

Judge Hamill in 2018. Appellant's brief at 17. She continues that, because the issue regarding the prior abuse was subject to collateral estoppel, "it was egregious error for [the trial court] to . . . alter [Judge Hamill's] original finding[.]" Mother's brief at 17-18.

Unlike Mother's argument relative to the *res judicata*, collateral estoppel will, in fact, bar the re-litigation of any issue concerning Judge Hamill's finding that Father was the perpetrator of abuse. Unfortunately for Mother, however, that is not the end of our inquiry. While it is beyond argument that the trial court is bound by Judge Hamill's 2018 determinations relative to Father's abusive behavior or the children's best interest when Judge Hamill reviewed the case, neither of those issues precluded the trial court from modifying custody in 2020 based upon contemporary evidence that demonstrated that modification served the best interests of the children. Hence, we reject Mother's contention that the doctrine of collateral estoppel barred Father from litigating his petition for modification based upon current evidence. Phrased differently, "Past conditions have relevance in a custody modification proceeding only to the extent that such conditions have a current impact on the child." 17 West's Pa. Prac., Family Law § 28:17 (Joanne Ross Wilder, et al., 8th ed.) (footnote omitted) (citing *In re Leskovich*, 385 A.2d 373 (Pa.Super. 1978)).

The final component of Mother's first issue implicates the coordinate jurisdiction rule, which is an aspect of the law of the case doctrine. **Zane v.**

Friends Hosp., 836 A.2d 25, 29 (Pa.2003). The rule establishes that “judges of coordinate jurisdiction should not overrule each other’s decisions.” ***Id.*** Principally, the purpose of the rule is to serve judicial economy, protect settled expectations, maintain consistency, and ensures efficiency within the litigation. ***Ryan v. Berman***, 813 A.2d 792, 795 (Pa. 2002) quoting ***Salerno v. Philadelphia Newspapers, Inc.***, 546 A.2d 1168, 1170 (Pa.Super. 1988); ***see also Commonwealth v. Starr***, 664 A.2d 1326 (Pa. 1995) (rule promotes judicial economy, protects settled expectations, insures uniformity of decisions, maintains consistency of single case; effectuates streamlined administration of justice, and brings litigation to end).

Significantly, however, “the coordinate jurisdiction rule does not bar a judge at a later and different procedural stage of the case from overruling another judge’s decision . . . , even on an identical legal issue and even where the record is unchanged.” ***Xtreme Caged Combat v. Zarro***, 247 A.3d 42, 47 (Pa.Super. 2021). As articulated by our High Court, the “general prohibition against revisiting the prior holding of a judge of coordinate jurisdiction . . . is not absolute.” ***Zane supra*** at 29 (citations omitted).

The precise component of the rule that Mother invokes in the case at bar relates to the principle that, “upon transfer of a matter between trial judges of coordinate jurisdiction, the transferee trial court may not alter the resolution of a legal question previously decided by the transferor trial court.” ***Starr, supra*** at 1331. Thus, invoking, once more, the trial court’s statement

regarding the absence of a current finding of abuse, Mother re-asserts that the trial court erred following the transfer of the case to Pike County in disregarding Judge Hamill's 2018 determination that Father was the perpetrator of abuse. Specifically, she argues, the trial court "made [its] own findings on the same issue already established by Judge Hamill . . . and instead claim[ed], 'there are currently no indicated, founded or substantiated findings of either sexual or physical abuse of a child of record against Father.'" Mother's brief at 40 (quoting Opinion and Order, 10/2/20 at 2).

Mother's claim regarding the coordinate jurisdiction rule fails for reasons similar to those that derailed her attempt to invoke *res judicata*, *i.e.*, modification of child custody orders is permitted where it serves the best interest of the child. Stated plainly, the trial court did not ignore Judge Hamill's factual findings, but rather, it put those facts in context of the current information available to it.

Father filed the instant petition for modification at a different stage of the children's maturity and it involves facts that have evolved since Judge Hamill disposed of a different motion in Mother's favor in 2018. Hence, the trial court did not disregard the prior allegations against Father. Rather, it considered all of the evidence concerning Father's actions, including those that Judge Hamill considered in 2018. Thus, in light of the doctrine's noted inapplicability where the posture of a case differs when judges of coordinate jurisdictions rule on a given issue, and mindful that child custody cases are

fluid, we reject Mother's attempt to call upon the coordinate jurisdiction rule in this case. Phrased differently, since the posture of the two motions differs significantly, the coordinate jurisdiction rule did not impede the trial court's authority to grant Father's petition for modification seeking supervised custody. *See Xtreme Caged Combat, supra* at 74; *Mellon Bank, N.A. v. Nat'l Union Ins. Co. of Pittsburgh, PA*, 768 A.2d 865, 870 (Pa.Super. 2001) ("[A]pplication of [coordinate jurisdiction rule] focuses on the procedural posture of the rulings in question."); *K.H. ex rel. H.S. v. Kumar*, 122 A.3d 1080, 1092 (Pa.Super. 2015) ("Under *Mellon Bank*, the procedural context alone precludes application of the coordinate jurisdiction rule.").

Next, we address Mother's related contention that the trial court abused its discretion by failing to consider Judge Hamill's prior finding of abuse in rendering its decision in favor of Father. After revisiting portions of the notes of testimony presented during the prior modification hearing that spanned 2016 and 2017, Mother first asserts that Judge Hamill's 2018 finding was supported by "objective evidence of abuse." Mother's brief at 19-23. Next, she identifies the favorable evidence adduced during the 2020 proceedings and contends that, "It is only by changing the facts, in direct contradiction to the outlined principles of law, that the trial court reaches the outcome that it does in the October 2, 2020, Opinion." *Id.* at 26. Mother continues that the trial court "has 'changed significantly' the facts and circumstances surrounding this matter." *Id.* Likewise, she complains that Dr. Esteve, the court-

appointed custody expert, undercut the children's credibility by equivocating, "I believe they were being as truthful and forthright and honest as they could be" and she criticizes him as having "issues in understanding 'facts.'" *Id.* at 26-27. In sum, Mother ultimately concludes that the trial court abused its discretion in "totally disregard[ing]" the 2018 findings in order to "determine that there was no objective evidence of abuse." *Id.* at 27.

Father counters that the trial court's findings are supported by the certified record. Father's brief at 14-15. He highlights the evidence establishing that he was not indicated as a perpetrator of abuse in a CPSL report or charged with any associated crimes. *Id.* at 14-15. Similarly, he notes that, following psychiatric testing, he was determined to not possess the characteristics of a sexual abuser. *Id.* at 14-15. Furthermore, Father highlights that Jo.D., who now resides with Father, subsequently recanted his accusation of sexual abuse and indicated that Mother coerced him to make the allegations by threatening to withhold his medication. *Id.* at 15. Father posits that Mother's perspective is clouded by her inability to accept any evidence that is favorable to his position. *Id.*

For the reasons explained, *infra*, Mother's attempt to frame the trial court's determination as an abuse of discretion is unconvincing.

As we have frequently reiterated,

An abuse of discretion is not merely an error of judgment, but rather a misapplication of the law or an unreasonable exercise of judgment. A finding that the trial court abused its discretion

must rest upon a showing by clear and convincing evidence, and the trial court will be upheld on any valid ground.

Johnson v. Johnson, 222 A.3d 787, 789 (Pa.Super. 2019) (quoting **Portugal v. Portugal**, 798 A.2d 246, 249 (Pa. Super.2002)). Moreover, past conditions, such as those present when Judge Hamill presided over the custody litigation, are relevant in custody modification proceedings only to the extent that they continue to impact the child. **In re Leskovich**, 385 A.2d 373 (Pa.Super. 1978).

In rejecting Mother's assertion that it committed an abuse of discretion, the trial court stated:

This Court observed the parties and witnesses first-hand during the five (5) day trial. When it comes to issues of credibility and weight of evidence, the appellate court must defer to the trial judge who viewed and assessed each witness and the evidence first hand. The fact-finder is free to believe all, part, or none of the evidence. This Court issued a very detailed and thorough Opinion in which all of the testimony and evidence which was presented was discussed and analyzed. We specifically noted in our Opinion that none of Father's treating professionals believed him to be so severely or morally deficient as to pose a grave threat to the welfare of the children. We had the opportunity to observe Father first-hand and hear his testimony and found him to be a credible witness. We noted that there are currently no indicated, founded, or substantiated findings of sexual or physical abuse of a child against Father. Both the court-appointed custody evaluator, Dr. Esteve, and the GAL opined that the children should participate in supervised reunification therapy with Father.

The appellate court is not in a position to dispute the trial court's determination unless the custody order is manifestly unreasonable as shown by the evidence of the record. Therefore, it is respectfully submitted that the Court completed

a comprehensive review of the custody factors in light of the entire record presented and that this Court did not commit an error of law or abuse its discretion in ordering supervised reunification therapy between Father and the children.

Trial Court Rule 1925 Opinion, 11/4/20, at 6-7.

The certified record reveals the following facts that support the trial court's determination. Wayne County Children and Youth Services investigated the allegations of physical and sexual abuse of Jo.D. and J.D. and determined that there were no indicated, founded, or substantiated findings of either sexual or physical abuse of a child of record against Father. N.T., 9/14/20, at 10-11. Likewise, no investigations conducted by the Pennsylvania State Police or the Office of the Attorney General resulted in criminal charges associated with the alleged physical or sexual abuse of Jo. or J.D. *Id.* 7-8.

Moreover, the certified record bears out that the results of Father's psychiatric evaluation by Robert M. Gordon, Ph.D., and his psychotherapy with Steven M. Timchack, Psy.D, established that Father did not pose a threat to any of the children. Significantly, Dr. Gordon testified that the purpose of his evaluation was to determine, *inter alia*, "whether [Father] is currently mentally and emotionally stable to be allowed to have supervised visitation with his four children and to evaluate progress made under the care of his therapist[, Dr. Timchack]." N.T. 9/15/20 at 177. In making this assessment, Dr. Gordon administered a battery of psychological tests,

including the HARE Revised Psychopathy Test, which he characterized as the “gold standard” of psychopathy evaluations—and the test recommended by the Pennsylvania Sexual Offender Assessment Board. **Id.** at 178-81. He highlighted that Father’s HARE score of zero was consistent with a person who is not a threat of abuse. **Id.** at 181. Dr. Gordon explained that Father’s results demonstrated “there’s just no psychopathic traits in his personality.” **Id.** at 180. Hence, he opined to a reasonable degree of professional certainty that Father does not pose a risk of sexual abuse to his children. **Id.** at 189-90.

Likewise, Dr. Timchack, who has treated Father since March 2018, posited that Father exhibited remorse over his use of corporal punishment and now recognizes alternate means of disciplining the children. N.T. 9/16/20 at 11, 18-21, 28. Dr. Timchack also expressed that Father demonstrated personal growth over the ten treatment sessions that Father completed. **Id.** at 26. In this vein, Dr. Timchack shared,

[Father] continues to impress me as a man who was able to quickly identify and come to terms with some of the errors in judgment he had. He quickly identified how . . . these beliefs . . . started and he has maintained a very kind of optimistic, forward looking and motivated demeanor throughout . . . the entire process[.]

Id. at 28.

Similar to the expert testimony of Dr. Gordon and Dr. Timchack, the court appointed custody evaluator, Dr. Esteve, noted that Father expressed

regret and remorse for his use of corporal punishment and testified that Father's psychological testing did not reveal any significant pathology that would indicate that Father posed a threat to the children. N.T. 9/15/20 at 33, 54, 79-80. Indeed, Dr. Esteve administered his own battery of testing and clinical questionnaires to both Mother and Father, and ultimately concluded that, while it would be emotionally difficult for J.D., Sh.D. and S.D., at least initially, supervised reunification therapy would serve the best interest of all three children.⁴ *Id.* at 83-87. The only qualification that Dr. Esteve noted was that the ultimate success of therapeutic contact was dependent upon Mother's level of cooperation and her ability to forego efforts to undermine the process. *Id.* at 83.

Lastly, we observe that Jo.D., now an adult, is thriving in Father's home, and planning on pursuing post-secondary education. As the trial court succinctly stated in its best interest analysis, "Jo[.D.]'s decision to live with his Father and the fact that he is thriving in . . . Father's care also contradict Mother's ongoing concerns of harm that she believes Father may pose to the children." Trial Court Opinion and Order, 10/2/20, at 14. Phrased differently, in light of the fact the Jo.D. moved into Father's home before he reached the age of majority, Mother's decision to relinquish her

⁴ Likewise, Attorney Muir, the guardian *ad litem* testified in support of supervised physical custody in a therapeutic setting. N.T., 9/16/20, at 68, 69,-70.

then-minor child to Father undercuts her present argument that Father is an incurable perpetrator of abuse that remains a threat to the three younger children during supervised therapeutic physical custody.

As the foregoing evidence in the certified record supports the trial court's factual determinations, we find no merit to Mother's claims. Stated plainly, the trial court did not disregard Father's past actions. Rather, it considered all of the evidence concerning Father's history relating to corporal punishment and allegations of abuse, including those that Judge Hamill considered in 2018, and determined that Father does not currently present a threat to his children. As the certified record supports the trial court's determination, we do not disturb it.

In her final issue, Mother contends that the modification of custody to permit supervised therapeutic visitation does not serve the best interests of the children. Traditionally, the denial of a right to visitation is rare.⁵

⁵ Indeed, Pennsylvania Courts applying the former statutory regime routinely held, "A parent will be denied visitation only in those instances where the record shows that the parent is severely mentally or morally deficient so as to constitute a grave threat to the child's welfare." **Rosenberg v. Rosenberg**, 504 A.2d 350, 352 (Pa. Super. 1986) (citing **Niadna v. Niadna**, 494 A.2d 856, 858 (Pa.Super. 1985) and **Somers v. Somers**, 474 A.2d 630, 631 (Pa.Super. 1984)). However, the authority concerning a "grave threat" in relation to child custody precedes the effective date of the Child Custody Act, which does not specifically establish the "grave threat" standard. In **M.J.M. v. M.L.G.**, 63 A.3d 331, 338 (Pa.Super. 2013), we held that judicially-created doctrines cannot be grafted on the best interest factors that the Legislature established in § 5328(a). **See also D.R.C. v. J.A.Z.**, 31 A.3d 677, 688 (Pa. (Footnote Continued Next Page)

As we recently reiterated, “The standard of review of a visitation order is the same as that for a custody order.” **Graves v. Graves**, 2021 PA Super 207 (filed October 18, 2021) (quoting **T.B. v. L.R.M.**, 874 A.2d 34, 37 (Pa.Super. 2005)). We review the child custody order according to the following scope and standard of review:

This Court reviews a custody determination for an abuse of discretion. We will not find an abuse of discretion merely because a reviewing court would have reached a different conclusion. Rather, appellate courts will find a trial court abuses its discretion if, in reaching a conclusion, it overrides or misapplies the law, or the record shows that the trial court’s judgment was either manifestly unreasonable or the product of partiality, prejudice, bias or ill will.

R.L. v. M.A., 209 A.3d 391, 395 (Pa.Super.2019) (cleaned up).

Moreover,

on issues of credibility and weight of the evidence, we defer to the findings of the trial court which has had the opportunity to observe the proceedings and demeanor of the witnesses.

The parties cannot dictate the amount of weight the trial court places on evidence. Rather, the paramount concern of the trial court is the best interest of the child. Appellate interference is unwarranted if the trial court’s consideration of the best interest

2011) (Then-Justice, now-Chief Justice Baer, concurring) (observing, following the enactment of the Child Custody Act, “there is no need for any trial court to find a “grave” threat of harm.”).

However, the **M.J.M. Court** also acknowledged that trial courts may nevertheless consider judicial doctrines under the catch-all provision of § 2328(a)(16). **M.J.M., supra** at 338 (“to the extent the trial court finds it necessary to explicitly consider [non-statutory doctrine], it is free to do so under subsection (a)(16).”). Hence, it was within the purview of the trial court to consider the absence of grave threat in reviewing the custody factors.

of the child was careful and thorough, and we are unable to find any abuse of discretion.

A.V. v. S.T., 87 A.3d 818, 820 (Pa.Super. 2014) (cleaned up).

As noted, in addressing Mother's foregoing arguments, the Child Custody Act permits modification of a custody order "to serve the best interest of the child." 23 Pa.C.S. § 5338(a). When awarding any form of custody, the Child Custody Act provides an enumerated list of factors a trial court must consider in determining the best interests of a child:

(1) Which party is more likely to encourage and permit frequent and continuing contact between the child and another party.

(2) The present and past abuse committed by a party or member of the party's household, whether there is a continued risk of harm to the child or an abused party and which party can better provide adequate physical safeguards and supervision of the child.

(2.1) The information set forth in section 5329.1(a) (relating to consideration of child abuse and involvement with protective services).

(3) The parental duties performed by each party on behalf of the child.

(4) The need for stability and continuity in the child's education, family life and community life.

(5) The availability of extended family.

(6) The child's sibling relationships.

(7) The well-reasoned preference of the child, based on the child's maturity and judgment.

(8) The attempts of a parent to turn the child against the other parent, except in cases of domestic violence where reasonable safety measures are necessary to protect the child from harm.

(9) Which party is more likely to maintain a loving, stable, consistent and nurturing relationship with the child adequate for the child's emotional needs.

(10) Which party is more likely to attend to the daily physical, emotional, developmental, educational and special needs of the child.

(11) The proximity of the residences of the parties.

(12) Each party's availability to care for the child or ability to make appropriate child-care arrangements.

(13) The level of conflict between the parties and the willingness and ability of the parties to cooperate with one another. A party's effort to protect a child from abuse by another party is not evidence of unwillingness or inability to cooperate with that party.

(14) The history of drug or alcohol abuse of a party or member of a party's household.

(15) The mental and physical condition of a party or member of a party's household.

(16) Any other relevant factor.

23 Pa.C.S. § 5328(a)(1)-(16). This Court has stated that, "[a]ll of the factors listed in § 5328(a) are required to be considered by the trial court when entering a custody order." *J.R.M. v. J.E.A.*, 33 A.3d 647, 652 (Pa.Super. 2011) (emphasis in original).

In granting Father periods of supervised therapeutic partial custody, the trial court reviewed the relevant custody factors outlined in 23 Pa.C.S. § 5328(a). It determined that four factors were either neutral or inapplicable, three favored Mother, five militated in favor of Father, and four factors would

be addressed by the trial court's order and continued oversight of the therapeutic process. Specifically, as to subparagraph (a)(16), the catchall provision for any relevant factor, the trial court determined "the facts and circumstances surrounding this matter have changed significantly since the testimony and evidence was closed on Father's last request for custody more than four years ago. This Court finds that it is the current situation of the parties and children that is relevant in making this determination." Opinion and Order, 10/2/20, at 23.

Ultimately, the trial court concluded,

The current trial record does not support a finding that the Father is so severely or morally deficient so as to pose a grave threat to the subject children's welfare. This Court observed the parties and witnesses first hand. The Court Appointed Custody Evaluator and Guardian Ad Litem recommend that supervised partial custody in at therapeutic setting be directed. This Court has done a comprehensive review of all of the custody factors in light of the trial record and concludes that it is the best interest of the subject minor children that Father be granted supervised partial custody in a therapeutic setting.

Id. at 23.

Mother's challenge to the trial court's exercise of discretion focuses on two factors that favored Father: subparagraphs eight and thirteen, concerning the attempts of a parent to turn the child against the other parent; and the level of conflict between the parties, respectively. We address the arguments collectively.

In addressing the eighth factor in Father's favor the trial court determined that Father encouraged Jo.D. to maintain a relationship with

Mother and the younger siblings after he moved into Father's residence. **See** Trial Court Opinion and Order, 10/2/20, at 20. As to Mother, however, the court found a heightened level of alienation, reasoning, in pertinent part, as follows:

It is abundantly clear to this court, based on the trial record, that Mother has not only consistently attempted to turn her children against the Father since 2015, but has successfully managed to do so with respect to her three younger children. Mother has repeatedly told them frightening stories about their Father. She has shared with them things that they are too young to process, such as his alleged viewing of [pornography, which she labeled] "bad pictures." She has created an environment in which the children feel they must carry continued hatred and fear of their Father. She devalues Father by identifying him [by his first name]" to J.D., S[h].D. . . . and S.D. She has expressed disdain for Jo[D.]'s choice to live with Father to her children. . . . Mother has continued to engage in polarizing conduct which goes far beyond what could be deemed a necessary safety measure for the children. Her conduct served solely to further turn J.D., S[h].D. . . . and S.D. . . . against their Father.

Id. (cleaned up).

Mother contends that the trial court erred in finding that she attempted to alienate the children from Father and in elevating the level of conflict between the parties. Mother's brief at 34-36. Essentially, she contends that the court erred in punishing her for her efforts to protect the children from abuse. She notes that the custody law does not require that a parent validate her desire to protect her children with evidence that the allegations of abuse were founded or proven, which she nevertheless asserts was established by Judge Hamill's 2018 determination.

Similarly, as to factor thirteen, the trial court observed that the extreme conflict between the parties was due to Mother's preoccupation with the past allegations that Father abused Jo.D. and J.D.⁶ The trial court explained,

Mother continues to harbor suspicion and hostility against Father. Mother has not cooperated with Father in any manner since 2015. This Court will not hold that against her as the prior Court Order did not direct any cooperation and Mother maintains that she believed that her actions were necessary to protect her children from abuse. Of concern to the Court is that Mother appears to be so firmly entrenched in her position that Father should not be granted any type of custody with the minor children, that she has been unwilling or unable to fathom the possibility of having to cooperate with Father. Mother demonstrated reluctance to cooperate in these court proceedings by her dilatory conduct during the evaluation process with Dr. Esteve. Mother's extreme position causes this Court to have reasonable concern over Mother's willingness to cooperate with Father to the extent necessary for her to comply with an Order of Court.

Id. at 22.

Mother maintains that her concern for the children's safety and her efforts to protect the children from Father is not evidence of her unwillingness or inability to cooperate with him. She continues that, while the trial court acknowledged that Judge Hamill did not order her to cooperate with Father, and even stated that it would not hold her efforts against her, the trial court erred in concluding that this factor militates in Father's favor. She complains

⁶ The court accepted as true Father's testimony that he is willing to cooperate with Mother but noted that Mother's desire to cooperate was nonexistent. Trial Court Opinion and Order, 10/2/20, at 22.

that the trial court characterized her behavior as dilatory and doubted her willingness to cooperate.

In this vein, Mother also asserts, “the trial court engage[d] in mind-boggling ‘logic’ to justify its punishment of [Mother] for relying upon and abiding by the factual findings and opinion of the trial court in 2018.” Mother’s brief at 35. Ultimately, she surmises that the trial court erred in finding that Father no longer presented a grave threat to the children and by engaging in the statutory analysis of the children’s best interests, “[g]iven the multitude of evidence against [Father], and his refusal to accept any responsibility for the 2018-established abuse of the children at issue[.]” *Id.* at 36. For all of the following reasons, Mother’s claims fail.

The certified record is replete with evidence of Mother’s alienation of Father under the pretense of protecting the children from abuse. First, we observe that Father conceded that both he and Mother committed past physical and emotional abuse in accordance with a religious doctrine that he no longer follows. In fact, two separate experts testified that Father exhibited remorse for his past practices and no longer follows those tenets.

Second, the allegations that Father perpetrated sexual abuse against Jo.D. and J.D. were not substantiated under the CPSL, a fact that Judge Hamill acknowledged in concluding that it was nevertheless inappropriate for Father to engage in clinically supervised visits with the two younger children when the matter was before him in 2018. However, Father’s petition for

modification contended, and the trial court expressly found, that Father addressed the safety concerns that Judge Hamill noted in his 2018 decision to deny supervised visitation. Thus, the trial court's statement regarding the absence of an indicated, founded or substantiated finding the Father perpetrated sexual abuse or physical abuse was made in the context of these facts. More importantly, and contrary to Mother's resolute pronouncements that she is merely protecting her children, the trial court's statement is supported by the certified record. Against this backdrop, we cannot discern that the trial court abused its discretion in viewing Mother's dogged allegations that continue to paint Father as a perpetrator of abuse as evidence of parental alienation under subparagraph eight of the enumerated custody factors.

As it relates to the trial court's consideration of the lack of parental cooperation pursuant to subparagraph thirteen, Dr. Esteve noted four general "observations" that are essential to the children's welfare: (1) a working and productive relationship between the parents; (2) the need for parents to assist the children in learning to love the other parent; (3) the children's healthy relationship with both parents; and (4) the need for both parents to maintain a healthy outlook. *Id.* at 75-78. Addressing these principles *seriatim*, we note that Dr. Esteve found that Mother had a negative impact on the first three observations. He testified that Mother dismissed "out of hand" the thought of maintaining a positive relationship with Father. *Id.* at 76.

Likewise, Mother was unwilling to help the children find anything positive about Father, or build any form of a relationship with him. *Id.* at 77-78. As it relates to the third point, Dr. Esteve observed, “the three youngest [children] certainly have this very, very frightening and dark view of their father.” *Id.* at 78. While Dr. Esteve did not relate the final observation to Mother, it is patently clear from the certified record that Mother’s perspective in this protracted custody litigation is clouded by an unresolved conflict with Father.

The above observations illustrate the unfortunate reality that Mother’s perspective of Father precludes even the smallest measure of cooperation. This actuality is further illuminated by Dr. Esteve’s apprehension that Mother would undermine the very therapeutic contact that he recommended to the trial court. N.T., 9/15/20, at 83. He testified, “[b]ased on all of my experience with [Mother], . . . all of that leads me to believe that she will not support [therapeutic partial custody] and will undermine that [process].” *Id.* at 84.

The GAL, Shannon Muir, Esquire, expressed similar concerns about Mother in her testimony regarding Mother’s “strongly held” convictions that Father is not only a danger to her children but “a danger to the community at large.” N.T., 9/16/20, at 71. Further, noting Mother’s social-media posts and public protests in anticipation of the evidentiary hearing, Attorney Muir testified that she did “not believe that [Mother] would follow a [c]ourt [o]rder” that required the children to have supervised contact with Father. *Id.*

Attorney Muir even expressed her concern that Mother could be a flight risk if the outcome of the custody hearing was not favorable. *Id.* at 78-79. The GAL noted that she believed that Dr. Esteve had similar concerns about Mother's potential flight risk. *Id.* at 78.

Finally, as to the effect of this prodigious dissonance on the children, Attorney Muir opined,

[I]n my interactions with the children, they are very distressed by the continuing nature of the litigation. They feel as if it consumes them. . . and [M]other seemed to be unable or unwilling to contemplate what her role in that could be[.] . . . I believe [that] it is detrimental to the children in that it prohibits them from being able to kind of have some semblance of normalcy in their everyday life.

Id. at 76.

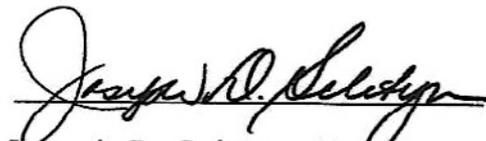
In view of the evidence in the certified record, we reject Mother's assertion that the trial court abused its discretion in concluding that Mother was principally responsible for the extreme conflict between the parties and that her preoccupation with the allegations against Father impeded any ability to cooperate with Father for the benefit of the children. We also are not persuaded by her argument that the trial court employed "mind boggling" logic in making Mother accountable for her persistent belief that Father would present a danger to the children if supervised contact was permitted. The weight of the evidence in the certified record bears out that Mother's reliance on Judge Hamill's findings of fact from 2018 as a basis to continue to alienate Father at this juncture in the custody litigation is unfounded. Stated

succinctly, for all of the reasons we explained *supra*, the certified record supports the trial court's current determination in favor of Father, notwithstanding Judge Hamill's finding of abuse in 2018.

In sum, the trial court engaged in a comprehensive best interest analysis pursuant to § 5328(a)(1)-(a)(16) before granting Father's modification petition and fashioning a custody arrangement that permits supervised therapeutic visitation. The trial court's analysis relative to whether Father currently presents a threat of harm to the children is careful, thorough, and reasonable, as shown by the evidence of record, and we discern no abuse of discretion. Therefore, we do not disturb the trial court's determination. **See A.V., *supra*** at 820 ("Appellate interference is unwarranted if the trial court's consideration of the best interest of the child was careful and thorough, and we are unable to find any abuse of discretion.").

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 11/16/2021