

**TWENTY-FIRST JUDICIAL DISTRICT COURT**

**PARISH OF TANGIPAHOA**

**STATE OF LOUISIANA**

**NUMBER: 2011-0001331**

**DIVISION "J"**

**CRYSTA ABELSETH**

**VS.**

**JOHN BARNES**

FILED: \_\_\_\_\_

DY. CLERK: \_\_\_\_\_

**REASONS FOR JUDGMENT**

This matter came before the Court on July 15, 2022 pursuant to a Rule for Contempt filed by Crysta Abelseth, Rule for Contempt filed by John Barnes, a Petition for Sole Custody filed by John Barnes, Answer and Reconventional Demand requesting Sole Custody filed by Crysta Abelseth, Petition for Termination of Parental Rights and For Sole Custody filed by Crysta Abelseth, and Motion for Change of Custody filed on behalf of the minor child.

Present in Court were:

**Jarrett Ambeau, attorney for/and Crysta Abelseth;**

**Jenel Secrease, attorney for/and John Barnes; and**

**Rebecca Lee, appointed attorney for/and Minor Child**

The Court, having heard the testimony of the witnesses and arguments of counsel presented throughout the course of a lengthy trial, and having reviewed the briefs and exhibits filed along with the entire suit record, now rules as follows:

**FACTS AND PROCEDURAL HISTORY**

██████ ("the minor child") was born on ████████, to Crysta Abelseth ("the mother" or "Abelseth"). While James Threton signed her birth certificate and the mother seemingly believed he was the father, he never formally acknowledged the child. When the minor child was four, Threton was incarcerated. It was at this time that John Barnes ("the father" or "Barnes") was contacted regarding the possibility that he may be the father of the minor child.

In February of 2011, Barnes submitted to a DNA test which determined that he was the biological father of the minor child. In April of that same year, the mother filed a Petition for Confirmation of Natural Tutrix for the Limited Purpose of Instituting a Paternity Suit. The Petition requested that Barnes be appointed under tutor. On April 18<sup>th</sup>, 2011, an Order granting the relief sought was signed by Judge Elizabeth Wolfe.

Soon thereafter, the mother, acting as the minor child's tutrix, filed a Petition to Establish Paternity seeking to have John Barnes deemed the child's biological father and to nullify any rights James Threton may have to the child. At a May 31<sup>st</sup>, 2011 hearing, Judge Brenda Ricks granted judgment as prayed. A Consent Judgment was signed by Judge Ricks on September 29<sup>th</sup>, 2011, awarding the mother and the father joint custody of the minor child and designating them as co-domiciliary parents. The Judgment specified that Barnes would have physical custody of the minor child every other weekend and every Monday through Wednesday. It further provided that each parent would receive two weeks visitation in the summer months and that no child support would be paid by either parent. The parents were to equally share the costs of extraordinary medical expenses, school/aftercare expenses, and agreed upon extracurricular costs.

In June of 2012, the mother sought a modification and increase of child support. Less than one month later, Mr. Barnes filed a pleading seeking to hold the mother in contempt of the September 29<sup>th</sup>, 2011 Judgment. Both parties' pleadings centered around verification and reimbursement of expenses. The father also filed a separate pleading seeking to prohibit Cynthia Abels, James Threton's mother, from visiting the minor child. These matters were resolved through two September 24<sup>th</sup>, 2012, consent judgments, one of which ordered Mr. Barnes to pay \$425 per month in child support. In addition, Mr. Barnes was to place \$200 per month into a college savings account for the benefit of the minor child as well as provide medical, dental, and vision insurance for the minor child. Physical custody of the minor child was also altered. Per the agreement of both parties, the minor child was to reside with the father on alternating weekends and each Monday and Tuesday. The parties further agreed to designate the arrangement as shared custody. It was agreed that Cynthia Abels would have two 12-hour periods of visitation per month during the mother's physical custodial periods. However, it was specified that James Threton was not to be present, and that the minor child could not be taken to the correctional facility where Mr. Threton was incarcerated during these visits.

In January of 2013, a modification of custody and support was again sought, this time, on behalf of the father. The request was due to the father's belief that the mother was having overnight visits with her boyfriend while the minor child was in her physical custody. Among other things, it was alleged that her boyfriend had a documented history of drug abuse.

Five days later, Barnes sought emergency temporary custody of the minor child based upon his concern that the mother was attempting to have the minor child participate in unsanctioned counseling sessions at the recommendation of the mother's attorney. While Judge Ricks signed an Order denying the request for *ex parte* custody pending a hearing, it was ordered that the child not be taken to a counselor pending a hearing.

The mother then filed a Rule for Contempt and Motion to Vacate the *Ex Parte* Order wherein it was alleged that the father was in arrears on child support and had failed to provide evidence of college savings account deposits. In the Motion, the mother denied having overnight visits with her boyfriend and expressed concerns about the father's parenting. It was specifically stated that the father needed parenting classes. The following day, the father filed a second request for *ex parte* custody complaining that the mother took the minor child to counseling despite the Court's Order. The request was summarily denied by Judge Ricks. The mother filed an Opposition which stated her belief that Barnes had mental health and control issues and would greatly benefit from counseling and/or therapy.

Ultimately, these matters were addressed at a January 28<sup>th</sup>, 2013, hearing where the father failed to appear. A Judgment signed on February 1<sup>st</sup>, 2013, memorialized the Court's ruling dismissing the father's motions and vacating any orders entered into pursuant to said motions. The mother was designated domiciliary parent, and a parenting facilitator was appointed. Mr. Barnes filed a Motion and Order for Appeal of the February 1<sup>st</sup>, 2013 Judgment alleging that when he showed up for the January 28<sup>th</sup> hearing, a clerk and a bailiff told him the matter was set for 1:00 p.m., and when he returned to the courthouse at 12:00 p.m., he was informed that the matter was handled without his presence. Mr. Barnes' motion was denied.

Soon thereafter, the parties submitted a third Consent Judgment regarding custody of the minor child which was signed on April 30<sup>th</sup>, 2013. The Judgment designated the parents as co-domiciliary parents and awarded shared custody of the minor child with the father exercising physical custody every other Friday through Wednesday and every other Monday through Wednesday. Per the Judgment, Barnes was to pay \$428 per month in child support for the months

of August through May and \$469 per month for the months of June and July as well as 74% of all extraordinary and extracurricular expenses.

In March of 2015, following the establishment of the Family Court in and for the Parish of Tangipahoa, the custody and paternity suits were reallocated to Division “K” and were consolidated soon thereafter. In August of 2015, due to a conflict of interest, the matter was reallocated to Division “J,” the division wherein the matter is currently pending.

In May of 2015, the father filed a Rule for Contempt and to Modify Custody alleging that the mother failed to honor a right of refusal, a prohibition of overnight guests not married or related to the minor child, and a prohibition of contact between the minor child and James Threeton. The pleading further alleged that the mother had moved approximately six times in twenty-two months and had exposed the minor child to a physically and mentally abusive relationship between herself and her estranged husband. Around this time, the mother filed a complaint with the Tangipahoa Parish Sheriff’s Office regarding a 2005 sexual encounter which occurred between the parties. This complaint was not brought to the Court’s attention until 2022 when the instant proceedings were initiated.

A trial was held on October 23<sup>rd</sup>, 2015, and on February 22<sup>nd</sup>, 2016, a Judgment was signed pursuant to the October 23<sup>rd</sup> ruling. Per the Judgment, the parties maintained co-domiciliary status and 50/50 custody. However, physical custody was modified to alternate on a week-to-week basis. It was further ordered that the mother pay \$78.41 per month in child support with said amount increasing to \$117.72 per month on January 1<sup>st</sup>, 2016. This amount was determined based upon the guidelines set forth by the Louisiana Legislature in La. R.S. 9:315 *et seq.* These guidelines create a rebuttable presumption that the amount of child support obtained utilizing the worksheets contained therein is the proper amount of child support. La. R.S. 9:315.1(A). The father’s monthly income was set at \$8,575.33 based upon his W-2s. The mother’s annual income was set at \$80,300.00 pursuant to the 2014 LA Wage Survey for a human resources manager with a master’s degree. Per statute, the father was given credit for monthly health insurance payments for the minor child in the amount of \$520.06, with said amount increasing to \$609.74 per month in 2016.

In May of 2016, the State filed an *Ex Parte* Motion and Order to Change Payee and Request for Immediate Income Assignment. Ultimately, the parties entered a Consent Judgment wherein the mother was to pay \$117.72 per month and \$50.00 per month toward an arrearage of \$1,686.76.

The parties further agreed that the father would forgive an arrearage of extraordinary expenses of \$512.85.

In October of 2017, the father again filed a Rule for Contempt and to Modify Custody alleging that the mother had moved six times since the last judgment, resided with a member of the opposite sex, failed to consult with the father prior to enrolling the minor child in counseling and failed to utilize Our Family Wizard for communications. The following month, the parties entered into a Stipulation wherein the minor child was to begin counseling with Jennifer Daigle, and the mother was to sign up for Our Family Wizard. A trial date was set for the custody modification. The trial was held on February 22<sup>nd</sup>, 2018, and a Judgment memorializing the ruling was signed on April 4<sup>th</sup>, 2018. While the father was named domiciliary parent, the physical custody arrangement was unaltered.

In December of 2020, Barnes filed a Motion to Modify Custody alleging, among other things, that the mother allowed the minor child, who was fourteen years old at the time, to be unsupervised in her bedroom with her then seventeen-year-old boyfriend, and that the minor child inappropriately used a cell phone. While the minor child had a cell phone with parental controls, it was alleged that she was given access to another phone which lacked these features and that the minor child was using the cell phone in a manner that could cause her significant harm. The mother filed an Answer and Reconventional Demand for Modification of Custody, Support and Contempt alleging that the father had physically and mentally abused the minor child. A trial was held on May 6<sup>th</sup>, 2021, and a Judgment complying with the Court's ruling was signed on June 2<sup>nd</sup>, 2021. Per the Judgment, both parties' requests for modification, and the mother's contempt rule, were all denied. It was further ordered that the minor child was to give the passcode to her phone to the mother, and the parties were to go through the phone together within seven days following the trial.

Following this Judgment, various pleadings were filed regarding access to the minor child's cell phone. In May of 2021, the father filed an *Ex Parte* Rule to Produce and Rule for Contempt arguing that the mother had retrieved the passcode for the minor's phone, but the parties had yet to meet because they could not agree on a location. He further alleged that he was informed the phone was wiped hours after the May 6<sup>th</sup> trial. The matter was set for hearing on June 28<sup>th</sup>, 2021 but was removed from the docket upon motion of counsel for the father. On November 17<sup>th</sup>, 2021, the father filed a Rule for Contempt and Temporary Injunction alleging that the mother and the

minor child continually refused to grant him access to the cell phone and seeking a temporary restraining order prohibiting alteration or deletion of the phone's contents. A hearing was conducted on February 7<sup>th</sup>, 2022, and the mother was found to be in contempt of court. It was further ordered that the mother was not to provide the minor child with an additional cell phone, and that both parties were to be given all login information for any account used by the minor child. A Judgment to that effect was signed on February 22<sup>nd</sup>, 2022.

Days later, the mother instituted a protective order proceeding through the filing of a Petition for Protection from Abuse on behalf of herself and the minor child. The petition alleged that the minor child informed the mother that she suspected the father had drugged and sexually assaulted her two nights in a row. The petition also contains an allegation that the mother believes the father drugged and raped the mother when she was 16 years old. An immediate Temporary Restraining Order was granted, and temporary custody was granted to Ms. Abelseth. Pursuant to court rules, this matter was then set for a hearing before the Court's Hearing Officer. On March 18<sup>th</sup>, 2022, the Hearing Officer signed a Recommendation for Judgment of Dismissal following the mother's own motion to dismiss. The Recommendation further noted that counsel for the mother waived exception period on behalf of her client. This proceeding was ultimately consolidated with the custody and filiation proceeding pursuant to a June 23<sup>rd</sup>, 2022, Order.

On March 21<sup>st</sup>, 2022, a Petition for *Ex Parte* Order of Sole Custody and Contempt was filed on behalf of the father alleging the mother had caused the institution of investigations by the Tangipahoa Parish Sheriff's Office ("TPSO") and by the Department of Children and Family Services ("DCFS"), as well as a protective order proceeding based upon false allegations, in an effort to obtain custody of the minor child and cause parental alienation. The Petition states that the mother, in writing, instructed the minor child to make allegations against the father so that he would be arrested. This communication from mother to minor child was sent just prior to the minor child making allegations of sexual abuse against Mr. Barnes. The Petition notes that no criminal charges or DCFS action followed the investigations, and notes that the protective order proceeding was subsequently dismissed at the mother's request. The Petition further alleged that the mother has allowed the fifteen-year-old to be sexually active with an eighteen-year-old and had concealed this information from the father. Based upon the totality of the circumstances, the father sought sole custody of the minor child.

An Order granting the father's *ex parte* request and granting the mother supervised visitation with the minor child on alternating Saturdays from 2:00 p.m. until 4:00 p.m., was signed on March 21<sup>st</sup>, 2022. The matter was set for hearing on April 4<sup>th</sup>, 2022. The mother filed an Answer to Petition and Reconventional Demand for Contempt on March 25<sup>th</sup>, 2022, alleging the minor child had informed the mother that the father physically strikes her, pulls her hair, takes her bedroom door off the hinges, invades her privacy, touches her inappropriately, monitors her phone calls if and when she is allowed to communicate with third parties, has deprived her of extracurricular school activities, and is verbally abusive to her. The mother requested domiciliary status and a determination of visitation between the minor child and the father. At an April 4<sup>th</sup>, 2022 hearing, the parties agreed to maintain custody with the minor child residing with the father pending a May 5<sup>th</sup>, 2022, trial.

On or about April 26<sup>th</sup>, 2022, a Motion for Leave to File Petition for Termination of Parental Rights and Motion and Order to Appoint Mental Health Professional, along with a Petition for Termination of Parental Rights and for Sole Custody, was filed on behalf of the mother. In these pleadings the mother, for the first time in these proceedings, alleged she was a victim of felony rape and petitioned to terminate the father's parental rights pursuant to La. Ch.C. art. 1004(I). She also sought sole custody based upon La. C.C. art. 137. The mother asserted that art. 137 is applicable, as the child was conceived through the commission of a felony rape as defined by La. R.S. 14:80 and La. R.S. 14:43.

On May 5<sup>th</sup>, 2022, the parties appeared before the Court, and the Court granted the mother's request to continue the trial previously set for that date. A new trial date of July 15<sup>th</sup>, 2022 was selected, and the parties agreed to the selection of a mental health professional to complete an evaluation of the parties. It was further agreed that the minor child would remain in the custody of the father with the mother exercising supervised visitations every other weekend.

The parties were again before the court on June 21<sup>st</sup>, 2022, pursuant to a Rule for Contempt filed by the mother. At that time, the Court heard arguments for a temporary change in custody. The Court ruled that the minor child would be placed in the temporary physical custody of a third-party selected by the parties. The parties were granted supervised visitation with the minor child on alternating weekends pending trial. The Court also appointed counsel to represent the minor child in these proceedings. Prior to trial, a motion was filed on behalf of the minor child

requesting that she remain in the custody of the [REDACTED] the third-party custodians selected and agreed to by the parents pursuant to the June 21<sup>st</sup>, 2022 ruling.

## ISSUES PRESENTED

### *Petition for Termination of Parental Rights*

La. Ch.C. art. 1004(I) provides that “[w]hen a child is conceived as the result of a sex offense as defined in La. R.S. 15:541, the victim of the sex offense may petition to terminate the rights of the perpetrator of the sex offense.” La. Ch.C. art. 1015(9) includes as a ground for termination of parental rights “[t]he commission of a sex offense as defined in R.S. 15:541 by the natural parent which resulted in the conception of the child.” La. Ch.C. art. 1015(3) provides that the “[c]onviction of a sex offense as defined in R.S. 15:541 by the natural parent which resulted in the conception of the child” is a ground for termination. Conviction of the underlying offense is not a prerequisite under La. Ch.C. art. 1015(9). La. Atty Gen. Op. 17-0032 (Apr. 12, 2017), 2017 WL 2218620. “The petitioner bears the burden of establishing each element of a ground for termination of parental rights by clear and convincing evidence.” La. Ch.C. art. 1035.

La. R.S. 15:541(24)(a) defines sex offense as follows:

“Sex offense” means deferred adjudication, adjudication withheld, or conviction for the perpetration or attempted perpetration of or conspiracy to commit human trafficking when prosecuted under the provisions of R.S. 14:46.2(B)(2), R.S. 14:46.3 (trafficking of children for sexual purposes), R.S. 14:89 (crime against nature), R.S. 14:89.1 (aggravated crime against nature), R.S. 14:89.2(B)(3) (crime against nature by solicitation), R.S. 14:80 (felony carnal knowledge of a juvenile), R.S. 14:81 (indecent behavior with juveniles), R.S. 14:81.1 (pornography involving juveniles), R.S. 14:81.2 (molestation of a juvenile or a person with a physical or mental disability), R.S. 14:81.3 (computer-aided solicitation of a minor), R.S. 14:81.4 (prohibited sexual conduct between an educator and student), R.S. 14:82.1 (prostitution; persons under eighteen), R.S. 14:82.2(C)(4) and (5) (purchase of commercial sexual activity), R.S. 14:92(A)(7) (contributing to the delinquency of juveniles), R.S. 14:93.5 (sexual battery of persons with infirmities), R.S. 14:106(A)(5) (obscenity by solicitation of a person under the age of seventeen), R.S. 14:283 (video voyeurism), R.S. 14:41 (rape), R.S. 14:42 (aggravated or first degree rape), R.S. 14:42.1 (forcible or second degree rape), R.S. 14:43 (simple or third degree rape), R.S. 14:43.1 (sexual battery), R.S. 14:43.2 (second degree sexual battery), R.S. 14:43.3 (oral sexual battery), R.S. 14:43.5 (intentional exposure to HIV), a second or subsequent conviction of R.S. 14:283.1 (voyeurism), or a second or subsequent conviction of R.S. 14:89.3 (sexual abuse of an animal), committed on or after June 18, 1992, or committed prior to June 18, 1992, if the person, as a result of the offense, is under the custody of the Department of Public Safety and Corrections on or after June 18, 1992. A conviction for any offense provided in this definition includes a conviction for the offense under the laws of another state, or military, territorial, foreign, tribal, or federal law which is equivalent to an offense provided for in this Chapter, unless the tribal court or foreign conviction was not obtained with sufficient safeguards for fundamental fairness and due process for the accused as provided by the federal guidelines adopted pursuant to the Adam Walsh Child Protection and Safety Act of 2006.



La. R.S. 14:80 currently provides that felony carnal knowledge of a juvenile is committed when “[a] person seventeen years of age or older has sexual intercourse, with consent, with a person who is thirteen years of age or older but less than seventeen years of age, when the victim is not the spouse of the offender and when the difference between the age of the victim and the age of the offender is four years or greater.” In 2005, the year of the alleged rape, La. R.S. 14:80 provided that felony carnal knowledge of a juvenile is committed when “[a] person who is nineteen years of age or older has sexual intercourse, with consent, with any person who is twelve years of age or older but less than seventeen years of age.”

Here, based upon the facts presented, it has been established by clear and convincing evidence that at the time of the sexual act which resulted in conception of the minor child, the mother was sixteen years of age, and the father was thirty years of age. That sexual act amounts to felony carnal knowledge of a juvenile under both the current version of La. R.S. 14:80, and the version in effect at the time of the occurrence.

After much deliberation, it is the finding of the Court that while Mr. Barnes admitted that a sex offense has occurred that resulted in the conception of the minor child, it has not been proven by clear and convincing evidence that it would be in the best interest of the child for all legal relations with the father to be terminated. The Court reached this determination after giving due consideration to the evidence and testimony adduced. Considering the history of this case, among other things, the Court is of the opinion that terminating a legal relationship with a parent with whom the minor child has resided for roughly two-thirds of her life, for over a decade, would not be in her best interest. Additionally, it is in the best interest of the minor child to continue to receive financial assistance from Mr. Barnes. Therefore, the mother’s request for termination of parental rights is denied in accordance with La. Ch.C. art. 1039.

***Modification Standard and Best Interest:***

In considering the pending requests for modification of custody, the Court is mindful that its paramount duty is to act as a fiduciary on behalf of the minor child. As such, the Court strives to actively reach a decision which would be of the greatest benefit to the child, taking into consideration her mental, physical, material, and social well-being and health and actively pursuing a course of action which will protect the child from the harsh reality of the parents' often

bitter, vengeful, and typically highly emotional conflict. *Turner v. Turner*, 455 So.2d 1374 (La. 1984). Furthermore, the Court is vested with the authority to make any disposition that is in the best interest of the child when declining to terminate a parent's parental rights pursuant to La. Ch.C. art. 1039 and has great procedural flexibility in crafting a custodial arrangement tailored to the specific facts and circumstances of each case so as to promote the child's best interests. *Hodges v. Hodges*, 181 So.3d 700, 709 (La. 11/23/15).

Modification of a considered decree requires the occurrence of a change in circumstances such that: 1) continuation of the present custody is so deleterious to the child as to justify a change; or 2) there is clear and convincing evidence the harm likely to be caused to the child by the change is substantially outweighed by its advantages to the child. *Bergeron v. Bergeron*, 492 So. 2d 1193 (La. 1986). Of further import are La. C.C. art. 134's non-exclusive list of factors which a court shall consider in light of the particular facts and circumstances of each case to make a best interest determination on behalf the child. The Court may freely balance and weigh each factor. It is not bound to make a "mechanical evaluation or provide a literal articulation" of the factors listed in art. 134. *Underwood v. Underwood*, 332 So.3d 128, 140 (La. App. 1st Cir. 10/21/21). Nor is the Court required to specifically explain its weighing and balancing of each factor. *Manno v. Manno*, 154 So.3d 655, 663 (La. App. 2nd Cir. 11/19/14). While an award of custody to the parents is preferred, La. C.C. art. 133 provides "If an award of joint custody or of sole custody to either parent would result in substantial harm to the child, the Court shall award custody to another person with whom the child has been living in a wholesome and stable environment, [...]."

Here, Ms. Abelseth filed a protective order against the father, which she voluntarily dismissed. Mr. Barnes subsequently filed seeking emergency *ex parte* custody, which was temporarily granted. Soon afterwards, at a preliminary hearing on competing Rules for Contempt and following the filing of pleadings addressing allegations of rape, the child was placed in the interim custody of a non-parent, third-party pending a hearing on the pleadings filed in this case.

In this case, the evidence and circumstances have profoundly proven that custody to either parent, joint or sole, would be substantially harmful to the child. None of the issues presented were the result of a sudden or isolated incident; rather, they were the product of the parents' adversarial dysfunction and continuous emotional and supervisory neglect of the child over the course of a decade. Furthermore, the Court does not find either parent to be credible.

Throughout the history of this case, while in the custody and care of both parents, the child has been involved in numerous dangerous, immoral, and potentially criminal situations which have been escalating in degree of seriousness and frequency for years. Ms. Abelseth has asserted many of these events occurred without her knowledge or approval. Her lack of knowledge and, therefore, lack of supervision is arguably contributory in several regards. Furthermore, Ms. Abelseth's willingness and ability to falsify and exaggerate the truth for her own benefit seems to be a common theme based upon the totality of the record, history, credibility of the parties, and evidence submitted at trial. For instance, the mother asserted the father forcefully and purposefully struck her in the chest during a custody exchange at a church. However, that allegation is uncorroborated by video submitted by Ms. Abelseth and further discredited by the testimony of the church pastor, who was in close proximity of the incident and said he never saw the father strike the mother and that when the video surfaced, he did not believe that Mr. Barnes should have been arrested.

Moreover, as alleged in Mr. Barnes' petition for *ex parte* relief and as supported by testimony and evidence presented at trial, Ms. Abelseth encouraged the child, in writing, to make false criminal allegations against the father in an effort to manipulate the outcome of the custody matter. The mother asserted that she was not responsible for parts of the messages because she was merely typing the words of Stacie Triche and was unaware of the meaning behind what she was typing. This Court finds this claim wholly without credit, particularly given the context and circumstances. In addition, Ms. Abelseth was found in contempt of court for failing to cooperate with Mr. Barnes in sharing the minor child's cell phone code and then providing the child with another phone after having been restricted from doing so. This type of behavior is incredibly detrimental to the child's development and overall wellbeing. This child has a critical need to be protected, supervised, and provided age-appropriate guidance, and Ms. Abelseth's newfound willingness to undergo parenting classes is simply insufficient to satisfy the child's immediate needs.

Then we have the minor child, an articulate and bright young lady, who is almost sixteen years of age. She has managed to maintain good grades and involvement in extracurriculars despite the chronic trauma she has experienced throughout the years of 'bitter, vengeful, and typically highly emotional conflict' and litigation between her parents. *Moore v. Prater*, 2021-1430 (La.

App. 1 Cir. 6/3/22). It is undisputed that the minor child is currently residing in a stable and wholesome environment with [REDACTED] pursuant to an interim Order of this Court and the agreement of her parents. According to pleadings filed herein, the minor child desires to remain with the [REDACTED] and wants an improved relationship with Ms. Abelseth but does not want to continue with her relationship with Mr. Barnes. Furthermore, Mrs. [REDACTED] echoed the child's sentiment and testified to her ability and commitment to continue providing a safe, stable, and loving home for the child. Mrs. [REDACTED] also expressed her willingness to aid and foster positive, healthy relationships between the child and her parents.

As for the father, he has increasingly overexerted his parental control and authority over the child while simultaneously neglecting her mental and emotional health. The father asserts that he was protecting the child, but evidence shows he was further alienating her and exacerbating the trauma she experienced. It was established by testimony at trial and through the entire case record that the father failed to comply or meaningfully participate in regular, joint or individual counseling for the child for years. This father-daughter relationship cannot be swiftly mended and placement in his custody would surely cause the child further emotional distress. Finally, the allegations of Felony Carnal Knowledge of a Juvenile were recently brought to the Court's attention and fully addressed in a lengthy trial. These allegations require an analysis of La. C.C. art. 137 to determine whether the article serves to restrict Mr. Barnes's rights pertaining to the minor child.

***Restriction of Visitation through La. C. C. Article 137:***

La. C. C. Article 137(A), states "in a proceeding in which visitation of a child is being sought by a parent, if the child was conceived through the commission of a felony rape, the parent who committed the felony rape shall be denied visitation rights and contact with the child." La. C.C. Article 137 does not define the term 'felony rape' nor does it provide the standard necessary to prove its commission. Although the Court requested that counsel for Mr. Barnes and Ms. Abelseth address current jurisprudence regarding application of Article 137 to these proceedings, they were unable to adequately do so.

Insofar as there is no explicit definition of 'felony rape' within the context of La. C.C. Article 137 or established case precedent, the Court must look to the legislative intent of the law.

La. Atty Gen. Op. 17-0032 (Apr. 12, 2017), 2017 WL 2218620, referenced the 2015 Congressional Rape Survivor Child Custody Act (RSCCA) as the precursor to Louisiana laws enacted to safeguard victims of sexual assault. Specifically noted is the need to restrict custody and visitation rights of a perpetrator so as to restrict ‘continued interaction’ between the perpetrator and the survivor as these interactions ”can have traumatic psychological effects on the survivor, and can make it more difficult for her to recover; and that these dramatic effects on the mother can severely negatively impact her ability to raise a healthy child.”

Here, the Court recognizes that while the parties have exercised shared custody of the minor child for over a decade and while that custody request was initiated and agreed upon by Ms. Abelseth, this on-going contact between Ms. Abelseth and Mr. Barnes has been acrimonious and perhaps traumatic for Ms. Abelseth. Furthermore, the combative nature of the parents’ relationship has undoubtedly proven detrimental to the well-being of the minor child.

The Court recognizes and Mr. Barnes has acknowledged his commission of Felony Carnal Knowledge of a Juvenile. The Court did not find compelling evidence of and heard direct testimony refuting Ms. Abelseth’s claim of Simple or Third-Degree rape, including testimony of a non-party eyewitness to the actual sexual encounter. There is simply no authority, jurisprudential or otherwise, defining “felony rape” or the application of Art 137 to Felony Carnal Knowledge of a Juvenile and this Court will not create law by judicial fiat where the Legislature has failed to do so. The Court is prepared, however, to insulate Ms. Abelseth from ongoing custodial interactions with Mr. Barnes, meeting the designed intent of Article 137 and believes it is in the best interest of the child. Moving forward, Ms. Abelseth and Mr. Barnes will no longer interact, and further communication regarding the minor child’s welfare will be directly handled by the [REDACTED] who are to receive full custody of the minor child as petitioned by the minor child’s attorney. Visitation by Mr. Barnes with the minor child is hereby restricted, and any future visitation will be at the sole discretion of the minor child and her custodians, the [REDACTED]

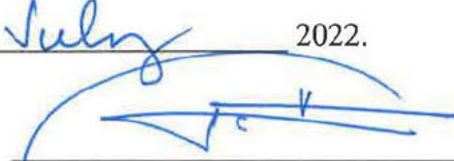
### **CONCLUSION**

Therefore, given the facts and circumstances of this case in consideration of the Article 134 factors, the Court finds that it is not only in the child's best interest to remain in the sole custody of the [REDACTED] but also necessary to ensure her mental and physical health and emotional wellbeing.

For these reasons cited above, Mr. Barnes is prohibited from initiating visitation and/or contact with the minor child. Any future visitation with the minor child will be solely at the discretion of the minor child and The [REDACTED]

Ms. Abelseth is granted visitation on the first weekend of every month beginning on Friday after school and ending the following Sunday at 6:00 p.m. and any other times mutually agreeable between the [REDACTED] and Ms. Abelseth. Further, Ms. Abelseth shall complete parenting classes and participate in family counseling sessions with the minor child with frequency to be determined by the minor child's counselor.

Amite, Louisiana, this 29 day of July 2022.

  
HONORABLE JEFFREY C. CASHE  
21<sup>ST</sup> JUDICIAL DISTRICT COURT  
JUDGE, DIVISION "J"

*Please send notice to all counsel of record.*