

DOCKET NO. [REDACTED] : STATE OF CONNECTICUT  
[REDACTED] : SUPERIOR COURT  
IN RE: [REDACTED] : JUVENILE MATTERS  
[REDACTED] : AT WATERBURY  
[REDACTED] : OCTOBER 29, 2020

**MOTION FOR COURTROOM TRIAL**

Pursuant to Practice Book § 34a-1, the Respondent mother, [REDACTED] moves for a trial in the superior court under General Statutes § 46b-129 (f) that secures for her the right to be heard before the judicial authority in the physical presence of the trial judge, as is required by Article First, §10, and Article Fifth, § 1, of the Constitution of the State of Connecticut (1965) and the Due Process Clause of the Fourteenth Amendment to the United States Constitution. In support hereof, the Respondent avers the following:

**I. Procedural history**

On October 20, 2020, the superior court (*Grogins, J.*) issued ex parte orders of temporary custody with respect to the Respondent's above minor children in favor of the Petitioner, the Commissioner of the Department of Children and Families (DCF). At a preliminary hearing held October 28, 2020, the Respondent invoked her right under General Statutes § 46b-129 (f) to contest the orders at a 10-day hearing. Because the superior court for juvenile matters at Waterbury in Torrington was unable to hear the matter within the time required by law, venue of the cause was transferred to the Child Protection Session in Middletown. The Respondent agreed to the change of venue upon the representation of the court that the hearing would be "live," in the physical presence of the judicial authority. Subsequently, the superior court advised the parties that if one

of the children's fathers, who was incarcerated, decided not to participate in the hearing, the matter would be heard by the court "virtually," by video, with the parties and their counsel present from remote locations. The court's rationale for permitting a "live" hearing only if the incarcerated father were to participate in the proceeding was that the father would not have access to Microsoft Teams<sup>1</sup> as a person committed to the custody of the commissioner of corrections. Otherwise, the court's preference would be to conduct the hearing virtually as a consequence of Governor Ned Lamont's declaration of a public health emergency resulting from the COVID-19 virus outbreak in the United States on March 20, 2020, pursuant to which the court has implemented certain protocols that it believes are necessary to protect the health of participants in judicial proceedings.

**II. The factfinding duties of the Superior Court under Article Fifth, § 1, of the Constitution of the State of Connecticut (1965).**

The Respondent moves for a "live" courtroom trial in the superior court with respect to the contested orders of temporary custody, in the first instance, because the court is required to by Article Fifth, § 1, of the Constitution of the State of Connecticut (1965) to find facts, in part, by assessing the demeanor of the parties and witnesses presented to the judicial authority, which must look them in the eyes, so that the court may gauge their conduct in physical proximity to the other parties. Article Fifth, § 1, of our constitution, as amended, provides in relevant part that, "[t]he judicial power of the state shall be vested in a supreme court, an appellate court, a superior court, and such lower courts as the general assembly shall, from time to time, ordain and establish."

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<sup>1</sup> Microsoft Teams is the video software program utilized by the superior court to conduct virtual hearings. Microsoft Teams allows parties and their counsel to join court proceedings by video from different locations through a specific URL or invitation sent by the court. Participants are able to appear before the court through Microsoft Teams by use of a desktop, laptop, tablet or smartphone.

Under Article Fifth, § 1, of our constitution, the people of this state created the superior court as a “superior court of judicature over this state,’ with a supreme jurisdiction, original and appellate, over the trial of all causes not committed to the jurisdiction of inferior courts.” *Styles v. Tyler*, 64 Conn. 432, 30 A. 165, 171 (Conn. 1894). The exclusive constitutional function of the superior court is to “determin[e], upon the evidence, . . . **questions of pure fact** . . . ,” in the manner required by the people of this state when they ratified our constitution in 1818. *Id.*, at 173. In making assessments of pure fact, the superior court is obligated by our state constitution to engage in factfinding that includes “credibility determinations . . . on the basis of [the] **firsthand observation** of [a witness’] **conduct, demeanor and attitude**.” *Lapointe v. Comm’r of Correction*, 316 Conn. 225, 268, 112 A.3d 1 (2015). (Emphasis added). As our Supreme Court has stated in the context of parental rights termination matters:

Although a judge [charged with determining whether termination of parental rights is in a child’s best interest] is guided by legal principles, the ultimate decision [whether termination is justified] is **intensely human**. It is the judge **in the courtroom** who **looks the witnesses in the eye, interprets their body language, listens to the inflections in their voices and otherwise assesses the subtleties that are not conveyed in the cold transcript.** (Internal quotation marks omitted.) *In re Davonta V.*, supra, 285 Conn. at 497, 940 A.2d 733.

*In re Nevaeh W.*, 317 Conn. 723, 740, 120 A.3d 1177 (2015). (Emphasis added.)

**III. The right of open access to the courts by due course of law pursuant to Article First, § 10, of the Constitution of the state of Connecticut (1965) and the fourteenth amendment of the United States Constitution.**

The Respondent moves for a “live” courtroom trial in the superior court with respect to the contested orders of temporary custody, in the second instance, to secure for herself the fundamental right guaranteed by our state constitution that “[a]ll courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall

have remedy by due course of law . . . .” Conn. Const. Art. I, § 10. “It is of the essence of the constitutional intention that the courts created in the Constitution [of the State of Connecticut] should be open and accessible to the people who may have occasion to seek the protection of their rights or the redress of wrongs and [no one] has [the] power to forbid any person from **entrance thereto** whether by so attempting to so define the jurisdiction of a superior court as to exclude them directly, or by indirection under the guise of creating or defining the jurisdiction of, inferior courts.” *Osborn v. Zoning Board of Appeals*, 11 Conn. Supp. 489, 492 (Super. Ct. 1943). (Emphasis added.) Access to the courts by due course of law means that litigants, particularly in matters affecting the fundamental right of family integrity, shall be afforded an opportunity to **go into court** to obtain [redress]” whenever the state seeks to affect “the adjustment of a fundamental human relationship.” *Boddie v. Connecticut*, 401 U.S. 371, 382, 91 S. Ct. 780, 28 L. Ed. 2d (1971). (Emphasis added.)

Under both Article First, § 10, of our state constitution and the due process clause of the Fourteenth Amendment to United States Constitution, the Respondent has the right to appear in person before the superior court so that she may compel witnesses to appear before the court, give spontaneous input to her counsel in the examination of witnesses in the physical purview of the court,<sup>2</sup> and present arguments calculated to persuade the judicial authority as can only be done in the court’s physical presence. “It is a policy of our law that a trial involves a reasonable opportunity for all parties to be heard and to present essential witnesses.” *Stanton v. Cox Circus Co.*, 12 Conn. Supp. 77, 77 (1943). “In almost every setting where important decisions turn on questions of fact, due process

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<sup>2</sup> See, e.g., *In re Jonathan P.*, 23 Conn. App. 207, 214, 579 A.2d 587 (1990).

requires an opportunity to confront and cross-examine adverse witnesses.” *Goldberg v. Kelly*, 397 U.S. 254, 269, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970). Certain principles of ancient roots have remained immutable in our jurisprudence regarding the right of confrontation and cross examination, including the right to examine one’s accuser “**personally**,” *Greene v. McElroy*, 360 U.S. 474, 496–497, 79 S. Ct. 1400, 3 L. Ed. 2d 1377 (1959) (Emphasis added), and to challenge one’s accuser “**face-to-face**.” *California v. Green*, 399 U.S. 149, 156, 90 S. Ct. 1930, 26 L. Ed. 2d 489 (1970).

The ancient right of in-person confrontation and cross-examination is not limited to criminal matters, but has applied to “all types of cases where administrative . . . actions [of the state] [are] under scrutiny. *Goldberg v. Kelly*, 397 U.S., 269. Particularly in matters affecting a litigant’s fundamental liberty interest in family integrity, the judiciary must afford “**entrance**” into the courthouse to secure for the litigant the right to a meaningful opportunity to be heard. *Boddie v. Connecticut*, 401 U.S., at 382. Only where the judiciary has a compelling governmental interest to restrict the same may it abridge the right of a litigant to appear physically before the judicial authority, so as to impress upon all involved the seriousness of the proceedings and to allow face-to-face contact with adverse witnesses, whose credibility is best assessed by the court’s observation of their demeanor on the witness stand. *California v. Green*, 399 U.S., at 158. The compelling governmental interest involved must not be speculative, hypothetical, or theoretical, but real and present. *Williams v. Rhodes*, 393 U.S. 23, 33, 89 S. Ct. 5, 21 L. Ed. 2d 24 (1968).

In the instant action, under the due process balancing test required by cases such as *Boddie v. Connecticut* and *Goldberg v. Kelly*, the superior court is without a compelling interest to deny the Respondent a “live” trial in the courtroom, as guaranteed by our state



**ORDER**

The foregoing motion, having been presented to the Court, is hereby  
**ORDERED: GRANTED/DENIED.**

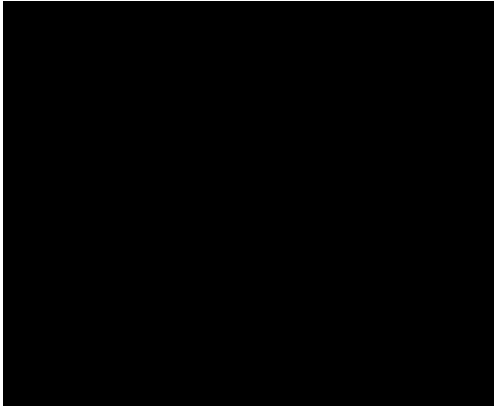
DATED:

BY THE COURT

\_\_\_\_\_  
( \_\_\_\_\_, J.)

**CERTIFICATION**

This is to certify that, pursuant to Practice Book § 34a-1, a copy of foregoing was delivered to the below counsel of record on the date hereof by email:



/s/ 422202

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