

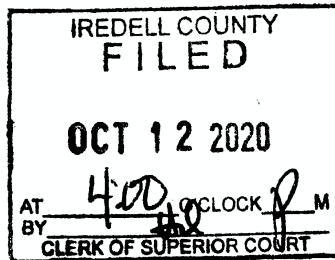
STATE OF NORTH CAROLINA

COUNTY OF IREDELL

KLETE DERIK KELLER,  
Plaintiff,

v.

CARI SHERRILL  
(formerly KELLER),  
Defendant.




IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
FILE NUMBER: 16CVD2715

CUSTODY ORDER

This matter came on for hearing before the Honorable Christine Underwood presiding over the September 29, October 1, and October 2, 2020 terms of Iredell County Civil District Court in Statesville, North Carolina. The matter was before the Court for permanent custody. Plaintiff was present and represented by Meg Stacy. Defendant was present and represented by William Medlin IV. After considering the testimony and the evidence presented, as well as the arguments of counsel, the Court makes the following findings by the greater weight of the evidence:

FINDINGS OF FACT

1. Plaintiff is a citizen and resident of Colorado Springs, Colorado.
2. Defendant is a citizen and resident of Iredell County, North Carolina. She has resided in the state of North Carolina for at least six months preceding the filing of this action.
3. Plaintiff resided in the state of North Carolina when he filed the action.
4. The parties were married September 20, 2008. They separated January 28, 2014. They divorced May 4, 2015.
5. The parties are the parents of three minor children, namely: [REDACTED], born January 24, 2010, and [REDACTED] and [REDACTED] Keller, born April 1, 2011.
6. The parties resided together in the state of Michigan with the minor children until Defendant moved with the children to North Carolina in January 2013. At that time, Plaintiff moved to Memphis, Tennessee for work. The plan was for Plaintiff's employment to transfer to Charlotte, North Carolina, which is one reason why Defendant and the children moved directly to North Carolina.
7. While Plaintiff resided in Tennessee, he saw the minor children at least monthly. He moved to North Carolina after a few months.
8. The parties entered into a Separation Agreement which included provisions regarding child custody on February 18, 2014. In this document, the parties agreed the Plaintiff would have supervised visits with the minor children and that the Defendant would supervise that visitation.
9. The parties agreed that once the Plaintiff obtained a permanent residence or after the passage of six months, they would review this arrangement. Plaintiff did not achieve a permanent residence until on or about July 2015. The parties did not review the arrangement.

10. Following the entry of the Separation Agreement, Plaintiff visited supervised with the minor children three or four times. But last saw the children in April 2014 before the entry of the first Temporary Custody Order.
11. Between August 2014 and October 2014, Plaintiff lived with family in Maryland and California. During that timeframe he made "some phone calls and a couple of e-mails and texts" requesting to see the minor children. These efforts were unsuccessful. He typically made these requests when he was in the state for court dates regarding child support. He eventually returned to North Carolina. Following that, he lived homeless in North Carolina for approximately 10 months. He was, however, employed and paying child support during this time.
12. In November 2014 he told the judge in his Mecklenburg County child support action that he was dealing with depression and that he was "mentally and physically incapable of working." In that same action, the judge found that he had a "naive indifference" to his children's financial needs.
13. Plaintiff was a professional swimmer before the parties married and had children. He struggled greatly with finding out who he was as a person without swimming as his primary focus. He struggled with depression, and in November 2010 he attempted suicide by connecting a hose to the exhaust of his automobile. He admitted to Defendant he had taken out a life insurance policy which allowed for a payout following a suicide and had marked the date when this provision was triggered on a calendar. He received medical treatment following this suicide attempt.
14. During this time period, the Defendant learned Plaintiff was pretending to go to work each day but was actually unemployed and the parties' health insurance had lapsed. She learned this when the minor child  needed stitches. She was also pregnant with the twins during this period of time.
15. He was largely unsuccessful in obtaining visitation with the minor children between the entry of the Separation Agreement and the entry of the first Temporary Custody Order. During that timeframe, Defendant repeatedly asked Plaintiff to get "help" for "mental health issues" and substance abuse issues. He has not engaged in any meaningful therapeutic treatment regarding any such issues. She refused visitation because she believed he had not effectively addressed potential mental health issues.
16. Plaintiff obtained a psychological evaluation in July 2015, although it appears that evaluation was based solely on self-reported information, and Plaintiff steadfastly denies he has any mental health conditions despite years of housing and employment instability, and despite a previous suicide attempt.
17. Until he moved to Colorado, he experienced several years of housing and job instability.
18. He filed several unsuccessful custody actions in Mecklenburg County, North Carolina which were dismissed for procedural issues.
19. In early 2015, the parties engaged in reunification therapy, but the minor children did not participate in this therapy. Defendant told him that the children "don't deserve therapy because of your problems," and declined to arrange for their participation. The last session occurred on March 29, 2016. The therapy appears to have been ineffective.
20. By July 2015, the children were calling their father "Uncle Klete" or "Mr. Klete."
21. She has repeatedly told Plaintiff that the children are confused about seeing him; that he is a stranger to them; and that they didn't understand why he was back in North Carolina.

22. On November 8, 2016 he filed the pending Complaint for custody in Iredell County, North Carolina.
23. Nearly a year passed before the parties attended mediation. In the parking lot following mediation, Plaintiff suggested it might be best for the children to allow their stepfather to adopt them. He was aware that they consider their stepfather to be their "dad" and was frustrated because he had gone so long without visiting with the children.
24. Despite being frustrated about not being able to visit, he moved to Colorado in October 2017. He told Defendant he was moving just a few days before he moved. He did not have employment when he moved. He moved to Colorado before even scheduling a temporary custody hearing. He testified "I finally had enough and threw up my hands . . . and moved to Colorado."
25. He admits that although he has never had any plans to return to North Carolina, he has asked the boys how they would feel if he did move back to North Carolina. He made these inquiries just to see if the boys would give him positive feedback and acknowledges in hindsight that this could be damaging to their psyches.
26. On May 16, 2018 the parties entered the first temporary custody order. Visitation was to be supervised by Defendant and were to operate on a graduated schedule.
27. All three of the minor children visited with Plaintiff at a local ice cream parlor. The visit went relatively well, but the children acted nervous.
28. Defendant supervised visits in June.
29. [REDACTED] wrote Plaintiff a letter dated June 7, 2018. When he asked Defendant about the contents of the letter, she told him "you're not her dad. She wants to change her name to her real dad's name." He has not seen [REDACTED] since a visit in 2017 when they went to the Whitewater Center together.
30. Plaintiff missed his scheduled July visits. He resumed visits in August, but on the weekend of August 18, 2018 Defendant prevented him from seeing the children because he didn't not arrive/confirm as previously agreed.
31. On September 6, 2018 the parties entered another temporary custody order by consent, which allowed for additional visits, to graduate to overnight visits with the boys. Plaintiff testified he decided not to "push the issue" with [REDACTED] and to let her "go at her own pace."
32. In December 2018, Plaintiff had the opportunity to visit with the boys overnight in North Carolina. He told Defendant the day before visitation was to begin that he was sick. He did not visit with the boys during this scheduled time.
33. On January 17, 2019 yet another temporary custody order was entered by consent, which allowed for some daytime visits in January and February 2019 but put off overnight visits.
34. February 18, 2019 another temporary custody order was entered by consent which again allowed for daytime weekend visits, without overnights. Plaintiff also agreed to engage in a 15-week parenting education program in Colorado, which he successfully completed.
35. Plaintiff missed his March 16-17, 2020 visit. He blamed it on the weather but told the kids he had to work. His flight was not cancelled.
36. He missed his Friday night visit on June 7, 2020 because he missed his flight.
37. On May 13, 2020 the parties entered a temporary custody order by consent which allowed for daytime visits with the boys (and with [REDACTED] if she expressed the desire to visit), and then allowed for the boys to visit in Colorado July 30-August 4, 2020. Overnight weekend visitations

monthly in North Carolina would occur following that, and [REDACTED] would engage in therapy to address her relationship with her biological father.

38. The boys enjoyed their visit with their father in Colorado. They stayed in his home for two days, but traveled the state the rest of the time, hiking and sightseeing.
39. On two separate occasions Plaintiff has left [REDACTED] alone in hotel rooms while he and [REDACTED] ran errands. On the first occasion, [REDACTED] woke up alone in the hotel room to find a note from his father telling him where he and [REDACTED] had gone. On the second occasion, Wyatt elected to remain alone in the hotel room, but became upset when his father did not return within the agreed-upon timeframe.
40. The boys enjoy their weekend visits with their father. They engage in fun outdoor activities such as bicycling and hiking. They visit the zoo and the Whitewater Center, go to the driving range, and play at local parks.
41. Plaintiff is the epitome of a "fun dad." He doesn't not act like a parent during visits, such as failing to keep the children on a schedule and failing to establish and then follow through with rules and punishment. The Court understands his desire to make the most out of the few visits he receives, but the Court also understands that all these children function better with structure.
42. Plaintiff very much acts like a kid himself. For example, on an outing to the Virginia Creeper Trail, Plaintiff allowed the boys to shoot at road signs with a BB gun from the window of a moving vehicle. Plaintiff shot at signs and a bathroom ceiling in the park. When a law enforcement officer happened to arrive in the park, Plaintiff hid the BB gun. After the officer left, he retrieved the BB gun and resumed shooting at things. The children felt unsafe during this incident.
43. On one visit, the Plaintiff rented motorized scooters for himself and the boys to ride in Charlotte. The motorized scooters were not supposed to be ridden by children under the age of 18. [REDACTED] fell off his scooter twice, one of which caused a nasty enough injury that it prevented him from participating in football practice.
44. Plaintiff acknowledges the scooter incident was not the "best choice." He says he wants to do fun things with the boys and to create memories with them, and that he has a "hard time saying no to them." He is aware that the boys know they can "get away with more" when they are with their dad because their dad has difficulty disciplining them and wants them to enjoy their visits without being concerned about discipline.
45. The boys have weekly Skype calls with their father, which typically go well.
46. Plaintiff admits regular marijuana use but denies using it when he is around the kids. There is some evidence to suggest he smells of marijuana and that his vehicle smells of marijuana when the boys are visiting, but no evidence that he appears impaired when in the company of the children. Marijuana use is legal in the state of Colorado. He says "it's no big deal" to use marijuana.
47. Plaintiff has worked in commercial real estate while living in Colorado. He recently started with a new company but was with the same firm for two years prior to the transition two months ago. He has stable employment.
48. Plaintiff has a stable residence. He has lived in the same residence for nearly three years. It is small, but appropriate.
49. He is current with his child support, which totals \$1,700.00 per month.
50. Plaintiff has a life-in girlfriend who he has dated for four years.



51. [REDACTED] was engaged in therapy from February to August 2020 to address behavioral issues at school and at home, and to address possible "processing" issues and issues with socialization.
52. He expressed to his therapist confusion about his father. He feels fearful at times of the actions of his father during visitation, giving an example that his father throws things at road signs while driving. He describes his father as someone who makes bad decisions. He also describes his father as fun and relaxed.
53. He describes his mother as safe to be around, nice, loving, and responsible.
54. [REDACTED] does not feel like his biological father is his father, although he knows of their biological connection. He feels like his stepfather, Chris Keller, is his "dad." He calls his biological father "Mr. Klete."
55. [REDACTED] is sad when his brother and sister do not accompany him during visitations with his father.
56. He told his therapist he sometimes feels unsafe during visits with his father, so they developed some tools [REDACTED] could use to address these feelings, such as talking to his brother, calling his mom, and using "I statements" to help his father better understand those feelings.
57. Wyatt has been in therapy since February 2020 regarding anger outbursts in school and low self-esteem.
58. He is diagnosed with Unspecified Anxiety Disorder. He is anxious, has negative self-thoughts, and is anxious about how others think about him.
59. [REDACTED] struggles with his relationship with his father and feels like his father treats [REDACTED] different from him. He often only agrees to visit because Carson is visiting.
60. He describes his father as "irresponsible." His father nearly made them late for their return flight to North Carolina, and this made [REDACTED] feel anxious. He is afraid his father will make him miss another flight or keep him from his mom.
61. He feels sad because his biological father discussed possibly moving back to North Carolina but has not made steps to do so. His therapist testified that [REDACTED] is "still waiting for his dad to move back to North Carolina."
62. [REDACTED] was able to describe having fun during visits with his father and about being excited sometimes to see him or talk to him. He is conflicted about his feelings regarding his father. He is happy when he gets to spend time with him, but he doesn't want to live with his father. He also prefers to call his father "Mr. Klete," seeing his stepfather as his "dad."
63. He enjoys fishing and mountain biking with his father.
64. [REDACTED] has been in counseling with her current therapist since January 2020. She has been in therapy since September 2019. She is in therapy to address why she refuses to have any contact with her biological father.
65. According to her therapist, [REDACTED] is "steadfast" in her refusal to have contact with Plaintiff. "[REDACTED] is clear. Interactions with her father make her anxious." [REDACTED] anxiety manifests itself with physical and mental affects, including panic and intrusive thoughts. She suffers from excessive worrying, trouble concentrating, and trouble sleeping, all related to issues surrounding her father "leaving" her (to use her words) and surrounding the thought of having contact with him again.
66. [REDACTED] fears her father will take her away from her mother. Based on stories she has heard from her brothers she does not feel like her father is safe to be around.

67. She describes her mother as her "safe person." They do many activities together and have a close and positive relationship.
68. She describes her stepfather as her "dad." She says he takes care of her and she feels safe with him. They have a good relationship.
69. She also calls her biological father "Mr. Klete." She told her therapist she calls him that because "my mom says I can't be rude or mean to him" and that using "Mr." is a respectful term.
70. If [REDACTED] had a choice, she would not have a relationship with her biological father. She has discussed with her therapist how these feelings might change over time and that she should keep an open mind, but she is "steadfast in her desire to not have a relationship with Mr. Keller."
71. Knowing that the Court may decide she should reunify with her father, [REDACTED] and her therapist have together developed a "Reconnection/Reunification Plan" (see Exhibit A, attached hereto).
72. According to her therapist, this plan is "the most safe and clinically appropriate way" to achieve reunification between [REDACTED] and her biological father.
73. [REDACTED] will likely have full-blown anxiety attacks if she is required to visit her father without first implementing a therapeutic reunification plan. She describes to her therapist that her anxiety "comes up from her belly" and that she feels like she needs to run and hide. She requires a gradual introduction through a therapeutic relationship if her reunification with her biological father is to be successful.
74. Defendant has been married to Chris Sherrill for more than five years. They have a 4-year-old son together, with whom the minor children are strongly bonded.
75. The children have a typical parent-child relationship with their stepfather, and all three began calling him "dad" voluntarily, and at their own pace.
76. They have a nicely appointed home with ample space for the family.
77. Defendant's parents moved to North Carolina, and her in-laws live nearby. The minor children have a close bond with Defendant's family and with their stepfamily.
78. The minor children have never met Plaintiff's parents, and do not have a bond with any other members of his family.
79. Defendant has been an excellent mother to these children in the absence of their biological father.
80. Plaintiff has never been particularly involved in the making of decisions regarding the welfare of the minor children. Him living so far away would make it difficult for him to be productively involved in decision-making for the children. Thus, it would be in their best interests for Defendant to have sole legal custody.
81. Continuing monthly, overnight weekend visitation with the boys would be in their best interests.
82. Granting Plaintiff visitation with the children for the entire summer would not be in their best interests as they thrive when living in a structured environment. However, providing for the boys to have extended visits with Plaintiff during the summers would be in their best interests as it would allow for additional time to create a stronger bond between them and their father.
83. Contact between [REDACTED] and Plaintiff is best accomplished by adhering to the plan developed by [REDACTED] and her therapist, with either the therapist or another adult agreed upon mutually by the parties being the supervisor of contact when the plan dictates there be supervision.
84. Defendant is a fit and proper person to have the sole legal custody of, and the primary physical custody of the minor children.

85. Plaintiff is a fit and proper person to have visitation and contact with the minor children, given certain parameters.
86. The Defendant expended \$1,593.00 in expert witness fees regarding the testimony of [REDACTED]'s therapist.

**Based on the foregoing Findings of Fact, the Court makes the following:**

**CONCLUSIONS OF LAW**

1. This Court has subject matter jurisdiction and personal jurisdiction over the parties.
2. North Carolina is the home state of the minor children, and North Carolina continues to exercise its original, exclusive jurisdiction over custody of these minor children.
3. Defendant is a fit and proper person to have the sole legal custody of, and the primary physical custody of the minor children.
4. Plaintiff is a fit and proper person to have visitation and contact with the minor children, given certain parameters.
5. The entry of a temporary custody order as to the minor child [REDACTED] Keller would be in her best interests. The entry of a permanent custody order as to the minor child [REDACTED] and [REDACTED] Keller would be in their best interests.
6. This Order is in the best interests of the minor children.

**Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED, ADJUDGED, and DECREED as follows:**

1. That all portions of the decretal portion of this order regarding the minor child [REDACTED] Keller are entered as a temporary custody order.
2. That all portions of the decretal portion of this order regarding the minor children [REDACTED] and [REDACTED] Keller are entered as a permanent custody order.
3. Defendant shall have sole legal custody of the minor children [REDACTED] and [REDACTED] Keller, born April 1, 2011, and temporary sole legal custody of the minor child [REDACTED] Keller, born January 24, 2010.
4. Plaintiff may have access to all the children's medical, dental, educational, and psychological records, and may have access to communicate with the children's providers.
5. Defendant shall provide Plaintiff with at least one-week advance notice of the children's sporting practice/game schedules and other extracurricular activities, and Plaintiff and may attend said activities of [REDACTED] and [REDACTED]. He may attend [REDACTED]'s activities if pursuant to reunification therapy or if invited to do so by Finley.
6. Defendant shall keep Plaintiff informed regarding the contact information for the children's medical, dental, educational, and psychological providers.
7. Defendant shall inform Plaintiff of any medical or dental treatment for the minor children which go beyond standard well-child visits.
8. Plaintiff and Defendant shall inform one another of any changes in contact information, including home and mobile telephone numbers, e-mail addresses, and physical and mailing addresses within 24 hours of any change in this information.

9. If [REDACTED] elects to do so, she may have contact with and visitation (including overnight visitation) with Plaintiff at her request, under the same scheduling parameters for [REDACTED] and [REDACTED].
10. Finley and Plaintiff shall have contact pursuant to the "Reconnection/Reunification Plan" (see Exhibit A, attached and incorporated by reference herein), incorporating the goals, objectives, and interventions set forth in the plan. The "estimated dates to achieve" listed on the plan may serve as guidance but shall not be strictly construed. Visits and in-office therapy may be achieved virtually with Plaintiff to accommodate his current living situation.
11. [REDACTED] and [REDACTED] shall have a minimum of one weekend (7:00 p.m. Friday – 7:00 p.m. Sunday) of overnight visitation with Plaintiff each month. If the children have Friday and/or Monday off from school, Plaintiff may extend his visit to include these days. These visits should occur within an eight-hour drive of the children's home unless agreed upon in advance by Plaintiff and Defendant.
12. [REDACTED] and [REDACTED] shall have a minimum of one weekly Skype (or other similar service) communication with Plaintiff. Defendant shall make the children available for these virtual visits between 6:00 p.m. and 7:00 p.m. on Sundays. Additionally, they shall have a minimum of 30 minutes visitation via Skype with Plaintiff on Plaintiff's birthday, Father's Day, and on the boys' birthday.
13. [REDACTED] and [REDACTED] shall have a minimum of three week-long visitation periods with Plaintiff, with two of these week-long periods being consecutive if desired by Plaintiff. Plaintiff may only select the week which includes July 4 during even-numbered years. These visits do not have to occur within the state of North Carolina.
14. The minor children may visit or otherwise communicate with the minor children at other times which can be mutually agreed upon by the parties. This is in addition to, and not controlled by, the Reunification Plan for [REDACTED].
15. Plaintiff shall take the children to their sporting practices and games in a timely fashion when these activities occur during his visitation time.
16. Neither party shall be under the influence of alcohol or other controlled substances while caring for the minor children.
17. Plaintiff is not required to reimburse Defendant for the expenses of the expert witness fee incurred during the trial of this matter.
18. The decretal portion of this order regarding [REDACTED] is temporary in nature pending entry of a permanent custody order (through hearing, consent, or through the passage of time and circumstances as described by caselaw). The findings of fact entered herein are binding on the parties, as the parties were not limited regarding time during this proceeding.

Entered this the 12 day of October, 2020.

  
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Honorable Christine Underwood  
District Court Judge Presiding