

The Ability to Foster the Child's Relationship with the Non-custodial Parent as a Factor in Custody Determinations

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I. Introduction

The ability to foster the relationship with the non-custodial parent is one of many factors considered by New York courts in custody determinations. The paramount concern in a custody dispute is to determine the best interests of the child based on a consideration of all of the relevant facts and circumstances. Consideration of the relationship between the parents and its effect on the best interests inquiry is not a new phenomenon. Courts have long considered the interaction between the parents as it relates to parental alienation, interference, and, more recently, the ability to foster the relationship between the child and the other parent. While the factors seems to have gained an increased attention from the courts, a thorough examination of recent cases illustrates that the ability to foster the relationship with the non-custodial parent is not a determinative factor unless it rises to the level of interference or alienation.

II. Current Standard for Custody

The best interest of the child is the current standard for determining child custody awards. The factor is well established. The New York Court of Appeals articulated that “any court in considering questions of child custody must make every effort to determine ‘what is for the best interest of the child, and what will best promote its welfare and happiness.’”¹

In custody determinations, the Court reviews numerous factors in order to determine the best interest of the child. Common factors that the Court weighs are maintaining stability for the child; the child’s wishes; the home environment with each parents; each parent’s past

¹ Eschbach v. Eschbach, 56 N.Y.2d 1567, 171 (1982) citing Domestic Relations Law § 70; Matter of Ebert v. Ebert, 38 N.Y.2d 700, 702 (1976); Obey v. Degling, 37 N.Y.2d 768, 769 (1975); Matter of Lincoln v. Lincoln, 24 N.Y.2d 270 (1969); Bistany v. Bistany, 66 A.D.2d 1026 (4th Dept. 1978); Sandman v. Sandman, 64 A.D.2d 698 (2nd Dept. 1978); Matter of Saunders v. Saunders, 60 A.D.2d 701 (3rd Dept. 1977).

performance; relative fitness; ability to guide and provide for the child's emotional and intellectual development; the financial status and ability of each parent to provide for the child; the parent's behavior toward each other and the child; parenting skills with particular reference to the child's special needs; the existence of siblings; the ability to provide for the child's overall well-being; and *the parents' ability and willingness to foster a relationship with the non-custodial parent.*²

III. Domestic Violence and its Relation to the “Fostering Connections” Factor

In addition to the other factors, the Court must consider the effect on domestic violence in determining the best interest of the child.³ But, the Court need only consider this effect when the allegations of domestic violence are proven by a preponderance of the evidence.⁴

A. Discounting the “Fostering Connections” Factor When Domestic Violence is Present

Although normally, the ability to foster a relationship with the non-custodial parent is considered in custody determinations, there is some concern that in the face of domestic violence, the ability to foster a relationship should not be relevant to the Court's decision.

Over time, “the [growing] awareness of the dramatic and long-term detrimental effects of domestic violence on children led to all states adding the consideration of spousal abuse as a factor in custody determinations.”⁵ Currently, twenty-four states have “a rebuttable presumption

² See e.g. Chilbert v. Soler, 77 A.D.3d 1405, 1406 (4th Dept. 2010) (emphasis added) citing Kaczor v. Kaczor, 12 A.D.3d 956, 958 (3rd Dept. 2004). Generally, no one factor is given more weight than the others. See e.g. Eschbach, 56 N.Y.2d at 171.

³ Williams v. Williams, 78 A.D.3d 1256, 1257 (3rd Dept. 2010) citing Domestic Relations Law § 240(1)(1); Matter of Melissa K. v. Brian K., 72 A.D.3d 1129, 1131 (3rd Dept. 2010); see also Kilmartin v. Kilmartin, 44 A.D.3d 1099, 1002 (3rd Dept. 2007).

⁴ Williams, 78 A.D.3d at 1257.

⁵ See Linda D. Elrod & Milfred D. Dale, “Paradigm Shifts and Pendulum Swings in Child Custody: The Interests of Children in the Balance,” 42 Fam. L.Q. 381, 394-395 (Fall 2008) citing Hicks v. Hicks, 733 S.2d 1260 (La. Ct. App. 1999); Peter-Riemers v. Riemers, 644 N.W.2d 197 (N.D. 2002).

against awarding custody to the abusive parent.”⁶ In addition, advocates for abused parents argue that the friendly parent provision unfairly penalizes the victim who is trying to protect herself and the child.⁷ Despite these efforts, when allegations of domestic violence are made in custody cases, “there has been a tendency for judges (and lawyers) to discount the allegations.”⁸

Given this knowledge regarding domestic violence, the likelihood of each parent to foster the child’s relationship with the other parent is not necessarily the right question to ask. Accordingly, in some cases where domestic violence is present, the court has awarded custody to victims of domestic violence even though such an award will significantly impede the non-custodial parent’s relationship with the child.

Clarke v. Boertlein serves an example of the Court awarding custody to a parent who was a victim of domestic violence, and who did not intend to foster the child’s relationship with the non-custodial parent.⁹ Here, on two separate occasions, the mother fled to Pennsylvania with the three children, allegedly to escape the father’s domestic violence.¹⁰ The Second Department acknowledged that the relationship between the children and the non-custodial parent is an important consideration.¹¹ The Court nonetheless held that the mother should be awarded custody, and permitted to remain in Pennsylvania because the move “was an opportunity to escape domestic violence in the home.”¹²

⁶ Elrod, 42 Fam. L.Q. 381 at 395 citing Annette M. Gonzales & Linda Rio Reichman, *Representing Children in Civil Cases Involving Domestic Violence*, 39 Fam. L.Q. 197, 198 (2005).

⁷ Elrod, 42 Fam. L.Q. 381 at 396 citing Margaret K. Dore, *The Friendly Parent Concept: A Flawed Factor in Child Custody*, 6 Loy. J. Pub. Int. L. 41 (2004); Lundy Bancroft & Jay G. Silverman, “The Batterer as Parent: Addressing the Impact of Domestic Violence of Family Dynamics” (2002).

⁸ Elrod, 42 Fam. L.Q. 381 at 395 citing Jane H. Aiken & Jane C. Murphy, *Evidence Issues in Domestic Violence Civil Cases*, 34 Fam. L.W. 43, 44-45 (2000); Marta Albertson Fineman, *Domestic Violence, Custody and Visitation*, 36 Fam. L.Q. 211, 217-20 (2002).

⁹ Clarke v. Boertlein, 82 A.D.2d 976 (2nd Dept. 2011).

¹⁰ Id. at 976.

¹¹ Id.

¹² Id.

Similarly, in Sara ZZ. v. Matthew A., the mother, a victim of domestic violence, moved to South Carolina with the child without informing the father, and without obtaining proper permission from the Court.¹³ In making it's decision, the Court considered "the appropriate factors, including . . . the effect of the move on contact with the noncustodial parent."¹⁴ The Court found that the father "opposed the move to harass the mother and because he wanted to continue exercising control over the mother and her life."¹⁵ The Court also found that the "mother wanted to relocate to start fresh, away from the intimidation of the father."¹⁶ Although the move would allow for only minimal visitation for the father, the Court awarded custody to the mother.¹⁷

B. Domestic Violence as One of Many Factors in Custody Determinations

In other cases, domestic violence and the ability to foster a relationship with the non-custodial parent are both factors that the Court weighs in making custody determinations.

The Fourth Department, in Chilbert v. Soler considered the existence of domestic violence as one of numerous factors in its decision to award custody to the mother.¹⁸ The father committed acts of domestic violence against the mother, often in front of the child.¹⁹ In addition to the existence of domestic violence, the Court also considered other factors including the ability of the custodial parent to foster the child's relationship with the non-custodial parent, maintaining stability for the child, the home environment offered by each parent, the parents' past performance, relative fitness, and the ability to provide for the child's well-being.²⁰ The

¹³ Sara ZZ. v. Matthew A., 77 A.D.3d 1059, 1060 (3rd Dept. 2010).

¹⁴ Id. citing Tropea v. Tropea, 87 N.Y.2d 727, 740 (N.Y. 1996); Matter of Solomon v. Long, 68 A.D.3d 1467, 1469 (3rd Dept. 2009); Matter of Smith v. Hoover, 24 A.D.3d 1096, 1097 (3rd Dept. 2005).

¹⁵ Sarah ZZ., 77 A.D.3d at 1060.

¹⁶ Id.

¹⁷ Id. at 1061.

¹⁸ Chilbert v. Soler, 77 A.D.3d 1405 (4th Dept. 2010).

¹⁹ Id. at 1406.

²⁰ Id.

Court explained that the father's inability to control his behavior was not in the child's best interest, and thus held that the father's visitation with the child be supervised.²¹

In Kilmartin v. Kilmartin, both parents made reports of domestic violence throughout the course of their relationship.²² The Court considered the behavior of both parents in "assessing the impact of any domestic violence on the children who were present during many of their [parent's] heated arguments."²³ In addition, the Court recognized that the petitioner limited the child's access to the respondent, whereas the respondent, in contrast, "had no objection to the children residing with petitioner part of the week, and [was] willing to work with petitioner for the benefit of the children."²⁴ The Court also noted that the children behave better when they are with the respondent, and that the respondent "exhibits a positive consistency with regard to parental decision-making."²⁵ After weighing each of the factors, the Court awarded respondent sole legal custody with weekly parenting time split between the respondent and the petitioner.²⁶

Similarly, in Kaczor v. Kaczor, although defendant has physically assaulted the plaintiff in front of the child, the Court nonetheless considered an array of factors in making a custody determination.²⁷ In addition to committing acts of domestic violence, the defendant also interfered with the plaintiff's court ordered visitation, blocked telephone access to the child, and "made derogatory remarks to the plaintiff in the child's presence."²⁸ The Court considered each of these conditions, and awarded sole custody to the plaintiff.²⁹

²¹ Id.

²² Kilmartin, 44 A.D.3d at 1102.

²³ Id. citing Domestic Relations Law § 240(1)(a); Matter of Wissink v. Wissink, 301 A.D.2d 36, 39 (2nd Dept. 2002).

²⁴ Kilmartin, 44 A.D.3d at 1103.

²⁵ Id.

²⁶ Id. at 1100-1101.

²⁷ Kaczor, 12 A.D.3d at 958.

²⁸ Id.

²⁹ Id.

Despite the presence of domestic violence, numerous other factors were also considered in Greene v. Gordon. Here, while the child was in her custody, the mother was openly hostile toward the father, and instigated a physical altercation with the father's wife in front of the child.³⁰ The Court considered these incidences, but also looked at the mother's interference with the father's visitation rights, her false allegations of child neglect, and her filing petty or baseless violation petitions.³¹ The Court acknowledged that the "father is the parent who is more likely to assure meaningful contact between the child and the noncustodial parent[,"] and upheld the transfer of custody to the child's father.³²

When one parent makes allegations of domestic violence that are not credible, the ability to foster a relationship with the non-custodial parent favors the alleged perpetrator. In Micah NN. V. Kristy NN., the mother's false allegations of domestic abuse aided the Court's decision to award primary physical custody to the father.³³ In this case, both the mother and the father had shortcomings regarding their parenting ability.³⁴ The Court considered the parenting ability of each parent, and ultimately awarded physical custody to the father.³⁵ The Court noted the mother's admission to the neglect of her children, and her incredible allegations of domestic violence as reasons why she should not be granted custody of the children.³⁶

As in Micah NN., the mother's allegations of domestic violence in Williams v. Williams were not found to be credible.³⁷ In addition to false allegations of domestic violence, the mother also made reports of sexual abuse of the child that were ultimately unfounded.³⁸ The Court

³⁰ Greene v. Gordon, 7 A.D.3d 528, 529 (2nd Dept. 2004).

³¹ Id.

³² Id.

³³ Micah NN. v. Kristy NN., 79 A.D.3d 1188 (3rd Dept. 2010).

³⁴ Id. at 1189.

³⁵ Id. at 1190.

³⁶ Id.

³⁷ Williams, 78 A.D.3d at 1257.

³⁸ Id. at 1257-1258.

considered these allegations, as well as the father's involvement in the child's school, recreational, sporting, and church activities, and his attention to their medical and academic needs in awarding custody to the father.³⁹

IV. The Relationship between the Parents

A. Alienation

The relationship between the parents is often a factor in custody determinations and can present itself in a number of configurations. Three ways in which the relationship between the parents can become a factor in a custodial determination are: parental alienation, interference, and the friendly parent doctrine. The concept of parental alienation was introduced during the mid-1980's by child psychiatrist, Richard A. Gardner, M.D.⁴⁰ Gardner, who was often employed by fathers in custody disputes, formulated Parental Alienation Syndrome (PAS) to describe the effect of the parent's relationship on the alienated child.⁴¹ Specifically, the alienating parent engages in a "campaign of denigration," including fabricating false abuse allegations, against the alienated parent resulting in the child's complete and unjustified rejection of that alienated parent.⁴² PAS is not recognized by the Diagnostic and Statistical Manual of Mental Disorders and is often referred to as "junk science" by its critics.⁴³ Despite the tremendous body of research discounting Gardner's theory, PAS remains a "fashionable legal strategy" in some cases where a child resists contact with a parent.⁴⁴ Accordingly, it is important to distinguish parental alienation as a "syndrome" from parental alienation as a clinical

³⁹ Id. at 1258.

⁴⁰ Michele A. Adams, "Framing Contests in Child Custody Disputes: Parental Alienation Syndrome, Child Abuse, Gender, and Father's Rights" 40 Fam. L. Q. 315, 316 (Summer, 2006).

⁴¹ Id.

⁴² Haralambie, Ann M., Handling Child Custody, Abuse and Adoption Cases § 4:15 (November 2010).

⁴³ Janet R. Johnston, "Children of Divorce Who Reject a Parent and Refuse Visitation: Recent Research and Social Policy Implications for the Alienated Child" 38 Fam. L. Q. 757, 774 (Winter, 2005).

⁴⁴ Id. at 759.

phenomenon.⁴⁵ While parental alienation is not recognized as a “syndrome,” it is clear that parents do engage in alienating conduct.⁴⁶ Accordingly, “a child who freely and persistently expresses unreasonable negative feelings and beliefs towards a parent that are not reflective of the child’s actual experience with that parent” can be described as alienated.⁴⁷

B. Interference

Another way in which the relationship between the parents becomes a factor influencing a custody determination is interference. Interference refers to the hindrance or denial of visitation rights between the non-custodial parent and the child by the custodial parent. In New York State, courts have held that a custodial parent’s interference with the non-custodial parent’s relationship with his or her child is “an act so inconsistent with the best interests of the child as to per se raise a strong probability that the offending party is unfit to act as a custodial parent.”⁴⁸ Accordingly, a change in custody may be ordered as a remedy to custodial interference where a court determines it is in the child’s best interest. In Beyer v. Tranelli-Ashe, the Fourth Department affirmed a change in physical custody of the child from the respondent to petitioner where the respondent “repeatedly, intentionally, and unjustifiably denied and interfered with petitioner’s visitation rights on numerous occasions and that she regularly violated court orders regarding visiting” in addition to numerous unfounded reports accusing petitioner of physically and sexually abusing the child.⁴⁹ Similarly, in Brown v. Marr, the Fourth Department affirmed a transfer of sole custody from the respondent mother to the petitioner father where respondent

⁴⁵ Haralambie, Ann M., Handling Child Custody, Abuse and Adoption Cases § 4:15 (November 2010).

⁴⁶ Id.

⁴⁷ Janet R. Johnston, “Children of Divorce Who Reject a Parent and Refuse Visitation: Recent Research and Social Policy Implications for the Alienated Child” 38 Fam. L. Q. 757, 762 (Winter, 2005).

⁴⁸ Matter of Glenn v. Glenn, 692 N.Y.S.2d 520 (3rd Dept. 1999) (quoting Entwistle v. Entwistle, 402 N.Y.S.2d 213 (3rd Dept. 1978)).

⁴⁹ Beyer v. Tranelli-Ashe, 600 N.Y.S.2d 598 (4th Dept. 1993).

mother had willfully violated the court's order by denying the petition father visitation.⁵⁰ In McTighe v. Pearl, the Fourth Department again affirmed a change in custody award that awarded sole custody to the petitioner father "because of respondent's efforts to exclude petitioner from the child's life and respondent's repeated attempts to sabotage that parent-child relationship."⁵¹

In 2012, the Second Department looked at several different cases involving parental inference. In Matter of Diaz v. Diaz, the Court modified an existing custody arrangement and awarded the mother sole custody of the subject children with visitation to the father. The Court cited evidence that established the father had "engaged in a course of conduct which intentionally interfered with the relationship between the children and the mother."⁵² Furthermore, the Court pointed out that the Family Court's determination that the mother should be awarded sole custody was consistent with the position of the attorney for the children, and that position is entitled to some weight.⁵³

The Second Department also affirmed an award of sole custody to a father where the mother had engaged in a course of conduct that intentionally interfered with the relationship between the children and their father.⁵⁴ The mother had attempted to excuse her behavior based on an allegation that she was a victim of domestic abuse perpetrated by the father, however Family Court had concluded her allegations were not supported by credible evidence and thus were properly discounted.⁵⁵

In 2012, the Third Department affirmed an award of sole legal and physical custody to the father with visitation to the mother. The Court found the evidence demonstrated the father is

⁵⁰ Brown v. Marr, 804 N.Y.S.2d 181 (4th Dept. 2005).

⁵¹ McTighe v. Pearl, 778 N.Y.S.2d 588 (4th Dept. 2004).

⁵² Matter of Diaz v. Diaz, 97 A.D.3d 747 (2d Dept. 2012).

⁵³ Id.

⁵⁴ Matter of Jones v. Pagan, 96 A.D.3d 1058 (2d Dept. 2012); see also Ashmore v. Ashmore, 92 A.D.3d 817 (2d Dept. 2012) (affirming Supreme Court's award of custody to the mother where father had alienated the children from their mother according to expert witness testimony from a forensic evaluator).

⁵⁵ Id.

the more likely of the two parents to put the child's best interests ahead of his own and to foster a relationship between her and her mother.⁵⁶ The Third Department also upheld an award of sole custody to a father in Matter of Anthony MM. v. Jacquelyn NN.⁵⁷ The Court's decision was based in part on the fact that the mother had made repeated allegations and insinuations that the father had sexually abused the child.⁵⁸

C. Friendly Parent

The friendly parent concept refers to the principle that since it is in a child's best interest to maintain a close relationship with both parents, custody should be awarded to the parent most likely to foster the child's relationship with the other parent.⁵⁹ The concept of the "friendly parent" is a variation of parental alienation and interference.⁶⁰ Instead of focusing on the parent's negative conduct, the focus is redirected on positive conduct names "which parent will support 'frequent and continuing' contact or a 'close and continuing relationship' between the child and the other parent."⁶¹ Judicial application of the friendly parent concept can be viewed as a reward and punishment paradigm.⁶² Courts punish parents engaging in "unfriendly behavior" by denying them custody or time with their children.⁶³ The "friendly-parent" concept and its statutory provisions are widespread and routinely applied throughout the United States.⁶⁴ Multiple states have codified some form of the "friendly parent" doctrine including Florida and

⁵⁶ Matter of Aaron W. v. Shannon W., 96 A.D.3d 960 (2012).

⁵⁷ Matter of Anthony MM. v. Jacquelyn NN., 91 A.D.3d 1036 (2012).

⁵⁸ Id.

⁵⁹ Dore, Margaret K. "The 'Friendly Parent' Concept: A Flawed Factor in Child Custody." 6 Loyola Journal of Public Interest Law 41-56 (2004).

⁶⁰ Id. at 52.

⁶¹ Marsha Kline Pruett, et al. "The Hand that Rocks the Cradle: Maternal Gatekeeping After Divorce." 27 Pace L. Rev. 709, 720 (Summer, 2007).

⁶² Dore, Margaret K. "The 'Friendly Parent' Concept: A Flawed Factor for Child Custody." 6 Loyola Journal of Public Interest Law at 45 (2004).

⁶³ Id.

⁶⁴ Marsha Kline Pruett, et al. "The Hand that Rocks the Cradle: Maternal Gatekeeping After Divorce." 27 Pace L. Rev. 709, 720 (Summer, 2007).

Virginia.⁶⁵ In New York State, the friendly parent doctrine has been interpreted as the ability of the custodial parent to foster the child's relationship with the non-custodial parent.⁶⁶ The friendly parent factor was intended to act as a "shield" or "tool that judges could use to protect the parenting time of noncustodial parent."⁶⁷

V. Cases Articulating and Applying the Factor of the Parent's Willingness to Foster a Relationship with the Other Parent

A. Initial Custody Determinations

In making an initial custody determination, New York's standard is the best interests of the child.⁶⁸ In analyzing the best interests of the child in an initial custody determination, Family Court is required to consider various nonexclusive factors including each parent's willingness to foster a relationship with the other parent.⁶⁹

The Fourth Department in Chilbert v. Soler, as discussed above, considered "the willingness of each parent to foster a relationship with the parent" in addition to other factors including: "maintaining stability for the child, . . . the home environment with each parent, each parent's past performance, relative fitness, ability to guide and provide for the child's overall well-being."⁷⁰ The Fourth Department affirmed the Ontario County Family Court's award of sole custody of the parties' child to the mother with supervised visitation to the father.⁷¹ In Chilbert, the record established that the father had committed acts of domestic violence against the mother, often in the child's presence, threatened to kill the mother and leave with their child,

⁶⁵ Dore, Margaret K. "The 'Friendly Parent' Concept: A Flawed Factor for Child Custody." 6 Loyola Journal of Public Interest Law at 42 (2004); See Fla. Stat. § 61.13(3)(a) and (j) (1995); Va. Code. Ann. § 20-124.3(6)-(7).

⁶⁶ Id.

⁶⁷ Elrod, Linda D. and Milfred D. Dale. "Paradigm Shifts and Pendulum Swings in Child Custody: The Interests of Children in the Balance." 42 Fam. L. Q. 381, 394 (Fall 2008).

⁶⁸ FCA § 611.

⁶⁹ Id.

⁷⁰ Chilbert, 77 A.D.3d at 1406.

⁷¹ Id.

and demonstrated an inability to control his anger, all of which the Court determined was detrimental to the child's best interests.⁷²

The Third Department has a large volume of cases applying the willingness of each parent to foster a relationship with the other parent as a factor in initial custody determinations.

In Kaczor v. Kaczor, the defendant–mother interfered with the plaintiff-father's visitation pursuant to a temporary order of joint custody, blocked father's telephone access to child, made derogatory remarks to father in the child's presence and assaulted father in the child's presence.⁷³ Accordingly, the court awarded sole custody to the plaintiff. Kaczor illustrates the overlap of interference and the willingness to foster a relationship with the other parent. In Anson v. Anson, the Third Department affirmed an award of custody to the father with visitation to the mother.⁷⁴ While each parent has affection for the child and displays the ability to meet the child's basic needs, the father "has taken a more proactive role in ensuring that the child's educational and medical needs have been met," "has made reliable childcare arrangements for his son," and "demonstrated a great ability to provide stability in his son's life."⁷⁵ The Court goes on to say, "Notably, we agree with the Family Court that the father has demonstrated a greater willingness to facilitate the child's relationship with the mother."⁷⁶

The Third Department, in Gast v. Gast, affirmed an award of custody to the father where:

"The mother actively attempted to undermine the children's relationship with the father, repeatedly disregarded court orders, purposely thwarted efforts by the father to visit the children, and exhibited extremely poor judgment in placing her own interests over those of the children . . . the mother degraded the father in front of the children, she lacked insight and judgment, and she was manifestly controlling . . . While the father had parenting weaknesses, he had stable and ample living arrangements for the children at the

⁷² Id.

⁷³ Kaczor v. Kaczor, 12 A.D.3d 956, 957 (3d Dept. 2004).

⁷⁴ Anson v. Anson, 20 A.D.3d 603 (3d Dept. 2005).

⁷⁵ Id. at 604.

⁷⁶ Id.

home of his parents – where he was residing – and he exhibited a cooperative effort to advance the relationship of the children with the mother.”⁷⁷

In Torkildsen v. Torkildsen, the Third Department again addressed the ability to foster the relationship with the other parent in determining custody. The Court affirmed the Family Court’s Order awarding joint legal custody and primary physical custody to the mother and liberal visitation to the father along with permission for the mother to relocate to New Jersey.⁷⁸

In addition to other factors weighing in her favor, the mother “consistently put her children’s needs ahead of her own and is able to foster a relationship between the father and the children, as demonstrated by her willingness to provide all transportation to and from New York in order to facilitate regular visitation with the father.”⁷⁹

In Williams v. Williams, the mother left the marital residence with the children and moved to New York City without informing the father of the children’s whereabouts.⁸⁰ In addition, the mother made allegations of domestic violence and child abuse against the father.⁸¹ The Court found these allegations not to be credible and awarded sole custody to the father.⁸² The Third Department reasoned that the children have resided with their father since 2006, he is very involved in their school, recreational, sporting, and church activities, he takes care of their daily needs.⁸³ Moreover, “despite past difficulties in having the children returned to him after visits with the mother, he is willing to facilitate visitation – including agreeing to provide transportation one way – and to otherwise permit regular contact between the children and the mother.”⁸⁴

⁷⁷ Gast v. Gast, 50 A.D.3d 1189, 1190 (3d Dept. 2008).

⁷⁸ Torkildsen v. Torkildsen, 72 A.D.3d 1405 (3d Dept. 2010).

⁷⁹ Id. at 1407.

⁸⁰ Williams v. Williams, 78 A.D.3d 1256 (3d Dept. 2010).

⁸¹ Id. at 1257.

⁸² Id.

⁸³ Id. at 1258.

⁸⁴ Id.

In Melissa K. v. Brian K., the Third Department was again presented with testimony regarding domestic violence but found the evidence to be credible, unlike in Williams, and awarded custody to the mother. The Court stated:

“We agree with Family Court’s determination that the mother is the parent more able to foster meaningful contact between the children and the noncustodial parent. In contrast to the unrelieved hostility manifested by the father, the mother described him as a loving parent, praised his involvement with the children, acknowledged that their son missed him, and tried to alleviate this by arranging additional visitation, an effort with which the father did not cooperate. Further, although the testimony reveals that both parties have anger management issues and have engaged in incidents of domestic violence, Family Court’s determination that the father had verbally and physically abused the mother in front of the children throughout their relationship is fully supported by her testimony, the psychological evaluation, and other credible evidence.”⁸⁵

In Moor v. Moor, the Third Department held that “the best interests of the child tip the scale in favor of awarding custody to the father.”⁸⁶ The father testified that “were he to become the primary custodial parent, he would allow the mother free and frequent access with the child.”⁸⁷ In contrast, although she testified as to the importance of the child’s relationship with the father, evidence showed that the mother had prevented the father from having contact with the child, misrepresented that she was breastfeeding in order to limit father’s visitation and opposed many of the father’s requests for increased visitation.⁸⁸ Likewise, there was evidence that the mother suffered from mental health issues, and the father provided a more stable home environment.⁸⁹

In Dupuis V. Costello, the Third Department awarded joint legal custody and sole physical custody to the mother who had “demonstrated the ability to encourage her children to have loving and warm relationships with their fathers” and successfully co-parented with the

⁸⁵ Melissa K. Brian K., 72 A.D.3d 1129 (3d Dept 2010).

⁸⁶ Moor v. Moor, 75 A.D.3d 675, 678 (3d Dept. 2010).

⁸⁷ Id. at 677.

⁸⁸ Id. at 678.

⁸⁹ Id.

father of her other children.⁹⁰ In addition, the mother had been the primary caregiver and the child's siblings also resided with the mother.⁹¹

The Second Department reversed an award of custody to mother in favor of custody to the father where the mother had made numerous false abuse allegations and filed charges against the father that were later determined to be unfounded.⁹² The Court reasoned, "the mother's manipulative conduct demonstrates a purposeful placement of her self-interest above the interests of others . . . evidence of false allegations of physical abuse which interfere with parent rights is 'so inconsistent with the best interests of the child that it raises, by itself, a strong probability that the offending party is unfit to act as a custodial parent.'" The Court went on to find that the trial court erred in finding that the mother, rather than the father, would better foster the child's relationship with the non-custodial parent. The Court explained "while the parenting skills of both the mother and the father are subject to criticism, there is sufficient evidence from which to conclude that the father demonstrated an ability to foster post divorce parent-child relationships, having done so with regard to his two older children from an earlier marriage. Moreover, a conclusion that the mother would more successfully foster a child/noncustodial parent relationship is unsupportable, in light of her false allegations of physical abuse against the father."

The Third Department has made several initial custody determinations using the requisite best interests of the child standard. In several cases, the parent who shows a willingness to

⁹⁰ Dupuis v. Costello, 80 A.D.3d 806 (3d Dept. 2011).

⁹¹ Id.

⁹² Mohen v. Mohen, 53 A.D.3d 471 (2d Dept. 2008).

cooperate with the other parent and foster the child's relationship with the other parent has been awarded custody in the initial determination.⁹³

B. Modifications

New York Courts have acknowledged that in modification petitions, priority should usually be given to the parent who was initially awarded custody.⁹⁴ But, this is only one factor to be weighed by the court in deciding whether a change of custody is warranted.⁹⁵ The Court will consider as one factor the willingness of the custodial parent to foster a relationship between the child and the noncustodial parent. It seems, however, that in modification cases the court puts a strong emphasis on maintaining stability for the child.

The Fourth Department, in Stevenson v. Stevenson, reversed the ruling of the Family Court, which transferred custody from the mother to the father.⁹⁶ The Family Court primarily based its decision on its view that the father would foster a meaningful relationship between the child and the mother, while the mother would not do likewise.⁹⁷ Despite the father's willingness to foster a relationship with the child and the mother, the Appellate Division declined to modify the existing custody agreement because the father failed to demonstrate that "the custodial parent was unfit or perhaps less fit."⁹⁸ The Appellate Division further explained that the Family Court also "erred in failing to consider the preference of the child, given his age and apparent maturity, to continue to reside with the mother."⁹⁹

⁹³ See Porcello v. Porcello, 80 A.D.3d 1131 (3d Dept. 2011) (where mother was willing to cooperate with the father and continuously fostered the child's relationship with him); Raynore v. Raynore, 92 A.D.3d 1167 (3d Dept. 2012) (where the father had interfered with the mother's relationship with the child and the mother was employed with benefits and she also recognized the need for the child to have a relationship with the father and the father's family).

⁹⁴ Lichtenfeld v. Lichtenfeld, 41 A.D.3d 849, 850 (2d Dept. 2007).

⁹⁵ Id. citing Eschbach, 56 N.Y.2d at 171; Matter of Carl J.B. v. Dorothy T., 186 A.D.2d 736, 737 (2d Dept 1992); Matter of Krebsbach v. Gallagher, 181 A.D.2d 363, 365 (2d Dept. 1992).

⁹⁶ Stevenson v. Stevenson, 70 A.D.3d 1515 (4th Dept. 2010).

⁹⁷ Id.

⁹⁸ Id. quoting Fox v. Fox, 177 A.D.2d 209, 211 (4th Dept. 1992).

⁹⁹ Stevenson, 70 A.D.3d at 1516 citing Matter of O'Connor v. Dyer, 18 A.D.3d 757 (2d Dept. 2005).

The Third Department also considers the willingness and ability to foster a relationship with the non-custodial parent when making custody determinations. Like the Fourth Department, the Third Department also utilizes this as one of many factors that affects its decision.

The Third Department, in Opalka v. Skinner, found that it was within the children's best interest to change custody from joint custody with primary physical custody to the mother to sole physical and legal custody to the father.¹⁰⁰ In making its decision, the Court took into consideration the mother's insistence, after only three weeks, that the children call her boyfriend "daddy," and instances of neglect.¹⁰¹ The Court emphasized the mother's conditioning the children to fear of their father.¹⁰² The Court explained that the mother's willingness to "manipulate the children's perception of the father to the detriment of [their] emotional health" warranted awarding sole legal and physical custody to the father, while allowing the mother supervised visitation.¹⁰³

In White v. White, the Court focused on the stable life the children's father had afforded them.¹⁰⁴ The father lived with the children in Albany for two years while the mother received medical treatment in Tennessee.¹⁰⁵ At the time of trial, both parents had suitable homes for the children, and both "demonstrated a willingness to foster the children's relationship with the other."¹⁰⁶ The Court also acknowledged that the father had been the children's primary caretaker for the past two years, and was actively involved in the children's academics and medical care.¹⁰⁷ Although the Court also found the mother to be a fit parent, the Appellate Division upheld the

¹⁰⁰ Opalka v. Skinner, 81 A.D.3d 1005 (3d Dept. 2011).

¹⁰¹ Id. at 1007.

¹⁰² Id.

¹⁰³ Id. at 1008.

¹⁰⁴ White v. White, 77 A.D.3d 1073 (3d Dept. 2010).

¹⁰⁵ Id. at 1074.

¹⁰⁶ Id. at 1075.

¹⁰⁷ Id.

Family Court's award of custody to the father because "the children have attained a stable life and appear to be thriving and developing in [his] care."¹⁰⁸

The Court focused mainly on the mother's willingness to hinder the children's relationship with their father in Hughes v. Hughes.¹⁰⁹ Without the father's knowledge, and without leaving any notice, the mother moved the children out of the household home while the father was at work.¹¹⁰ The mother also failed to comply with Court ordered visitation and sharing of the children's medical and school information with the father.¹¹¹ The Court awarded primary physical custody to the father because "it is of considerable importance to the children's well-being the parent having physical custody foster the children's relationship with the noncustodial parent."¹¹²

Claflin v. Ciamporcaro is another case where the Court stressed the importance of the custodial parent's willingness to foster a meaningful relationship between the child and the non-custodial parent.¹¹³ The Appellate Division found that the Family Court properly awarded sole custody to the mother.¹¹⁴ The mother attempted to "facilitate communication with the father and keep him abreast of developments regarding the child."¹¹⁵ Conversely, the father "prevented communication by refusing to provide contact information or to reply to the mother when she engaged in discussion," and failed to provide the mother with his work hours or cell phone number.¹¹⁶ Although both parties provided a "loving environment for the child," the mother was

¹⁰⁸ Id. citing Eschbach, 56 N.Y.2d at 173-74; Matter of Richardson v. Alling, 69 A.D.3d 1062, 1064 (3d Dept. 2010); Matter of Smith v. Smith, 61 A.D.3d 1275, 1277-1278 (3d Dept. 2009); Matter of Wentland v. Rousseau, 59 A.D.3d 821, 822 (3d Dept. 2009).

¹⁰⁹ Hughes v. Hughes, 80 A.D.3d 1104, 1105 (3d Dept. 2011).

¹¹⁰ Id.

¹¹¹ Id.

¹¹² Id.

¹¹³ Claflin v. Giamporcaro, 75 A.D.3d 778, 780 (3d Dept. 2010).

¹¹⁴ Id.

¹¹⁵ Id.

¹¹⁶ Id.

more likely than the father to “foster a relationship between the child and the other parent and attempt to provide the father with information regarding the child.”¹¹⁷

In Diffin v. Towne, the Court recognized that each parent had been, and remains, willing to foster the child’s relationship with the other parent.¹¹⁸ Because both parents possessed this willingness, and were equal in other respects, the Court found that the “record [did] not demonstrate that the [child’s] best interest would be *enhanced* by ordering a change in his present physical custody.”¹¹⁹ Under the circumstances, the Court held that the child’s best interests were “best served by the stability of an uninterrupted custody arrangement.”¹²⁰

The Court, in Robinson v. Cleveland, discussed a myriad of custody factors in their decision.¹²¹ There was evidence that “the petitioner was more attentive to the child’s intellectual and emotional needs,” and had “a job with benefits and [had] a suitable home, whereas respondent had moved frequently and was residing in a crowded residence with his mother and various other individuals.” In addition, the petition “exhibited a stronger willingness to foster the child’s relationship with the noncustodial parent.”¹²²

The Second Department employs the same reasoning as the Fourth and Third Departments in making custody modifications. In some cases the willingness to foster the child’s relationship with the non-custodial parent is given a great deal of consideration, while in other decisions it is overshadowed by other considerations. It seems, however, that the Second Department goes into the most detail in explaining the importance of the “fostering connections” factor.

¹¹⁷ Id.

¹¹⁸ Diffin v. Towne, 47 A.D.3d 988, 991 (3d Dept. 2008).

¹¹⁹ Id. at 991.

¹²⁰ Id.

¹²¹ Robinson v. Cleveland, 42 A.D.3d 708, 709-710 (3d Dept. 2007).

¹²² Id.

One case in which the Court focused on the custodial parent's need to foster a relationship with the non-custodial parent is Lichtenfeld v. Lichtenfeld.¹²³ In this case, the Appellate Division upheld the Family Court's order granting the father's petition to modify the custody order.¹²⁴ The Court observed that "the mother deliberately interfered with the relationship between the children and the father, an act so inconsistent with the best interests of the children as to per se raise a strong probability that she is unfit to act as a custodial parent."¹²⁵ In contrast, the children's father "demonstrated that he is better able than the mother to place the children's needs before his own needs and to foster an ongoing relationship between the children and the noncustodial parent."¹²⁶

The Court had a similar focus in Cuccurullo v. Cuccurullo.¹²⁷ The Court listed each of the factors that is considered in making a modification to custody arrangements, but stressed that "[o]ne of the primary responsibilities of a custodial parent is to assure meaningful contact between the children and the other parent."¹²⁸

In Caravella v. Toale, the Court granted the father's custody petition and awarded him sole legal and physical custody of the children.¹²⁹ In making its determination, the Court considered the mother's previous interference with the father's visitation rights, and her failure to ensure that the children attended school.¹³⁰ Additionally, the Court noted that "the father is more likely to foster a relationship between the children and the noncustodial parent."¹³¹

¹²³ Lichtenfeld, 41 A.D.3d at 849.

¹²⁴ Id.

¹²⁵ Id. citing Barbato v. Barbato, 264 A.D.2d 792 (2d Dept. 1999); Young v. Young, 212 A.D.2d 114, 115 (2d Dept. 1995).

¹²⁶ Lichtenfeld, 41 A.D.3d at 849 citing Matter of Greene v. Gordon, 7 A.D.3d 528, 529 (2d Dept. 2004); Matter of King v. King, 225 A.D.2d 697, 698 (2d Dept. 1996).

¹²⁷ Cuccurullo v. Cuccurullo, 21 A.D.2d 697, 698 (2d Dept. 1996).

¹²⁸ Id. citing Young, 212 A.D.2d at 122-123.

¹²⁹ Caravella v. Toale, 78 A.D.3d 828 (2d Dept. 2010).

¹³⁰ Id. citing Matter of Zeis v. Slater, 57 A.D.3d 793, 794 (2d Dept. 2008).

¹³¹ Id. citing Cuccurullo, 21 A.D.3d at 984.

The Court took numerous factors into account in Greene v. Gordon.¹³² These factors were “the existence of siblings, the parents’ financial status, parental guidance, and the parents’ ability to provide for the child’s emotional and intellectual functioning[,]” and the recommendations of the attorney for the child and the court appointed forensic psychologist.¹³³ In addition to these factors, the Court elaborated that the mother was openly hostile towards the father in front of the child, deliberately interfered with the father’s visitation rights, and made false allegations of neglect against the father. Because these behaviors were “inconsistent with the best interests of the child,” and because “the father is the parent who is more likely to assure meaningful contact between the child and the noncustodial parent,” the Court transferred custody to the father.¹³⁴

As in Greene, the Court in Gago v. Acevedo considered the mother’s false allegations against the father in its decision to award sole custody to the father.¹³⁵ In this case, the mother made false allegations of child abuse against the father, and coached the child to make false allegations as well.¹³⁶ The mother also disrupted the child’s visitation with the father.¹³⁷ The Court reasoned that “interference with the relationship between a child and a noncustodial parent by the custodial parent is an act so inconsistent with the best interests of the child that it raises, by itself, a strong probability that the offending party is unfit to act as a custodial parent.”¹³⁸

¹³² Greene, 7 A.D.3d at 529.

¹³³ Id. citing Eschbach, 56 N.Y.2d at 172-173; Matter of Garvin v. Garvin, 176 A.D.2d 318, 319 (2d Dept. 1991); Young, 212 A.D.2d 118-119.

¹³⁴ Id. citing Matter of Fallon v. Fallon, 4 A.D.3d 426 (2d Dept. 2004); David K. v. Iris K., 276 A.D.2d 421, 422 (2000); Miller-Presutti, 257 A.D.2d 562, 563 (2d Dept. 1999); Young, 212 A.D.2d at 122-123.

¹³⁵ Gago v. Acevedo, 214 A.D.2d 565, 566 (2d Dept. 1995).

¹³⁶ Id.

¹³⁷ Id.

¹³⁸ Id. citing Leistner v. Leistner, 137 A.D.2d 499 (2d Dept. 1988); Krebsbach, 181 A.D.2d at 363.

False allegations of abuse were also a focal point in Sandra C. v. Christian D.¹³⁹ Here, “the mother persisted in accusing the father of physically and sexually abusing the child even after [an] investigation revealed that such allegations were unfounded.”¹⁴⁰ The Court awarded custody to the father because it found that the “mother should not continue to have custody based on her unwillingness to foster a meaningful relationship between the father and the child.”¹⁴¹

In Young v. Young, the Court held that the mother’s conduct was so “egregious as to warrant a change of custody to the father.”¹⁴² The Court expressed that “the mother’s anger and hostility toward the father has made her unfit to be the custodial parent ‘since her attitude would substantially interfere with her ability to place the needs of the children before her own in fostering a continued relationship with the noncustodial parent.’”¹⁴³

In 2012, the First Department set aside the parties’ Parenting Agreement and modified the order of custody after the father repeatedly failed to foster the child’s relationship with the mother.¹⁴⁴ The Court found that the numerous emails from the father to the mother “showed that he bullied and derided the mother and spoke negatively about her to the child.”¹⁴⁵

Meanwhile, in another modification case, the Second Department affirmed a change from joint custody to sole custody of the children to the father.¹⁴⁶ The Court found that the record established that the mother “failed to promote a positive relationship between the children and

¹³⁹ Sandra C. v. Christian D., 244 A.D.2d 551 (2d Dept. 1997).

¹⁴⁰ Id.

¹⁴¹ Id. citing Young, 212 A.D.2d at 114.

¹⁴² Young, 212 A.D.2d at 122.

¹⁴³ Id. quoting Janecka v. Franklin, 150 A.D.2d 755, 757 (2d Dept. 1999); citing Matter of Mahoney v. Marrano, 134 A.D.2d 834 (4th Dept. 1987).

¹⁴⁴ Sendor v. Sendor, 93 A.D.3d 586 (1st Dept. 2012).

¹⁴⁵ Id.

¹⁴⁶ White v. Mazzella-White, 84 A.D.3d 1068 (2d Dept. 2011).

the father” and failed to participate in the children’s extracurricular activites.¹⁴⁷ The Court also held that the father’s home provided more stability for the children than the mother’s home.¹⁴⁸

Conversely, in another case, the Second Department affirmed a change from joint custody to sole custody to one parent, but did not order a change in physical custody. The Court held the best interests of the child would be to remain with the mother with whom she had been living for eight years.¹⁴⁹ Despite the presentation of evidence that the mother had interfered with the father’s visitation, the Court held her uncooperative behavior “was not sufficient to justify a change of custody.”¹⁵⁰

In 2011, the Third Department modified a custody order and awarded the father sole legal and physical custody of the parties’ child.¹⁵¹ The mother, who at the time was the child’s primary caregiver, had initiated the modification proceedings, alleging that the father returned the child from visitations wet and dirty and that he inappropriately touched the mother’s older child.¹⁵² In awarding sole custody of the parties’ child to the father, the Court found her allegations to be untrue and that the mother had actively and persistently interfered with the father’s visitation rights by “unreasonably refusing to relinquish the child if the father was even five minutes later (or early) for his scheduled visitation.”¹⁵³ Furthermore, the Court found that the mother manufactured the allegations of inappropriate touching of her older child and the court called into question the mother’s parental fitness.¹⁵⁴

The Fourth Department awarded a father sole custody in the best interests of the child after a modification hearing, finding the father was less likely than the mother to interfere with

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Cervera v. Bressler*, 90 A.D.3d 803 (2d Dept. 2011).

¹⁵⁰ *Id.*

¹⁵¹ *In the Matter of Melissa WW.*, 88 A.D.3d 1199 (3d Dept. 2011).

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

the other parent's relationship with the child.¹⁵⁵ In its decision, the Court cited the fact that the mother had omitted the father's name on school enrollment forms and had changed the child's pediatrician without telling the father.¹⁵⁶ Essentially, the mother had engaged in a pattern of behavior that had excluded the father, and therefore a modification of custody awarding sole custody to the father was warranted.¹⁵⁷

The Fourth Department also modified a prior custody order and transferred physical custody of the couple's two children to the father and granted the father sole custody in Tarrant v. Ostrowski.¹⁵⁸ In this case, the Court found there was clear and convincing evidence to support the finding that the mother willfully violated a prior court order by preventing the father from receiving custodial access to the children in April of 2010.¹⁵⁹

C. Visitation

In custody cases, the Family Court is required to structure a schedule, which results in frequent and regular access by the non-custodial parent.¹⁶⁰ But, under certain circumstances, courts will limit visitation to supervised access. These circumstances often include those where domestic violence is present, where false allegations of child abuse or neglect are made, and where the non-custodial parent vilifies the custodial parent in a way that is detrimental to the child.

In Chilbert v. Soler, the Fourth Department awarded sole custody of the child to the mother, with supervised visitation to the father.¹⁶¹ The Court explained that the determination "whether visitation should be supervised is a matter 'left to Family Court's sound discretion and

¹⁵⁵ Matter of Orzech v. Nikiel, 91 A.D.3d 1305 (4th Dept. 2012).

¹⁵⁶ Id.

¹⁵⁷ Id.

¹⁵⁸ Tarrant v. Ostrowski, 96 A.D.3d 1580 (4th Dept. 2012).

¹⁵⁹ Id.

¹⁶⁰ Micah NN., 79 A.D.3d at 1190 quoting Matter of Swett v. Ralcom, 64 A.D.3d 934, 935 (3d Dept. 2009).

¹⁶¹ Chilbert, 77 A.D.3d 1406.

it will not be disturbed as long as there is a sound and substantial basis in the record to support it.”¹⁶² In upholding the Family Court’s award of supervised visitation, the Appellate Division took into consideration that “the father had committed acts of domestic violence against the mother, often in the child’s presence.”¹⁶³ The Court also emphasized the father’s threats to run off with the child, demonstrating his unwillingness to foster the child’s relationship with the mother.¹⁶⁴

The Third Department, in LaFountain v. Gabay, granted full custody to the child’s mother, and supervised parenting time to the father.¹⁶⁵ The Court acknowledged that both parents “demonstrated serious deficiencies in their parenting skills[,]” but the mother was the only parent who was ready and able to care for the children.”¹⁶⁶ The father was ordered supervised visitation because he had a “long history of polysubstance abuse, [and] admitted to smoking crack cocaine during the period of time in which the fact-finding hearing was proceedings” thus putting his drug use “above the well-being of his children even while fighting for their custody.”¹⁶⁷ The Court explained that the record supported the finding “that the mother was more capable of fostering a positive relationship between the children and the father and their paternal grandparents.”¹⁶⁸

In Opalka v. Skinner, the Court required that the mother’s visitation with the children be supervised either by a grandparent or other supervisor agreed upon by the parties.¹⁶⁹ In this case the mother vilified the father and alienated him from the children, traded her prescription

¹⁶² *Id.* quoting Matter of Taylor v. Fry, 47 A.D.3d 1130, 1131 (3d Dept. 2008).

¹⁶³ Chilbert, 77 A.D.3d at 1406.

¹⁶⁴ *Id.*

¹⁶⁵ LaFountain v. Gabay, 69 A.D.3d 994, 995 (3d Dept. 2010).

¹⁶⁶ *Id.* at 995.

¹⁶⁷ *Id.* citing Matter of Valenti v. Valenti, 57 A.D.3d 1131, 1134 (3d Dept. 2008).

¹⁶⁸ LaFountain, 69 A.D.3d at 995.

¹⁶⁹ Opalka, 81 A.D.3d at 1008.

medication for marijuana, and made false allegations of domestic violence against the father.¹⁷⁰ The Court held that “given the evidence that the mother is willing to manipulate the children’s perception of the father to the detriment of the children’s emotional health,” supervised visitation was not unwarranted.¹⁷¹ The First Department awarded custody to the father, and permitted the mother to have supervised visitation in James Joseph M. v. Rosana R.¹⁷² In ordering supervised visitation, the Court focused on the complete inability to foster the child’s relationship with the father while the child was in her custody.¹⁷³ The mother continuously interfered with the father’s visitation, “completely disregarded the best interests of the child by her repeated false allegations of abuse at [the father’s] hands, which subjected this young child to repeated interviews with law enforcement and medical personnel.”¹⁷⁴ The mother also coached the child to confirm the false allegations that she made to governmental and medical personnel.¹⁷⁵ The Court explained that “supervised visitation for the mother is warranted given her consistent pattern of detrimental behavior.”¹⁷⁶

VI. Conclusion

When making custody determinations, there are a myriad of factors that the Court must consider. One of these factors is the ability and willingness of the custodial parent to foster a meaningful relationship between the child and the noncustodial parent. Normally, neither this factor nor any other should be afforded more weight than any other factor that the Court considers. There are, however, certain circumstances in which the Court focuses closely on the “foster connections” factor. These cases are usually those where one parent’s conduct makes is

¹⁷⁰ Id. at 1006.

¹⁷¹ Id. at 1008.

¹⁷² James Joseph M. v. Rosana R., 32 A.D.3d 725 (1st Dept. 2006).

¹⁷³ Id. at 726.

¹⁷⁴ Id.

¹⁷⁵ Id.

¹⁷⁶ Id. at 727.

abundantly clear that awarding them custody of the child will interfere with the non-custodial parent's access to the child. Under these circumstances, the Court will award custody to the parent who will ensure that a relationship is maintained with the non-custodial parent.