IN THE COURT OF APPEALS OF TENNESSEE

CHERYL MAXINE POLLARD,	)	C/A NO. 03A01-9503-CV-00109
	)	HAMILTON COUNTY CIRCUIT COURT
Plaintiff-Appellee,	)	
	)	
	)	
	)	
	)	
v.	)	
	)	HONORABLE WILLIAM L. BROWN,
	)	JUDGE
	)	
	)	
	)	
ANDREW FAHEEN AKHDARY,	)	
	)	
Defendant-Appellant.	)	AFFIRMED AND REMANDED

FILED

April 24, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

MICHAEL M. RAULSTON, Chattanooga, for Appellant

E. BLAKE MOORE of SPEARS, MOORE, REBMAN & WILLIAMS, Chattanooga, for Appellee

O P I N I O N

Susano, J.

In this post-divorce case, Andrew Faheen Akhdary (Akhdary) filed a motion on January 5, 1993, seeking visitation with his two minor children, Adam Blaine Akhdary (Adam) (dob: September 9, 1983) and Rachel Lauren Akhdary (Rachel) (dob: June 10, 1988). He had not seen his children since July, 1990. Following four separate hearings extending over approximately eighteen and a half months, the trial court denied Akhdary's motion. He appeals, arguing, in effect, that the trial court abused its discretion in refusing to grant him at least supervised visitation.

I. *Procedural History*

The parties were divorced by a judgment entered June 18, 1990, following a contested hearing that lasted four to five days, some of which, in the words of the trial judge, extended to "eight or nine, . . . ten o'clock at night." While we do not have a transcript of that hearing, we do have the trial court's 29-page memorandum opinion which graphically describes Akhdary's violent conduct during the marriage and its effects on his wife, Cheryl Maxine Pollard (Pollard)[1]:

> The Court will grant the divorce to Mrs. Akhdary on the ground of cruel and inhuman treatment. I think I should point out for the record in the event that either side chooses to appeal from this decision that the Court finds that there is an abundance of proof that Mr. Akhdary has physically abused Mrs. Akhdary on numerous occasions, that he has carried on a campaign of verbal abuse which is intended to intimidate her and

[1]In the divorce judgment, Akhdary's former wife was restored to the use of her maiden name.

destroy her self confidence and self esteem, that there were numerous acts of physical abuse which included pulling her hair, punching her breasts, dragging her by the hair of the head, pushing her fingers backwards until they popped, kicking her, holding a pillow over her face, hitting her in the stomach while she was pregnant as well as other acts of physical abuse; that on one occasion the proof is that he pointed a loaded rifle at her and made her stay awake all night, that he has spit on her and other -- He has also called her vile and vulgar names. This not only has been to her personally, but in places in public on more than one occasion.

As a result of the physical abuse, Mrs. Akhdary was treated at least two times by Dr. Brackett and was given medical attention as a result of these physical assaults. the Court feels that these acts of physical abuse or physical and verbal abuse have been corroborated by numerous witnesses who have observed bruises, scratches and so forth on Mrs. Akhdary, that the defendant's first wife testified during the course of this trial and testified that she encountered the same type of behavior during her marriage to the defendant which was approximately of three years' duration, that these same types of physical abuse was [sic] carried on, and the Court believes that this definitely established a pattern of conduct on the part of Mr. Akhdary.

The Court further finds that Mr. Akhdary, his attitude has been belligerent throughout the marriage, throughout some of this hearing, that this was evidenced to such an extent that his son by his first marriage requested to quit visiting with his father at age 13 or 14, that he was also subsequently adopted by his stepfather and no longer has any relationship with his father whatsoever. This conduct and attitude was carried out not only with the plaintiff, but with other people who from time to time became involved with Mr. Akhdary, had confrontations with him, and I'm specifically referring to -- specifically referring to incidences with Dr. Martin Baldree who was or may still be a professor at Lee College in Cleveland, Tennessee who Mr. Akhdary threatened to kill and threatened to kill his children after Mr. Akhdary's father was written a letter by Dr. Baldree stating that he had to retire because of the mandatory retirement age.

> Dr. Baldree also testified that later at Mr. Akhdary's father's funeral Mr. Akhdary did offer an apology, but the Court does not feel that this in any way makes up for the fear and concern that was caused to Dr. Baldree and again was in compliance and correspondence with the type tactics that he has used on Mrs. Akhdary.
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> This attitude was also demonstrated when he had a confrontation with Mr. Harold Riley who is the president of Graphic Impressions & Designs whom Mrs. Akhdary had worked for on one occasion when Mr. Akhdary threatened him and threatened to turn his so-called sweat shop into a blood shop and threatened him with physical violence.
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> I think it's important that the record reflect that these are independent witnesses who knew nothing about the facts that were testified to concerning the divorce between Mr. and Mrs. Akhdary, but were individuals who had experienced similar type of conduct and retaliation on the part of Mr. Akhdary. The Court feels that this independent evidence certainly corroborates the testimony that was presented by Mrs. Akhdary and other persons who testified in her behalf with regard to the abuse she has encountered.
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> Mrs. Akhdary testified that as a result of the physical abuse that she was bruised and often showed signs of physical abuse. This fact was corroborated by Mrs. Peg Johnson who is director of Family Shelter for Battered Women who testified that she observed bruises on the plaintiff at the time that the plaintiff came to the shelter, and I might add that I think she came to the shelter on some four different occasions, three or four occasions. Mrs. Johnson also testified that the plaintiff's fear level was much higher than the average woman who comes to the shelter . . .

The trial court awarded custody of the parties' children to their mother. The court awarded Akhdary conditional supervised visitation, noting, in part, as follows:

> With regard to visitation, visitation shall be limited to supervised visitation and in

> the future, this shall be conditioned upon Mr. Akhdary agreeing to submit himself for counseling which has been recommended by all of the expert witnesses who testified during the course of this trial. Specifically, there were two psychologists and two psychiatrists that testified as well as other social workers and other counselors, so the Court feels that this is imperative since this is based upon the recommendations of all expert witnesses.
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> With regard to counseling to be participated in by the parties, the Court is accepting the suggestion or recommendation of both Dr. Spalding, Dr. Speal and Dr. Brandenberg, and that is, that all parties participate in counseling with a counselor who is a specialist in the field which is needed by each of them, . . .
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> * * *
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> For Mr. Akhdary, that is as a person who counsels with people who have precipitated this type of conduct upon a wife or another person, . . .

The trial court alluded to testimony regarding Akhdary's "disorders":

> Dr. Spalding also stated that the picture that Mr. Akhdary painted of himself was that of a blameless person, that it was too good to be true, that he did not accept the defendant's evaluation of himself. He also testified on the basis of the hypothetical question which was posed by Mr. Moore that he diagnosed the defendant as having the following disorders. One, narcissistic disorder. He had six of the nine characteristics which were positive; two, a sadistic disorder with each of the eight characteristics being positive or present and that there was, three, a borderline personality disorder. He has testified that these disorders are not treatable by medication, that they will yield only to psychotherapy and the person receiving the therapy must admit to the disorder before help can be available. He also testified

> that he felt that a person with these disorders generally should not be allowed to influence a child.

The trial court's opinion indicates the impact of Mr. Akhdary's conduct on his oldest child, Adam:

> Mrs. Johnson [of the Family Shelter for Battered Women] also testified . . . that the parties' child Adam was one of the most fearful children that she had ever had at the center, that he was extremely anxious and would not let anyone touch him.
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> * * *
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> The Court has also ordered . . . that Adam certainly continue in the counseling that is being provided for him to try and overcome the damage that's been done as a result of the parties' relationship.
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> The Court will further state that in support of the order which I have just made as previously stated, Dr. Susan Brandenberg is a psychologist with heavy emphasis in dealing with children and addressing a child's emotional function. She testified in this case and diagnosed that Adam suffers from post-traumatic stress disorder, that he was also severely depressed, that Adam expressed fear of harm or potential harm to his mother and sometimes his sister, that he has also been a witness on more than one occasion to physical abuse of his mother which has certainly instilled these fears in him, and Dr. Brandenberg believed that these were very real fears. She has opined that ongoing therapy for Adam is mandatory and that therapy for the entire family is necessary.
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> Dr. Stanley Speal, a clinical psychologist from this city for many years during the trial testified that he had seen the defendant twice, saw the plaintiff one time, saw Adam, the minor child, on three occasions. He did conclude that Mrs. Akhdary is an abused spouse, that the child has very marked emotional problems; that is, he is

> very depressed, that he was very guarded, withdrawn and insecure and that Adam's test results indicate that he believes the mother to be a more positive parent.
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> Dr. Speal also testified that these emotional problems which he defined Adam as having were due to the problem and the turmoil that has existed between the child's parents. He also agreed that the child should continue in therapy and that both parents should be in therapy and also that the therapist should be a specialist in the field of abuse.

The trial court's memorandum opinion clearly states Judge Brown's intent with respect to visitation:

> Now, visitation will resume at such time as the appropriate arrangements have been made, and the Court instructs the attorneys to make those arrangements with as much haste as possible. It's not the Court's intention to deprive Mr. Akhdary of visitation with the children, but I do feel that it should be under the conditions as set out by the Court.

The divorce judgment in this case spells out the details of the court's supervised visitation plan:

> The defendant is granted the right to visit both his children under the following circumstances and conditions and not otherwise:
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> a. The visits will be supervised.
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> b. The visits will be at a neutral place and no less than one hour.
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> c. The defendant must be in therapy with a duly qualified professional counselor/therapist who is qualified specifically to render therapy and counseling to batterers and/or persons who have abused their spouses.

> d. The plaintiff continues in her present therapy with Corliss Gober, a qualified therapist specializing in counseling and therapy for abused spouses.
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> e. Adam Akhdary continues in his therapy.
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> f. The counseling/therapy of the plaintiff and the defendant, as well as Adam, will continue indefinitely or until that person's counselor concludes and reports that the counseling/therapy of that person is no longer necessary.
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> g. The location of the visits and the frequency of the visits are to be determined and established by Adam Akhdary's therapist in consultation with the therapists for the plaintiff and the defendant.
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> h. Visits with Rachel will take place simultaneously with the visits with Adam and with respect to time and place will in all ways be the same as with respect to Adam.
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> I. The grandmother, Emily Akhdary, is permitted to visit Rachel and Adam Akhdary upon the same occasions and under the same conditions at the same time and place as the defendant.
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> j. Any questions, issues or disagreements regarding the visitation will be addressed first to the three therapists who will answer any such questions and resolve any disagreements within ten days and, if that is not done, all such matters will be brought directly to this Court.

On January 5, 1993, some 2 ½ years after the divorce, Akhdary filed his motion for visitation. Apparently, despite the court's grant of conditional supervised visitation, there had been no visitation since the divorce. The trial court received

testimony and exhibits on the motion on April 26, 1993, October 18, 1993, January 24, 1994, and November 7, 1994. Following the last hearing, the trial court announced it was denying Akhdary's motion. The court directed that Akhdary should continue to participate in a batterers' class "for at least an additional six to seven months." The court went on to order Pollard, in conjunction with certain named professionals, to start preparing the children for visitation with their father. The court indicated that following all of that, it would hold another hearing to determine if supervised visitation was then appropriate. The court's decision was designated as a final order to accommodate Akhdary in the event he decided to appeal.

In the course of his remarks, the trial judge again made clear his intent to provide for visitation:

> THE COURT: . . . It's the Court's intention -- and I want Mr. Akhdary to understand this, it's the Court's intention to re-establish a relationship with your children. And, you know, if I have erred in the past or I err in the future I'll be the first to tell you, and the Court of Appeals -- and I think both these attorneys know me well enough to know that I'm going to err on the side of caution for the children. I'm the advocate for the children.
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> MR. AKHDARY: Yes, sir. I appreciate that, sir.
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> THE COURT: But I do think that this is something that can be accomplished and I want to know and am insisting that steps be taken to eventually accomplish this goal. Is that clear?
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> MR. MOORE: Yes.

On December 13, 1994, an order was entered memorializing the trial court's pronouncements on November 7, 1994. This appeal followed.

II. *Facts*

As a result of his father's violent and abusive conduct, Adam entered psychotherapy in July, 1990. He was initially treated by Barbara P. Seals, a clinical social worker who counseled abused children. She testified that Adam told her of observing his father physically abuse his mother. He remembered a time when he saw his father point a gun at Pollard. He also told Ms. Seals that he too had been the object of his father's physical abuse. He said that his father had spanked him so hard it left whelps. On a number of occasions, according to the boy, his father hit him and said "one more time to get the demons out." Adam told Ms. Seals that he was afraid of his father.

Ms. Seals and other therapists met with Akhdary on September 23, 1992, pursuant to the direction of the divorce judgment. She testified at the April 26, 1993, hearing that she did not believe that Akhdary "had made progress in his treatment in regard to his problem of compulsive violence." According to her, it was essential that an abuser acknowledge and accept full responsibility for his conduct and that if such a person failed to do so, visitation was "possibly dangerous for a child."

Ms. Seals testified that she did not believe that Adam had suffered as a result of his separation from his father. She was opposed to visitation.

Adam's therapy was transferred to Terry Lynn Wood, a licensed clinical social worker at Ms. Seals' facility, on June 7, 1993. Ms. Wood testified at the hearing on January 24, 1994. She told the court that Adam had progressed nicely "and was a very different child" from the one she had observed in 1990 when the child was first seen by Ms. Seals. She testified that Adam was still fearful of his father and did not want to see him. She said that she did think that Adam needed to be in therapy at that time. She was also opposed to visitation and was pessimistic as to whether visitation would ever be possible. She agreed with Ms. Seals that it was essential that an abuser acknowledge responsibility for his or her abusive conduct.

Pollard testified at the hearing on January 24, 1994, as well as the hearing on November 7, 1994. At the first hearing, she agreed with Ms. Wood that Adam did not then need to be in therapy. She said that both of the children were "[d]oing great." She told the court that Rachel, who was approximately ten and a half months old when she filed for divorce, did not know who Akhdary was.

Corliss Gober, Pollard's therapist, testified at the October 18, 1993, hearing. She was opposed to even supervised visitation at that time, opining that "it could be dangerous . .

. [e]motionally to Adam." She expressed her view as to how she thought the court should proceed:

> Once Mr. Akhdary has assumed responsibility for his behavior and it has been identified and verified by his following the court order, by his receiving appropriate counseling from a person who specializes in treating batterers, such as in the PEACE Group in Nashville or the group here in Chattanooga or the one in Knoxville and recommendations from those counselors, then the judge might consider that the children start being prepared for supervised visitation.

She agreed with Ms. Seals and Ms. Wood that the "key" to appropriate visitation was whether Akhdary sincerely accepted responsibility for his abusive behavior.

Mary Kay Radpour, a licensed clinical social worker, had counseled with Akhdary since July, 1990. She testified on April 26, 1993, and again on January 24, 1994. She stated that Akhdary had acknowledged to her that he had been abusive to his wife. She told the court that he had pursued therapy with her "with great reliability" for three years before he left for duty arising out of the Gulf War, and also after his return to this country. She diagnosed him as possessing a "narcissistic disorder with paranoid features." She ascribed at least some of his conduct to the fact that "he's culturally Egyptian."[2] She pointed out that he cared "profoundly" for his children. She recommended that he be afforded supervised visitation, stressing the need of children to know their parents.

[2]Apparently, Egypt is Akhdary's native country.

Akhdary testified on January 24, 1994, and again on November 7, 1994. At the time of the former hearing, he testified that he had been involved with a batterers group in Washington, D.C., when he was there in connection with his duties related to the Gulf War; but there was nothing to substantiate this involvement. He joined such a group in Hamilton County in December, 1993. He had attended three meetings at the time of the January 24, 1994, hearing and had finished the course--a "domestic violence class"--at the time of the November 7, 1994, hearing.

Akhdary testified that he knew that he had acted improperly with respect to his former wife. He testified that he should be afforded supervised visitation.

All of the expert witnesses agreed that the children would need a period of preparation before visitation started because it had been so long since they had seen their father.

III. *Law*

We embark upon our analysis of this case mindful of the fact that trial courts are vested with wide discretion in matters of custody and visitation. "[T]he details of custody and visitation with children are peculiarly within the broad discretion of the trial judge." ***Edwards v. Edwards***, 501 S.W.2d 283, 291 (Tenn. App. 1973). *See also* ***Marmino v. Marmino***, 238 S.W.2d 105, 107 (Tenn. App. 1950); ***Grant v. Grant***, 286 S.W.2d 349, 350 (Tenn. App. 1954). Therefore, we are cautioned by

precedent not to disturb a lower court's determination on these issues unless there is a showing that the court below has abused its discretion[3]. ***Suttles v. Suttles***, 748 S.W.2d 427, 429 (Tenn. 1988). In our review of this non-jury case, we are also mindful of the fact that our appellate inquiry of this non-jury case is *de novo*; however, the record of the proceedings below comes to us accompanied by a presumption of correctness that we must honor unless we find that the evidence preponderates against the trial court's findings of fact supporting its judgment. Rule 13(d), T.R.A.P.

As a general rule, a trial court, as a part of its divorce judgment, will grant a noncustodial parent visitation with his or her minor children[4]. "[T]he right of the noncustodial parent to reasonable visitation is clearly favored." ***Suttles***, 748 S.W.2d at 429 (Tenn. 1988) (Drowota, J.). However, it is clear beyond any doubt that a noncustodial parent does not have an "inviolate right to any particular arrangement." ***Taylor v. Taylor***, 849 S.W.2d 319, 331 (Tenn. 1993) (quoting from ***Long v. Long***, 381 N.W.2d 350, 356 (Wis. 1986)). Furthermore, visitation can be severely limited or even eliminated "if there is definite

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[3]The Supreme Court, in ***Foster v. Amcon International, Inc.***, 621 S.W.2d 142, 145 (Tenn. 1981), defined "abuse of discretion" as follows:

> The term has too often implied intentional wrong, bad faith or misconduct on the part of a trial judge. In our view, "abuse of discretion" was never intended to carry such a meaning, nor to reflect upon the trial judge in any disparaging manner. To us the phrase simply meant an erroneous conclusion or judgment on the part of the trial judge--a conclusion that was clearly against logic (or reason) and not justified.

[4]Following the entry of the order appealed from in this case, the General Assembly enacted Chapter 428 of the Public Acts of 1995 addressing a noncustodial parent's "rights of visitation." Chapter 428 is now codified at T.C.A. § 36-6-301. It was effective June 12, 1995. The statute appears to be a codification of the common law.

evidence that to permit [the parent] the right would jeopardize the child, in either a physical or moral sense." ***Weaver v. Weaver***, 261 S.W.2d 145, 148 (Tenn. App. 1953); ***Suttles***, 748 S.W.2d at 429. *See also* ***D v. K***, 1995 WL 574406 (Tenn. App. September 29, 1995) (perm. app. den. by Supreme Court on February 5, 1996). Put another way, "the grant or enforcement of 'visitation' is not justified where it results in injury to rather than enhancement of the best interests of the child or children." ***Arnold v. Arnold***, 774 S.W.2d 613, 618 (Tenn. App. 1989).

In a visitation determination, as in a custody determination, a court must be guided by what is in the best interests of the child or children. As we said in the unreported case of ***Yeager v. Yeager***, 1995 WL 422470 (Tenn. App. 1995), "[t]he courts now commonly refer to their approach to custody and visitation issues as the 'best interests' analysis." 1995 WL 422470 at *4. In this analysis, "the welfare and best interests of the child are [the] primary concern, . . . and . . . the rights and wishes of the parents are secondary." *Id.* *See also* ***Neely v. Neely***, 737 S.W.2d 539, 542 (Tenn. App. 1987). The "best interests of the children" test has been described as "the polestar, the *alpha and omega*." ***Bah v. Bah***, 668 S.W.2d 663, 665 (Tenn. App. 1983) (italics in original). However, it is also clear that the "rights of the parents cannot be ignored and must be weighed in the balance when a court makes a decision that will affect the parent/child relationship." ***Neely***, 737 S.W.2d at 539; ***Pizzillo v. Pizzillo***, 884 S.W.2d 749, 755 (Tenn. App. 1994).

Generally speaking, "[a] child's interests are well-served by a custody and visitation arrangement that promotes the development of relationships with both the custodial and the noncustodial parent." ***Pizzillo***, 884 S.W.2d at 755. It is also clear visitation "should not be made to punish or reward parents." *Id*. at 757.

In ***Suttles v. Suttles***, 748 S.W.2d 427 (Tenn. 1988), the noncustodial father, who was confined in the state penitentiary serving sentences totaling 30 years, sought visitation with his son who was then five years old. In the divorce, the mother alleged a history of physical abuse at the hands of the father, including an incident when he "beat her while she held their son in her arms." *Id*. at 428. His confinement arose out of charges placed against him as a result of the following incident involving his wife and child, as described by the Supreme Court:

> On September 15, 1985, Defendant came to see Plaintiff where she was staying at a campground in Pigeon Forge and when Plaintiff's father intervened in an argument between the parties, Defendant drew a pistol and shot her father in the chest. He then abducted Plaintiff and their son in his car and led the police on a high speed chase. During the course of the chase, Defendant threatened his son with the pistol and shot at Plaintiff when she tried to protect the child. As a result of the chase, the Defendant wrecked his car, injuring both Plaintiff and their son. At some point during this incident, Defendant choked his son but was restrained by Plaintiff and the police before the child was seriously injured.

Id. Both the trial court and the Court of Appeals allowed visitation with the noncustodial father. The Supreme Court

reversed, holding that suspension of visitation was warranted. In the course of its opinion, the Supreme Court opined as follows:

> That Defendant assaulted his own child is essentially undisputed and the record sufficiently establishes that Defendant has violent propensities toward both his former wife and their child. His need for psychological counseling and treatment is apparent. While the mere fact that Defendant is presently incarcerated does not of itself preclude visitation, the combination of Defendant's incarceration, the crimes for which he is imprisoned, the age of the child, his history of violent behavior toward his son and Plaintiff, and his obvious need to deal with his violent temper make visitation inappropriate at this time.
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> . . . considering all of the circumstances in this case, we conclude that visitation should be suspended until a change of circumstances can be shown. We believe that this suspension would serve the best interests of the child. Defendant may, however, petition the trial court to modify this order upon a demonstration of changed circumstances, which would include a showing that the child had reached sufficient maturity to express his own preference voluntarily or that Defendant had been released from the penitentiary.

Id. at 429.

IV. *Analysis*

The judgment of divorce in this case set forth conditions which had to be satisfied to "trigger" the commencement of supervised visitation. That judgment was not appealed from. Therefore, its provisions were binding on the parties as a part of a final judgment. While we were not asked

to review those conditions following the divorce, we do not find them to be overly burdensome in view of the extreme nature of Akhdary's abusive treatment of Pollard and Adam during the marriage.

One of the conditions imposed by the trial court was that Akhdary involve himself in therapy with a person "*qualified specifically* to render therapy and counseling to batterers and/or persons who have abused their spouses." (Emphasis added). There was nothing in the education, training or experience, of his therapist, Ms. Radpour, to suggest that she was "qualified specifically" to render therapy to a batterer. To the extent that Akhdary relied upon his therapy with Ms. Radpour to satisfy this particular provision, he was in error. This is not to say that Ms. Radpour was not qualified to express her professional opinions in this case. She clearly was; but Akhdary's therapy with her simply did not satisfy the court's condition that therapy be rendered by one "qualified specifically" with respect to batterers.

It is true that Akhdary claimed that he participated in a batterers' group in Washington; maybe he did. However, these sessions were not specifically identified by name, faculty or otherwise, and his attendance was not substantiated beyond his own testimony; and, more importantly, there was no proof as to whether he made any progress in these sessions. The proof was deficient as to whether these sessions satisfied the court's objective in mandating therapy specifically designed for batterers.

The only real proof in the record regarding counseling for batterers came out at the hearings on January 24, 1994, and November 7, 1994. The testimony of Akhdary was that he had completed the Hamilton County "domestic violence class" as of the date of the last hearing. Judge Brown was not satisfied with the proof regarding Akhdary's participation:

> To say this report [of Akhdary's paraticipation] is very brief would be a gross understatement. Other than the fact the class dealt with domestic violence there is no explanation as to how the classes were conducted or as to whether any members of the class received individual counseling as well as group therapy.
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> Based upon the information received at our most recent hearing the domestic violence class which Mr. Akhdary attended would be of a relatively short duration. Based upon the information received I would not be inclined to grant Mr. Akhdary visitation at this time.
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> One of the bases for that is the Court's concern about the duration of this class which was supported by Ms. Ashton's testimony near the end of her testimony, and I wrote it down in quotes, "Twelve weeks is a limited period of time to accomplish the goals of the class. In the future we will be increasing the length of the course," and that's exactly what I expected when I requested or required Mr. Akhdary to attend such a class.
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> The Court will order that Mr. Akhdary continue in the batterers' class for at least an additional six to seven months. The Court will consider the 1st of June whether or not to establish a supervised visitation program with the children.

We do not believe the evidence preponderates against the trial court's determination that some of the conditions

imposed on the commencement of supervised visitation had not been satisfied. It is obvious from the record before us that the trial judge was concerned about exposing either of the children to their father until he sincerely appreciated the harm he had caused Adam by his violent conduct. This was and is a legitimate concern. There is no doubt in our mind that the trial judge is sincere in professing his intent to move the parties and their children toward visitation.

We find no abuse of discretion on the part of the trial judge. We cannot say that his decision following the last hearing in November, 1994, was contrary to the best interests of the children.

This is a sad case indeed. Akhdary was last with his children six years ago. At that time Adam was almost seven years old; Rachel was two years old. Adam is now going on 13 and Rachel will soon be eight. Rachel does not know her father; Adam's thoughts are apparently dominated by bad memories of his father. Everyone agrees that some period of preparation is necessary before supervised visitation starts. Hopefully, this preparatory work has been pursued while this appeal was pending.

Akhdary has made some effort toward complying with the court's conditions. He was obviously prevented from meeting some of the conditions for a period of time due to service in the Gulf War. He appears to be making a good faith effort; but it remains to be seen whether he is *benefiting* from his counseling with respect to his violent and abusive behavior. Hopefully, he is;

but this determination must be made by the trial judge who is in a far better position than are we to assess credibility and the proper weight to be given to the testimony of the various witnesses. It is not enough "to go through the motions." It is essential that Akhdary have a genuine and heartfelt acknowledgement of the unacceptable nature of his past violent and abusive conduct.

In view of the fact that a significant part of the children's minority, especially Adam's, has now passed, the trial court should move with all deliberate speed to determine if supervised visitation is now appropriate.

The judgment of the trial court is affirmed. This cause is remanded to the trial court for such further proceedings as are necessary, consistent with this opinion. Costs of this appeal are taxed to the appellant.

_____
Charles D. Susano, Jr., J.

CONCUR:

_____
Houston M. Goddard, P. J.

_____
Herschel P. Franks