

FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 4

-----X

In The Matter of

SMITH CHILDREN

**ORDER TO SHOW
CAUSE**

Children Under Eighteen Years of Age,
Alleged to be Neglected by

Docket Nos: NN-XXXXXX-12
NN-XXXXXX-12

JOHN SMITH,
JANE SMITH

Respondents.

-----X

Upon the annexed Affirmation of _____, dated September 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, Christopher _____, Esq.; June _____, Esq., Attorney for the Respondent Mother Jane Smith; and The Legal Aid Society Juvenile Rights Practice, _____, Esq., Attorney for the Children Victor and Veronica Smith, show cause on the _____ day of _____, 2013 in Part 4 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:

1. Allowing John Smith to have unsupervised day visits with the subject children;
2. Allowing John Smith to have supervised overnight weekend visits with the subject children, supervised by the paternal grandparents at their home, located at _____;
3. Allowing John Smith to have telephone contact with the subject children;
4. Providing such other and further relief as the Court deems just and proper.

It is further ORDERED that service of this Order to Show Cause and any supporting documents to be made on Christopher _____, Esq.; June _____, Esq., Attorney for the Respondent Mother Jane Smith; and The Legal Aid Society Juvenile Rights Practice, _____, Esq., Attorney for the Children Veronica and Victor Smith, by _____ service, no later than _____ is deemed good and sufficient service.

ENTERED:

J.F.C.

FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 4

-----X

In The Matter of

THE SMITH CHILDREN

**AFFIRMATION IN
SUPPORT OF ORDER TO
SHOW CAUSE**

Docket Nos: NN-XXXXXX-12
NN-XXXXXX-12

Children Under Eighteen Years of Age,
Alleged to be Neglected by

JOHN SMITH,
JANE SMITH

Respondents.

-----X

Allegra Leitner, an attorney duly licensed to practice law before the courts of this State, affirms the following under penalty of perjury:

1. I am an attorney at the Center for Family Representation, Inc. (“CFR”), counsel for John Smith (“Respondent Father” or “Mr. Smith”), the father of the Smith children, and I am fully familiar with the facts and circumstances of this case.
2. I make this affirmation in support of Mr. Smith’s Order to Show Cause.
3. This affirmation is based upon personal knowledge and upon information and belief, the sources of which include: conversations and contacts with Mr. Smith and CFR Family Advocate Emily _____; a review of the record and all papers and proceedings heretofore filed and had in this matter; and counsel's own further research and investigation.

Pertinent Procedural History

4. A neglect petition was filed against Mr. Smith on September 20, 2012. CFR was assigned as counsel to Mr. Smith pursuant to FCA § 262 on September 23, 2013. The children were paroled to the care of the then non-respondent mother, Jane Smith.

5. ACS filed an amended petition on April 17, 2013, naming Jane Smith as a respondent, and requested a remand of the subject children on that date. Following a hearing pursuant to FCA § 1027, the Court ordered a parole of the subject children to their maternal aunt.

6. On July 30, 2013, the subject children were paroled to the respondent mother Jane Smith.

7. Since the commencement of the instant matter, the Court has permitted Mr. Smith to have visits with the subject children supervised by ACS. Visits were initially arranged one time per week; as of June 2013 visits were expanded to two times per week. Mr. Smith has consistently attended visits with the children and, upon information and belief, the supervised visits have gone well.

8. Mr. Smith enrolled in The PAC Program, a batterer's intervention program, on May 16, 2013. To date, Mr. Smith has attended 16 of 24 total sessions. Mr. Smith has attended his program consistently, with no absences, and has participated in the sessions appropriately and actively. He shares his experiences with the group and has shown insight into his role and responsibility in the alleged incidents that led to the instant matter. (See Letter from The PAC Program of Manhattan, dated September 6, 2013, attached as Exhibit A.)

The Court Should Order Unsupervised Day Visits, Supervised Overnight Visits, and Telephone Contact Because Such an Order Would Not be Detrimental To the Children or Be Contrary to Their Best Interests

9. FCA § 1061 provides that for good cause shown, the Court may set aside, modify, vacate, any order issued.

10. It is respectfully submitted that good cause exists to modify the order to allow for unsupervised day visits, supervised overnight visits, and telephone contact because Mr. Smith is now enrolled in a program and is engaged in services that are appropriately addressing the concerns raised in the petition that was filed against him by ACS.

11. Additionally, it is respectfully submitted that providing Mr. Smith and his children with unsupervised day visits, supervised overnight visits, and phone contact is in the children's best interests. 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, 447 N.Y.S.2d 893, 432 N.E.2d 765 (1982).

12. This expansion of visits and contact would not be detrimental to the children and is in the children's best interests. Supervised visitation is appropriate only where it is established that unsupervised visitation would be detrimental to the child. Powell v. Blumenthal, 35 A.D.3d 615, 615, 827 N.Y.S.2d 187 (2d Dept. 2006); Gainza v. Gainza, 24 A.D.3d 551, 808 N.Y.S.2d 296, 297 (2d Dept. 2005) [citing Purcell v. Purcell, 5 A.D.3d 7552, 773 N.Y.S.2d 569; Matter of Graves v. Smith, 264 A.D.2d 844, 845, 696 N.Y.S.2d 181]. There is no evidence that unsupervised visits would be detrimental or pose a risk to the children in the instant case or that an expansion of visits would be against their best interests. Ritz v. Otero, 265 A.D.2d 560, 697 N.Y.S.2d 123 (2d Dept. 1999); Gerald D. v. Lucille S., 188 A.D.2d 650, 650-51, 591 N.Y.S.2d 528, 529 (2d Dept. 1992).

13. Unsupervised visitation should be denied only when, given the totality of the circumstances, unsupervised visits would not be in the child's best interests. Abanko v. Vargas, 26 A.D.3d 490, 810 N.Y.S2d 509 (2d Dept. 2006) [citing Grossman v. Grossman, 5 A.D.3d 486, 772 N.Y.S. 2d 559]. In the instant case, the totality of the circumstances indicates that unsupervised visitation would be in the children's best interests.

14. Upon information and belief, Mr. Smith's supervised visits with the children at ACS have gone very well and there have been no safety concerns. Upon information and belief, the children wish to spend more time with their father and they wish to spend unsupervised time with him.

15. Mr. Smith is engaged in the services required of him by ACS, namely batterer's intervention services. His service provider, the PAC Program of Manhattan, indicates that Mr. Smith is an active participant in all topics, shares his experiences during sessions, and has taken responsibility in the role he played in the events leading to his engagement in services. Mr. Smith has completed 16 of the 24 sessions that are required to complete the program and has had no absences since he began the program on May 16, 2013. (See Exhibit A).

16. Granting Mr. Smith's request for unsupervised day visits will allow Mr. Smith to spend time with the children in a more natural setting and will further allow Mr. Smith to engage in the parenting role and bond with his children.

17. Mr. Smith is also requesting overnight visits with the children supervised by the paternal grandparents, Nathan and Lorraine Smith, at their home in Forked River, New Jersey. Upon information and belief, the children are familiar with their paternal grandparents and has visited with them and spent time in their home. Granting Mr. Smith's request for these visits would allow Mr. Smith to be more involved in the children's day-to-day routine as he would

have the opportunity to spend full days with the children. Having the visits supervised by the paternal grandparents would mitigate any risk or concerns about the safety of the children, as other responsible adults would be present in the home with Mr. Smith and the children. Prior to these visits commencing, ACS could speak to the paternal grandparents to ensure that they understand their responsibility and role in being visit hosts.

18. Finally, Mr. Smith is requesting telephone contact with the children. Upon information and belief, the child Victor, who is fourteen years old, has his own cell phone. Mr. Smith can contact the children on the child's cell phone rather than through the respondent mother, which would ensure that Mr. Smith does not have contact with the respondent mother in violation of the outstanding criminal court order of protection.

19. In the instant case, there is nothing in the record that suggests that unsupervised day visits, supervised overnight visits, and telephone contact with Mr. Smith would be contrary to the children's best interests. There is likewise nothing to suggest that unsupervised contact with their father would endanger the children's life or health, or otherwise be detrimental to them.

In the Interests of Justice, the Court Should Consider New York State Regulations and ACS Guidelines Regarding Visiting for Children in Foster Care as Instructive When Crafting Its Visiting Order in this Case

20. Mr. Smith asks this Court to consider the New York State regulations surrounding visiting, and the policy guidelines promulgated by the Administration for Children, as instructive when ordering parent-child contact in this case. When children are in foster care, the foster care agency would have the obligation to arrange for visits, "to occur in a location that assures the privacy, safety and comfort of the family members." 18 NYCRR § 430.12 (d)(1)(i)(c).

21. ACS Best Practice Guidelines for Family Visiting Arrangements for Children in Foster Care should be considered by the Court in making determinations regarding visitation.

ACS's own guidelines suggest that an order allowing ACS supervised visits only is inappropriate in the instant case. ACS guidelines make clear that "the lowest level of supervision which safeguards the well-being of the child should always be chosen in order to allow the parent to resume/assume the maximum amount of parenting responsibility possible."

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

Allegra Leitner, Esq.
The Center for Family Representation, Inc.
Attorneys for John Smith

Date: September 6, 2013
New York, NY

TO: Christopher Walken, Esq.
Attorney for the Petitioner
Family Court Legal Services
Administration for Children's Services
150 William Street, 5th Floor
New York, NY 10038

Adam Sandler, Esq.
Attorney for the Children
Legal Aid Society
60 Lafayette Street, 9th Floor
New York, NY 10013

June Carter, Esq.
Attorney for the Respondent Mother
305 Broadway, 9th Floor
New York, NY 10007