

**Commonwealth of Massachusetts
The Trial Court
Probate and Family Court Department**

Worcester Division

Docket No. WO13Pxxxx

**JUDGEMENT OF MODIFICATION
(on Complaint filed June 9, 2015 and Amended Complaint filed September 21,
2016)**

Andrews, Plaintiff

vs.

Rose, Defendant

This action came on for hearing before the court, Kathleen A. Sandman, J. presiding. IT IS ORDERED AND ADJUDGED as follows:

1. The Guardianship of xxxxxxxx Andrews, date of birth xxxxxx, shall be vacated on August 24, 2018.
2. Beginning August 24, 2018, Ms. Andrews, the Mother, shall have sole legal and physical custody of the Child.
3. The child shall begin reunification therapy immediately with a therapist chosen by the Mother. Reunification therapy shall be a priority for the Mother, the Guardian and the child, to the exclusion if necessary of other therapy or activities, and the Guardian shall ensure the child's attendance at reunification therapy. The child may also continue her existing therapy at least until August 24, 2018 to facilitate the reunification. All therapists involved with the child shall be allowed to communicate as necessary.
4. The Mother shall make every effort to continue the child's extracurricular activities, at least initially, as the child transitions to the Mother's custody.

5. The Mother shall have telephone and video chat time with the child nightly at 7:00 PM, except on the day(s) of reunification therapy or other therapy with the Mother, for no less than ten (10) minutes unless a lesser time is agreed to by the Mother and the child, beginning immediately. The Guardian shall make the child available and shall not interfere with the child and the Mother's time.
6. On April 21, 2018 and April 28, 2018, the Mother and the child shall have parenting time at the Mother's home from 10:00 AM to 1:00 PM, and the Guardian shall be present. All parties may choose another location in addition to the home but a portion of the parenting time shall be spent at the home.
7. Beginning May 5, 2018, the Mother and the child shall have unsupervised parenting time Saturday from 10:00 AM to 6:00 PM.
8. Beginning June 2, 2018, the Mother and the child shall have unsupervised parenting time Saturday from 10:00 AM through Sunday at 6:00 PM.
9. Beginning July 6, 2018, the Mother and the child shall have parenting time Friday at 4:00 PM through Monday at 6:00 PM.
10. Beginning August 2, 2018, the Mother and the child shall have parenting time full time, except that the child shall spend time with the Guardian Wednesday from 10:00 AM through Thursday at 6:00PM.
11. Beginning with the start of the 2018 fall school year, any time the child spends with the Guardian or with the grandmother shall be at the discretion of the Mother, until December 31, 2018, not to be unreasonably withheld.
12. The Mother shall consider keeping the child in her current or comparable school program but may choose to have the child attend a new and different school. The child shall remain in her current school system until the termination of the Guardianship.
13. The Mother shall remain drug free at all times when parenting the child, except as to prescription medication that will not lend itself to addiction or impair the Mother's judgment in any way.
14. The Mother shall have discretion to revise any provision of this transition plan that she determines is not in the child's best interest.

15. The Court *sua sponte* vacates the Judgment of Modification dated November 6, 2014, Docket Number WO09xxxxx Taylor v. Andrews, which case is linked with the Guardianship case and incorporates an Agreement for Judgment on Petition for Guardianship and Modification, as of August 24, 2018 as the Guardianship shall terminate on that date. Thereafter the parties to that action shall abide by the original terms of their Judgment of Paternity dated January 5, 2010, except as modified by the terms of this Judgment.

Dated: **April 17, 2018**

Justice of Probate and Family Court
Kathleen A. Sandman

Probate and Family Court Department

Worcester Division

Docket No. WO13P3751GD

**MEMORANDUM IN SUPPORT OF JUDGMENT
(on Complaint filed June 9, 2015 and Amended Complaint filed September 21,
2016)**

Andrews, Plaintiff

vs.

Rose, Defendant

PARTIES, WITNESSES AND EXHIBITS

Trial in this matter was held on January 3, 2018, February 6, 2018 and February 28, 2018. The parties in this case are Andrews (hereinafter referred to as "Mother") and Rose (hereinafter referred to as the "Guardian"). The minor child in this matter is Andrews, whose date of birth is xxxxx, 2009.

At trial, the Court heard testimony from the Mother; Mr. Chrisler (Mother's fiancée, hereinafter referred to as "Mr. Chrisler"); the Guardian; E. Andrews (the child's maternal grandmother, herein referred to as "Ms. Andrews"); and Mr. Taylor (The Child's father, hereinafter referred to as "Father").

The Court considered the following exhibits, all of which were entered into evidence by agreement of the parties: letter from Drs. Kacprzak and Izzo dated March 23, 2015; letter from Mr. Bartlett of LMHC dated August 21, 2015; Skype pictures and text messages dated April 3, 2016; letter from Ms. Stevens dated February 25, 2016; hair follicle testing results dated February 23, 2016, June 16, 2016, December 30, 2016, April 27, 2017 and December 14, 2017; Guardian *ad Litem* report dated June 21, 2017;

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photographs of Mother and child; letter from Ms. Anderson, LMHC dated December 28, 2017; Uxbridge police report dated March 26, 2014 and criminal docket; letter from

Family Continuity dated November 21, 2017; Family Continuity records dated February 4, 2017; child's report cards dated 2016-2017 and 2017 1st trimester; an Abuse Prevention Order issued from the Milford District Court on March 25, 2015, Docket Number xxxxxxx; an Abuse Prevention Order issued from the Uxbridge District Court on March 22, 2014, Docket Number xxxxx s[anish Immersion school pamphlet; and photographs of the The Child .

The Court also took judicial notice of hair follicle testing results dated February 16, 2018 and the paternity file of Andrews v. Taylor, Docket Number WOxxxxxx.

FINDINGS AND RATIONALE

History

The Child was born on xxxxx. The Mother and the Father have never been married. A Judgment of Paternity entered in this matter by agreement on January 5, 2010, defining the terms of the parents' relationship with their daughter. The parties were to share legal custody of The Child and the Mother was awarded sole physical custody. The Father has seen The Child a few times recently but has never chosen to have a continuous and consistent relationship with her. He paid child support to the Mother prior to the Guardianship and continues to pay child support to the Guardian at the present time.

A Temporary Guardianship was entered on November 26, 2013, awarding the maternal grandmother, Ms. Andrews, guardianship of The Child. On November 6, 2014, the Guardianship became permanent with the agreement of both parents, appointing the Guardian as permanent Guardian. The Guardian is also The Child 's maternal aunt and sister-in-law to the Mother. A corresponding detailed Judgment of Modification entered in the Paternity case incorporating an agreement of the parties.

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On January 9, 2015, the Mother filed a Complaint for Modification seeking regular communication with The Child and unsupervised parenting time. A Temporary Order issued on September 28, 2015, allowing phone contact between the Mother and The Child twice per week and parenting time at The Child 's therapist's office. The Mother amended her original Complaint for Modification on September 21, 2016,

seeking immediate unsupervised parenting time with The Child and termination of the Guardianship.

The Bad Night

The Court heard dramatic testimony concerning the night of March 21, 2014 from the Guardian, the Mother and Ms. Andrews. On that night, there was a physical altercation between the Mother and Ms. Andrews that was violent, necessitated police involvement and, most disturbingly, involved The Child. The event began with the Mother trying to leave Ms. Andrews' home with The Child, where Ms. Andrews had been supervising the Mother's parenting time. A struggle with The Child occurred in the Mother's car and then moved to the home of a neighbor who offered Ms. Andrews and The Child refuge. The Mother broke the neighbor's glass door to gain access to The Child. A tug of war ensued for The Child between the Mother and Ms. Andrews. Ultimately, in an effort to escape, The Child ran from the scene of the violence, through broken glass, on which she cut her feet. She was found a few streets away by the police.

The Guardian came and picked up The Child and removed her from the chaotic scene. When she first arrived, the Guardian observed The Child to be rocking back and forth and shoving her sweater cuff in her mouth, and her feet had shards of glass in them and were bloody. The Guardian told the Mother she was not going to give The Child back to her, in response to a request from the Mother that she retrieve her after she made bail. The Court finds that the Guardian's actions at that time were appropriate.

Thereafter, the Guardian testified that The Child began to have nightmares, bed-wetting, and was extremely "clingy". The Court credits the Guardian's descriptions of The Child and acknowledges that her observations of The Child support that The Child was physically and emotionally affected by the trauma.

Therapy and Reunification

The Court heard much testimony on the pace of therapeutic treatment that The Child has engaged in since the night of March 21, 2014. On June 9, 2014, the Guardian

enrolled The Child in therapy for post-traumatic stress (PTSD) at Family Continuity in Whitinsville, Massachusetts. She treated for PTSD until July 2015, with no focus on

reunification with the Mother. During the time period of March 21, 2014 through June of 2015, the Mother did not have any contact with The Child. During the time frame and until May of 2015, the Guardian remained in the room during The Child 's therapy sessions.

After June of 2015, the Mother participated in therapy every other week for forty-five (45) minutes, through October 7, 2015 when the therapist left on maternity leave. The Mother stated that when she inquired of the therapist as to reunification with The Child, she received a letter from Family Continuity dated August 21, 2015 stating, "It is outside our scope of practice to make legal decisions regarding phone calls, visitations and parenting time."

Thereafter, the therapy continued with an intern. The original therapist returned in January of 2016 and the Mother's participation in therapy moved to weekly. Skype time with The Child and the Mother was recommended by the therapist but the Guardian did not agree to Skype after two (2) sessions and discontinued the Skype contact. The original therapist left Family Continuity in June of 2016 and there was no therapy and no parenting time scheduled by the Guardian during the time period of June 2016 through September 2016. In October of 2016, therapy resumed but with another intern. This therapy continued until May of 2017 but consisted largely of game playing. In May of 2017, therapy moved from PTSD/trauma therapy to individual therapy and the Mother was allowed to participate every week for forty-five (45) minutes. As the Guardian *ad Litem* opined almost a year ago on June 21, 2017, the pace of therapy was "very slow with little or no effort to move things along at a faster pace." (Guardian *ad Litem* ("GAL") report, p. 21).

The Guardian *ad Litem* reports, "The Child has apparently done well with the meetings with Mother and the therapist, based on the Family Continuity records, reports of the therapist and the parties and the direct observation of the therapy by the GAL." (GAL report, p. 21). Since the termination of the Abuse Prevention Order in March of 2017, the Mother has seen The Child two (2) to three (3) times per month, supervised by the Guardian, Mr. Chrisler or Ms. Andrews. These visits are reported by the Mother to have gone well, and The Child has interacted with her baby brother and Mr. Chrisler's daughter on these visits in addition to the Mother. The Court credits this testimony. The Court was presented with photographs of the children interacting and they appear to be having a great time and enjoying each other's company. The Mother

has been allowed to be alone with The Child at the Millbury Mall for ten (10) to fifteen (15) minutes and at a bowling alley, but the Guardian was in the background. She has also been doing homework with The Child over the phone.

The Mother stated that The Child and she do "high 5's" when together and have hugged a few times, but when the Guardian walks into the room The Child will walk to the other side of the room, away from the Mother. The Mother testified that The Child calls her "by her first name". The Guardian acknowledged this but testified that she encourages The Child to call her "Mom" when she is around her and did not tell her not to call her "Mom". Emphasis was placed by the Guardian on the Mother apologizing to The Child. Yet the Guardian did admit that the Mother said she was "sorry" to The Child as early as the spring of 2016, two (2) years ago. The Guardian testified that she believes The Child is still "guarded" around the Mother but acknowledged that the visits are going "very well."

The Court finds credible that the Mother has made consistent efforts since 2015 to try and initiate reunification therapy with The Child. The Mother testified she wants to focus on reunification with a therapist who focuses on that type of therapy, which she believes Family Continuity is unable to provide. The Mother provided a reunification therapist to the Guardian, Dr. Anderson, but Dr. Anderson ended up not taking the case because the Guardian and the Mother could not agree on a schedule of therapy.

The Court finds that the Guardian does not appear to have been aggressive in suggesting and implementing reunification therapy, as she testified she prefers to take her direction from The Child and what she believes The Child feels comfortable doing. The Court finds credible Mother's testimony that when she asked the guardian if there could be some parenting time for Christmas, the Guardian only responded, "We'll see." When asked when The Child may be comfortable with transitioning to unsupervised parenting time, the Guardian testified that it has to be on The Child 's time and that "the situation has to be right." She also testified that "I love her so much," "This isn't about me," and "I'd let her go." Also, the Guardian testified that she wanted to keep The Child as long as necessary. The Guardian testified that she did not believe there was a specific time frame to heal from a trauma, and when pressed as to how long she believes it will take, she stated that she would take her lead from whatever The Child needs.

Mother's Fitness

It is undisputed that the Mother has been a serious drug abuser in her past. She was misdiagnosed for kidney disease and was given several medications, among them Vicodin, Oxycodone and Percocet. The Mother testified that she became addicted to the medication and the Court credits her testimony. She was involuntarily committed for drug treatment in November of 2013 largely because Mr. Chrisler convinced her family that she had a substantial drug problem and had become addicted to Oxycodone.

As a result of the events of March 21, 2014, the mother was criminally charged with assault and battery, possession of various illegal drugs and child endangerment, among other charges. She used cocaine during her probationary period in July of 2014, and was sent to Framingham State Prison. The Mother was then allowed to enter Honest Beginnings, a sober house, where she remained from September of 2014 until December of 2014. On March 25, 2015, the Guardian, on behalf of The Child, obtained an Abuse Prevention Order against the Mother from the Milford District Court, Docket Number xxxxxx. In part, the Guardian alleged that in 2015 the Mother had abused her prescription medication and had tested positive for ecstasy, resulting in violation of her probation. The probation violation was withdrawn when the Mother's physician explained that a prescription of Wellbutrin she was legally taking resulted in a false positive for ecstasy. The Court credits the Mother's explanation for the false positive.

The Mother has repeatedly undergone drug testing on her own and at her own expense to prove her sobriety. At trial, she presented evidence of drug testing showing negative results for illegal substances from February, 2016 to present. She remains in treatment with Ad Care and attends AA four (4) to five (5) times monthly. The Mother testified that she has been and will always be in danger of substance use disorder. The Court finds that she is remorseful and recognizes her flaws and the mistakes she has made in the past. The Court finds credible that the Mother has been sober since July of 2014, acknowledges that she will always have an addiction issue and is actively taking steps to monitor and maintain her sobriety.

The Court credits Mr. Chrisler with being a positive support willing to exercise "tough love" when necessary as a safeguard against the Mother ever relapsing into her drug addiction, as his past actions have demonstrated. Pointedly, the Court finds credible Mr. Chrisler's statement, "I won't hide that for her, that's not going to happen," when acknowledging the Mother's drug addiction.

The Mother's fitness was evidenced by additional factors as well. She has rebuilt her career as a registered nurse. She cares for at least twenty-five (25) patients in their homes, working for a nursing service in Chelmsford, Massachusetts.

The Mother gave birth to a son, xxxxxxxxx, in 2016. Mr. Chrisler is the child's father. The Mother and Mr. Chrisler both testified that the Mother is his primary caretaker. Mr. Chrisler acknowledged that the Mother is an amazing mother and is "all over it" and "outshines" him relative to the care of their son. The Court credits his testimony as to the Mother's parenting abilities with him.

The Mother and Mr. Chrisler are engaged to be married. They reside in a single-family home in Dudley. The Mother has a bedroom for The Child at the Dudley home. The Child will share the bedroom with Mr. Chrisler's daughter, who is also named xxxx and is also age nine (9), on alternate weekends and vacations when Mr. Chrisler has his parenting time with her. The Child and xxxxxx have met and according to the Guardian *ad Litem* "enjoy spending time together and like each other very much." (GAL report, p. 17). The Child also reported to the Guardian *ad Litem* that she enjoys the visits at therapy with the Mother and also with her baby brother: "When asked if she enjoys those visits her face brightened into a smile and she nodded her head vigorously and said that she likes 'seeing Mom.' (GAL report, p. 8). Further, "The Child appears quite comfortable with Mother, based upon direct observation by the GAL and reports of collaterals." (GAL report, p. 21).

The Court finds that the Mother is a fit parent, ready, willing and able to parent her child.

Bonding of the Guardian

The Guardian testified that she played a role in The Child 's life ever since The Child was born, and the Court credits this testimony. She was a babysitter for The Child when she was little, sometimes having The Child overnight at her home. The Guardian also has two (2) grown sons. When the Guardianship entered in November of 2013, the Guardian began to have The Child during each week, while Ms. Andrews had her on the weekends.

The Court finds that the Guardian has performed her fiduciary role well. Evidence was presented as to The Child 's report cards and she appears to be an excellent student at her Spanish Immersion school in Upton where she is now in the third (3rd) grade. The Guardian also presented many photographs of The Child at her school, interacting with her

friends and interacting with her family. She has enrolled The Child in Zumba classes and The Child attends dance classes four (4) days every week. The Guardian told the Mother that The Child would not like that and so the Mother never attended. The Guardian has taken The Child for all medical appointments since her Guardianship entered. The Guardian has not asked the Mother to attend any medical appointments with her. The Court finds that with the Guardian's efforts The Child has enjoyed a comfortable and loving environment during the Guardianship.

Pursuant to the terms of the agreement entered into at the permanent Guardianship hearing, the Guardian receives \$695.00 weekly child support from the Father and \$46.00 weekly from the Mother. The Guardian testified that the Mother was supposed to increase her child support voluntarily but never did.

The Guardian also interacted with the Father and was successful in introducing the Father to The Child. The Father testified that he had not wanted children and consequently had chosen not to be involved to this point. He has enjoyed his time seeing The Child with the Guardian and described it as "exciting". The Father has attended a Zumba class that The Child attends and has now met The Child 's teachers. The Court finds that while the Father's role in The Child 's life is minimal, it was in her best interest to meet him and begin that relationship, and the Guardian is credited with making that happen.

The Court recognizes that The Child 's comfort level in her lifestyle with the Guardian is a direct impediment to reunification, as it often necessarily is with a loving guardian-ward arrangement. Given the affection for The Child expressed by the Guardian in testimony, which the Court credits, the Court understands that the termination of the Guardianship will at times be heart wrenching. This Court is confident that this Guardian understands that it is an essential element of a good Guardian to recognize the final chapter of their role. As the Guardian *ad Litem* states, "If reunification is to be successful, The Child needs to be given a consistent message from family members that reunification is everyone's goal and that she and Mother are, or may soon be, ready to progress to time alone together." (GAL report, p. 21). There is no question that the person most able to facilitate the transition back to the Mother is the Guardian.

As the Guardian is also The Child 's aunt, the hope of this Court is that she will always have an extra special place in The Child 's life, and that The Child will continue to have a fulfilling relationship with her grandmother, Ms. Andrews, as well. The Guardian has certainly fulfilled the role of stable, loving caretaker which was very necessary at the time when the mother's addiction was at its worst. The photographs

provided to the Court show a happy, busy and active child and clearly, she has been well taken care of.

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Summary

Custody of a child belongs to a parent unless that parent is unfit. Guardianship of Estelle, 70 Mass. App. Ct. 575, 578 (2007). See also Bezio v. Patenaude, 381 Mass. 563, 576 (1980); Care and Protection of Zelda, 26 Mass. App. Ct. 869, 871 (1989). When determining a petition to remove guardians filed by a minor child's parent, the dispositive issue is the current fitness of the parent, not the best interest of the child. Guardianship of Yushiko, 50 Mass. App. Ct. 157 (2000). However, in evaluating "fitness," the Court may consider the effect on the child of a transfer of custody from the guardian to the biological parent. Estelle, *supra* at 582; Adoption of Katherine, 42 Mass. App. Ct. 25, 30-31 (1997).

The Court has been asked to decide whether this Guardianship should be vacated, and custody returned to the Mother. In considering this decision, the Court recognizes that both parental fitness and the child's best interest are always considerable in any case dealing with the fundamental right of a parent to raise their child in their custody and as they see fit. The Court finds that the Mother is fit and that it is in The Child 's best interest for her to return to the Mother's custody, in a phased-in transition schedule, as delineated herein.

The Guardian *ad Litem* in this case conducted a detailed examination of the families involved in The Child 's life. On June 21, 2017, over nine (9) months ago, she opined, "In the final analysis, Mother is The Child 's mother and it is the opinion of this GAL that however traumatized The Child may have been by the 'bad night,' the trauma is no longer so great as to warrant continued separation of mother and child." (GAL report, p. 23). Further, "Thus, the longer she is kept from being reunited with her mother, the more difficult reunification will be, and this would be unfair to both." (GAL report, p. 23).

The Court decides with this Judgment that it is time for the Guardianship to end. This decision is not without recognition that the process will not be easy and will require the efforts and encouragement of all adults involved with The Child, no matter their role in

her life. The Child 's ease of transition will be a direct reflection on the willingness of these adults to recognize that there never will be a perfect time, but that this Court agrees with the Guardian *ad Litem* that the longer the wait, the more of a disservice it will be for this young child.

Dated: **April 17, 2018**

Justice of Probate and Family Court
Kathleen A. Sandman

**Commonwealth of Massachusetts
The Trial Court
Probate and Family Court Department**

Worcester Division

Docket No. WOxxxxx

***SUA SPONTE* JUDGEMENT OF MODIFICATION**

Taylor, Plaintiff

vs.

Andrews, Defendant

IT IS ORDERED AND ADJUDGED, *sua sponte*, as follows:

1. The Court *sua sponte* vacates the Judgment of Modification dated November 6, 2014 as of August 24, 2018 in accordance with its decision entered this date in Docket Number WO13P3751GD, as the Guardianship shall terminate on that date. Thereafter the parties to this action shall abide by the original terms of their Judgment of Paternity dated January 5, 2010, except as modified by the terms of the Judgment entered this date in WO13P3751GD, a copy of which is attached hereto.

Dated: April 17, 2018

Justice of Probate and Family Court
Kathleen A. Sandman