'll grant your motion
15 where -- let me ask Mr. Cafarella his response to --
16 Mr. Margulis filed an amended petition October 11th.

17 **MR. MARGULIS:** Sounds right, Judge. Probably
18 the same date I filed the notice of motion.

19 **THE COURT:** Right.

20 **MR. CAFARELLA:** Judge, I have no objection for
21 the motion for leave to file an amended petition. I believe
22 just with the request for the judicial subpoenas, I think this
23 is the time to get all of the information out from both
24 sides --

25 **THE COURT:** Right.

1 **MR. CAFARELLA:** -- so Your Honor can make a
2 decision.

3 **THE COURT:** Right. With respect to the filing
4 of the amended petition, before I make my final ruling,
5 Mr. Cervi, anything else you want to be heard on with respect
6 to that?

7 **MR. CERVI:** No, Judge. I think that the papers
8 speak to both sides as it pertains to the leave to file the
9 amended petition, Your Honor. I don't think that I need to
10 say anything further.

11 **THE COURT:** Okay. All right. So with respect
12 to the filing of the amended petition, it was filed on October
13 11th. I understand that our first Court hearing date is the
14 first week of November, and this has been an ongoing matter
15 for a very long period of time in this Court.

16 After reading Mr. Margulis's papers, it is
17 correct and accurate that at some point in time in the middle
18 of proceedings before me, just on further proceedings date, it
19 had been requested to amend, orally, the petition, to include
20 a request for custody, as well as expanded access. So based
21 on that, and based on the fact that -- and I don't believe
22 there's anything, procedurally, to disallow this at this point
23 in time, I'm going to allow the filing for the amended
24 petition for custody, and that will be included in your
25 hearing dates beginning on November -- I can't remember the

1 date.

2 **MR. MARGULIS:** 12th --

3 **THE COURT:** November 12th.

4 **MR. CERVI:** 16th or --

5 **MR. MARGULIS:** Or 16th?

6 **PETER MARK DIARBAKERLY:** 16th.

7 **MR. MARGULIS:** 16th, sorry.

8 **MR. CAFARELLA:** 16th.

9 **THE COURT:** You are here November 16th at 1:30
10 for the beginning of your fact-finding hearings.

11 **MR. MARGULIS:** Correct.

12 **MR. CERVI:** Yes, Your Honor.

13 **THE COURT:** Continuance on November 26th, at
14 9:30, and you also have a third date on December 6th, at 1:30,
15 as well.

16 **MR. CERVI:** Yes, Your Honor.

17 **THE COURT:** All right. I've taken care of the
18 subpoenas. I've taken care of the amended petition filing by
19 Mr. Margulis on October 11th. What else am I missing?

20 **MR. MARGULIS:** Your Honor, part of my motion,
21 which has three components to it, the other two that we
22 haven't yet addressed relate to the access that my client is
23 exercising with both children. The Court, I'm sure will
24 recall, at some point in the past, I think it was a June
25 order, you ordered supervised access, and you designated

1 Jeanne Kratt, J-E-A-N-N-E, Kratt, to act as supervisor.

2 Since that time, Your Honor, there have
3 been -- well, there have been problems that -- I submit, that
4 have been caused by Ms. Riford, but I'm going to address the
5 actual need or not for the supervision, itself.

6 Attached to the reply affirmation are some notes
7 from Ms. Kratt, including what I believe is a letter she may
8 have circulated in the past to the Court. I never received a
9 copy of it in the past, so I don't know if, in fact, the Court
10 had gotten any reports from her or not. I have not had any
11 contact with her in that regard, so I don't have personal
12 knowledge, but needless to say, there is, I think, a two-page
13 letter attached to the reply affirmation, and it's from
14 Ms. Kratt. It's a three-page letter dated August 29th, 2018.
15 It's just attention Judge DeLabio.

16 And in that three-page letter from Ms. Kratt,
17 she summarizes -- and I -- I'd like the record to reflect, and
18 the Court to be aware, that this letter that, apparently, was
19 either sent to you or not sent to you, I had no hand in it. I
20 don't think either Counsel had any hand in it. I'm just
21 assuming that as part of her supervisory functions, maybe she
22 routinely submits reports to the Court. This came about, as
23 far as I'm concerned or aware, this was just on her own
24 volition and not at anyone's request, unless it was the
25 Court's, but in that letter she suggests that there have been

1 problems during the supervised access, and all of those
2 problems have been caused by the children's mother.

3 She goes on to suggest that Mr. Diarbakerly has
4 been, what I would submit is an exemplary parent during
5 periods of access with his children. She states in here, he
6 has properly fed the children. There's a baby, as you know,
7 who's in diapers. There's allegations that the child suffers
8 from diaper rash because of my client. The baby suffered from
9 dehydration because of my client. That's the substance of the
10 medical records that I think they're seeking to obtain by the
11 subpoena, part of the argument we heard today. Ms. Kratt has
12 suggested that it's Ms. Riford and her mother who have
13 systematically interfered with access during the process.

14 She has stated that Mr. Diarbakerly, my client,
15 has always used proper seat restraints, car seats for the
16 children.

17 The kid got -- one of the kids got her clothes
18 dirty, and my client helped, you know, dab water on it.
19 Whatever. To suggest that whatever he does is inappropriate
20 under the circumstances, I --

21 There was an allegation -- I think the Court
22 might be aware of this -- after one of the periods of access
23 Ms. Riford called the police on my client, alleging -- how she
24 would have known this, I don't know, unless she was stalking
25 him, but she made an allegation -- of a misdemeanor, mind

1 you -- she alleged that he was driving erratically, so the
2 police came, detained my client by questioning him and I think
3 his mother -- or some member of his family -- and Ms. Kratt --
4 and Ms. Kratt attested to and states in her letter to you that
5 he was just -- he was driving appropriately. He doesn't
6 speed. He makes the kids wear their seat belts. There's
7 nothing inappropriate, so --

8 I would also point out that in the report from
9 Dr. Tyrrell, who did perform a mental health evaluation, of
10 sorts, alluded in her report to the Court --

11 **MR. CERVI:** Judge, I would object to any report
12 of Dr. Tyrrell.

13 **MR. MARGULIS:** The Court has it.

14 **THE COURT:** I know that. That's the problem,
15 Mr. Cervi. You came in and I -- I can appreciate you came in.
16 I actually looked at the Dr. Tyrrell report today, because
17 your motions were very specific. There's a lot of motions,
18 and it's asking for a lot of things that -- let me just put it
19 out there to some degree it's almost like an attempt for both
20 of you to posture what's going to happen in this trial, so
21 I -- they are -- these were ordered back in May, and both
22 parties participated. It's Dr. Tyrrell, so it was the Niagara
23 County Mental Health Department that did it, and these are
24 part of the file now. They're part of my whole file. They've
25 been sitting here since May. I have not touched them or read

1 them, but with how specific and how much has been requested in
2 these motions only a month prior to the trial, I did read them
3 today, just to see what had really been going on and what has
4 Ms. Tyrrell proposed, because he's looking for unsupervised
5 access right now. I mean, I do have a response for all this,
6 but I think I'm going to let him refer to Tyrrell.

7 Have you had a chance to read the Tyrrell
8 reports?

9 **MR. CERVI:** I did, Your Honor, and honestly, I
10 didn't think there was a lot of substance to it, to be frank,
11 but --

12 **THE COURT:** Right.

13 **MR. CERVI:** And -- in any event, Judge, I
14 understand.

15 **THE COURT:** Okay. So he can refer to them. I'm
16 going to be honest, I did read them, because you guys are very
17 specific today about what you want, and I wanted to be a
18 little better briefed. I have kept myself away from all this
19 information, because my law clerk had been pre-trying a lot of
20 this, and they've been coming in front of me -- quite frankly,
21 the two temporary orders were proposed to me and consented to
22 by the parties. They weren't really my issuance of a
23 temporary order based on what I'm seeing; this was -- these
24 were both submitted by consent.

25 **MR. CERVI:** Okay.

1 **THE COURT:** So I did those temporary orders
2 based on those reasons, so that shows you how little I had
3 involvement with the temporary orders going into place and
4 things like that, because the parties had been trying to
5 resolve this matter, to some degree, with themselves.

6 **MR. CERVI:** Thank you, Your Honor.

7 **THE COURT:** Okay. So I'm sorry, go ahead,
8 Mr. Margulis.

9 **MR. MARGULIS:** Thank you. So as I was saying,
10 the parties each met with Dr. Tyrrell, who opines in the
11 report that she submitted to the Court, that she believes that
12 there's a strong possibility of attempt by Ms. Riford, the
13 children's mother, to alienate Mr. Diarbakerly from the
14 children's lives.

15 I would submit that the suggestions -- or the
16 references from Jeanne Kratt in her letter to the Court, which
17 suggests that the allegations -- the numerous, repeated
18 allegations against Mr. Diarbakerly by Ms. Riford are all
19 unfounded, at least according to the one unbiased independent
20 witness that we have, which is Ms. Kratt herself. It would
21 appear to me that the suggestion by Ms. Tyrrell -- or
22 Dr. Tyrrell, rather, that Ms. Riford is attempting to alienate
23 the children, might be dead on.

24 It would further appear to me -- and I think
25 it's all consistent with what Dr. Tyrrell sensed was going on

1 by the mother, and if you looked at the report that you just
2 referenced from Dr. Tyrrell -- mom has poor judgment.

3 The letter from Jeanne Kratt reflects
4 interrogation of the child by the mother. When dad takes the
5 baby to be breastfed in the middle of the access, mom comes
6 out and interrogates Olivia: Are you okay? Is everything
7 okay? Are you safe? It's inappropriate, so given that we
8 have some corroboration -- it's not just me standing here on
9 behalf of my client trying to do a good job, suggesting that
10 there is no need for continued supervision, we have some
11 corroboration of the fact that there may very well be no
12 continued need for any supervision -- not to mention the fact,
13 Your Honor, that Ms. Riford has no skin in the game, so to
14 speak. It costs my client \$450 a day for Ms. Kratt's
15 services, at the rate of \$75 an hour. The Court granted six
16 hours alternate weekends, plus all such other times as may be
17 agreed. That's a whole other issue, Your Honor. I don't have
18 a violation filed -- petition, but it -- it would be our
19 allegation that Ms. Riford has violated your order by denying
20 access that's entitled to be exercised by Mr. Diarbakerly, and
21 in fact, again, looking at that letter from Jeanne Kratt, she
22 even says in here -- she cites a Friday, August 10, 2018, 2:47
23 p.m. text message -- I'm sorry, a 4:18 p.m., from Ms. Riford,
24 that says, quote, due to the serious concerns I have regarding
25 the emotional and physical wellbeing of the children during

1 these visitations, the children will not be present at this
2 weekend's visitation. Thank you.

3 So I think all of this taken together, Your
4 Honor, portrays a clear picture that Ms. Riford will do
5 anything she can to prevent Mr. Diarbakerly from having and
6 enjoying a normal, natural, healthy relationship with his
7 children, that I would respectfully submit to this Court that
8 he is every bit entitled to.

9 So given that there is no continued need for
10 supervision; there's no evidence that he's done anything
11 inappropriate; there's no evidence that any of the past or
12 more recent allegations from Ms. Riford are even remotely
13 true, I don't believe that there's any evidence or implication
14 that the children are in any risk of imminent harm or
15 emotional damage by having unsupervised access with their
16 father.

17 Mr. Cervi has objected in his papers on a
18 procedural basis, suggesting that my appropriate form of
19 relief would have been a motion to re-argue or renew a motion
20 that I made in the past. And I think what he's referring
21 to -- I believe it was back in March, I filed a motion with
22 the Court, seeking what I referred to in my papers -- well,
23 the notice of motion in that earlier submission asked for a
24 schedule of access, because if you might remember earlier on,
25 the directive from the Court was as agreed and arranged.

1 Well, guess what? We weren't able to agree, and we weren't
2 able to arrange, so we came to Court on a motion asking for a
3 strict schedule of access, and nowhere in my notice of motion
4 did I ask for a termination of supervised visitation. You
5 know why? There was no Court-ordered supervised visitation.

6 In my affirmation where I summed it all up and
7 said, you know, respectfully, I'm asking for this and I'm
8 asking for that, I said, I'm asking for unfettered access by
9 my client with the children. And what that alluded to was the
10 earlier allegations that Ms. Riford would bring her mother.
11 She would bring her brother, who also called the police on my
12 client on a separate occasion. That's what I was asking for,
13 so I think that the reference to the -- any procedural
14 deficiency, I think, is -- respectfully, is misplaced.

15 I am asking for unsupervised access going
16 forward. I don't know if you want me to raise the final issue
17 now or after we deal with just this issue. It's a short one.
18 It's a short one.

19 **THE COURT:** Keep it short.

20 **MR. MARGULIS:** I'll do my best.

21 **THE COURT:** All right. Might as well get it
22 out. I'll have Mr. Cervi respond and Mr. Cafarella.

23 **MR. MARGULIS:** The final issue, Your Honor, that
24 we are requesting in our motion has to do with access, so I
25 think it was discussed and ordered -- one of the children just

1 turned one, little Mason, who I believe is nursed by his
2 mother, and he still takes naps, so when we were before the
3 Court and we had, I think, a lengthy discussion about trying
4 to figure out the times on the weekends and so forth, there
5 was a suggestion submitted to the Court about, well, you know,
6 he's a little baby, so he needs to be breastfed and he needs
7 to take naps, and six hours at a time of access with dad might
8 not enable them to facilitate that, so it was suggested by the
9 Court -- and I believe it's in the order -- when the child
10 gets fussy or whatever and seems to be hungry, dad has to stop
11 the access, meet mom somewhere, provide the child so the child
12 can be breastfed, and then I think, napped, and then the
13 intention was, when the child's got a full tummy and he's
14 taken his nap, then Mr. Diarbakerly can get him back for the
15 remainder of whatever that six-hour period is.

16 As it turns out, most, if not all of those
17 occasions, once he returns the child to be breastfed and
18 napped, that's it; I don't think -- maybe one or two there's a
19 reference by Ms. Kratt at the end of the period for 15 minutes
20 he gets him back so he can say goodbye and I'll see you
21 whenever.

22 Given the child's age, I think it's disruptive
23 now to my client's six hours a day once in a while that he's
24 been getting, so I would ask that the Court re- -- well, not
25 reconsider. I would ask that the Court consider terminating

1 that requirement that the baby has to be returned to the
2 mother to be breastfed.

3 I -- I'm no expert. I'm a -- I think there are
4 other ways of accommodating the need for the child to be fed
5 breast milk.

6 **THE COURT:** I got it. I need Mr. Cervi to
7 respond to that with respect to the mother. When you said now
8 that the child is older, this was only since five months ago,
9 so -- a child could breastfeed up to two to three years,
10 depending on the parent.

11 **MR. MARGULIS:** Well --

12 **THE COURT:** Depending on the parent. With all
13 that being said, Mr. Cervi.

14 **MR. CERVI:** Thank you, Your Honor. Judge, I'll
15 address the last issue, first, just because it's so fresh, and
16 I think the Court is looking for a response on that.

17 Judge, if you look at my responsive papers under
18 Exhibit G -- or I'm sorry, E, I believe it is, there is
19 a -- actually a doctor's note in there June 28, 2018. It
20 merely says that Mason, the child, the infant, is breastfed on
21 demand. Please be aware of and responsive to signs of hunger,
22 and contact mom to nurse him. That is Dr. Watson from her
23 June 29 of 2018 note that the child is still breastfed,
24 Judge -- although -- breastfed on demand.

25 Although the child does -- is starting to eat

1 solid foods -- there's no question about that -- I think with
2 that, Your Honor, it should help to alleviate some of the
3 problems, in that if the child is fed some solid foods, then
4 probably won't need to nurse as frequently, but the child
5 still is --

6 **MR. MARGULIS:** Breastfed --

7 **MR. CERVI:** -- breastfed on demand.

8 **THE COURT:** On demand. Does he receive bottles
9 at all?

10 **MR. CERVI:** No, Judge.

11 **THE COURT:** No bottles with breast milk in them?

12 **MR. CERVI:** No, Your Honor.

13 **THE COURT:** Not at home? I saw something in the
14 letter --

15 Just to be clear, these Jeanne Kratt letters,
16 they did not come to the Court. They do -- I see that they
17 are addressed to me, but our Court has not received these
18 letters. This is the first I'm seeing them, in your reply
19 affidavit, and I thought I saw something about -- I don't know
20 what page it was on, but Ms. Kratt said something to the
21 effect of, if Olivia can feed Mason with a bottle, why can't
22 somebody -- is the child Olivia feeding the child Mason with a
23 bottle as an older sibling while she's home?

24 **KATIE LYNN RIFORD:** No.

25 **MR. CERVI:** No, Your Honor. That's just simply

1 not happening. And Your Honor, I would suggest that a
2 compromise, as I indicated, could be had here, in that,
3 certainly, with the child eating some solid foods, I'm sure
4 there may be lengthy periods, at times -- and I don't think it
5 would be the whole six hours, but maybe it is possible that
6 the child would go, certainly, longer periods of time, if not
7 the entire period of time, but obviously if the child
8 needs -- is needing to be breastfed, I don't think that anyone
9 would want to keep the child from being fed, so I don't think
10 that we're, you know, seeking the child to come back every
11 hour, every two hours, every three hours; just simply if the
12 child is not able to be consoled, obviously then the child
13 needs to -- to be breastfed.

14 And Jeanne stated in her one letter, if the
15 child is inconsolable, in 15 minutes, they will contact mom to
16 have her come to provide the breastfeeding.

17 **THE COURT:** Is Ms. Kratt still doing the access?

18 **MR. MARGULIS:** Yes.

19 **THE COURT:** Okay. I'm going to leave it to
20 Ms. Kratt to determine whether or not the child -- the mother
21 should be called to pick up the child. I think she's the only
22 person that can, at this point, be the neutral party to make
23 that determination.

24 **MR. MARGULIS:** I'm hoping there would no longer
25 be a need for Ms. Kratt, Your Honor.

1 **THE COURT:** At this point, I haven't heard from
2 Mr. Cafarella; I know I'm jumping the gun by saying that, but
3 it's been my inclination, unless there's something different
4 Mr. Cafarella can give me, that we are so close to trial that
5 I -- I wasn't --

6 **MR. MARGULIS:** Could we --

7 **THE COURT:** I wasn't interested in changing any
8 of the access right now, because we're so close to trial.
9 I -- it -- and I have not been -- as I've said before, I have
10 not been involved in these temporary orders. I just signed
11 temporary orders based on how the parties -- which I
12 appreciate -- came up with a lot of ways to address the issues
13 and dad getting access.

14 I also appreciate, your client has stepped up
15 here, Mr. Margulis, and offered to pay that amount of money so
16 that he could get into his access with his children and have
17 somebody like Jeanne Kratt, who is an MSW, at least observe
18 and all of that, and be able to provide reports to not only
19 Counsel and their -- and to all the parties, but also to the
20 Court about how appropriate it seems that they have been.

21 And now with all of that coming out of my mouth,
22 I know you're thinking, why wouldn't you give me unsupervised
23 access. I'm just -- there's -- there's just so much going on
24 here that I'm just not ready to make any changes. I just want
25 to get to the hearing. This hearing has been delayed --

1 **MR. MARGULIS:** Well, that's true. Yes, it has.

2 **THE COURT:** -- by a lot of parties --

3 **MR. MARGULIS:** Yes, it has.

4 **THE COURT:** -- both parties on both sides.

5 **MR. MARGULIS:** Yes.

6 **THE COURT:** So there's equal play in the delay
7 of all of this.

8 **MR. MARGULIS:** I, too, would like to hear what
9 Mr. Cafarella has to say; however, then -- and I'll sit down,
10 but then I would ask the Court to consider different
11 allocation of the cost, because this is getting really
12 expensive.

13 **THE COURT:** Or I was going to at least allow his
14 parents to supervise.

15 **MR. MARGULIS:** Okay.

16 **THE COURT:** If they want to come in from
17 Massachusetts and they can supervise the access -- I haven't
18 heard any allegations about the parents, which I'm sure I'm
19 about to hear some now. I haven't heard it before, and I'm
20 going to allow his parents to supervise. One access, I still
21 would like Jeanne Kratt involved, because I think it
22 provides -- it confirms and solidifies the appropriateness of
23 his action, which will help you and your client in trial, but
24 Mr. Cafarella --

25 **MR. MARGULIS:** Thank you, Judge. Sorry to

1 interrupt.

2 **MR. CAFARELLA:** Do you want me to go first or
3 Mr. Cervi?

4 **THE COURT:** Mr. Cervi, let me hear from
5 Mr. Cafarella about the actual -- what does he -- he think
6 about unsupervised access.

7 **MR. CAFARELLA:** Judge, I guess I can't disagree
8 with your overall rationale to not make any modifications on
9 the eve of trial; however, I was prepared today to advocate
10 for unsupervised access. The reason being, Judge, when
11 this -- when this access started, the allegations, which
12 were -- some of them were true -- is that dad did not have a
13 very good relationship with his children. There was long
14 distance. He lived in Boston. Mom and my clients live here.
15 There were questions regarding his parenting abilities and
16 also his stability. Since that time, this Court ordered a
17 mental health evaluation, the Dr. Tyrrell evaluations, and --

18 **MR. CERVI:** Judge, I'm sorry, I hate to
19 interrupt, but with Mr. Cafarella making that statement, I
20 guess there's two things; one, obviously, I want to be heard.

21 **THE COURT:** Yeah.

22 **MR. CERVI:** But secondly, I would ask that
23 Mr. Cafarella place on the record if he is following his
24 client's wishes, or -- I believe he's substituting judgment at
25 this time. I would like -- I believe he needs to state

1 adequate basis for doing so.

2 **THE COURT:** Okay. Go ahead, Mr. Cafarella.

3 **MR. CAFARELLA:** Thank you, Judge. So as I was
4 saying, with regards to the stability, Dr. Tyrrell had issued
5 a report for Mr. Diarbakerly. That report didn't have any
6 serious concerns with regards to his stability. In the very
7 beginning, mom's mother was the supervisor. That did not work
8 out well, and then we were left with Jeanne Kratt, who is a
9 third-party independent supervisor, and, at least my
10 intention, and I thought the intention of everybody involved,
11 that she would be an independent voice with regards to
12 how -- how this access was transpiring, to see whether or not
13 dad did have the skills necessary to care for his children,
14 whether he was appropriate.

15 **THE COURT:** Um-hmm.

16 **MR. CAFARELLA:** And since the entry of this
17 order, the access has occurred. Jeanne Kratt has supervised
18 all of the access, Judge. And not only in her letter, which I
19 believe now is part of the Court's file, but in my
20 conversations with her -- and I spoke with her just this
21 morning -- unequivocally, she says dad is appropriate and he
22 has not done anything inappropriate, and she has no
23 reservations with regards to dad exercising unsupervised
24 access.

25 In speaking with Jeanne Kratt, I also wanted to

1 hear her opinion. I know that there's allegations of
2 alienation. I am not going to weigh in on those allegations
3 right now. Whether I substitute judgment at trial, I will
4 make that known, but I can say now, Jeanne Kratt, who has been
5 involved in all of the supervised access, says that Olivia
6 enjoys her access, enjoys her time with her father. Based on
7 that, it's my recommendation, or would have been my
8 recommendation, for unsupervised access.

9 Now, I understand that the Court is not willing
10 to make that leap at this point, and I don't necessarily
11 disagree. We're on the eve of trial. We have -- you have a
12 ton of information in front of you, and we have a ton of
13 witnesses, but I don't believe that the Court's inclination to
14 have the paternal grandparents as alternate supervisors is
15 irrational. In speaking with Ms. Kratt, I believe that the
16 paternal grandmother has been at most of the access.

17 **THE COURT:** Yeah. I saw that.

18 **MR. CAFARELLA:** And according to Ms. Kratt, the
19 paternal grandmother is appropriate; she's not overbearing,
20 and all of the childrearing falls on Mr. Diarbakerly. It's
21 not the situation where the paternal grandmother steps in and
22 is handling the care for the children. She is more visiting
23 and the father is the one taking care of the children at this
24 time.

25 **THE COURT:** Okay.

1 **MR. CAFARELLA:** Thank you, Judge.

2 **THE COURT:** Sorry, Mr. Cervi. I kind of skipped
3 you in the process there. I didn't mean to do that. Talking
4 about the breastfeeding, I got your response on that. I think
5 it would make -- let me let you finish, and then --

6 **MR. CERVI:** Thanks, Your Honor.

7 Judge, first and foremost, Judge Kaye had come
8 forth with a memo -- Judge, I don't know how many ago years
9 now; it seems like it was a few years ago, but it's probably
10 ten years at this point -- as it pertains to the role of the
11 law guardian and Attorney for the Children in a custody and
12 visitation case. Also, it enumerated their responsibilities
13 on a neglect case and JD, et cetera.

14 In regards to a custody and visitation case,
15 Judge, it's a clear directive of the Court of Appeals and
16 Judge Kaye's mandate that the Attorney for Child or Children
17 follow the wishes of the child if they are old enough to
18 articulate their reasons, and they cannot substitute judgment
19 unless they find it would cause imminent danger to follow
20 their wishes.

21 **THE COURT:** I'm sure Mr. Cafarella is well aware
22 of that, so I think your client should caution herself on what
23 she's going to tell you her daughter says, because one thing
24 I've learned about children, being an AFC myself, is children
25 will tell parents what they want to hear, as well.

1 So he has clearly said, on the record, that his
2 recommendation is based on what Ms. Kratt has also observed
3 during all of the access, so if you're trying to elicit from
4 Mr. Cafarella exactly what his client is saying to him or if
5 he's not, you know, advocating for her wishes, you know, he's
6 already -- he said what he is putting on the record.

7 **MR. CERVI:** I understand that, Judge.

8 **THE COURT:** If you're trying to admonish him by
9 telling us what Judge Judith Kaye pretty much promoted as to
10 what AFC's should be doing, Mr. Cafarella has been on a lot of
11 my cases and knows very well how to represent his clients.

12 **MR. CERVI:** Judge, I don't doubt his legal
13 knowledge and ability, Your Honor; however, I know he's
14 substituting judgment. He indicated to me previously he's
15 substituting judgment at this point. It's not just at a trial
16 that he has to follow the wishes of the child. He must follow
17 the wishes of the child at hearings as it pertains to access
18 and everything else.

19 **THE COURT:** Right.

20 **MR. CERVI:** If he doesn't, he has to place on
21 the record, A, what the child's wishes are, and secondly, the
22 reason for not following the child's wishes. It's what's
23 directed by the Court of Appeals.

24 **THE COURT:** This is motion practice. We are not
25 at the hearing right now.

1 Look, I -- you guys, we are into over an hour on
2 these motions. You guys are -- I feel as though this is just
3 a total attempt at posturing what trial -- you have three
4 hearing dates.

5 Mr. Cervi, I'm going to let you respond to the
6 unsupervised access right now very quickly, and I'm just going
7 to -- I'm just going to make my rulings and we'll be done and
8 you guys are just going to be here for your hearing dates.

9 **MR. CERVI:** Thanks, Your Honor. Judge, I think
10 Counsel's argument is misplaced. He talks about what Jeanne
11 Kratt says. He talks about the visitations, et cetera. It
12 overlooks all of the problems and the issues which got us to
13 the supervised visitation in the first place.

14 I would submit to you, first and foremost, my
15 client thoroughly denies any and all allegations in those
16 reports. Secondly, even if they are true, Your Honor, if they
17 are true, it would concern me, and I would admonish my client
18 that she needs to take different action. You can bet your
19 bottom dollar, Judge, I would be having a very serious
20 conversation with my client as it pertains to that, and I
21 already have, because -- you knew what these allegations were,
22 Judge, and I can tell you a hundred percent from my
23 standpoint, that those allegations are not true.

24 Secondly, Judge, even if they are true, and
25 overlooking the fact that it would be intolerable behavior,

1 okay, I would suggest, overlooking that fact, as it pertains
2 merely to visitation, it overlooks the point of what the need
3 for supervised visitation is in the first place.

4 The need for supervised visitation was exactly
5 as outlined in my papers, Judge, and it overlooks, one, on
6 a -- if you look at a doctor's note from July 2nd, the child,
7 Mason, the infant, one year old, who is dehydrated, heatstroke
8 and sunstroke initial encounter. Judge, heatstroke and
9 sunstroke initial encounter as a result of the visit with the
10 father, my client had indicated to him that the child should
11 not be out in the elements. It was 96 degrees out that day.
12 The child was basically sopping wet and was lifeless when she
13 had the child back after that.

14 Further, Judge --

15 **THE COURT:** Hold on. In that access period --
16 was Ms. Kratt at that --

17 **MR. CERVI:** Yes, Your Honor.

18 **THE COURT:** Okay.

19 **MR. CERVI:** Further, the child -- if you look at
20 the note from June 29th from Dr. Watson, it indicates that
21 Olivia has asthma, and it specifically -- specifically, the
22 doctor says she should avoid extreme heat and poor air quality
23 conditions. Please consider indoor activities on hot days.
24 These notes -- doctors' notes were provided to Jeanne Kratt as
25 indicated in one of her reports. All of that was ignored, and

1 the child obtained heatstroke and sunstroke.

2 Judge, I've been on this earth for many years,
3 and I've never come across anyone who had heatstroke or
4 sunstroke before. It requires -- I would suggest, Judge, it
5 requires neglect of someone's health and wellbeing in order
6 for that to happen, and not Jeanne, not the mother -- who I
7 believe was present on that date -- not anyone took the
8 appropriate precautions to ensure that child's health and
9 wellbeing. That's just one of many different instances of
10 problems that we have as it pertains to the father.

11 Judge, I indicate in my papers, further, we have
12 a report from Dr. Cercone that indicates, as I said earlier,
13 the child has exhibited symptoms of depression and also has
14 had anxiety and stress associated with visiting dad.

15 Contrary to Counsel's assertion, this is not
16 based upon what mom had said. This is based upon -- it says
17 she endorsed -- Olivia endorsed -- many symptoms of depression
18 on the CDI2, which is a medical test that is given to the
19 child to determine whether or not there was issues with her;
20 it resulted -- that resulted in very elevated scores across
21 most scales and sub scales. These -- the doctor opines these
22 responses likely reflect anxiety and distress associated with
23 visiting dad. She also endorsed suicidal ideation, et cetera.

24 Judge, the father --

25 **THE COURT:** I'm going to be signing a subpoena

1 for those records to come in. I'm certain, you as attorneys
2 are going to bring the right people in to testify to those
3 records. That will be your opportunity to cross-examine those
4 doctors or bring in that testimony -- if those are your
5 witnesses -- to put it in here that she is truly suffering
6 anxiety or whatever mental health issues she's having due to
7 dad's -- her -- her being with dad or visiting with dad.
8 These are just records right now before me. I don't have them
9 in as testimony, as evidence. I don't have people testifying
10 here. These are just motions that you have before me,
11 gentlemen.

12 **MR. CERVI:** Correct.

13 **THE COURT:** At this point in time, Mr. Cervi, I
14 know my decision. It hasn't changed or wavered since
15 everybody has been putting on the record what their positions
16 are. I do totally understand your positions. I've read
17 everybody's motions and their responses to the motions, so at
18 this point, I'm ready to rule on the -- the motions that are
19 left.

20 With respect to the supervised visitation,
21 whether I'm going to let it go, what I'm proposing is this:
22 That Ms. Kratt do one more visit and give us a final report.
23 And I see that these reports are going to -- she's addressing
24 them to me. I have not received them into the Court. Those
25 records, just like any other records, have to come in through

1 Ms. Kratt. Somebody has to bring her in to testify to those.

2 The other thing I'm going to do is allow his
3 parents, dad's parents to supervise access. There can't be
4 that much access before the trial.

5 **MR. CERVI:** With that, Judge, that was -- my
6 final statement would be this, Judge, we are on the eve of
7 trial --

8 **THE COURT:** I know.

9 **MR. CERVI:** -- and to change access at this
10 point absent a preliminary hearing, I believe, Judge, it's --

11 **THE COURT:** It's a temporary order.

12 **MR. CERVI:** It's error, Judge, but further, Your
13 Honor, given, again, the Court has said, repeatedly, these are
14 all affidavits. It's all motion practice setting it up.
15 Judge, shouldn't we hear all the evidence and shouldn't
16 everything come before the Court before we change the access?
17 We only have four weeks until the trial date, Judge.

18 **THE COURT:** Correct.

19 **MR. CERVI:** And again, as it pertains to the
20 parents, his parents, Judge, if you look at -- the child had
21 sunstroke while in the care of mom -- his mom and himself.

22 **THE COURT:** And a social worker, Mr. Cervi.

23 **MR. CERVI:** I understand.

24 **THE COURT:** So those are pretty steep
25 allegations. Okay? And at this point in time, no, I -- I get

1 that that's an allegation your client has made, but I'm
2 confident that there has been appropriate access. And no. It
3 was a temporary order. It was on consent of the parties. I
4 have the opportunity and discretion to change a temporary
5 order, and I -- I'm not -- there's a supervisory component to
6 it. The next access -- I would like one more access period
7 with Ms. Kratt, and then any other access after that
8 Mr. Diarbakerly's mother and/or father and/or both shall be
9 present at all times. I'm not going to change the access,
10 because father is -- should have access.

11 With respect to -- like you said, Mr. Cervi, you
12 know, reviewing all of these things before me, there's been a
13 lot of information brought to my attention that your client
14 may not be working with clean hands here, so --

15 **MR. CERVI:** Judge, I didn't even get a chance to
16 address that, but if I may, just briefly, because I don't want
17 this to be --

18 **THE COURT:** It's not going to change my
19 decision.

20 **MR. CERVI:** I understand, but I don't want the
21 poison to be in your head, Judge. As it pertains to Dr. --

22 **THE COURT:** All of you have submitted this to me
23 to review all of your motions when I'm a month away from
24 hearing, so now I can't un-look at this, or not -- you know,
25 I -- it's all before me. You've all brought it to my

1 attention.

2 **MR. CERVI:** Understood. Just one more thing to
3 Counsel's statement on Dr. Tyrrell; total misstatement and
4 misstates what is in her report. It says nothing in her
5 report. He has bad judgment; she has bad judgment, basically
6 for being together is what it says.

7 **THE COURT:** Correct.

8 **MR. CERVI:** That's exactly what it says.

9 **THE COURT:** I know that's what it says.

10 **MR. CERVI:** There's no alienation. It says that
11 it's possible, as are many other things, but she doesn't -- in
12 order to make a finding of alienation, Judge, there would have
13 to be a full evaluation for that to occur, so I would just --

14 **THE COURT:** I don't disagree with you.

15 **MR. CERVI:** I want to make that point, Judge.

16 **THE COURT:** I don't disagree. I think
17 Dr. Tyrrell's reports back in May touch on it, touch on the
18 unclean hands of your client, touch on the fact that
19 Mr. Diarbakerly has made all these decisions in his past,
20 decided to have -- they both have decided to have this long
21 relationship never living together, living in different
22 states. She has addressed all of it. She has addressed the
23 alienation as a possibility. She also addressed that
24 Mr. Diarbakerly probably needs to do some parenting class that
25 he had not experienced parenting with the children to begin

1 with; however, five months later, he has been with the
2 children now with a social worker, a certified one, paying for
3 that money all that time.

4 My decisions are that the access now is -- I
5 just would like one more with Ms. Kratt. She -- it looks as
6 though she's doing wonderful reports to -- I know she's saying
7 she's sending them to the Court. I'm not reviewing them prior
8 to the trial.

9 **MR. MARGULIS:** I wasn't suggesting that.

10 **THE COURT:** I know that. I just want to be
11 clear to Mr. Cervi and his client; I'm not prejudicing myself
12 with Ms. Kratt's reports. I just lightly referred to them,
13 because they're part of your response --

14 **MR. MARGULIS:** Right. Got ya.

15 **THE COURT:** -- but I'm not going to now go and
16 read every letter. I want them to be introduced --

17 **MR. MARGULIS:** Sure.

18 **THE COURT:** -- into trial the right way, so I
19 can review them for a decision.

20 **MR. CAFARELLA:** Judge, just for clarification,
21 you said that you wanted one more period of access to be
22 supervised by Ms. Kratt. Currently, she supervises on a
23 Saturday and Sunday. Do you mean the Saturday and Sunday
24 would be one more period?

25 **THE COURT:** Yeah.

1 **MR. CAFARELLA:** Okay.

2 **THE COURT:** And the rest of the periods from
3 there on in will be with his parents.

4 **MR. CAFARELLA:** Every other weekend, six hours
5 per day on the Saturday and Sunday?

6 **THE COURT:** Yes.

7 **MR. CAFARELLA:** Thank you, Judge.

8 **MR. MARGULIS:** Glad you asked that.

9 **THE COURT:** The temporary order is being amended
10 or changed. I have no registry results for both parties.

11 Have I addressed everybody's motions?

12 **MR. CERVI:** You have. You have, Judge. Just
13 one -- on the order, Judge -- this is just one thing that I
14 would request, and I understand that the Court's -- the
15 Court's ruling, and I know I'm not going to change your mind,
16 with one caveat, though, I hope to impress upon the Court.
17 The father -- the paternal grandfather, I don't believe, has
18 been present for the visitation at all, nor has Ms. Kratt been
19 able to observe him and/or his parenting skills, ability, or
20 his ability to make sure that things are appropriate during
21 the visitation. I understand the Court is directing that the
22 paternal grandmother do that, the -- the supervision, but I
23 would ask, Your Honor, that if you're going to make that
24 ruling, that it be her and not him, as he has not been
25 involved.

1 **THE COURT:** Okay. Agreed.

2 **MR. MARGULIS:** Judge --

3 **THE COURT:** I'm going to do his mother,
4 because --

5 **MR. MARGULIS:** I --

6 **THE COURT:** -- she's been here for the access.

7 **MR. MARGULIS:** Give me five seconds. His father
8 can fly here tonight, and Jeanne can observe him tomorrow and
9 Sunday and determine if he's appropriate.

10 **THE COURT:** That's fine. Bring him in. I was
11 going to say, if you let me finish --

12 **MR. MARGULIS:** Sorry.

13 **THE COURT:** -- that the grandmother will have to
14 be the general supervisor. The grandfather can be at the
15 access periods along with the father and his mother.

16 **MR. MARGULIS:** Well, that just --

17 **MR. CERVI:** I'm sorry, Judge, what was that?

18 **THE COURT:** The access with Ms. Kratt is this
19 weekend, I'm understanding, correct?

20 **MR. CERVI:** Yes.

21 **THE COURT:** So this is the final access with
22 Ms. Kratt, both Saturday and Sunday, for her to be there and
23 to observe everything. Mr. Margulis is trying to be ahead of
24 the game by asking if he can be there -- the grandfather can
25 be at the access. The access is going to go this way:

1 Ms. Kratt has her last session with him this weekend, Saturday
2 and Sunday. Mr. and Mrs. Diarbakerly can be there. I don't
3 have a problem with that. From here on in, the
4 supervision -- I'm calling it general supervision, that his
5 mother be at the access periods. I'm not going to allow the
6 father to be the supervisor until I have some kind of
7 information after this weekend.

8 **MR. MARGULIS:** Okay.

9 **MR. CERVI:** Thank you, Judge.

10 **THE COURT:** All right. Any other -- do I need
11 to address anything else with the motions?

12 **MR. MARGULIS:** No. I have a question maybe off
13 the record, just to --

14 **THE COURT:** Okay.

15 **MR. MARGULIS:** An evidentiary question. It's
16 not part of the motion. It's up to you.

17 **THE COURT:** Okay. Off the record.

18 *(Proceedings concluded at 12:45 p.m.)*

19 I hereby certify that the foregoing is a true and accurate
20 transcription of the proceeding.

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SENIOR COURT REPORTER