F.C.A §§651, 652, 654; General Form 18

D.R.L §240 (Order on Petition for Custody or Visitation)

6/2016

At a term of the Family Court of the State of New York

held in and for the County of , at

New York, on ,

PRESENT:

Hon.

Judge

.............................................................................. Family File No.:

In the Matter of a Proceeding for Docket No.

 Custody  Visitation under

 Article 6 of the Family Court Act  FINAL ORDER

 Section 240 of the Domestic Relations Law  TEMPORARY ORDER ON PETITION FOR

 CUSTODY

Petitioner,   VISITATION

- against -

Respondent

................................................................................

**NOTICE: YOUR WILLFUL FAILURE TO OBEY THIS ORDER MAY RESULT IN INCARCERATION FOR CRIMINAL CONTEMPT.**

The Petitioner herein having filed a petition on [specify date]: , , pursuant to

 Article 6 of the Family Court Act  Section 240 of the Domestic Relations Law, requesting an order of  custody  visitation of the following minor children [list each child as follows]:

Name of Child: Date of Birth:

**[Check applicable box(es)]:**

And the Respondent having  been served  not been served with a copy of the petition, and

having  been advised by the Court of the right to counsel, and

having  appeared  not appeared before this Court to answer the petition

and to show cause why it should not be granted; and

having  consented  not consented to the relief requested in the petition; And the Court having searched the statewide registry of orders of protection, the sex offender registry and the Family Court’s warrant and child protective records, and having notified the attorneys for the parties and for the child [check if applicable]:  and the following self-represented party or parties [specify]:

of the results of these searches;

 And the Court having considered and relied upon the following results of these searches in making this decision [specify; if no results found, so indicate]:

[**Required in cases involving Native-American children** **where petitioner and/or respondent are not parents of the child; check box if applicable and attach Addendum to Order (General Form GF-32 - Findings of Fact and Conclusions of Law – *Indian Child Welfare Act*)]:**

❑ And the following having been duly notified [check applicable box(es)]:

❑ parent/custodian ❑ tribe/nation [REQUIRED]

❑ United States Secretary of the Interior [REQUIRED if tribal contact undetermined];

And the tribe/nation having: ❑ appeared and participated as a party;

❑ appeared and declined to assume jurisdiction;

❑ appeared and requested transfer of jurisdiction;[[1]](#footnote-1)

❑ not appeared;

❑ And the required findings of fact and conclusions of law having been made pursuant to the *Indian Child Welfare Act* and having been attached in an **Addendum** to this Order;

**[Applicable to TEMPORARY orders only where less than 90 days have elapsed since last record review]**: ❑ And the Court, having dispensed with the search of the statewide registry of orders of protection, the sex offender registry and the Family Court’s warrant and child protective records because these databases had been reviewed within the past 90 days;

**[Applicable where a party had made an allegation of domestic violence or child abuse; findings must be stated on the record, included in a written decision OR included in this order; check applicable box]**:

**❑** And the Court having explained its findings on alleged domestic violence or child abuse on

the record;

**❑** And the Court having issued a written decision containing its findings on alleged domestic

violence or child abuse;

**❑** And the Court having found that the allegation that [specify party]:

had committed domestic violence or child abuse against [specify party or child(ren)]: **❑** was **❑** was not proven by a preponderance of the evidence, and having considered the effect of such domestic violence or child abuse upon the best interests of the child(ren) and relevant facts and circumstances as follows in making this order [specify how findings, facts and circumstances were factored into this Order]:

**[Applicable where hearing was heard jointly with hearing of Family Court Act Article 6 custody or guardianship petition, pursuant to Family Court Act §1055-b; CHECK BOX if applicable]:**

**❑ And the hearing having been heard jointly with the ❑ custody ❑ guardianship petition,**

**Docket # [specify]:**

**[NOTE: Attach or insert the ADDENDUM TO FINDINGS OF FACT to this form where**

**Petitioner or Respondent is a Respondent, Non-respondent parent, relative or other non-**

**parent in a child protective, destitute child dispositional or permanency proceeding and where**

**the hearing in the child custody matter was consolidated with the child protective or destitute**

**child dispositional or permanency hearing, pursuant to F.C.A. §§1055-b, 1089-a or 1096**]

**AND THE MATTER HAVING DULY COME ON TO BE HEARD BEFORE THIS COURT,**

**NOW, after examination and inquiry into the facts and circumstances of the case and after hearing the proofs and testimony offered in relation thereto, this Court finds and determines that:**

**[For modification cases: delete if inapplicable]**:[[2]](#footnote-2) The following change of circumstances has occurred since the entry of the order judgment, dated [specify]: , of custody visitation [specify change in circumstances]:

**And this Court further finds and determines that [specify]:**

**And it is therefore ORDERED** that the best interests of the above-named child or children require [check applicable box(es)]: custody visitation to be as follows [specify]:

; and it is further

**[Applicable to cases involving a party or parties in the military; check box(es) if applicable]**:

❑ **ORDERED** that, since  Petitioner  Respondent is on active duty, deployed or temporarily assigned to military service and since such service affects such party’s ability to act as a joint or primary custodian of the child(ren), the return of such party from such active duty shall constitute a substantial change of circumstances sufficient to entitle such party to a review of this Order for possible modification if in the child(ren)’s best interests, unless the parties and child(ren)’s attorney have otherwise stipulated or agreed; and it is further

❑ **ORDERED** that during the period of active military service, deployment or temporary assignment, the party on such duty shall be permitted the following contact and visitation with the child [specify, including electronic communication and visitation during military leaves]:

; and it is further

**[Applicable to cases where hearing was consolidated with child protective or destitute child dispositional or permanency hearing, pursuant to F.C.A. §§1055-b, 1089-a or 1096; check box if applicable]:**

❑ **ORDERED** that the following local department of social services [specify]:

and the following attorney for the child(ren)[specify]: shall be notified and shall be made parties to any subsequent proceedings for modification, enforcement or termination of the Order; and it is further

[**Applicable in cases involving Native-American child where petitioner and/or respondent are not parents of the child; check box(es) if applicable]:**

❑ ORDERED that the following should be notified of this proceeding [specify]:

the ❑ custodian of the child; ❑ tribe/nation; ❑ United States Secretary of the Interior

❑ ORDERED that in light of the assumption of jurisdiction by the tribe/nation, this

petition is DISMISSED WITHOUT PREJUDICE; (and it is further)

**[Applicable to temporary orders]:**  **This Order shall expire** [check applicable box]:

 on the following date [specify]:  upon issuance of a further or final order in this case.

**AND IT IS FURTHER ORDERED** that [specify]:

ENTER

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Dated: Judge of the Family Court

PURSUANT TO SECTION 1113 OF THE FAMILY COURT ACT, AN APPEAL FROM THIS ORDER MUST BE TAKEN WITHIN 30 DAYS OF RECEIPT OF THE ORDER BY APPELLANT IN COURT, 35 DAYS FROM THE DATE OF MAILING OF THE ORDER TO APPELLANT BY THE CLERK OF COURT, OR 30 DAYS AFTER SERVICE BY A PARTY OR THE ATTORNEY FOR THE CHILD UPON THE APPELLANT, WHICHEVER IS EARLIEST.

Check applicable box:

❑ Order mailed on [specify date(s) and to whom mailed]: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

❑ Order received in court on [specify date(s) and to whom given]:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**ADDENDUM TO FINDINGS OF FACT[[3]](#footnote-3)**

**[Applicable to cases where Petitioner or Respondent is a Respondent or Non-respondent parent in a child protective or destitute child dispositional or permanency planning proceeding and where the hearing in the child custody matter was consolidated with the child protective or destitute child dispositional or permanency hearing, pursuant to F.C.A. §§1055-b, 1089-a or 1096; check applicable box(es)]:**

Termination of the order placing or remanding the child(ren) pursuant to Article 10, 10-A or 10-C of the Family Court Act ❑ will will not not jeopardize the child(ren)’s safety, will provide the child with a safe and permanent home and  is is not in the best interests of the child(ren).

**[Applicable to cases where Petitioner or Respondent is a Respondent in a child protective or destitute child dispositional or permanency planning proceeding and where the hearing in the child custody matter was consolidated with the child protective or destitute child dispositional or permanency hearing, pursuant to F.C.A. §§1055-b, 1089-a or 1096; check applicable box(es)]:**

 The following non-parent of the child [specify non-parent]: has objected to custody with  Petitioner  Respondent and  has  has not demonstrated extraordinary circumstances. If demonstrated, the following extraordinary circumstances support the non-parent’s standing to seek custody of the child(ren) [specify]:

If the non-parent has demonstrated extraordinary circumstances, this Court finds that granting such custody  is  is not in the child’s best interests.

**[Applicable where child’s other parent is NOT the Petitioner or Respondent in the custody proceeding; check box if applicable]**:  The child’s other parent  has  has not consented to custody with the  Petitioner  Respondent. If the child’s other parenthas failed to consent to such custody, this Court finds that granting such custody  is  is not in the child’s best interests.

**Applicable to cases where Petitioner or Respondent is a relative or other non-parent, who appeared in a child protective or destitute child dispositional or permanency proceeding and where the hearing in the child custody matter was consolidated with the child protective or destitute child dispositional or permanency hearing, pursuant to F.C.A. §§1055-b, 1089-a or 1096;check applicable box(es)]:**

❑ Termination of the order placing or remanding the child(ren) pursuant to Article 10, 10-A or 10-C of the Family Court Act ❑ will will not not jeopardize the child(ren)’s safety, will provide the child with a safe and permanent home, and  is is not in the best interests of the child(ren).

❑ The child(ren)’s birth mother  has  has not consented to custody of the child with the relative or other non-parent. If demonstrated, the following extraordinary circumstances support the relative’s or other non-parent’s standing to seek custody of the child(ren) [specify]:

If the relative or other non-parent has demonstrated extraordinary circumstances, this Court finds that granting such custody  is  is not in the child’s best interests.

❑ The child’s legally-established birth father  has  has not consented to custody of the child with the relative or other non-parent. If demonstrated, the following extraordinary circumstances support the relative’s or other non-parent’s standing to seek custody of the child(ren) [specify]:

If the relative or other non-parent has demonstrated extraordinary circumstances, this Court finds that granting such custody  is  is not in the child’s best interests.

❑ The child has been living with the following foster parent(s)[specify]:

for a period in excess of one year, who  has/have  has/have not consented to custody of the child with the relative or other non-parent.

❑ The local department of social services, the petitioner in the related  child abuse or neglect

 destitute child  permanency proceeding  has  has not consented to custody of the child with the relative or other non-parent.

❑ The attorney for the child(ren) [specify]: in the related  child abuse or neglect  destitute child  permanency proceeding  has  has not consented to custody of the child with the relative or other non-parent.

1. If an oral application was made or a written petition was filed requesting transfer of the case to a tribal court, an order determining the request, General Form GF-20, must also be issued. [↑](#footnote-ref-1)
2. Form 40-a, the Order on Petition for Modification, may be used instead of this form in modification cases. [↑](#footnote-ref-2)
3. This addendum must be used where the Family Court Act Article 6 custody order is issued in conjunction with, or as a resolution of, a child protective, destitute child or permanency proceeding. [↑](#footnote-ref-3)