

FAMILY COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 11

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In the Matter of

James Smith

ORDER TO SHOW CAUSE

Children Under Eighteen Years of age  
Alleged/Adjudicated to be Neglected by

Docket No.: NN-12345-12

Sally Johnson,

Adjourn Date:

Respondent.

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Upon the annexed affirmation of Teresa Shapiro, staff attorney at the Center for Family Representation and counsel for the Respondent Mother Sally Johnson (“Ms. Johnson”), dated May 6, 2013, and upon all papers and proceedings previously filed and had herein, and good and sufficient cause appearing,

LET the Administration for Children’s Services, Family Court Legal Services, by Clyde Morris, Esq.; The Legal Aid Society, Juvenile Rights Practice by Jessica Burton, Esq., Attorney for the Child, John Smith; and Geraldine O’Shea, Esq., Attorney for Non-Respondent Father, Charles Smith, Sr., show cause on the \_\_\_\_\_ day of \_\_\_\_\_, 2013 in Part 11 of this Court at 9:30 a.m., or as soon thereafter as the parties can be heard, why an Order should not be made, directing that:

- 1. Ms. Johnson shall have one full-day visit from 11:00am-7:00pm with both subject children on Mother’s Day, May 12, 2013 at the home of Marilyn Johnson.**
- 2. Providing such other and further relief as the Court deems just and proper.**

It is further ORDERED that, pending the determination of this Order to Show Cause, the Petitioner shall provide Administration for Children's Services and foster care agency records from the date the subject child entered foster care to the present, to counsel for respondent Ms. Johnson, no later than one business day prior to a hearing held pursuant to § 1061 of the Family Court Act;

And it is further ORDERED that service of this Order to Show Cause and any supporting documents to be made on Family Court Legal Services by Clyde Morris, Esq.; The Legal Aid Society Juvenile Rights Practice, Jessica Burton, Esq., and Geraldine O'Shea by \_\_\_\_\_ service, no later than \_\_\_\_\_ is deemed good and sufficient service.

\_\_\_\_\_  
The Honorable Clark V. Richardson

FAMILY COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 11

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In the Matter of

James Smith

AFFIRMATION IN SUPPORT OF  
ORDER TO SHOW CAUSE

Children Under Eighteen Years of age  
Alleged/Adjudicated to be Neglected by

Docket No: NN-12345-12

Sally Johnson,

Respondent.

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I, Teresa Shapiro, an attorney duly licensed to practice law before the Courts of the State of New York, affirms the following under penalties of perjury:

1. I am a staff attorney at the Center for Family Representation, Inc. (CFR), counsel for Sally Johnson (Ms. Johnson), the mother of the subject children, David Johnson (David) and James Smith (James), and am fully familiar with the facts and circumstances of this case.
2. I make this affirmation in support of Respondent's Order to Show Cause.
3. This affirmation is made upon personal knowledge and information and belief, the sources of which include conversations and contacts with Ms. Johnson and: a review of all relevant case records; all papers and proceedings heretofore filed and had in this matter; and my own further research and investigation.

**I. PERTINENT FACTUAL AND PROCEDURAL HISTORY**

4. On August 13, 2012, the New York Administration for Children's Services (ACS) filed petitions against Ms. Johnson that alleged that she neglected her children, David and James, in violation of Article 10 of the Family Court Act ("FCA") and asserted that Ms. Johnson misused alcohol while caring for her children.
5. On or about August 13, 2012, the Court remanded David and placed him in kinship foster care with his maternal grandmother, Marilyn Johnson, and paroled James to Charles Smith, his biological father and non-respondent father in the instant action.
6. Although paroled to Mr. Smith, soon after the filing of this petition in September 2012 through January 18, 2013, James primarily resided at the home of his maternal grandmother, Marilyn Johnson, Monday through Friday.
7. On or about August 13, 2012, the Court entered a Temporary Order of Protection against Ms. Johnson in favor of Mr. Smith and James. Subsequently, on March 18, 2013, this Court issued an order permitting agency-supervised visits between James and Ms. Johnson.
8. At the conclusion of the Permanency Hearing on April 5, 2013, the parties agreed that the agency-supervised visits for Ms. Johnson and James would occur on Tuesdays and Fridays from 5:00-7:00 p.m. and weekend sibling visits would be arranged by Mr. Smith and Marilyn Johnson.
9. As of the April 5, 2013 Permanency Hearing, the visits between Ms. Johnson and James have occurred regularly and James has enjoyed weekend visits with his brother David at their grandmother's home.

10. During the agency-supervised visits, Ms. Johnson brings dinner, which she and James eat together, and games from home to play. They also spend time talking and playing with toys in the playroom.
11. Ms. Johnson consistently visits with David who resides in the kinship home of Marilyn Johnson. Shortly after completing an inpatient substance abuse program in December 5, 2012, Ms. Johnson, with the permission of the foster care agency, began to enjoy liberal unsupervised community visits with David. Ms. Johnson presently visits David four days each week for several hours at a time. During visits, Ms. Johnson takes David for walks and to the park, she plays with him, feeds him, changes his diaper, and puts him to sleep.
12. Since the inception of this case, Ms. Johnson completed a six-day detoxification program at Metropolitan Hospital (EXHIBIT A), a three-month inpatient substance abuse treatment program at Phoenix House (EXHIBIT B), a parenting class (EXHIBIT C), and a class on relationships (EXHIBIT D). At the direction of the foster care agency, Ms. Johnson regularly submits to random substance abuse screenings.
13. On April 2, 2013, Ms. Johnson gained admission to an outpatient substance abuse treatment program at Phoenix House. The program consists of weekly group sessions, two individual sessions per month, and random weekly drug screenings. (EXHIBIT E)

### **LEGAL ARGUMENTS**

The Court should modify the current order for agency-supervised visitation to permit expanded visitation for Ms. Johnson and James on Mother's Day, May 12, 2013 because such increased visitation is in the best interests of James and will foster successful reunification.

14. Section 1061 of the Family Court Act authorizes this Court, upon a demonstration of good cause, to set aside, modify, or vacate any of its previous orders. As discussed below, there

is ample good cause to now allow Ms. Johnson to enjoy a full-day visit with both the subject children at the home of her mother, Marilyn Johnson, on Mother's Day, Sunday, May 12, 2013.

15. In New York, it is well settled that the best interests of the child are the overriding concern in all visitation determinations. Freidewitzer v. Friederwitzer, 55 N.Y.2d 89, 94 (1982). Unless the court finds that the subject child's life or health would be endangered, a respondent "shall be granted reasonable and regularly scheduled visitation[.]" F.C.A. § 1030 (c).
16. Allowing James to visit with Ms. Johnson on Mother's Day at the home of the maternal grandmother is in the child's best interests.
17. Ms. Johnson currently enjoys substantial unsupervised time with David approximately four days a week for several hours at a time. In the course of this case, there has not been a single reported concern with regard to Ms. Johnson's behavior during her visits with David. To the contrary, the foster care agency has reported positively on Ms. Johnson's interactions with David and attentiveness to his needs. There have been no complaints that David has been harmed or that the visits do not go well.
18. Throughout the case, Ms. Johnson's efforts to visit with her son James have remained persistent and consistent. Notwithstanding the history of scheduling and coordination difficulties by ACS and Mr. Smith's cancellations, refusals, and tardiness in producing James for visits, Ms. Johnson has remained flexible, available, motivated, and very willing to visit with her son. As with David, the concerns that contributed to this Court's decision to parole James to Mr. Smith, have been addressed through Ms. Johnson's meaningful participation in services.

## CONCLUSION

19. It is in the best interest of James to spend Mother's Day with Ms. Johnson, his grandmother, and his brother. Ms. Johnson has demonstrated through liberal unsupervised day visits with David and the agency-supervised visits with James that she is a loving, engaged parent who is capable of caring for her sons.
20. Ms. Johnson will make a good faith effort to facilitate smooth transitions for James to and from the visit and enlist the assistance of her family members in this regard.
21. Ms. Johnson's completion of inpatient substance abuse programs and classes in parenting and relationships as well as her continued participation in outpatient substance abuse services and substance abuse screenings, as required by the program or directed by the foster care agency, reflect her commitment to addressing the concerns that led to her children's removal and her desire to work toward reunification with her two sons.

WHEREFORE, it is respectfully requested that this Court grant the relief requested herein as well as such other and further relief as the Court deems just and proper.

Dated: New York, NY  
May 6, 2013

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