23May23
Paula Werme

WRITTEN TESTIMONY OF PAULA WERME, WEEK FOUR
SPECIAL COMMITTEE ON THE FAMILY DIVISION OF THE CIRCUIT COURT

No one has spoken to the Article 73-A problem or open and known-to-the-court felony level financial abuse – with zero consequences. I have thought about Article 73-a over years and only come to my understanding of it over a period of years. Article 73-a threw off legislative and executive power oversight of the third branch of government that we all learned in 4th grade was the core of fundamental checks and balances essential for a functioning republic.

Here are my thoughts: The NH Bar was unified in 1968 – not by a vote of the bar members, who overwhelmingly voted against it months or only a year or two before the case was initiated, but the NH Supreme Court, who issued an opinion on a case brought by probable bar insiders. Opinion of the Justices, 109 N.H. 260 (1968) A unified bar meant that one had to be a member to practice law. (Note: current RSA 311.1 negates that, and important statute to keep on the books because so many people can't afford attorneys in the field of family law.)

One of the results was that attorneys lost their first amendment right to criticize the judiciary. There is a reason why I am the only attorney testifying against the judiciary here. It used to be against the rules of professional conduct to criticize the judiciary. I believe that was so for entirety of my legal career, but I only recently re-read the rules. Now the rule comment for Rule reads "Section (d) of the ABA Model Rule is deleted. A lawyer's individual right of free speech and assembly should not be infringed by the New Hampshire Rules of Professional Conduct when the lawyer is not representing a client."

Attorneys are the only profession in NH not regulated by the executive branch, but by a private corporation (the NH Bar Association) associated with the judicial branch. Lack of oversight by the other two branches makes it easy to hide misdeeds, bad management, and the abject incompetence of judges in the Family Division because they are decades behind in knowing the harm they are causing via peer-reviewed research in other fields. I found no evidence that the judges were reading any sort of family law journals, such as Juvenile and Family Law Journal or the Child Law Journal, Child Law Practice, let alone journals by the such names of Journal of Child and Adolescent Trauma. They are out there.

Art. 73-a states: "The chief justice of the supreme court shall be the administrative head of all the courts. He shall, with the concurrence of a majority of the supreme court justices, make rules governing the administration of all courts in the state and the practice and procedure to be followed in all such courts. The rules so promulgated shall have the force and effect of law." The effect of that amendment threw off the historically important right of the legislature to legislative branches to make changes in the rules. You can't pass legislation that changes, for instance, the rules of evidence in family law cases and make it stick. The Supreme Court could overturn that in a heartbeat. November 22, 1978

Since the passage of Article 73-A:

The Supreme Court affiliated Judicial Conduct Committee claims that the complaints in the judicial conduct committee are entirely secret unless and until they issue a public reprimand or other sanction. I think there is an argument that it violates Article 8 Right to know, but it's useless to litigate

it because the Supreme Court is the final decision maker with respect to Article 8. They are going go with with the status quo, given the chance.

The same thing applies to the court affiliated Guardian ad Litem Board, Board of Mental Health, Board of Psychologist complaints, etc. They all have similar secrecy rules. Every last "stakeholder" as the legislature calls them has no duty to be forthcoming. Even the state and federally monetarily gifted Coalition Against Domestic and Sexual Violence is outside governmental oversight, despite their source of funding.

This body assisted the courts and other stakeholders in some cases to hide their bad conduct. Legislatively entire classes of cases and pleadings are sealed by the court, such as DCYF cases and guardian ad litem reports. Since it is a first amendment issue – the deprivation of the right to know has to pass strict scrutiny. One can easily protect the identities of children with a less restrictive manner, with a law similar to a rape shield law. If challenged on the basis of the 1st Amendment and strict scrutiny, the sealing of entire classes of cases would like end. That may be next year's project for me.

The legislatively sealed records impede the ability of the legislature and the executive branch to keep an eye on what has been happening for decades. The legislature actually gave themselves an out with respect to these sealed records, but have never attempted to implement it, to my knowledge. The legislature also forgot to gift themselves or the executive branch with the power to look at sealed court case records to determine the cause of the Family Division's problems.

RSA 170-G:8, states, in relevant part that: (a) **The department shall provide access** to the case records to the following persons unless the commissioner or designee determines that the harm to the child named in the case record resulting from the disclosure outweighs the need for the disclosure presented by the person requesting access: . . .

d) Access to case records by a state official who is responsible for the provision of services to children and families, **or a legislative official who has been statutorily granted specific responsibility for oversight of enabling or appropriating legislation related to the provision of services to children and families, for the purposes of carrying out their official functions, provided that no information identifying the subject of the record shall be disclosed unless such information is essential to the performance of the official function, and each person identified in the record or the person's authorized representative has authorized such disclosure in writing.** [Emphasis added] Requiring personal authorization from each person in the record, particularly where the subject is a child, makes that authorization meaningless. Non-party children don't have the legal capacity for consent. Abusers will not consent.

Neither the legislature nor executive branch has funds such a person to keep track of them. As a result, my court audit did not include looking at one document that is sealed from the public record. Not one sealed order, GAL report, DCYF report (where I could have at least determined if they were acting as untrained an unlicensed GALs v some other reason.)

Who knows HOW DCYF is hiding the time for their social workers to be involved in custody matters, sometimes as statutorily unauthorized parties in the NH budget ? It's taxpayer fraud. The various entities owe loyalty to the court because they depend on the court for their incomes, for favorable decisions in other cases where they appear before the courts, and their budgets, not the

litigants. This legislature already got rid of GALs for people who can't afford them. Please do the right thing and dispose of them altogether.

One final note: I may have said it in previous testimony: The ACES study – the massive. lifelong harm that comes to women and children in the context of custody cases and other family law cases makes this committee the most important committee that has probably sat in this building for more than a century, if not in the history of the NH legislature.

Please know your burden is heavy here. Please continue what I perceive now as your first diligent efforts to get the entire picture. **You have to get this right, for the children now, and for generations to come. Be one of the states that makes meaningful change sooner rather than later. Allow battered women to move on with their lives, via not having to interact with their abuser for the entirety of their children's minorities. Write into law that the safety, long term health, and psychological well being of the children and battered spouses is the 1st and highest priority in custody matters. Everything else is secondary.**

Be very clear with the courts that you expect a massive cultural change in them to promote the purposes of your legislation. Give them the necessary budget resources, but hold them to account. And please support:

* **a constitutional amendment to remove Article 73-a from the NH Constitution. The courts will not be accountable unless this happens.**

* **Funds to hire someone to do what I have been doing – checking up on the courts via the legislative branch or the executive branch as you gave yourself the right to do. Change the wording of RSA 170-G:8 to not require consent for an auditor and/ or a member of the public researcher to look at sealed files, sealed GAL reports, and even (with not statutory authority) so long as no names are use.**

* **Making laws opening up professional conduct matters to public scrutiny that hold the judiciary to account.**

* **Making safety of children the 1st and highest priority in the context of custody litigation.**

* **Expanding the definition of "domestic violence" to include specifically include financial abuse and coercive control to better reflect current peer reviewed studies that certainly include those behaviors in the definition of domestic violence. The NH AG's office (and I believe they refer to police standards training), the GAL training materials, and DCYF training materials all reflect coercive control in their working definitions. That includes financial abuse.**

* **Getting rid of GALs altogether. Judges can and do make decisions about child abuse and domestic violence in the course of a DCYF trial on short time lines or over the DV issues in equally short timelines in a matter of hours. They can hear the evidence themselves. Lack of adequate training in these matters makes GALs almost useless. Their lack of in depth knowledge about domestic violence means they are subject to manipulation by the abusers and frequently make recommendations to put children with the abusers or perpetrators of domestic violence.**

* **Change the criminal law of non-payment of support (RSA 639.4) to include a provision that that victims can directly report that to police, and expect referrals for prosecution. That would take away the power of judges to simply ignore it, and take away the power of BCSS to fail to make criminal referrals. NH remains a haven for financial abusers – they get away with up to $100,000 or more of felony non-support in virtually 100% of the cases – zero consequences.**

Court time wasted on endless "review hearings" used to judge the willingness of the victims to cheerfully coparent with their children's abusers or their own batterers is meaningless.

The complex case docket is almost exclusively devoted to issues of DV and child abuse, and the decisions from that docket most frequently harm children (ACES study). Lots of cases have gone "sideways" with dockets as old as 2005 still having hearings as of 2019. Judge Lemere testified, in a very misleading statement, to in Child and Family Law, the majority of the docket being devoted to "complex financial matters." Unless she was counting past due child support and alimony (financial abuse) that the courts continue to encourage and facilitate as part of "complex" financial matters, I found on HER docket – the number was a small minority of cases.

* **CHANGE entire classes of sealed cased to protect the juveniles by the constitutionally permissible method of simply making it a crime to publish their names anywhere – press, internet, etc. to further court accountability.**

As state by James McHenry (1753-1816) "It's a republic, if you can keep it." and repeated after January 6 by Amy Klobuchar. Article 73-a was a step toward destroying that republic in NH. It's my opinion, but I have had years to ponder the question.

Paula Werme, Esq. (retired)

EXAMPLES OF BAD JUDICIAL BEHAVIOR ON CASE SUMMARIES OF JUDGE FOLEY COMPLEX CASE DOCKET

NOTE: Limited examples because of time this week.

Docket # 670-2018-DM-6

Ordering mediation without determining if domestic violence is an issue in the matter via a hearing. First appearance is watching a movie post-pandemic.

02/09/2018	**First Appearance**	
02/09/2018	Letter to Corespondent	*Index #13*
02/09/2018	Notice to Corespondent	*Index #14*
02/09/2018	Letter *corrected VS needed*	*Index #15*
02/09/2018	Order on Appointment of Mediator *both private pay*	*Index #16*

Possible violation: GAL preliminary report sealed from parties? Unclear.

01/28/2019	Guardian ad Litem Preliminary Report Party: Guardian ad Litem Mahoney Mullen, Theresa, ESQ *e-mailed to court - CONFIDENTIAL*	*Index #67*

Clearly from the rest of this case summary, financial abuse is an ongoing issue.

01/31/2020	Order (Judicial Officer: Steckowych, Kerry P) *The court declines to find the petitioner in contempt on the alimony payments. SEE ORDER FOR MORE*	*Index #126*

It may have been legitimate. I made double my part time self-employed income during the pandemic because of the federal $600 / week unemployment benefit.

Docket # 629-2018-DM-248

Case filed 6/5/2018

No proposed scheduling orders from attorneys, no scheduling order by judge.

Temporary Child support ordered a full six months after petition filed:

by The Court

12/13/2018 Uniform Support Order *Index #46*
Temporary

Temporary hearings going in 2019

04/29/2019 *CANCELED* **Further Hearing**
Further Temporary Hearing on Parenting and Possession of House

Two years to finalize the divorce. It will no doubt be litigated further because evidence of financial abuse is evident from the case summary.

Docket # 629-2017-DM-173

Filed 5/4/2017

Evidence of financial abuse on summary:

02/27/2018 Objection *Index #27*
Party: Attorney Steiner, R. James, ESQ
Verified Objection To Petitioner's Motion For Alimony

Scheduling order – a full year later.

03/01/2018 Scheduling Order *Index #33*

Temp Order and child support also ordered a full year later:

03/01/2018	Temporary Decree	*Index #35*
03/01/2018	Approved (Judicial Officer: Alfano, Michael L)	
03/01/2018	Uniform Support Order *Temporary*	*Index #36*

Temp orders didn't work for long:

04/26/2018	Motion Party: Attorney Balkus, Jennifer M., ESQ *For Immediate Further Temporary Orders And Motion For Contempt*	*Index #39*
05/03/2018	Order Issued (Judicial Officer: Alfano, Michael L)	
05/03/2018	Objection Party: Attorney Steiner, R. James, ESQ *Verified Objection To Petitioner's Motion For Further Temporary Orders And Contempt*	*Index #40*

Last entries on case summary:

07/09/2019	*CANCELED* **Final Divorce Hearing** *Day 1*
07/10/2019	*CANCELED* **Final Divorce Hearing** *Day 2*

The case was two years old, and no final decree.

Exhibit # 2

Paula Werme Note:

This document gives you an outline of tasks you need to legislatively complete to stop domestic violence in the context of custody cases in NH.

Click off this page https://barrygoldstein.net/articles/confirmed-custody-courts-fail-children for full article with references/citations.

Peer Reviewed Article on court qualified expert's web page about Family Court Problems.

(citations available as per above, but omitted)

Confirmed: Custody Courts Fail Children

This article was originally published in Family and Intimate Partner Violence Quarterly, Dr. Mo Therese Hannah, ed. and Civic Research Institute, publisher.

Custody courts have been ruining children's lives for decades---just like the Catholic Church! Increasingly, over the years, safe, protective mothers have been complaining about the widespread failure to protect their precious children. The courts have dismissed the mothers as "disgruntled litigants." Victims of domestic violence (DV) were silenced, gagged, punished, bankrupted, jailed and deprived of a relationship with the children they risked their lives to protect.

Understandably, many mothers believe this American tragedy is caused by corruption or worse, but there is a more realistic explanation. The courts developed responses to DV custody cases at a time when no research was available. The popular assumption in the

1970s was that DV was caused by mental illness, substance abuse or the actions of the victims. This led courts to turn to mental health professionals as if they were the experts on DV. Later research proved the initial assumptions were wrong, but the courts have never used research to reform their outdated and discredited practices.
Most custody cases, like any litigation, are settled more or less amicably. The problem is the 3.8% of cases that require trial and often much more. Court professionals have been taught to treat contested custody as "high conflict" by which they assume both parents are angry at each other and act out in ways that harm the children. The research is clear, however, that a large majority of contested custody cases are DV cases in which the most dangerous abusers seek custody in order to regain what they believe is their right to control their partners. These are the cases in which mothers, children and bystanders lose their lives. More often the children survive but suffer through pain and torment that often leads to shorter lives.
DV is about control, including financial control. This means that in contested cases, the abusive father usually controls most of the economic resources. Therefore, the best way for lawyers and mental health professionals to make large incomes is to support approaches that favor wealthy abusers. The pernicious Parental Alienation Syndrome (PAS) was concocted to give these professionals an argument to support abusive fathers. This started the cottage industry that has done so much to help abusers and spread misinformation in the courts. Today, judges have spent their entire careers hearing this misinformation, so it is deeply ingrained.

Gradually, as the DV movement developed, more and more research became available. The research undermines many of the original assumptions and demonstrates the harm caused by many standard practices, including relying only on mental health professionals who have limited knowledge of DV or child sexual abuse. With each new scientific study, mothers and the professionals who try to help them hoped the courts would take a fresh look at their failed practices. Each time we have been disappointed, and the tragic outcomes hurt so much more because we know they can be prevented.

Failure to Integrate Current Scientific Research

The ACE (Adverse Childhood Experiences) Studies are medical research from the Centers for Disease Control and Prevention. The Saunders Study (2012) is scientific research from the National Institute of Justice in the US Justice Department. This highly credible research goes to the essence of the best interests of children. The National Council of Juvenile and Family Court Judges seeks to train judges about this vital research. Any attempt to resolve custody cases involving DV or child abuse without this research should be understood as malpractice. And yet this is exactly what most custody courts do every day.
The first ACE Study was published in 1998. The initial purpose was to use this information to treat medical patients. In many cases, patients suffer from unexplained ailments and pain. Doctors rarely considered that childhood trauma from decades earlier could be the cause.

The ACE research demonstrates that childhood trauma often causes health problems throughout victims' lives.

Dr. Vincent Felitti, lead author of the original ACE Study, now believes that prevention is the most important use for his research. ACE is often compared to the 1964 Surgeon General's report linking cancer and smoking. Society used this knowledge in a variety of ways to prevent smoking and thus reduce cancer, heart disease and many other serious health problems.

The ACE research has the potential to provide even more benefits to society. For thousands of years society has permitted and even encouraged behavior that is now recognized as DV and child abuse. The present level of cancer, heart disease, diabetes, mental illness, substance abuse, suicide, crime and many other health and social problems is related to this long history of tolerating DV and child abuse. The exciting opportunity ACE provides is that these scourges of society can be dramatically reduced by prevention of abuse. Custody courts need to be part of the solution.

At a time when ACE says prevention of abuse is critical, the Saunders study demonstrates the widespread failure of judges, lawyers and evaluators to recognize DV and child abuse. It is difficult for custody courts to protect children when they are relying on professionals who do not know what to look for when responding to reports of DV and child abuse.

ACE Research

What Courts Are Missing

DV and child abuse are far more harmful to children than previously understood. Children exposed to ACEs will live shorter lives with increased risk of health and social problems for the rest of their lives. Most of the harm is caused not by the immediate physical injuries that courts tend to focus on but the fear and stress caused by the pattern of abuse. One-quarter of children in the United States will suffer sexual abuse before they reach the age of 18. Significantly, the ACE research used a methodology that eliminated any possibility of false reports. This is important because the myth that mothers and children frequently make false allegations is one of the biggest obstacles to preventing child sexual abuse.

Common Mistakes Caused by Ignorance of ACE

Although DV advocates have been saying for decades that physical assaults are not the most harmful part of DV, courts have continued to focus almost exclusively on physical injuries. ACE demonstrates it is living with the fear and stress caused by living with an abuser that creates most of the harm. Most contested custody cases involve at most "only" a few incidents of physical abuse. Instead abusers use a variety of other coercive and controlling tactics to remind the direct victims and the children what can happen if she doesn't obey. One

physical assault is enough to alert children of what the abuser is capable of. Victims live full time with the fear that causes stress because they never know when he will cause another incident.

Until recently, researchers believed the United States was spending $5-8 billion annually on health costs related to DV. Based on the ACE Research, we now know the full cost is $750 billion. The earlier calculations applied only to immediate physical injuries while the updated research includes all the health problems caused by living with the fear and stress.
Many custody courts place a time limit on abuse incidents so that older incidents, usually physical assaults, cannot be considered. The rationale for taking DV into consideration is the impact of such behavior on children. The passage of an arbitrary number of years is unlikely to change the fear and stress a physical assault creates. More common incidents of DV that are neither physical nor illegal remind the victims of what the abuser is capable of and so the mother and children continue to live with the fear and stress that ACE tells us causes so much harm. The time limit makes it easier for courts and abusers but not for children.

Common approaches that are inappropriate in DV cases, such as calling such cases "high conflict" and mandating co-parenting, are based on the demand that the victims just "get over it." The fear caused by DV and child abuse is viewed as an obstacle to the shared parenting arrangement courts prefer rather than a good reason to avoid a harmful arrangement. Courts have the power to force children to interact with the abuser, but they can't take away the fear and stress. This pushes children to use survival mechanisms that force the painful incidents deeper inside them. ACE tells us that eventually the harm will come out in much more dangerous forms.

High conflict approaches are not based on scientific research and so fail to consider that most contested custody cases are really about DV. High conflict approaches create a false equivalency between abusers and victims. Society tells women to leave abusers, but custody courts punish mothers for trying to minimize contact with someone who brutalized her. The only way to reduce the fear and stress caused by ACEs is to protect children from interactions that reignite the fear and stress. This can be done by forcing abusers to change their behavior or limiting contact to supervised visits. Instead, high conflict approaches pressure the victims to interact with the abuser and punish mothers for trying to protect their children.
Courts like shared parenting approaches because they view this as the best way to create compromise and settlement. Even dangerous abusers are unlikely to be awarded anything less than unsupervised visitation, which gives them incentive to demand shared parenting. Most states have laws that are supposed to bar shared parenting in DV cases. Even the research most favorable to co-parenting found it only works under the best of circumstances. Unequal power and fear of the abuser are far from the best of circumstances.
Children have a good chance to recover from exposure to ACEs if they are no longer exposed to ACEs and can access the therapy and medical treatment they need. This requires the safe

parent to have control over health decisions. Saunders found that abusers use shared parenting to block the mother's decisions. This is particularly true when mothers seek therapy for their children, because an abuser fears the child will reveal his abuse. Unfortunately, courts frequently get around legal obstacles to shared parenting and the harm it causes children by pressuring mothers to accept shared parenting with their abuser. In many cases, mothers are punished and viewed as uncooperative if they object to such a harmful arrangement.

The ACE research demonstrates the need for trauma-informed professionals in custody cases involving possible DV and/or child abuse. Instead, the courts frequently use the same small group of evaluators and other professionals that would be used in cases that do not involve abuse. These unqualified professionals routinely disbelieve or minimize true reports of abuse. This leads to harmful decisions that remove the child's last chance to overcome the harm caused by exposure to ACEs.

The ACE research demonstrates that exposure to DV and child abuse cause far more harm than previously understood. This means that when courts try to resolve custody in these cases without taking ACEs into consideration, they minimize the harm to children. States typically require courts to consider a large number of factors, and judges usually have complete discretion. The ACE research establishes that DV and child abuse are far more consequential to children than any of the other factors that courts often treat as of primary importance.

I have seen many cases in which courts treated a child's fear of the father as an obstacle that needed to be overcome rather than a warning of potential harm and danger. In many cases, the mother is blamed for her child's fear. The ACE findings tell us that it is the fear and stress from abuse that causes most of the harm. The focus should be on how to reduce rather than ignore the fear. Courts that are not informed by the ACE research have little chance to properly understand the fear caused by an abuser.

Harm from Failure to Integrate the ACE Research Findings

Some court officials may believe that the failure to integrate ACE and other vital research is neutral because it applies equally to both sides. In reality, ignorance of the ACE findings strongly benefits abusive fathers and harms protective mothers and their children. Ignorance that makes it harder to recognize abuse and easier to minimize the harm inflicted by the abuser inevitably tilts court decisions in ways that err on the side of harming children.

The failure to consider the ACE research makes it harder for courts to recognize DV, because it removes two vital tools from the courts. All of the DV tactics, and not just physical abuse, contribute to the fear and stress that causes so much harm to children. The first tool--looking at the pattern of abusive behavior —provides the most important information necessary for detecting DV. Recognizing the overall pattern of behavior – examining many incidents of

abusive behavior over the course of time--which helps establish the motives of abusers. In addition, abusive tactics persist throughout the course of litigation, which ought to convince the court that the abuser hasn't changed his ways.

The second tool for detecting DV involves recognizing the fearfulness of the victim and her children. The purpose of DV tactics is to pressure and intimidate the partner to obey the abuser. This inevitably causes fear in the mother and children; therefore, court professionals should pay attention to the level of fear they express.

One of the problems with the courts' focus on incidents rather than patterns is that a victim might strike back out of anger or frustration, or the abuser may claim she did. Often in these instances, court agents claim that the victim is the one who is abusive. However, it is mother's and children's fear of the abuser that indicates who is the perpetrator and who is the victim. The most outrageous statistic I have found related to ACE is that in the U.S, about a quarter of all children are sexually abused by the time they reach adulthood. The long-lasting sexual abuse scandals in the Catholic Church, in the Boy Scouts, at Penn State, in the family courts, at prep schools, and in many other respected institutions are the rule and not exceptions. These patterns can flourish only in systems that are fundamentally flawed.

Victims of child sexual abuse are treated differently depending on their relationship with the alleged offender. Only when the suspect is a stranger does the legal system take the assault seriously. The investigation is led by law enforcement; they seek to immediately interview the suspect and attempt to have him take a lie detector test. The purpose of the investigation is to gather evidence so they can bring criminal charges.

Most child victims are abused by someone they know, and for young children, this is likely to be a close family member, like a father or step-father. In most cases, child abuse investigations are conducted by social workers. The parents are given notice before any interview, so if they are motivated to do so, they have time to destroy any evidence and silence the child. The purpose of the investigation is reunification so evidence is not collected or preserved. If the case later becomes part of a custody dispute, the lack of evidence is treated as proof the mother coached the child. The failure to bring charges against the alleged offender is treated as proof the reports must be false.

Custody courts have a culture in which any report of child sexual abuse is viewed as suspect. As I will discuss in the section about the Saunders study, most court professionals believe in the myth that mothers frequently make false reports. Attorneys routinely discourage mothers from raising the issue or even refuse to present evidence of child sexual abuse.
Courts often make preliminary orders that serve to silence the children. The courts usually use the same evaluators and other professionals in most cases. They rarely have the specialized child sexual abuse expertise that is needed. This is the equivalent of using a

general practitioner instead of a specialist when a patient has cancer or heart disease. There are several reasons why a child sexual abuse report may be made. Most of the time it is because the report is true. The next most likely explanation is that the suspect violated the child's boundaries: the father might have slept in the same bed, laid down beside the child while putting them to bed, or engaged in some other benign act that made the child uncomfortable. In these cases, the father is completely safe and can easily be instructed to change his behavior, which would improve his relationship with the children, But, in a contentious custody case, it is easier to accuse the mother of coaching the child to make a false allegation.

Other common explanations include equivocal evidence ,a good faith report that turns out to be wrong, and the least like, which is that the mother deliberately made a false report. This occurs less than 2% of the time, but it is what the courts focus on more often than all the more likely explanations. Dismissing reports of a painful issue is the easiest thing for courts and other authorities to do, but it is why we so often fail to protect children.
The ACE research confirms what courts should already know: that cases involving DV or child abuse may involve life or death issues. As discussed later in this article, over 700 children involved in contested custody cases were murdered in the last ten years. In addition, such children die early from suicide, drug overdoses, accidents and crime. If they survive the immediate risks, they are more likely to suffer cancer, heart disease and other medical problems that reduce their life expectancy. This is caused by the fear and stress that courts fail to take seriously.

Aside from early death, children impacted by exposure to ACEs will suffer from health and social problems. The stress caused by ACEs is responsible for many common diseases and also leads to bad choices that harm their lives. The children are less likely to reach their potential and more likely to be involved in crime, substance abuse and risky sexual behavior. The stress and missed sleep undermine their attention in school and cause children to act out in ways that take time away from other students.

When courts fail to understand how children are impacted by ACEs, they issue decisions that isolate and silence children. This makes it safer for abusers to continue to harm these and other children. In many cases, children believe they are being punished for revealing their father's abuse. Frequently, the worst punishment is that they lose their mothers. They learn to never report mistreatment, even by strangers, which means the children become more vulnerable to further abuse. More generally, the children spend their childhoods in pain, fear and sadness.

Courts that fail to consider ACEs routinely deny and minimize reports of abuse. Inevitably, this leads to children not receiving the treatment they need. They are often placed with abusers

who actively oppose such treatment. The abuse becomes normalized, and the stress is left untreated, thus harming the children for the rest of their lives.

Needed Remedies: The courts' routine failure to use trauma-informed professionals in cases where children were likely exposed to multiple ACEs demonstrates that the court system is not handling abuse cases with the gravity they deserve. A mental health degree does not provide the necessary knowledge about ACEs, just as it doesn't convey the needed expertise about DV and child sexual abuse. In most cases, the children's ACE score and potential consequences are not even discussed. Trauma-informed experts know how to recognize exposure to ACEs and emphasize the treatment they need to recover.

In any case in which there is evidence or reports of DV or child abuse, it should be mandatory to calculate the children's ACE score. This is one way to make sure courts treat abuse cases more seriously. The ACE score helps courts understand the harm children have suffered and their need for treatment, ensuring that the courts pay attention to the most important issues. DV custody litigation is often the last chance to save children from the consequences of exposure to ACEs. Evaluations, recommendations, and decisions made by the courts should include a discussion of the treatment and remedies needed to reduce children's fear and stress. These are the responses needed to prevent the awful consequences that the children would otherwise endure.

In summary, the widespread failure of courts to include the ACE research in its consideration of abuse cases causes courts to minimize the harm caused by a parent's abuse. The ACE research informs us that exposure to ACEs is a matter of life or death and that the courts should treat these cases accordingly.

A lot of the mischief created by custody courts is based on the misplaced belief that children need both parents equally. Children do not need both parents equally; they need their primary attachment figure more than they need the other parent, and they need their safe parent more than the abusive one. Children do benefit from having both parents in their lives, but only if both parents engage in safe parenting. When a parent's poor parenting causes a child to live with fear and stress, that parent is causing more harm than good.

Children exposed to ACEs will need medical treatment as health problems develop, and therapy. Part of the treatment is to reduce the stress that can cause so much harm. Abusers often use shared parenting to interfere with needed treatment. Accordingly, it is critical for the safe parent to have complete control over health care.

The ACE research established that most of the harm from DV and child abuse is caused by the fear and stress these induce in the child. The selection of a custodial parent should be based on which parent is most likely to reduce the fear and stress.

Similarly, decisions about visitation should emphasize the need to reduce the child's fear and stress. This means visitation must be supervised until and unless the abuser changes his behavior. The end of the parents' relationship does not end his abuse or the fear and stress experienced by the children. The abuser should complete an accountability program and convince a judge that unsupervised visits are safe. The court should consider whether the abuser accepts sole responsibility for his abuse, understands the harm he caused, is committed to never abusing anyone again, and realizes that any further abuse could end the relationship.

The Saunders Study

What Courts Are Missing: There is now a specialized body of scientific research about DV that can be used to help courts recognize and respond to reports of DV. Present practices fail to use this research, leading directly to mistakes that place children in jeopardy. The professionals upon whom the courts rely for expertise are rarely familiar with this current research and so focus on less important issues. The courts fail to scrutinize the work of these professionals, which they need to do in order to reject recommendations that are unsupported and often contradicted by this research.

Saunders found that judges, lawyers and especially evaluators need training in specific DV topics, including screening for DV, risk assessment, post-separation violence, and the impact of DV on children. Many evaluators who claimed to conduct DV screening did so using psychological tests that provide no information about DV. Other evaluators demonstrated their lack of DV knowledge by making clear mistakes in responding to vignettes that Saunders provided as part of his study. Many court professionals discredit DV reports based on common non-probative information; they fail to look for the pattern of abuse or to consider which parent is afraid of the other.

There are several behaviors associated with greater risk of lethality, but few court professionals focus on these behaviors or conduct a risk assessment in DV custody cases. Few court professionals understand that DV is not caused by anything the victim did. Abusers often continue their abuse during litigation and are likely to abuse future partners. These concerns are rarely considered in DV custody cases. The ACE research demonstrates the impact of DV on children, but again, courts rarely focus on this vital information.

Most evaluators and other court professionals do not have the specific DV knowledge needed by custody courts. Legal and mental health degrees do not provide the DV knowledge needed to recognize the risk from DV. Workshops and trainings in DV can be helpful but do not provide the level of expertise needed. Many of the trainings relied upon by the courts are not done in a multi-disciplinary manner, do not include DV advocates, and may include misinformation about "parental alienation" and other unproven theories.

Professionals without the specific DV knowledge recommended by Saunders tend to focus on the myth that mothers frequently make false reports and on unscientific alienation theories. Deliberate false reports of abuse by mothers occur less than 2% of the time. Nevertheless, many unqualified professionals continue to rely on stereotypes and propaganda and so assume false reports are far more common than they actually are.

Parental Alienation Syndrome (PAS) was developed not on the basis of any research but rather on the personal beliefs, experiences, and biases of a psychiatrist, Dr. Richard Gardner. His beliefs included many public statements that sex between adults and children can be acceptable. His theory was created to support the cottage industry of lawyers and mental health professionals who make large incomes by supporting wealthy abusers. Because of its notoriety, PAS is often used under the guise of different names, such as "alienation" or "parental alienation."

The American Psychiatric Association rejected inclusion of bogus alienation theories from the DSM-V (Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition), despite heavy lobbying by the cottage industry, because there is no scientific basis for the theory. Some courts mistakenly consider alienation as valid because parents certainly can and do make negative remarks about the other parent. This is common sense, but it doesn't prove that alienation is caused by mental health issues or that it causes more harm than DV or child abuse. Negative comments are simply bad behavior, and courts do not need help from professionals, especially from the cottage industry, to judge this behavior. It is very common for courts to treat mothers' sincere attempts to protect their children from abuse as though such actions constitute alienation. In fact, in the majority of these cases, the father's abuse caused the alienation.

Professionals without the needed DV training who focus on myths and alienation theories tend to make recommendations that harm children. Their mistaken focus says more about their lack of qualifications than the circumstances in the case. Courts should keep in mind that the Saunders study is based on peer-reviewed scientific research and that unqualified evaluators are providing their subjective opinions unsupported by valid scientific research. DV advocates have the specific DV knowledge that courts need. This makes sense because they represent the only profession that works full time on DV issues. A big part of their job is to keep battered women and their children safe. This is also supposed to be an important component of the court's mission. Too often advocates have been discredited because "they are always against DV." Of course, this is consistent with the law and the mission of the courts. Saunders' research supports what seems obvious: that DV experts are needed to understand DV custody cases.

The specialized body of DV knowledge was not available when custody courts turned to mental health professionals as though they were experts in DV. We now know that DV is not

caused by mental illness. Over two decades after the release of the first ACE Study, and seven years after the Saunders study was published, most evaluators and other court professionals are not informed by current scientific research. They don't know about fundamental topics like DV dynamics and batterer narratives. They are also unfamiliar with child sexual abuse.

This helps to explain why Saunders found that the courts need to use a more multi-disciplinary approach. The present practices serve to deny and minimize true reports of DV and child abuse. Mental health professionals are useful when the main issue in a case is mental illness or psychology. In cases involving other issues, the courts would be better served by seeking expertise from experts in DV, child sexual abuse, medical issues, substance abuse, and other relevant topics.

There is conflicting research about the benefit of shared parenting arrangements, but there is widespread agreement by legitimate researchers. Shared parenting can only benefit children under favorable conditions that include voluntary agreement by both parents, ability to cooperate and living nearby. DV involves a fundamental imbalance of power and so co-parenting in these cases is harmful. Saunders found that abusers use joint decision-making to regain control by refusing to agree to anything the mother wants. He also found that abusers often use visitation exchanges to harass or assault the victim.
Aside from child deaths, the extreme decisions that Saunders calls "harmful outcome" cases are the most heart-breaking and destructive. These are cases where the alleged abuser wins custody and a safe, protective mother who is the primary attachment figure is limited to supervised or no visitation.

Harmful outcome cases are always wrong because the harm of denying children a normal relationship with their primary attachment figure, a harm that includes increased risk of depression, low self-esteem and suicide, is greater than any benefit the court thought it was providing. Saunders found that these mistakes are caused by the use of flawed practices such as failing to recognize abuse, relying on unscientific alienation theories, or the use of professionals unqualified for abuse cases.

Particularly disturbing are court decisions that maintain harmful outcomes despite the findings by Saunders. In one New York City Case, the initial order was created in response to a false report of abuse by the abusive father. More than 18 months later, the court has not even addressed its mistake. None of the attorneys appointed to represent the mother, a Vietnamese immigrant with limited English ability, have been willing to inform the court about Saunders' findings. Instead, at each hearing the court focuses on non-probative issues like the mother's difficulty with various professionals or her being late for meetings. And so, all this time a young boy is deprived of a normal relationship with his primary parent.

Closely related to the last example is a finding by Saunders that courts focus on a mother's anger and emotion all out of proportion to what it says about her parenting. This is based on the stereotype of the scorned or angry woman. In any other type of litigation, the father's reliance on the mother for most of the child care would be understood as an admission she is a good mother. She did not become unfit because she decided to leave the relationship or report his abuse.

One of the most surprising findings in Saunders was that social workers tend to make better custody recommendations in DV cases than do psychologists. One reason is that psychologists focus on psychological tests that were neither designed nor normed for the populations seen in family court. These tests tell the court nothing about DV but are often used to pathologize the victim. The reliance on these tests leads to mistaken assumptions that if the father has no mental illness, and the children seem to be doing well, any abuse report must be false. But DV is not caused by mental illness, and children use a variety of defense mechanisms in response to trauma; therefore, to outsiders, they may appear to be doing well.

Common Mistakes from Ignorance of Saunders: Mental health professionals relied on by the courts rarely have the knowledge recommended by Saunders that is necessary to recognize and respond to DV. They often dismiss true reports of abuse because they don't know what to look for. In other cases, they focus on less important issues because they don't understand the importance of the abuse dynamics in the family. This creates the worst possible scenario, because judges believe they are receiving expert advice about the abuse when the issue is actually being ignored, misunderstood or minimized. And the mistakes all tip the courts to err on the side of posing a risk to children.

Custody courts desperately need the specialized knowledge now available about DV and child sexual abuse. We know this because of the frequency with which courts disbelieve or minimize abuse reports. The courts could access the necessary specialized knowledge by reading the scientific research or by learning from DV and child sexual abuse experts serving as trainers or expert witnesses.

Unfortunately, most of the training is provided by other judges or mental health professionals. Any experts other than the usual mental health professionals who testify regularly in such cases are treated as suspect. A mental health degree that included no exposure to information about DV or child sexual abuse is the focus of any discussion of credentials. In other words, courts routinely fail to consider that someone qualified in psychology and mental illness does not necessarily have expertise in DV or child sexual abuse.
The courts have continued to impose harmful outcome decisions on children long after the Saunders Study found they are always wrong and based on flawed practices. This demonstrates the widespread failure of court professionals to keep abreast of current

scientific research. It also demonstrates that courts routinely fail to compare the benefits and risks of different custody and visitation arrangements. They are not comparing the certain and severe harm of denying children a normal relationship with their primary attachment figure with whatever benefit they want to achieve. The standard practice of relying on subjective opinions unsupported by good research contributes to this mistake.

In DV cases, if the abuser will receive unsupervised visitation, the best approach is parallel parenting. The children have witnessed their father's abuse and are often frightened when their parents are together. Parallel parenting reduces communication to absolute necessary situations. Abusers do not co-parent; they counter-parent. It is unsafe and unhealthy to allow shared parenting when there is a history of DV and one parent is afraid of the other.
Mental health professionals often promote shared parenting in inappropriate cases because it requires more paid work for them or their colleagues. Inevitably they are pressuring the victim to cooperate and asking the mother and children to push their fear deep inside themselves where it might cause greater harm later on. A better practice is to pressure the abuser to change his behavior and to focus on how to reduce the fear and stress he caused. Shared parenting does just the opposite.

Saunders found that court professionals need training in screening for DV. They need to avoid discrediting abuse reports based on non-probative information. Common examples include the mother returning to her abuser, failing to follow-up with a petition for a restraining order, or lacks a police or hospital report. These safety-seeking responses are common among survivors. Another typical scenario is the children showing no fear when professionals observe them interacting with an alleged abuser. The children understand that he won't hurt them with someone present, so they feel free to play with a father whom they still love. Professionals without the needed expertise routinely discredit true reports of abuse for the kind of non-probative factors described above. DV experts would be looking for a pattern of abuse (not just physical assaults) and focusing on which parent is afraid of the other. Judges almost never discredit an evaluation for focusing on non-probative issues and failing to use best practices to recognize DV and child sexual abuse.

Saunders recommended court professionals learn about risk assessment. This ought to be mandatory if the courts want to keep children safe.

Attempted strangulation, hitting a woman while pregnant, hurting animals, forced or pressured sex; threats of murder, suicide or kidnapping, a belief she has no right to leave, and access to guns are common factors associated with a higher risk of lethality. Law enforcement regularly uses this information, but courts charged with protecting kids do not.

Many inadequately trained court professionals assume the end of the relationship is also the end of the risk. In reality, leaving is the most dangerous time for women. At least 45% of women killed in DV homicides are killed after they leave. Most of the contested custody cases

involve the worst abusers who are using custody to regain control over their victim. Courts rarely question the father's motive, and they usually fail to focus on evidence in plain sight that he is trying to pressure her to return or punish her for leaving.

There is nothing the mother did or could do to force her partner to abuse her. His actions are based on his beliefs and sense of entitlement. This means that even if he never hurts the mother again, he will abuse future partners. The children who have been exposed to ACEs and are living with the fear and stress that cause so much harm will be exposed to more abuse and so cannot heal. This is an important issue in almost every DV custody case but is rarely discussed.

In the broken system, I have actually seen court professionals pressure children to get over their fear or even blame mothers for alienation because the father's abuse made a child afraid of him. The fear of mothers and children is viewed as an obstacle to shared parenting, but it is actually a warning about an underlying abuse problem that must be dealt with. The fear of a parent or child is an important piece of evidence that would help courts understand the family dynamics if only the professionals understood its meaning.

Like the ACE research, Saunders' focuses on the importance of the impact of DV on children. The consequences literally destroy children's lives. This means that DV and child abuse go to the essence of the best interests of a child. Unfortunately, most court professionals don't have the needed training so they focus on less consequential issues. In some cases, the courts actually go out of their way to avoid hearing evidence about ACE and Saunders. This inertia and defensiveness routinely hurt children.

Judges and other court professionals have constantly heard that children do better with both parents in their lives. This is true in the vast majority of cases in which both parents love their children and engage in safe parenting. Children are harmed by losing one of their parents, but they are hurt far more when one of the parents continues to be abusive. This is why Saunders determined that professionals need training about the impact of DV on children. The health and safety of children must have a higher priority than anything else, including maintaining a relationship with a parent who causes more harm than good.

Harm from Failing to Integrate the Saunders Findings: Saunders found that professionals without the needed DV knowledge tend to focus on the myth that mothers frequently make false reports of abuse and rely on unscientific alienation theories. The bogus alienation theories encourage ignorant professionals to believe the destructive myth. Knowledge of Saunders would prevent courts from disbelieving true reports of abuse, and this will improve courts' ability to protect children.

Courts repeatedly place children at risk because they are relying on professionals that don't have the necessary knowledge of DV. This mistake leads courts to disbelieve true reports and minimize the harm from abuse. The lack of risk assessment means the courts are not even trying to guard against potential lethality. The deaths and health problems suffered by children involved in contested custody are directly related to the failure to use current research like Saunders.

Under present court practices, concerns from protective parents that the other parent presents a risk to the child are treated as an obstacle to the preferred shared parent arrangement. Courts routinely fail to consider research that demonstrates the full risk to children. The ACE research states that the danger is greater than previously understood, but most courts respond to DV cases without the education ACE provides.
The benefit of having both parents in children's lives is exaggerated because the courts are unaware of the full risk abusive parents cause. Evaluators fail to weigh the risks and benefits, so keeping both parents involved is treated as the main objective rather than a means to benefit children when a parent is safe. Ignorance of the risks always tilts the court toward keeping abusive fathers in children's lives and against protecting children from real dangers. Evaluators and other court professionals who are unfamiliar with the specialized body of DV research spend their careers spreading misinformation. Judges repeatedly hear this misinformation-- first as lawyers, and later as judges. Few DV trainings include experts in DV and child sexual abuse, and in too many cases, judges refuse to pay attention on the rare occasions they receive accurate information.

The myth that mothers frequently make false reports of abuse is based on stereotypes. This lie is promoted by the family court cottage industry and the abusers they help. This misinformation thrives in an arena where ignorance of credible scientific research is routinely tolerated. The myth inevitably encourages courts to disbelieve true reports of abuse, and this undermines the ability to protect children.

Unscientific alienation theories were concocted to help abusers distract attention from their abuse so that they can win their custody cases. The research and every legitimate professional organization have rejected the bogus theories . The alienation theories widely used in family courts are not included in the DSM-V, which is the compendium of all valid mental health diagnoses. The court system continues to embarrass and discredit itself by treating these theories as if they had any validity and in doing so, they are destroying children's lives.

Needed Reforms:

Courts must start using a multi-disciplinary approach. Instead of automatically using the usual evaluators, judges should consider what type of expertise is needed. If there are significant

issues involving mental illness and DV, it may be useful to use more than one expert. DV and child sexual abuse involve a specialized body of knowledge, and courts should seek experts who focus mainly or exclusively on abuse when that is a critical issue in the case. Similarly, courts should use a multi-disciplinary approach when planning trainings for judges and other professionals.

The Saunders study makes clear that professionals without specific DV knowledge are not qualified to respond to abuse cases. Judges need to inquire about this knowledge before appointing an evaluator, GAL or other neutral professional. Judges should review reports and recommendations to determine if the professional demonstrates expertise in the subjects Saunders recommends. Without this knowledge, any reports should be discredited and the recommendations ignored.

Courts must eliminate harmful outcome cases because they are wrong; they demonstrate flawed practices, and worst of all, they harm children. These are the cases that create a strong appearance of corruption and undermine the reputation of the court. In Dutchess County, New York, these bad practices led abused women to stop using the courts, resulting in a series of DV homicides.

The Stop Abuse Campaign sent a letter to the National Council of Juvenile and Family Court Judges that provided research and media investigations that conclusively proved that the courts are getting a high percentage of abuse cases wrong. The National Council is one of the best judicial organizations and agreed with our findings. We conducted a series of conference calls to discuss improved training and needed reforms. They warned us that many judges will not pay proper attention to trainings unless they involve other judges. The National Council includes some of the best judges for DV issues, but as Saunders demonstrates, judges need a multi-disciplinary approach. Accordingly, it is important that judges become open to learning from other professionals besides judges.

Frequent Catastrophic Mistakes

Over 700 Children Involved in Contested Custody Have Been Murdered in the Last Ten Years:

Most of these murders have been committed by abusive fathers. Courts rarely learn from current research, so they are unaware that most contested custody cases involve the most dangerous abusers who believe their female partner has no right to leave. These are the cases that lead to murder or other catastrophes, but courts don't guard against that risk because they don't understand the fundamental nature of these cases.

In a California case, Katie Tagle told the judge that the father had threatened to kill the baby. In the transcript, the judge repeatedly states that he thinks the mother is lying and therefore

allowed the father access. After the murder, the judge expressed his sincere sorrow but said there was nothing he could have done differently based on what he knew. In a sense, he is right, because as long as he doesn't use the research provided by Saunders and relies on the myth that mothers frequently make false reports, he, and more generally the courts, cannot keep children involved in DV custody cases safe.

In Pennsylvania, a judge used the high-conflict perspective by treating a safe, protective mother as being as responsible for the custody dispute as was the abusive father. The father used the access provided by the court to kill seven-year-old Kayden Mancuso. He left a note on the child's body saying that this is what the mother deserved. This is exactly the motive for abusive fathers that use custody to regain control. Even after the murder and the note, the judge stubbornly insisted that both parents were responsible for what happened.

In many cases like those described above, the court provided the access that the fathers needed to kill their children. By minimizing abuse, failing to use the ACE findings, and disbelieving true abuse reports due to ignorance of the Saunders and Bala research, courts routinely fail to recognize the danger. A court system that fails to err on the side of safety errs on the side of child murders.

The myth that mothers frequently make false reports is a killer. The Tagle case illustrates what can happen when court professionals rely on the myth instead of on the evidence. The Meier Study discussed below demonstrates the frequency with which abuse reports are disbelieved. The myth helps keep abusive fathers in children's lives; at least while they have lives.

Bartlow Study Explains Why Courts Fail to Reform Dangerous Practices

The Bartlow Study sought to follow-up on news stories about 175 child murders involving contested custody cases over a two-year period. Dr. Bartlow and her students interviewed judges and court administrators in the communities where the tragedies occurred. The judges tended to be those who were most interested and knowledgeable about DV, which is probably why they agreed to participate. They provided thoughtful and illuminating discussions about DV custody cases.

Context and patterns are important to understanding DV, but court professionals are trained to take each case and each incident separately. This discrepancy is likely one of the reasons for the courts' poor response to abuse cases. The pattern and frequency of child murders in contested custody cases was unknown until the Dastardly Dads blog and the Center for Judicial Excellence started compiling information about these tragedies.

The courts have made no effort to keep records of child murders or other obvious tragedies that their decisions have enabled. If courts, and perhaps more importantly, the public knew

the frequency with which court decisions led to children's deaths, reforms would be demanded. Instead, judges have reacted defensively to these tragedies and dismissed the murders as the exception.

Dr. Bartlow asked the court leaders she interviewed what reforms had been adopted in response to the tragedies in their community. The shocking answer-- that no reforms had been made-- illustrates the problem with a court system that has no ability to spot the patterns of dangerous mistakes and deaths. The child murders in the Tagle and Mancuso cases illustrate the problem where the courts respond defensively even after an unbearable tragedy. Consumer panels automatically review child deaths caused by consumer products, but courts have no process to study the mistakes that cost children their lives or how to improve practices to better protect children. This means preventable murders will continue until the legislatures intervene. And the same mistakes and outdated practices that immediately lead to child murders more often result in a childhood of abuse, fear and stress that leads to the awful consequences described in the ACE studies. There is no response or explanation for why courts fail to integrate highly credible scientific research that would prevent most of these tragedies, because the courts can't even admit there is a problem.

58,000 children sent for custody or unprotected visitation every year

A study led by Dr. Joyanna Silberg for the Leadership Council provides the best estimate of the number of children sent for custody or visitation with dangerous abusers. The failure to integrate vital research like ACE and Saunders explains why courts frequently fail to protect children. All of the mistakes tilt the courts towards placing children in jeopardy.
Strong anecdotal evidence indicates that the excessive use of shared parenting frequently leads to preventable deaths. What possible reality-based argument could justify the use of shared parenting in DV cases? Even if the allegation of abuse is false, the fact that one parent would accuse the other of DV demonstrates they cannot cooperate
The original campaign for shared parenting was made in total good faith and was never intended for DV cases. The cottage industry and the abuser groups they work with have aggressively promoted shared parenting in courts and legislatures. The fact that co-parenting is routinely discussed and used in DV cases provides a strong confirmation of the failure of courts to protect battered mothers and their children.

What isn't routinely discussed is the frequency that shared parenting in DV cases leads to early deaths of children and others. In many cases the required access leads to the murder of mothers, children and bystanders. More commonly children forced to live with continued fear and stress lose their lives from suicide, drug overdoses and other harmful choices. Even more common, according to the ACE research, are deaths from a variety of illnesses particularly related to the stress the court failed to address.

85% of Child Sexual Abuse Reports Result in Custody to the Alleged Abuser:

Research like Saunders and Bala tell us that deliberate false abuse reports are rare. This means that in a large majority of sexual abuse cases, the courts are sending children to live with their rapist or abuser. The children are likely to suffer more abuse and will be silenced because they are under the control of the abuser. This saves courts from more reports of abuse but prevents children from protecting themselves. These bad decisions also mean children will be denied the therapy and treatment they desperately need.

Most lawyers do not know the statistics, but they know mothers who report sex abuse usually lose custody and are severely punished. Protective mothers often complain that their attorneys refuse to present evidence of child sexual abuse. This means courts never have an opportunity to protect child sexual abuse victims. The retaliation and punitive practices employed by courts prevent them from detecting possible sexual abuse.

Child sexual abuse is a painful and embarrassing subject. Experts know that it takes time to develop a trusting relationship before children are ready to discuss such a sensitive issue. Play therapy is often the best approach and has the benefit of eliminating the issue of coaching, because through play, children reveal whatever is bothering them without consciously doing so. Reports of sexual abuse are often discredited for non-probative reasons, such as a child using a bland tone after repeatedly telling the story, or the child being unafraid of the alleged abuser when witnesses are present.

These are among the many common mistakes of which the "experts" used by the courts remain unaware. As Saunders' study teaches us, inadequately trained professionals tend to focus on the myth that mothers frequently make false reports. Bogus alienation theories were concocted based on the false belief that child sexual abuse is not harmful and that most reports are false. Professionals who are unqualified to work with sexual abuse cases contribute to the courts judging such a high percentage of such cases wrongly.

More Evidence Undermines Status Quo

Meier Study Reviewed Published Decisions Involving Claims of DV, Child Abuse and Alienation

No one study will prove or disprove the effectiveness of present practices used in responding to DV custody cases. Instead, courts and researchers need to put together information from credible scientific research and from reports about child murders to determine whether the courts are adequately protecting children under their control.

Professor Joan Meier and her colleagues worked under a grant from the National Institute of Justice. The complete study reviewed over 4000 published cases that involved DV, child abuse and alienation. This research comes from a highly credible source and so is worthy of serious consideration.

The Meier study determined the frequency with which courts transferred custody from mothers to fathers when the mothers accused the fathers of abuse. While the number of fathers starting out with custody was quite small, the study found that, in comparison with fathers' custody losses, women lost custody at higher rates when they alleged abuse. The study does not claim to prove whether the present practices are effective. Comparing the frequency with which mothers and fathers lose custody in combination with other research about the frequency of true reports offers important information about the status of present court practices. The Meier research also provides information about related topics, such as gender bias, that might help explain the results.

One of the judges interviewed for the Bartlow study stated that she believes some of her colleagues bend over backwards to keep fathers in children's lives because so many other fathers abandon their children. This is probably one of the reasons for the continued gender bias against mothers seen in custody courts. This is not a new problem. Starting in the 1980s, court-sponsored gender bias committees using a variety of approaches found widespread gender bias especially against women litigants.

The courts have done little to overcome gender bias, and the Meier study confirms that it is still a serious problem. Professor Meier discovered that when courts find that a mother has committed alienation, it significantly helps the father, but when courts find the father has committed alienation, this doesn't affect the outcome. This appears to make the continued use of alienation theories a violation of equal protection and due process at least until it can be considered without the common bias against mothers. PAS and subsequent alienation theories were based on sexist stereotypes of the scorned or angry woman. It was based on the myth that women frequently make false reports of abuse Ironically, the assumption has been that mothers make false reports of abuse to gain an advantage in custody litigation, but the findings in Meier and elsewhere confirm that alleging abuse, especially child sexual abuse, make mothers' risks of losing custody skyrocket.
The Meier Study confirms the enormous influence that alienation theories have in DV custody cases. I find it troubling that a theory based on the belief that sex between adults and children can be acceptable and used to help abusive fathers gain custody would have more influence with the courts than the ACE research from the CDC and the Saunders study from the US Justice Department. This seems incompatible with custody courts' denial of serious problems with their response to abuse cases.

Professionals would need an understanding of the basis for any alienation finding in order to analyze the validity of the outcome. This is problematic because alienation has no universal definition or any generally accepted method for evaluation or diagnosis. There are no standards for evidence necessary to believe alienation claims. The Meier study did not attempt to assess the validity of alienation claims in the cases in its database; indeed, many

court opinions do not explain their basis for such findings. It is likely that some parents say things to the children which are derogatory about the other parent; however, this is a far cry from the leap to treating such comments as a form of severe child abuse warranting removal of custody. But experience in these cases teaches that many alienation findings are based on the fact that a child is afraid or doesn't want a relationship with a parent, feelings which routinely stem from other causes. Yet alienation theorists treat every case of a child who dislikes a non-custodial father as alienation. A finding of so-called alienation, based on an unsupported claim or supposition from the "alienated" parent, without knowledge of concrete alienating behaviors and without ruling out of the estranged parent as the cause of his own alienation from his child, should be considered suspect.

There is no valid research to support the idea that alienation is caused by mental illness (as opposed to bad behavior), which is why bogus alienation theories were not included in the DSM-V. Accordingly, courts' reliance on mental health professionals in this regard should be suspect. In fact, there is no research establishing the harm caused by alienation because there is no standard definition nor proof of harm.

We know that exposure to DV and child abuse often leads to illnesses that shorten children's lives, based on the ACE research. Saunders found that harmful outcome cases are always wrong because the harm from denying children a normal relationship with their primary attachment figure is greater than whatever benefit the court thought it was creating by separating children from the safe, protective mother. This is based on attachment research stating that children suffer increased risk of depression, low self-esteem and suicide when denied a normal relationship with their primary attachment figure.

It is troubling that courts routinely assume that alienation must be more harmful than separation from the primary parent based on subjective opinions that have no basis in scientific research. There is plentiful anecdotal evidence that alleged abusers given custody based on alienation claims use that power to destroy the child's relationship with the mother. In the notorious Shockome case, the NY judge took custody away from a mother who was the primary caretaking parent. She had been named Dutchess County Mother-of-the-Year because of her outstanding parenting skills. Nevertheless, the court granted custody to the alleged abuser based on claims of alienation. The so-called alienation included the mother telling the children to eat healthy foods, dress appropriately for the weather, and avoid adult-oriented programs. This was considered alienation because the father did not use these good parenting practices. The father was allowed to move to Texas, and the mother was allowed almost no contact with the children. When. the Texas court finally obtained jurisdiction, it sought to restore custody to the mother. They scheduled therapy between the mother and children, but by that time the father had so destroyed the relationship that it could not be salvaged.

The Meier study found that courts are crediting only 41% of mothers' abuse allegations when fathers do not claim alienation. If alienation is alleged, the mothers are believed only 23% of the time. For child sexual abuse reports, mothers are believed 15% of the time in non-alienation cases but only 2% of the time (1 out of 51) when fathers cross-claim alienation. In other words, charges of alienation against protective mothers very often lead to their losing custody of their children.

The same study found that mothers lose custody 26% of the time when no alienation is claimed; 44% of the time when alienation is claimed and 73% of the time when courts credit alienation claims against them. Mothers lose custody 28% of the time when they raise concerns about child sexual abuse. This increases to 58% if the father alleges alienation, and to 100% if the court credits the alienation claim.

Extant research is clear that domestic violence and child abuse are far more consequential to children than is a child's feeling of alienation from an abusive parent. The harm from alienation is unproven, since there is no standard definition for alienation. The ACE research establishes that exposure to DV or child abuse shortens children's lives and causes a lifetime of health and social problems. The Meier study found that when courts credit both a mother's claim of abuse and a father's claim of alienation, mothers still lose custody in 43% of the cases.

This exposes the common court failure of minimizing the significance of DV and child abuse while allowing itself to be manipulated by a cottage industry that makes large incomes promoting an unscientific theory. These professionals are laughing all the way to the bank while the children cry themselves to sleep.

I have heard many judges and evaluators suggest they are being fair because they favor mothers and fathers about an equal amount of the time. This fails to consider some important factors about the context. In our still sexist-society, mothers continue to provide most of the child care. Further, children suffer substantial harm from being separated from their primary attachment figure, who is usually the mother.

Other research demonstrates that mothers make deliberate false reports of abuse less than 2% of the time; fathers, on the other hand, are 16 times more likely to make deliberate false reports. The Saunders' study found that evaluators and other professionals without specific DV knowledge tend to believe in the myth that mothers frequently make false reports. This means that courts are more likely to believe fathers over mothers than would be justified by the evidence.

Child abuse is different than DV because the mother would always be present when the father abuses her. For child abuse the mother often has to rely on the child's reports or

behavior. This makes it more likely there could be a good faith misunderstanding and there might be inadequate evidence available.

The Meier Study could not and did not seek to prove that court findings of fact were wrong; it merely recounts the courts decisions in abuse cases Court defenders may argue that believing abuse claims less than half the time is appropriate because abuse claims are often false or unproven. But consideration of the context of the outcomes and credible scientific research demonstrate that the decisions are strongly tilted in favor of abusive fathers and thus pose risks to children.

Based on the Bala Study, one would expect mothers' reports of child abuse would be valid about 98% of the time. Other studies might predict a slightly reduced percentage of true reports, but this is in the context of many professionals believing the myth and so overestimating the frequency of false reports. There could be cases in which the evidence is inadequate even if the report is true. Many protective mothers cannot afford an attorney or rely on attorneys who do not know how to present abuse cases. This could result in cases where a court cannot find in a mother's favor. There is, however, no valid justification for reducing the expected 98% valid reports of abuse to 41%.

Claims of alienation have become a standard abuser legal tactic. Father's rights groups promote this unscientific theory; lawyers encourage abusers to use it, and the cottage industry of mental health professionals make large incomes by supporting this tactic. How can fathers prove that mothers are engaging in alienating behavior when they are separated from the mother and so have no personal knowledge of what she is saying to the children?
With most judges, lawyers and evaluators having inadequate DV knowledge and therefore relying on myths and unscientific alienation theories, it is reasonable to believe that these mistaken beliefs contribute to the failure of courts to recognize true reports of abuse, especially when fathers claim alienation. Again, there is no valid justification to go from the likely 98% true reports to the 23% credited by courts when fathers use this standard abuser tactic.
As discussed earlier, the response of society and especially the courts to reports of child sexual abuse are particularly problematic. The Bala study was based on reports of child sexual abuse. It is fair to say that there are many good reasons why child sexual abuse would be hard to prove. It is also possible that a child's behavior or statements might be misunderstood. At the same time, we know child sexual abuse is far more common than we would like to believe. ACE research tells us that one-quarter of U.S. children are sexually abused. Presumably it would be much more likely that abuse reports would come from actual victims rather than pretenders. Accordingly, the idea that only 15% of all reports, and 2% of reports when fathers claim alienation, is true is patently absurd.

Context is critical to understanding DV and is very helpful in understanding the court decisions on custody. The Meier study did not look at prior child care arrangements and probably could not have done so because this is rarely the focus of court opinions. In a large majority of the cases reviewed in Meier, it's reasonable to assume that the mother was probably the primary attachment figure and plausible that the father wanted or even demanded that she provide most of the child care.

There are substantial risks associated with separating children from their primary attachment figure including depression, low self-esteem, and suicide. The fact that a mother provided most of the child care usually means she is the more skilled and experienced parent. Presumably, loving fathers would not want their children cared for by an unfit mother, so the parents' prior arrangements demonstrate that, before they were in an adversarial position, the father believed that she was a fit parent. Courts treat contesting parents equally, but this context demonstrates they are not equal as far as child care experience or attachment; thus, there is good reason to favor the primary parent, whom the father implicitly admitted is a good mother.

Meier found that when mothers raise abuse issues and there is no alienation claim by the father, the mothers lose custody 26% of the time. The courts might say this is favoring mothers because they are keeping the children ¾ of the time, but with all the factors favoring the mother, she should retain custody in almost all the cases.

When fathers use their standard alienation tactic, mothers lose custody in 44% of the cases. Based on Bala, fathers in contested custody are 16 times more likely than mothers to make false reports- so the mothers' abuse claims are highly likely to be true but the fathers' alienation claims much less so. Many of the alienation claims are likely based on children's justified fear or anger toward the father, rather than actual alienating behavior on the part of the mother.

What is the harm of separating a child from their primary attachment figure, in comparison with the harm posed by alienation of the child from the non-primary parent? The importance of primary attachment is derived from well-respected research on child development that is applied in many areas, aside from child custody. There is no dispute that being separated from their primary parent creates serious risks for children. Alienation theories are highly controversial and have been rejected for inclusion in the DSM-V because of a lack of scientific support. There is no valid research about the harm caused by alienation, in part because there isn't even universal agreement on a definition for alienation.

Research that claims great harm from alienation includes harm that came from DV, child abuse and the breakup of the family. Children in intact families often witness parents denigrating each other, but this doesn't seem to have a long-term harmful impact. I am not

saying alienation is benign; my concern is that courts are assuming great harm based on speculation and familiarity with a bogus theory. Saunders found professionals without the needed DV knowledge tend to focus on unscientific alienation theories.

As mentioned earlier, there seems to be a pattern of courts giving custody to alleged abusers based on the belief the father will promote the relationship with the mother. However, once he has control, he does just the opposite. This is to be expected, as The Batterer as Parent found that all DV abusers engage in harmful parenting practices that include undermining the relationship with the mother. Furthermore, courts could address the alienation issue without separating children from their primary attachment figure.

Accordingly, Meier's findings – that when mothers report abuse and fathers claim alienation, mothers lose custody 44% of the time; and when the court believes the alienation claim mothers lose custody 73% of the time --reflect practices that cannot be in the best interests of the children. These decisions are based on believing dubious claims of alienation and assuming it has far more significance than what is supported by any valid research. Essentially what is happening is that courts fail to differentiate between subjective and objective opinions. Without skepticism, courts accept personal opinions from cottage industry professionals that are motivated by financial incentives and are masked as scientific, but are actually biased in favor of abusive fathers.

The failed response to child sexual abuse is strongly supported by the myth that mothers and children frequently make false reports. Saunders found that inadequately trained professionals focus on this myth. The failure to prove sexual abuse can be caused by inadequate evidence, the difficulty in proving abuse of young children, a lack of physical evidence, or a good faith report based on misunderstanding the child's statements or behavior. Nevertheless, the failure to prove the report, or worse-- the failure to believe a true report--routinely results in fit mothers losing custody.

This result means that if the report was true, the child will be silenced and never receive the therapy needed. When older, the child will be at increased risk of depression, low self-esteem, and suicide. The child will believe they were punished for making the report, leading them to ensure they never do so again and thus leave them more vulnerable to future sexual assaults. In their desire to punish mothers for raising the issue of sexual abuse, the courts rarely consider the serious long-term consequences. Learning from Bad Decisions and Tragic Outcomes

A Day in the Life of Ivan Denisovich is a classic book by Alexander Solzhenitsyn. It tells the story of one day in a Soviet Union forced labor camp. The descriptions provided are of the most awful day imaginable. The power of the story is that the author keeps telling us that he is describing one of the better days.

For whatever reason, the court system has yet to update beliefs and practices stemming from the 1970s. It has failed to integrate current scientific research or respond to the many tragedies that their outdated and discredited practices have caused. If watching innocent young children lose their lives because of court decisions fails to cause court officials to reexamine their practices, what will?

The Bartlow study interviewed the judges and court administrators with the most training and knowledge about DV. These are the court leaders whom one would expect to respond appropriately when children lose their lives due to bad practices.

So, what does it tell us when the very best court officials dismissed a child murder in their community as though it were an exception? This speaks volumes about the culture in the court system, its failure to look at patterns and its presumption that if a court makes a decision, it must be right. Even a child's funeral does not spark curiosity about whether there could be better practices to protect children.

The Pennsylvania judge who made the bad decision that led to the murder of Kayden Mancuso had no background in DV or family law. He believed in treating cases as high conflict rather than applying the research establishing that most contested custody cases involve abusive fathers motivated to hurt the mother, even if in doing so he harms the children.

The killer left a note on Kayden's lifeless body telling the world his motive. He said that the murder would cause the mother to suffer. Unbelievably, the judge continued to blame both parents AFTER the murder and the father's note. Courts are routinely creating a false equivalency between mothers trying to escape a father's abuse who may be legitimately angry at the harm he has done, with the father who is using the children and custody only to hurt his adult victim. Why do courts continue to use the same practices for cases involving two safe parents as they use for abuse cases that are often a matter of life and death? Duchess County, New York is a conservative-Republican community. There is no constituency for attacking the courts. When the county suffered a series of DV homicides, the county legislature asked a citizen's committee that included professionals that work on DV issues to investigate the county response to DV. The committee did extensive research and produced a lengthy report. There were many flawed practices the contributed to the failed DV response. The committee found that one of the most serious problems in the county was the courts' response to DV. The courts, especially the custody courts, were ignorant about DV and biased in favor of abusive fathers. This discouraged battered women from using the courts for protection, because their flawed practices made women less safe. The committee found the courts' practices contributed to the series of DV homicides, but no reforms have come from the findings.

The ACE research found that exposure to DV and child abuse is far more harmful than previously understood and it is the fear and stress that cause most of the health and social problems. The Saunders study found that most judges, lawyers and evaluators do not have the specific DV knowledge they need. Those without this understanding tend to make decisions that place children in jeopardy.

ACE is medical research from the CDC, and the Saunders study comes out of the National Institute of Justice in the US Justice Department. In other words, this is peer-reviewed, highly credible research that goes to the essence of the best interests of children in custody cases involving abuse. How can court officials allow judges to make life and death decisions without this vital information? Even worse, some judges actually refuse to listen to this research when it is offered by one of the parties.

The new Meier research demonstrates that courts believe mothers' abuse reports far less than good scientific research would predict. Courts also remove children from mothers' custody far more often than the research would support. Court defenders would like to believe these decisions represent fair outcomes. The courts' widespread failure to integrate current scientific research, use a multi-disciplinary approach, or consider needed reforms in the face of catastrophic tragedies undermines any belief that the courts' decisions could be justified. Meier's research demonstrates the enormous influence that alienation theories have wielded over DV custody cases How can a theory that was never based on scientific research and was therefore dismissed by the American Psychiatric Association and barred from the Diagnostic and Statistical Manual of Mental Disorders (DSM) continue to hold sway in the court system?

Significantly, alienation is a sexist theory both in how it was created and how it continues to be applied. Meier's findings show that allegations of alienation generally help abusive fathers and harm protective mothers. Meier also demonstrates that courts have made little progress in overcoming their long history of gender bias. How can court decisions be fair or credible when myths and stereotypes reflecting gender bias are allowed to influence case outcomes? Most of the bias is intrinsic and unintentional, but it influences decisions and contributes to the harm courts inflict on children and their mothers.

The Safe Child Act

The Safe Child Act is a comprehensive plan to improve the custody court response to DV custody cases in order to make the courts safer for children. It is based on current scientific research and DV dynamics. This is the plan courts would have adopted years ago if they were open to needed reforms and improvements.

Health and Safety of Children First Priority in all Custody and Visitation Decisions

Every state has laws or court decisions that establish factors courts are required to consider when deciding custody and visitation. Abuse cases involve life-or-death decisions, in which the health and safety of children is far more important than any other factor. The ACE research provides definitive evidence for situations in which children's health and safety are at risk. Risk assessment, as discussed in Saunders's research, would tell the courts which factors are associated with increased risk of lethality. Presently, judges have complete discretion as far as which factors to focus on, and appellate courts rarely interfere with this discretion. This means that children will not be protected, since the courts are unfamiliar with current research and focus on less crucial factors.

Most courts are not trauma-informed because they are unfamiliar with the ACE studies and related scientific research. This leads them to minimize dangers faced by children. Their limited focus on physical injuries means that courts are considering only one percent of the harm caused by DV and child abuse.

Courts frequently fail to recognize health and safety risks because they are unfamiliar with current scientific research. Court professionals routinely fail to recognize abuse because they rely on non-probative factors that lead them to discredit true reports. The myth that mothers frequently make false reports, along with reliance on unscientific alienation theories, undermines the ability of courts to recognize abuse. When courts engage in practices like refusing to consider earlier incidents of abuse, they help abusers gain the access they need to punish their partners and harm children.

Courts Must Integrate Current Scientific Research like ACE and Saunders

Courts have failed to create reforms based on scientific research. Originally courts developed practices to respond to DV at a time when no such research was yet available. Many of those earlier practices turned out to be flawed. We now have substantial research that ought to make it easier for custody courts to recognize when abuse allegations are true.
As of 2020, courts continue to cling to mistaken assumptions that were disproven decades ago. The research is clear: mental illness, substance abuse and anger problems do not cause DV; mothers rarely make deliberate false reports; older abuse incidents continue to be relevant; and court professionals continue to discredit true reports of abuse based on non-probative information.

The research demonstrates that most of the harm from abuse is from the fear and stress the abuser causes. Nevertheless, courts place little if any priority upon reducing the fear and stress. Courts rarely look for patterns of abuse to recognize DV, and they don't ask which

parent is afraid of the other. DV and child abuse cause far more harm than alienation or the loss of an abusive parent.

Courts Must Use a Multi-Disciplinary Approach

Courts first turned to mental health professionals at a time when it was assumed that DV was caused by mental illness or substance abuse. These professionals are experts in mental illness and psychology, and their involvement can be helpful when those topics predominate. Even if they have taken some workshops or trainings, however, they do not have the needed expertise on DV and child sexual abuse.

Using the same small group of professionals creates an insular atmosphere that has contributed to the failure of courts to integrate new research and create reforms in response to avoidable catastrophes. There is now a specialized body of scientific research and knowledge that would help courts recognize and respond effectively to abuse cases. Relying only on the usual suspects undermines the courts' ability to safeguard children.

Courts Should Hold Early Hearing Limited to Abuse Issues

The Safe Child Act would create the practice of holding a hearing early-on in custody cases that involve reports and/or evidence of DV and/or child abuse. Most separating or divorcing couples consist of two safe parents, so this provision would not apply to those cases. This hearing would be limited to abuse issues giving courts the opportunity to focus on the most important issue for children. Cases that now take many months or years would be resolved within a few hours. Best of all, the courts will have a better chance of getting the case right. If one of the parents is safe and the other is abusive, we only need to look at the ACE research to know who should be chosen as the custodial parent by the court. The safe parent would win custody while the abuser would be limited to supervised visitation until he changes his behavior and convinces the court that the benefits of unsupervised visits outweigh the risks. Deliberate false reports of abuse are rare, so this hearing focused on abuse issues will likely resolve most abuse cases saving courts and parties substantial time and resources.
Court Professionals Need Training and Retraining about Domestic Violence

Judges and other court professionals need to be trained about current scientific findings related to domestic violence dynamics and batterer narratives. The Safe Child Act is needed because currently, most professionals continue to make critical decisions about these cases without the requisite knowledge. These professionals also need retraining to unlearn the misinformation they absorbed that leads to decisions that harm children. The training and retraining should be conducted in a multi-disciplinary manner by experts on DV and child sexual abuse.

States Must Provide Additional Funding so DV Advocates Can Participate in DV Custody Cases

Research as well as common sense tells us that DV advocates are the primary experts on DV. They are members of the only profession that focuses solely on problems caused by domestic violence. They are experts in critical subjects like safety planning and DV dynamics. The courts need such advocates to help train court professionals about DV. Advocates also need to be trained to serve as expert witnesses. This would allow DV victims to be able to afford the most knowledgeable DV experts, and court professionals would therefore learn correct information about DV. DV agencies are already underfunded, so the states must provide additional funding to cover the cost of these additional services.

Exhibit #3 Denver

Double Sided Printing

PROPUBLICA

90% of Abuse Allegations Recommended a Teen Stay Under Her Abusive Father's Control

by Hannah Dreyfus

Sept. 30, 2022, 1 p.m. EDT

In Colorado family courts, parents can request an expert evaluation of their case, which sometimes includes allegations of abuse. Mark Kilmer is routinely appointed to evaluate families despite his own history of domestic violence.

Elina Asensio says custody evaluator Mark Kilmer downplayed her father's felony child abuse charge in evaluating whether her father should have custody of her. Trent Davis Bailey for ProPublica

Co-published with The Denver Post

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This story was co-published with The Denver Post.

Elina Asensio had a restraining order in place against her father when she met with a court-appointed psychologist assigned to determine whether

She expected Mark Kilmer, the Colorado "parental responsibility evaluator" appointed to her parents' custody case, would want to hear about the incident that had led to her father being charged with felony child abuse and pleading guilty to misdemeanor assault. The 14-year-old was surprised, then, as she talked to Kilmer on the front porch of her mother's suburban Denver home in October of 2020, that he didn't seem interested in learning about it.

A year earlier, according to police reports, her father had grabbed Elina from behind by her lucky charm necklace and hoodie and dragged her up a flight of stairs. "Dad, I cannot breathe. ... You're hurting me, stop it," Elina had screamed, according to the police report. She was left with burst blood vessels on her eyelids and a deep cut from ear to ear where the necklace had dug into her neck, according to the police report. A child welfare investigator described the resulting scar as a "ligature mark," the imprint left after strangulation.

It was Elina who first brought up the incident, mentioning it after Kilmer asked why, "if you love your Dad," she was not attending therapy with him, according to notes that accompanied Kilmer's report to the court.

"I still feel my dad's hands around my neck sometimes," she recalled telling Kilmer, who is the brother of actor Val Kilmer.

He responded with a blank stare, she said.

Elina told him about other violent incidents involving her father, including one directed at a sibling, according to Kilmer's notes.

> **"Father's parenting failure(s) ending in an assault conviction appear to be an aberration."**
>
> —Mark Kilmer's evaluation of the Asensio custody case

Colorado family courts began appointing parental responsibility evaluators, or PREs, to custody cases 14 years ago as a privately funded alternative to court-furnished evaluators. The litigants shoulder the cost, which can run into the tens of thousands of dollars, and in some instances the PRE is paid by only one of the parents in a dispute. The intent was to allow a broader range of psychologists, including those the court could not afford, the opportunity to lend their expertise to custody decisions. They have operated with little oversight.

Elina didn't know at the time they met that Kilmer says he does not believe about 90% of the abuse allegations he encounters in his work, or that he himself had been charged with domestic violence. Kilmer was arrested and charged with assault in 2006 after his then-wife said he pushed her to the bathroom floor, according to police reports. Following the incident, the woman obtained a restraining order against him and he was required by the court to give up his guns pending resolution of the criminal charges, according to court documents.

children because of concerns about his parenting. The court placed him on probation for 24 months while he completed domestic violence counseling. After he completed probation, the court dismissed the assault charge.

"Unfortunately, I had a conflicted divorce myself," Kilmer said in an interview. "She made up these false allegations and had me arrested. It was pretty humiliating and shocking." His guilty plea was the result of poor legal representation, he said, and he regrets not going to trial.

Kilmer, who received a doctorate in psychology from the California Graduate Institute, had also been previously disciplined by the State Board of Psychologist Examiners in 2009 for revealing confidential information about one client to another client in an effort to set them up on a date. He was required to have his practice monitored for a year but was allowed to continue working as a custody evaluator. (Kilmer said he obtained consent from both parties before introducing them, according to board records. The board noted clients "cannot consent to a boundary violation and/or breach of confidentiality.") Today, Kilmer's psychological license is in good standing.

Colorado's State Court Administrator's Office, which is responsible for vetting PREs, said a criminal misdemeanor conviction older than 15 years does not disqualify a custody evaluator from family court appointments. ProPublica found that four evaluators on the state's roster of 45 PREs, including Kilmer, have been charged with harassment or domestic violence. In one case, the charges were dismissed. In the two others, it is unclear how the charges were resolved.

The court administrator's office also said that discipline by the State Board of Psychologist Examiners does not disqualify an evaluator unless it currently affects their license. ProPublica found that 1 in 5 PREs, including Kilmer, has been sanctioned by the board, six times the rate of discipline among all psychologists with active licenses in Colorado.

One evaluator who works with victims of domestic violence was sanctioned after the state received a complaint alleging she had publicly referred to a domestic violence client as "full of shit," and after she admitted to having a member of a domestic violence counseling group she oversaw do work in her neighborhood. Others were sanctioned for misrepresenting their credentials, and several failed to keep clients' information private, including one PRE who revealed the home address of a domestic violence victim enrolled in the state's Address Confidentiality Program, which endangered the client, the state board found.

None of the sanctioned PREs lost their licenses or had them suspended.

Prospective PREs are asked to disclose board violations from the past 10 years, which would "trigger" further investigation, according to a court spokesperson.

siblings, and that he begin therapy with Elina and transition back to limited parenting time with her. Kilmer also recommended that he have equal decision-making authority over his children, including choices about their medical care, social activities and academic path. Kilmer described the father's assault conviction as an "aberration" and noted that he had "considerable positive parenting skills and abilities." He also recommended that Elina's restraining order be modified so she could participate in reunification therapy with him.

Elina's mother, Karin Asensio, who said she was fearful the judge would use Kilmer's recommendations to reduce her parenting time, agreed to resolve the custody dispute through arbitration. There, the parents agreed to divide parenting time equally and to modify the restraining order so Elina could go to therapy with her father.

"Mark Kilmer's decision affects every day of my teenage life," Elina said in an interview. "They let him speak for me but they wouldn't let me speak for myself."

When Elina wanted to get a learner's permit, she said her father refused to grant her permission. She later got a license over his objections. Trent Davis Bailey for ProPublica

Kilmer declined to comment on this or any case, saying it's prohibited by the court. "I am — forever — under a statute and direction from the Honorable Court to hold all of my cases in the strictest of confidentiality and privacy," he said in a statement to ProPublica.

But in an interview about his approach to custody cases, Kilmer said he does not believe a "great majority" of abuse allegations he encounters in his work.

work, that's completely flipped on its head: About 90% of the allegations I hear are false." Kilmer emphasized the estimates are based on his "own experience," not scientific research.

"Sometimes the Judge Just Cuts and Pastes All My Recommendations"

In Colorado custody cases that trigger legal disputes, family court judges may appoint an evaluator to assess the best interests of the children. The cost of these child and family investigators, who are not required to be mental health professionals, is capped at $2,750, which can be paid for by the state or split between the parties.

But for parents willing to pay uncapped fees as high as $30,000, Colorado law permits the appointment of a parental responsibility evaluator from a roster of state-approved experts, most of whom have masters or doctorate degrees in psychology.

The two-tiered system was created at the urging of psychologists who argued the courts' $2,750 limit on fees didn't adequately cover their services, including in-depth personality testing for complex cases. As PREs, psychologists could work as court appointees without cutting their fees or curtailing their analytical methods.

PREs acknowledge that they wield tremendous influence over family court proceedings and are subject to little oversight or transparency.

This is by design, according to Bill Fyfe, who worked with the Colorado Supreme Court to draft procedures governing PREs and became one of the state's longest-practicing custody evaluators. The more costly and highly trained professional advisers were given as much independence as possible while still functioning as appointees of the court.

Fyfe retired from serving as a PRE in protest last year, after a new law took effect requiring increased oversight and training for custody evaluators. "The court shouldn't be involved in managing us. They're good people, but they have no idea what we do or how we do it," he said.

Kilmer and other PREs told ProPublica that judges accept their recommendations in the overwhelming majority of custody decisions, though that's impossible to verify because their reports are filed under seal and seldom made public.

"At this point in my career, sometimes the judge just cuts and pastes all my recommendations and puts it into the court order," Kilmer said.

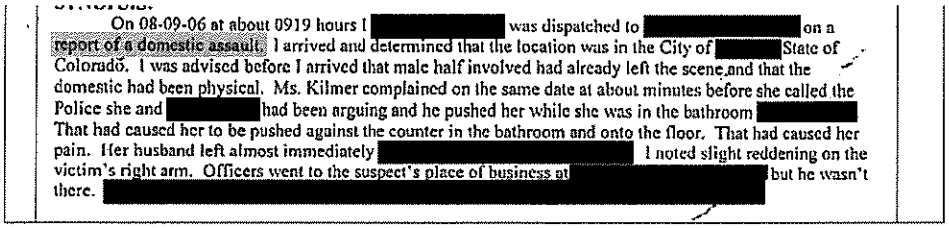
Mark Kilmer Nabil Nezzar, special to ProPublica

Kilmer, 64, is tall and broad with blond hair, a square jaw and a beefy handshake. When he is not assessing parents in living rooms, in kitchens or on front porches, he sees clients at one of his several offices in the Denver area.

When Kilmer received his doctorate in 1998, the California Graduate Institute's psychology program was not accredited by the American Psychological Association, according to a spokesperson from the organization. The program now goes by a different name and has received APA accreditation.

Kilmer said he was attracted to PRE work because "it's lucrative — as far as things go in psychology." His fee averages $14,000 per court-ordered report, but his charges can rise to more than $30,000, he said. "People have a lot of money, and they just keep sending stuff to me."

The domestic dispute Kilmer was charged for occurred in August 2006. When a Boulder County police officer arrived at Kilmer's residence to investigate a report of an assault, Kilmer had already left, according to the police report. The officer found Kilmer's then-wife on the bathroom floor complaining of pain on her left side. Two days earlier, she said, Kilmer had also blocked the entrance to their home and only moved after she threatened to scream and call 911. Kilmer was 6'1" and weighed 225 pounds, according to the report.



On 08-09-06 at about 0919 hours I [redacted] was dispatched to [redacted] on a report of a domestic assault. I arrived and determined that the location was in the City of [redacted] State of Colorado. I was advised before I arrived that male half involved had already left the scene and that the domestic had been physical. Ms. Kilmer complained on the same date at about minutes before she called the Police she and [redacted] had been arguing and he pushed her while she was in the bathroom [redacted] That had caused her to be pushed against the counter in the bathroom and onto the floor. That had caused her pain. Her husband left almost immediately [redacted] I noted slight reddening on the victim's right arm. Officers went to the suspect's place of business at [redacted] but he wasn't there. [redacted]

An excerpt of the police report on the incident that led to Kilmer's domestic assault charge Obtained and annotated by ProPublica

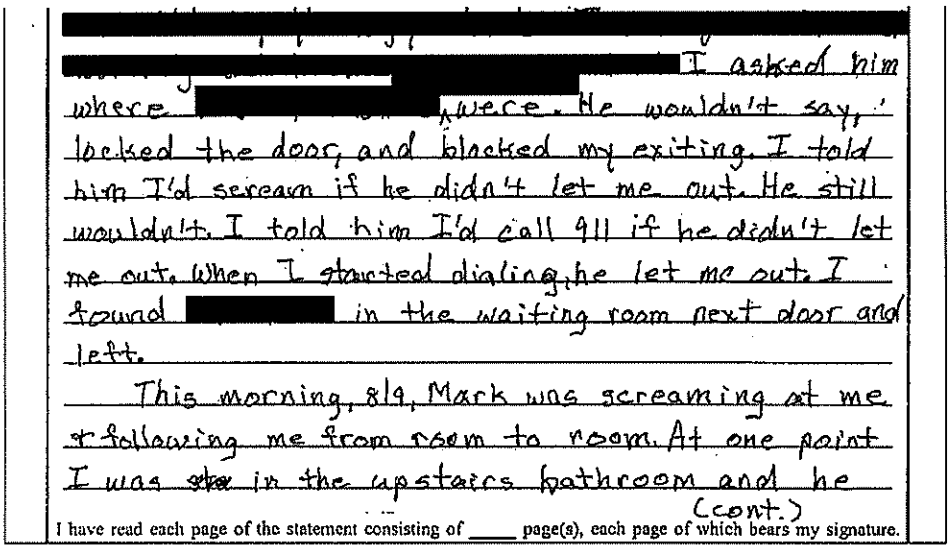
Asked if his criminal record comes up when he works with victims of domestic violence and abuse, Kilmer answered: "Just look at my resume, right? It's like, look at what I've done and who I am and what I've been trying to put together for myself. Do you think, beneath all of this, I'm some kind of monster?"

Multiple parents said custody evaluators downplayed or omitted from reports to the court the traumatic and lasting effects of abuse they said they had experienced.

ProPublica also spoke to 45 Colorado parents currently or recently involved in custody disputes with allegations of child and domestic abuse. In cases evaluated by a PRE with a criminal or disciplinary record, parents told ProPublica they only learned about that record after the court had appointed the evaluator to their case.

According to the APA's code of ethics, psychologists should recuse themselves if their personal histories could "reasonably be expected" to affect their objectivity or expose a client to harm or exploitation. Experts said it would be "highly unusual" for a psychologist who's been charged with domestic violence or child abuse to evaluate custody cases involving domestic violence or child abuse, especially if those charges were not disclosed beforehand.

"I would question such a custody evaluator's ability to look at claims of domestic violence or abuse in a fair and objective way," said Helen Brantley, a clinical psychologist who chairs the task force that developed the APA's guidelines for child custody evaluations in family law proceedings.



[redacted] I asked him where [redacted] were. He wouldn't say, I locked the door, and blocked my exiting. I told him I'd scream if he didn't let me out. He still wouldn't. I told him I'd call 911 if he didn't let me out. When I started dialing, he let me out. I found [redacted] in the waiting room next door and left.

This morning, 8/9, Mark was screaming at me & following me from room to room. At one point I was [redacted] in the upstairs bathroom and he (cont.)

I have read each page of the statement consisting of ____ page(s), each page of which bears my signature.

Kilmer's then-wife made a voluntary statement to the police in 2006 about Kilmer. Obtained by ProPublica

Kilmer said he has never recused himself in 30 years working on over 600 court-ordered reports. "Once the court appoints me, that's it. There's no bailing out."

His call to action: saving kids. "Like the whole situation in Uvalde, with the cops," he said, referring to the mass shooting at a Texas elementary school earlier this year. Surveillance video showed armed officers waiting more than an hour to enter a classroom and confront the gunman.

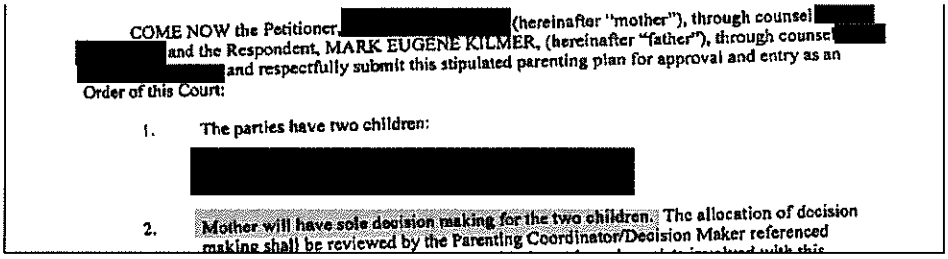
"There's no not going in," Kilmer added. "Sometimes people are really disturbed and violent and it's just like, that's part of the job."

A Colorado statute requires courts and court-appointed evaluators to consider claims of domestic violence and child abuse in child custody cases.

Karin Asensio filed a complaint against Kilmer with the State Board of Psychologist Examiners, alleging that he failed to take her ex-husband's assault conviction into account when making his recommendations. The board dismissed the complaint, stating that it did not amount to a violation warranting disciplinary action.

Evaluators' findings in custody cases are consequential: The Leadership Council on Child Abuse and Interpersonal Violence estimates that each year 58,000 children are placed in the custody of an abuser. Since 2008, 864 children have been killed in cases where a divorcing or separating caretaker has been accused of the crime, according to the Center for Judicial Excellence, which tracks news reports of child deaths; in 117 of those cases, a family court was involved prior to the death but failed to prevent it.

Kilmer said he's particularly skeptical of abuse allegations from a person who stayed in a relationship for a long time.



COME NOW the Petitioner, [redacted] (hereinafter "mother"), through counsel [redacted] and the Respondent, MARK EUGENE KILMER, (hereinafter "father"), through counsel [redacted] and respectfully submit this stipulated parenting plan for approval and entry as an Order of this Court:

1. The parties have two children: [redacted]

2. Mother will have sole decision making for the two children. The allocation of decision making shall be reviewed by the Parenting Coordinator/Decision Maker referenced

A court document shows Kilmer temporarily lost decision-making authority over his children in 2007 during his divorce. Obtained and annotated by ProPublica

"People come in and say, 'You know, this person has been terrible to me for 17 years.' And you've just been hanging in there all that time and you had five kids? How was it really that bad all that time?" he said.

Then, he said, he'll meet the partner who's been accused of the abuse, "I look at their information and I'm like, 'Oh, these allegations are really not even possible.'"

More often than not, he said, the accusers are exaggerating "to see what kind of legal advantage they can get."

Conducting a Custody Evaluation During a Criminal Investigation

While the Colorado statute governing PREs requires evaluators to release their underlying case file to involved parties who request it, the files don't include some aspects of how evaluators arrive at their recommendations. PREs frequently conduct in-depth psychological testing, but may refuse to release the results to clients, forcing parents to hire another psychologist to review the data. And parents are not immediately privy to what was included and omitted from their final report.

The day after Kilmer released his report, Elina's mother requested the documentation used in his evaluation. Kilmer gave her his shorthand notes but refused to release recordings or transcripts of his interviews. When Karin continued to pursue the information, Kilmer sent her a cease-and-desist letter.

Sometimes the contents of evaluators' reports are only disclosed if the PRE is subpoenaed and testifies in court.

That's how one woman said she found out that Kilmer had not mentioned her ex-husband's violence against her and her daughter in his recommendations. The woman asked to remain anonymous for fear of retaliation from her ex-husband.

In that case, Kilmer was not acting as a PRE but as a court-selected investigator. The court appointed Kilmer in August of 2019. Midway through the evaluation, she said, she learned of Kilmer's record of

In her initial interview, she told Kilmer that her husband had become increasingly violent toward her after she became pregnant with their child, according to the woman and Kilmer's court testimony. When she was five months pregnant, her ex-husband was arrested and charged with assault after grabbing her hair and slamming her head into the ground, resulting in a concussion and a neck contusion, according to medical records. "Assault" is listed as part of the medical diagnosis. The woman was reluctant to pursue charges and the district attorney chose not to prosecute the case, according to court testimony.

Under cross-examination in the couple's custody case, Kilmer said he knew about the incident and had reviewed the husband's arrest records and the woman's emergency room medical records. Explaining why he had excluded those details from his report, Kilmer said, "I don't take medical providers' consideration or determination of whether a crime happened or not. Allegations, documentation, validations are not reality."

In the same custody case, Kilmer omitted witness accounts of the father grabbing his then-2-year-old daughter by the neck and lifting her off the ground. Under questioning, Kilmer acknowledged that more than one source had described the incident to him, but said he "didn't understand" if abuse "had actually taken place or not."

The mother said that when she told Kilmer about the incident, he chastised her for not calling the police. No charges were filed.

> **"I don't take medical providers' consideration or determination of whether a crime happened or not. Allegations, documentation, validations are not reality."**
>
> —Kilmer, in court testimony

In his final recommendations, Kilmer told the court that "both parents" appeared to have made "mistakes" and exhibited "poor judgment." Among the mother's mistakes, he noted, was "publicly disparaging" her husband. Kilmer did not specify mistakes made by the father.

In court testimony, Kilmer said he did "consider" in his evaluation the fact that the father had lied when asked if he'd been arrested for domestic violence, but Kilmer decided against mentioning it in his report. "It ultimately didn't seem to be something that was germane to the issue of trying to figure out ... what was the safest and most appropriate parenting plan for [the child]. ... I made [recommendations] with the understanding that there were these allegations but they were just that, allegations."

This month, the judge adopted most of Kilmer's recommendations and awarded the parents joint custody. While Kilmer had recommended that the parents share decision-making authority, the judge awarded that power solely to the mother.

of abuse if law enforcement is still investigating them. "It is not the place of a custody evaluator to determine if abuse took place, that's a criminal matter," said Brantley, the chair of the APA child custody task force. Brantley said that this is a best practice but not a formal guideline.

In 2020, Kilmer accepted a custody case involving allegations of spousal rape and child sexual abuse and issued a report while police were still investigating the allegations involving the child. (Police closed the spousal rape inquiry shortly before Kilmer's appointment due to a lack of corroborating witnesses or DNA evidence, according to the police report.)

Kilmer did not speak to the detective investigating the case, according to his report. The police department confirmed to ProPublica that they have no record of Kilmer contacting them. The detective investigating the case also confirmed that the child abuse case remains open.

Kilmer also did not interview a social worker at a local children's hospital who had reported suspected abuse of the same child to the Adams County Sheriff's Office. According to police records, the hospital employee said that the then-2-year-old child was brought in for an exam because a caretaker reported she was"displaying abnormal behavior" after staying with her father, and the girl was "touching and rubbing her vagina."

In his PRE report, Kilmer accused the mother of "knowingly making false allegations in order to further a legal position." He also threatened — in the only portion of the report in capital letters, bolded and underlined — that he would advise the court to restrict the mother's parenting time if she subjected the child to further physical examinations: "IF MOTHER CONTINUES, UNFORTUNATELY FOR THE CHILDREN A RESTRICTION OF HER PARENTING TIME SHOULD BE REVIEWED BY THE HONORABLE COURT, DESPITE HER OTHERWISE EXCELLENT PARENTING SKILLS."

Lawrence Jay Braunstein, a former prosecutor and expert on child abuse litigation, said custody evaluators should not give an opinion as to whether abuse has or has not occurred. To do so would be unethical and inappropriate, he said. "Custody evaluators stay in their lane, that's the theory," said Braunstein.

Kilmer declined to comment on why he did not contact law enforcement investigating this case or why he deemed the abuse allegations to be "false."

"People often ask me, 'How can you tell if people are lying?' That's where my own clinical experience comes in," he told ProPublica. "I know what it looks like when somebody's telling me the truth."

"So Easily Rigged"

abuse and on how a history of abuse should be weighed in custody recommendations. The law also tasked the court with vetting PREs and reviewing complaints against them.

The bill's sponsor, state Rep. Meg Froelich, hopes it will spur improvements, but remains unflinching in her criticism of the system.

"Apparently, we don't even have the ability to prevent convicted domestic abusers from being PREs," said Froelich, adding that she was not referring to any specific PRE.

Despite the system's problems, Froelich sees value in mental health professionals advising the court. "But what we don't need are court professionals being hired and paid exorbitant sums of money by one of the parties."

Colorado allows one party to a custody dispute to request and pay for a court evaluator, though the court must approve and issue the appointment.

"The PRE system is so easily rigged," Froelich added. "PREs are racking up huge expenses, which of course benefits the more affluent spouse."

Kilmer acknowledged that custody evaluators are put in an ethically complicated situation when one party pays them to do work on behalf of the court.

"Sometimes people are like, 'Hey, I'm paying you! I hired you!'" said Kilmer. "And then, more often than not, the other party will complain and be like, 'I'm not the one that wanted you. You're clearly working for them.'"

Kilmer said he addresses this by encouraging both parties to be "upfront" about any concerns they might have about his objectivity.

> **"I charge time for preparation, travel and a four-hour minimum for expert witnessing."**
>
> —Kilmer

PREs can earn even more by serving as expert witnesses in custody cases. And unless the court stipulates otherwise, the party who requests the testimony foots the bill.

"Payment for the evaluation will not cover testimony as an expert witness," states a PRE contract reviewed by ProPublica.

"I charge time for preparation, travel and a four-hour minimum for expert witnessing," Kilmer told ProPublica. He said his hourly rate is $325.

Robin M. Deutsch, a former chair of the APA Ethics Committee who trains judges, lawyers and court-appointed custody professionals in how to recognize intimate partner violence, was surprised Colorado courts allow PREs to act as expert witnesses while being paid by one party.

expert witness hired by one side is absolutely an ethics code violation." An evaluator is "the court's witness" and should not appear to be working for one party by testifying on their behalf, she said.

Bill DeLisio, a spokesperson for the court, said Colorado law allows PREs to work as both a custody evaluator and an expert witness on the same case. The court is responsible for monitoring complaints about their objectivity and managing their testimony, he said.

Kilmer said he frequently acts as an expert witness on cases for which he also served as an evaluator. He dismissed as "ridiculous" concerns over the ethics of serving in both capacities.

"If you can produce a report, you can talk about it to the court," he said.

Kilmer said acting as an expert witness is his "favorite" part of the job and he has improved his courtroom presentation through years of involvement in Toastmasters.

"Being in court is like being in Kabuki theater," said Kilmer, who received his undergraduate degrees in dramatic literature and theater arts. "There's a whole presentation — there's a whole way that you can be more effective, by the way you talk and the way you present yourself. And you do all those things not because you're being false, but just because that's what the theater requires."

"Questioning Every Bit of Reality I Had Fought to Reestablish"

In pleading guilty to misdemeanor assault, Elina's father, Cedric Asensio, avoided a trial on charges of felony child abuse and criminal neglect. He received a deferred judgment, meaning at the end of a probation period, the plea was withdrawn and the case dismissed.

Cedric Asensio's attorney, Kimberly Diego, said in a statement to ProPublica that the initial charge of felony child abuse against her client was "very serious," but noted that the case was ultimately resolved through a plea to misdemeanor assault and deferred sentence, which indicates "there is much more to the story."

"In reaching this resolution, a host of information was provided to the prosecuting attorney," Diego stated. "What was provided included text messages, social services records, police reports, medical records, emails, and a number of media files. It was after consideration of these materials that the case was resolved in the way it was."

When the criminal case was resolved, Elina was living full time with her mother, was going to therapy and had started ninth grade.

"Things were starting to feel a little more normal," she said.

dad if she didn't — triggered what she described as post-traumatic stress and depression. The aftermath of the conversation left her "questioning every bit of reality I had fought to reestablish."

She stopped going to school. She sat alone in her room for hours and went days without sleeping. She lost weight and wanted to be even thinner. She thought several times about taking her own life.

"I wanted there to be less of me," she said. "And I was too scared to ask for help. I didn't want to prove them right, that I was sick. That I was out of control. That this was, somehow, my fault."

Elina's father retains equal decision-making authority over his daughter.

Elina's countdown app on her iPhone tracks the days, hours and minutes until she turns 18. Trent Davis Bailey for ProPublica

In June 2020, he refused to let her participate in a mentor and therapy program, according to court documents.

objections.

In May 2021, he denied her request to receive a COVID-19 vaccine, according to court documents. Elina said she got the vaccine anyway.

Cedric Asensio said he requested that his ex-wife wait a few weeks "to get more data on safety" before Elina got the vaccine.

Karin Asensio filed an emergency motion requesting that her daughter be allowed to address the judge directly about the parenting arrangement.

The court denied the motion, saying that she had not offered new reasons why the parenting arrangement should change.

Elina keeps a countdown app on her iPhone tracking the days, hours and minutes until she turns 18 and is no longer under her father's control.

She never got back the gold necklace she was wearing the day her father assaulted her. The chain had been given to her by her maternal grandmother a few weeks earlier. The nurse who examined her in the emergency room swabbed the small four-leaf clover pendant dangling from the broken chain before giving it to police as evidence. Elina never saw it again.

"It's really hard to think about the things I've lost," she said. "But it's scarier to think about how much more I could have lost, if my injuries that day hadn't been bad enough for people to believe me."

Mariam Elba contributed research.

Hannah Dreyfus
Hannah Dreyfus covers abuse for ProPublica.
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Exhibit #1

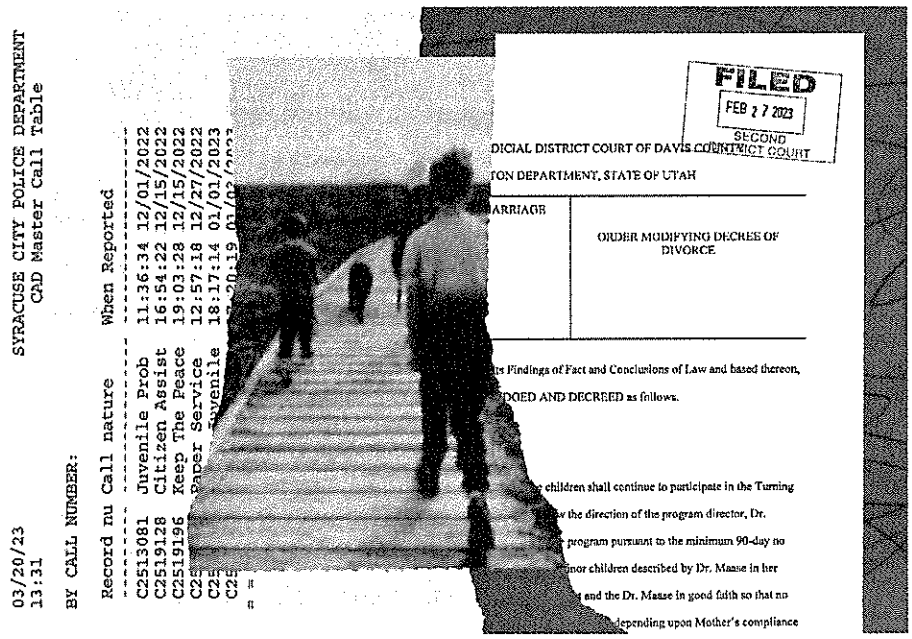
Double Sided Printing

Reunification Camp With Their Estranged Father. The Children Say It Was Abusive.

by Hannah Dreyfus

May 18, 5 a.m. EDT

Family courts are increasingly using programs like Turning Points for Families to treat the disputed psychological theory of parental alienation. But little is publicly known about the programs' controversial methods.



Vanessa Saba, special to ProPublica

ProPublica is a nonprofit newsroom that investigates abuses of power. Sign up for Dispatches, a newsletter that spotlights wrongdoing around the country, to receive our stories in your inbox every week.

One Thursday afternoon in December, a father and two of his estranged children boarded a flight from Salt Lake City to Texas, beginning an effort to repair their fractured relationship.

A family court official had ordered them to attend a reunification camp, Turning Points for Families Texas, to repair damage that the judge said the boys' mother had inflicted by alienating them from their father.

The following morning, at the vacation rental where their therapy sessions were to be held, the counselor made an unusual request.

IN AND FOR THE SECOND JUDICIAL DISTRICT COURT, STATE OF UTAH
IN AND FOR DAVIS COUNTY, FARMINGTON DEPARTMENT

In the Matter of the Marriage of: HOLLIE [redacted] And JORDAN [redacted]	**VERIFIED EX-PARTE MOTION FOR A TEMPORARY RESTAINING ORDER** CIVIL NO. [redacted] JUDGE RONALD RUSSELL COMMISSIONER CHRISTINA WILSON

COMES NOW, JORDAN [redacted] and hereby submits this Verified Ex-Parte Motion for a Temporary Restraining Order, as follows:

CONCISE STATEMENT OF RELIEF REQUEST REQUESTED

In January of 2023 a trial was held between the parties. As a witness in this trial, Loretta Maase recommended that the minors in this case, who were suffering from severe alienation and chronic abuse (determined by DCFS investigation) by Mother, to continue reunification therapy

A reporter, Hannah Dreyfus, has now contacted several people affiliated with this case for comment about a story she's going to publish. Information has already been posted from the case on Facebook to pages that are encouraging alienation as a pseudoscience and encouraging alienated children to run away from their non-alienating parent, and personally naming key figures in the case and painting them in light of sending abused children back to their abusers through the court system. Not only are they naming witnesses, but the media is also naming doctors and judges who are supporting reunification therapy for alienated children.

Respondent requests that this Court immediately seals this case to the public. These

Jordan filed a motion against ProPublica requesting the court seal the custody case involving his boys and their mother. Obtained by ProPublica

Jordan declined to speak with ProPublica, citing his children's need for privacy. "They've gone through a lot," he said.

In an interview, Hollie said she faces "an impossible choice: see my kids again or subject them to more of this."

Maase has blamed Hollie — "the alienating parent," Maase called her — for the treatment's failure, according to court documents. She did not comply with "Turning Points Protocols," specifically writing a letter of apology and another in support of the reunification efforts. The letters, both subject to Maase's approval, were to "explicitly and convincingly" disabuse the children of "their false beliefs about their father."

hasn't seen the boys since December. "I'm not putting my kids through more of her 'treatment.' I never consented to this, and I never will. How this is not a violation of my parental rights, I do not know."

"I Don't Know of Any Other Option"

Years before the children were sent to Turning Points, the court appointed reunification therapists to address their resistance and ill will toward their father.

Karly McGuire said during the year she counseled the family she came to believe that Jordan's parenting style was the cause of his sons' continued resistance to him, according to her testimony. Jordan disagreed, she said.

McGuire, who holds a Ph.D. in family therapy, told the court that Jordan constantly sent her videos about parental alienation. And he accused Hollie of spearheading a campaign of parental alienation against him and causing the rift between him and his sons.

After years of therapy, the boys continued to report they were being harmed by their father and violently resisted visitation with him. The 12-year-old posted a video on TikTok with a gun barrel in his mouth, and all three of Jordan and Hollie's sons declared a "suicide pact" if they were forced to live with their father, according to court documents. (The oldest of the three brothers is an adult and did not participate in the reunification program.)

If you or someone you know needs help, here are a few resources:

-Call the National Suicide Prevention Lifeline: 1-800-273-8255

-Text the Crisis Text Line from anywhere in the U.S. to reach a crisis counselor: 741741

IN THE SECOND JUDICIAL DISTRICT COURT

COUNTY OF WEBER, STATE OF UTAH

HOLLIE [redacted] Petitioner, vs. JORDAN [redacted] Respondent.	EX PARTE MOTION FOR REVIEW AND CHANGE IN CUSTODY AND THE COURT'S CONSIDERATION OF PARTICIPATION IN THE TURNING POINTS PROGRAM Case No. [redacted] Judge Russell Commissioner Wilson

COMES NOW Bryce M. Froerer, as Guardian ad Litem in the above-captioned matter, pursuant to URCP Rule 7A, and moves this Court for an immediate review of this case, a change in custody, and consideration of participation in the Turning Points program.

The most concerning issue is regarding [redacted] the 12-year-old boy. He has, in the last month, been posting very concerning messages on his TikTok site. As recently as 24 hours prior to the preparation of this Motion, these included a photo of someone with a gun barrel in his mouth which, in my view, suggests suicide and considerable self harm. (See Exhibit 1.)

Bryce Froerer, appointed by the court to represent the boys' interests in the custody case, cites worries of self-harm by the 12-year-old in his motion recommending treatment at Turning Points. Obtained by ProPublica

Bryce Froerer, a guardian ad litem appointed by the court to represent the boys' interests in the custody case, told the court that their refusal to visit their father and their threats of self-harm were evidence of parental alienation. He also said a more severe intervention was needed to address it, according to court documents.

The "conservative, cautious approach" advocated by McGuire wasn't working, argued Froerer, who has no psychological training, according to his office. He recommended they instead attend Turning Points and follow its practice of prohibiting the children from seeing the "alienating parent" for at least 90 days. Froerer admitted that he had "very little experience" with Turning Points, beyond speaking with Maase and reviewing some promotional materials.

Honor, is to linger on. And it is not my recommendation that we linger on."

Froerer declined to speak with ProPublica. After the news organization requested an interview, he petitioned the court to seal the case.

McGuire testified that she cautioned Froerer against sending the boys to an intervention like Turning Points. She had grown concerned about their increasing despondency during her sessions, which she attributed to burnout from all of the court-ordered therapy. She believed separating them from their mother, the primary caregiver for most of their lives, would further harm their mental health.

But Froerer's argument prevailed. Christina Wilson, the judicial commissioner overseeing the case, agreed that the court was running out of options. Though she also admitted knowing little about it — asking at one point "how the program works" — she ordered the boys to participate in the intervention.

"When that's done, we can come back here and talk about what happened," Froerer said. "And if things have improved, wonderful. And if things haven't improved," he paused, "I don't know."

A spokesperson for the court said Wilson was unable to comment on "any past or current cases."

A Courtroom Affliction

The family's trip to Texas was intended to repair a case of parental alienation. Advocates and critics debate whether it's a real ailment, but they agree on one thing: It is only diagnosed and treated in the family courtroom.

"Other kinds of psychological dysfunctions that show up in court tend to show up elsewhere as well, whereas parental alienation is a process that is specifically brought to court to remedy," said Demosthenes Lorandos, an attorney and parental alienation scholar who has written about a reunification program that uses methods similar to Turning Points. Lorandos defends parental alienation as a legitimate diagnosis and believes reunification camps are a safe and effective way to treat the condition. Lorandos, who also holds a doctorate in clinical psychology, said he does not know of another psychological dysfunction that only shows up in court.

Dr. David Corwin, a professor and director of pediatric forensic services at the University of Utah and a past president of the American Professional Society on the Abuse of Children, disputes that parental alienation is a legitimate disorder. It almost exclusively affects children of parents with higher socioeconomic status, he said. "True mental health disorders are

Gottlieb told ProPublica that she created Turning Points at the request of lawyers whose clients were seeking intensive treatment for alienation. Gottlieb, who trained Maase, has expanded to meet the demand, including the Texas location and a program in California.

Maase said Jordan paid her company $12,000 for the Texas sessions. Today, the price for the four-day treatment is $15,000.

Lorandos said he charges $5,000 a day for expert testimony in parental alienation cases, and the bill for his services on a single case has reached $50,000.

"Business is booming," said Robin Deutsch, chair of the American Psychological Association's working group on high conflict family relationships involving children.

She is a critic of Turning Points and programs like it, saying their treatments don't address the complex dynamics that cause fractures within families. "The court has to put all their eggs in the parental alienation basket. And the kids will suffer because of it," Deutsch said. (Previously, Deutsch ran a reunification camp that she says differed in its approach to family fractures; she said the camp is no longer in operation.)

Outside the courtroom, the ailment that the programs claim to heal — parental alienation — has struggled to gain legitimacy. Medical and psychological professionals, including the American Psychiatric Association, have rejected it as a mental disorder. And the special report released by the United Nations Human Rights Council blasted parental alienation as a "pseudo-concept" and recommended member states prohibit its use in family courts.

The theory has also been shunned by the National Council of Juvenile and Family Court Judges for failing to meet court evidentiary standards.

Jennifer Hoult, an attorney and legal scholar, has written about why parental alienation fails to meet national standards for court admissibility. She said the theory is based on a fallacy that parents have a right to be loved. "There is no legal right to force your children to love you, respect you or even like you," she said.

Gottlieb, who spoke to ProPublica in February for another story, argues alienation typically begins when people believe children's claims of abuse. "Everyone knows children lie," Gottlieb told ProPublica. "Lying is so instinctual — children love to make up stories. Why on earth do we believe that children are reporting accurately?"

Little independent research has examined the long-term effects of reunification camps on children.

A 2021 evaluation led by Jennifer Jill Harman, an associate professor of psychology at Colorado State University who believes parental alienation is a genuine diagnosis, analyzed video recordings of Gottlieb's

and had a 96% rate of effectiveness.

According to Harman, the analysis didn't look at the treatment's long-term effectiveness. And the study was intended to "promote" the program and refute claims that its interventions "are traumatic for children and cause long-term harm," according to Harman's application to the Colorado State University Institutional Review Board for the project. Gottlieb was involved in designing and executing the evaluation of her program, records show.

Harman declined to comment. Gottlieb didn't respond to requests to comment for this story.

Jennifer Bard, an expert in human-subjects research law and a professor at the University of Cincinnati, questioned the value of this evaluation of Turning Points.

"The fact that the person who stands to profit by the findings of this study designed it should cause considerable concern," Bard said. "It's almost as if this study was put together to support a predetermined conclusion, which is not what studies are supposed to do."

Sessions Spiral Out of Control

On Dec. 1, police officers arrived at Jordan's brick-front home in Syracuse, Utah. He had called for help with a "juvenile problem." His two sons were refusing to be taken to Turning Points as the court had ordered, according to police records.

Eventually, the boys agreed to go, and the group that traveled to Texas included Jordan's new wife (the boys had not previously met her) and stepchildren, and the boys' paternal uncle and cousins, according to testimony. The boys' older brother, Xander, who is 19, opted out of the program.

Maase held full-day sessions at the family's vacation rental. (The address on the Turning Points for Families Texas website is a post office box at a strip mall in Austin.)

In discussing the program, the judge and commissioner overseeing the case referred to Maase repeatedly as a "doctor," though Maase is not a doctor and does not refer to herself as such. She is a licensed professional counselor with a master's degree in counseling and family therapy. She is not permitted to provide or advertise herself as providing psychological or medical services, according to the executive director of the Texas Behavioral Health Executive Council. Maase also operates a counseling company called ParentRise, which provides therapy to families.

Jordan testified that after the sessions began, Maase instructed him to play for the boys the recording of the July 1, 2019, domestic dispute between him and his ex-wife.

physically violent with Jordan.

The incident led to Hollie's arrest. She was charged with domestic violence in the presence of a child and disorderly conduct. She pleaded not guilty to the charges, which were later dismissed.

Maase told the court that introducing children to recordings and documents of their parents' domestic disputes is "standard procedure" at her camp in order to correct children's "false narrative" about the alienated parent — in this case Jordan.

In her report to the court, Maase wrote that throughout their time in Texas the boys showed "inadequate compliance, aggressive and violent behaviors, and overall lack of progress."

Texas police officers were called several times to respond to the 16-year-old's threats of violence toward himself and others. Though he weighed only 111 pounds, the teenager had to be physically restrained several times by family members before police arrived.

According to accounts from those who participated in the intervention, Maase instructed adult family members to physically coerce the boys to cooperate with the treatment. According to one account, Maase recorded the therapy sessions over the boys' objections and repeatedly threatened them, including telling the older boy that he would go to jail if he didn't cooperate and might never see his mother again. According to more than one account, Maase took away the boys' food during the intervention in order to compel participation.

Maase told ProPublica that these claims are "preposterous." "I advise that you turn your attention to the motives of those who would make such assertions in the first place," she wrote in an email.

Since the intervention, the children have been barred from participating in individual therapy.

Turning Points for Families – Texas

Loretta Maase, MA, LPC-S
Texas State Practitioner
[redacted] Telephone
[redacted]
www.turningpointsforfamilies-texas.com

12/8/2022

Re: CIVIL NO. [redacted]

Dear Mr. Froerer,

I am writing to you in your capacity as the Guardian ad Litem for the two minor children referenced in this case.

6. Regarding after-care therapy, *individual therapy is contraindicated (considered dangerous).* Research is clear (as well as validated in our work with hundreds of families), that individual therapy is harmful post-treatment because of the probability that the child(ren)'s false narratives will be allowed to stand and will once again be supported/validated as being accurate. *It is critically important for the children's mental and emotional wellbeing that the legal and clinical teams understand the assault on children's cognitive development when they are encouraged and/or allowed to believe they had abusive past experiences when, in fact, they did not.*

When and if Ms. [redacted] complies with the TPFF-T treatment protocols to takes responsibility for her abusive behaviors, contact should be restored gradually beginning with supervised visits. There is too much risk for the children's psychological and emotional wellbeing to go back to unsupervised contact with mother. Again, these recommendations are for protective reasons and are not meant to advise regarding custody.

Respectfully submitted,

Loretta Maase, LPC-S

Loretta Maase, MA, LPC-S

In her report to the court, Turning Points counselor Loretta Maase states that individual therapy would be considered dangerous to the children. Obtained by ProPublica

Such prohibitions are standard Turning Points protocol. Maase explained to the court that interacting with therapists who aren't part of Turning Points could be "dangerous" because they might encourage the children to believe "they had abusive past experiences when, in fact, they did not."

After returning from Texas, the boys remained with their father, beginning the 90-day separation from their mother and any relatives who had defended her in the dispute.

In such programs the separation can be extended by the facilitator if the children or the accused parent fail to comply with the treatment.

"Sometimes the 90-day order can turn into a forever order," Deutsch said.

On Dec. 6, the day after their return from Texas, Jordan brought the 16-year-old to a Salt Lake City emergency room out of fear he would hurt himself or others, according to court documents.

The teenager told the doctor that he had attended a "brainwashing camp" and felt "unsafe" with his father. He said that he had been physically assaulted while at the Turning Points program, according to medical records. The medical report described "faint linear marks" on his upper arms, where the patient said his father had grabbed him.

Another teenager treated years ago by Turning Points in upstate New York also alleged he was abused during his therapy sessions. According to a July 2016 police report, an officer was dispatched to the home of Gottlieb, the Turning Points founder, to investigate claims that a 16-year-old, Caleb Thomas, had been "dropped off at the therapist's residence" and "assaulted and thrown in a closet." No charges were filed.

Thomas told ProPublica that when he protested Gottlieb's attempts to record his therapy sessions, he was pinned to the floor by his father and another man. Thomas said he escaped through a window, intending to return to his mother, but was caught by police.

Lt. Craig Wood, the police officer who responded to the report, said he recalled Gottlieb showing him an order from a Delaware family court judge, placing the teen in her care. "I found it unusual that they couldn't find a doctor closer to where they lived, but she's a specialist, I guess," he said.

Gottlieb did not respond to a request for comment.

The week after Jordan took his 16-year-old son to the emergency room, he brought his 12-year-old son to the ER for "suicidal ideation with intent."

The boy also told medical staff about the "alienation camp," where he was "threatened that he would be arrested if he didn't cooperate," according to medical records. He told hospital staff that while there he had been forced to look at documents and watch video showing that "his mom was a 'bad person.'"

The 12-year-old said that at his father's house he was being "restrained daily" if he didn't do what his dad wanted, and he said he felt "mentally broken down" because of his father's threats that he would never again see his mother. The boy disclosed to medical staff that his father had sexually abused him at age 11. According to the medical report, Utah's Department

Jordan did not respond to requests for comment about the allegation. He told hospital staff that multiple DCFS cases had been opened against him and closed because of a lack of evidence. He said he believed his ex-wife had made false claims about him to the children to further alienate them from him, according to court documents.

The child told medical staff that if he was forced to return to his father's house, he would "find a way to kill himself." He was admitted for inpatient psychiatric care.

Jordan's father, Brent, testified in the hearing earlier this year that he has long-standing concerns about his son's parenting and the effect the reunification camp has had on his grandsons.

"They don't feel safe with police officers, they don't trust you, they don't trust their father. And the reason is because they told their story of abuse and what happens is they get shoved back into the hands of their abuser every time," Brent testified. "How can you ask a child to rationalize that?"

Police have been called to Jordan's home multiple times since the family's return from Texas, according to 911 records. On Dec. 15, a juvenile court judge ordered the children to be removed from the home and placed with their mom. Police brought the 12-year-old to Hollie (the 16-year-old had already run away to his mother's home). The next day, Jordan secured an order returning the boys to his house. Police assisted with the transfer.

In February, Maase advised the court to continue prohibiting the boys from seeing their mother until Hollie "fully acknowledges the alienation and discontinues her negative behaviors." The children must first "relinquish their alienating thoughts, beliefs, attitudes, feelings and behavior" before they are allowed to see her, Maase wrote in a report to the court.

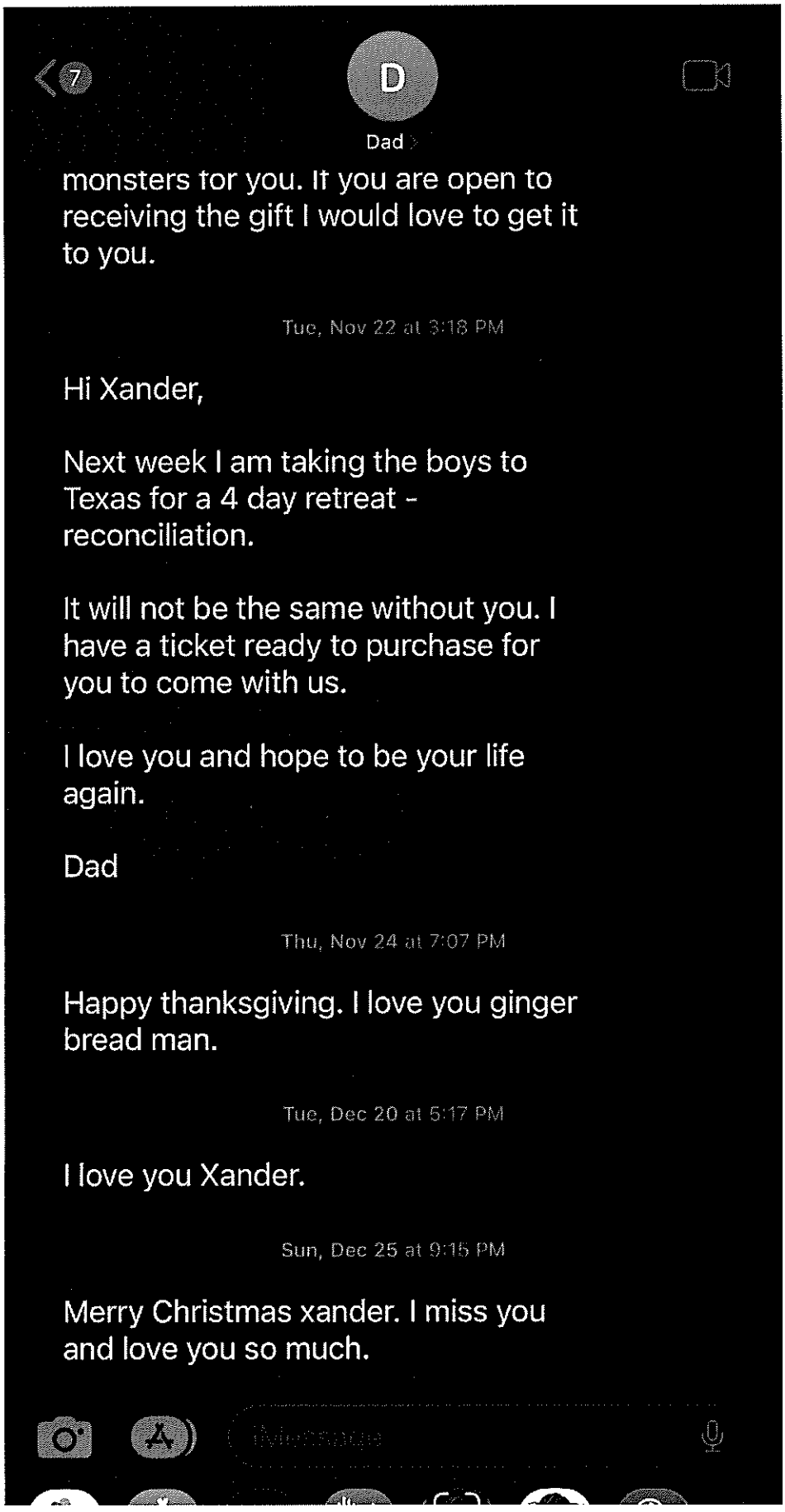
Judge Ronald G. Russell ordered the children to continue Maase's treatment.

Hollie has not been permitted to communicate with her children who are minors since December. In February, she moved from her home in Utah to dissuade the boys from running away from their father's house to see her, as they had done multiple times. If they do it again, the no-contact order will be extended, Hollie said.

The Oldest Brother

As a legal adult, the court couldn't force Xander, the oldest of the three brothers, to participate in the reunification program.

Jordan invited him to join them in Texas, texting at the end of November, "It will not be the same without you. I have a ticket ready to purchase for you to come with us. I love you and hope to be your life again."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D
Dad
monsters for you. If you are open to receiving the gift I would love to get it to you.
Tue, Nov 22 at 3:18 PM
Hi Xander,
Next week I am taking the boys to Texas for a 4 day retreat - reconciliation.
It will not be the same without you. I have a ticket ready to purchase for you to come with us.
I love you and hope to be your life again.
Dad
Thu, Nov 24 at 7:07 PM
Happy thanksgiving. I love you ginger bread man.
Tue, Dec 20 at 5:17 PM
I love you Xander.
Sun, Dec 25 at 9:15 PM
Merry Christmas xander. I miss you and love you so much.

Jordan invited his son Xander via text message at the end of November to participate in the reunification program in Texas. Provided by Xander

Xander never responded.

He told ProPublica that he had been through years of failed court-mandated reunification therapy and had no intention of participating in more.

Still, he has struggled with feelings of guilt for not being with his brothers as they suffered through the reunification camp.

"Maybe if I had gone, I could have protected them," he said. "I'm having trouble forgiving myself for that."

Clarification, May 18, 2023: *This article was updated to clarify that the National Council of Juvenile and Family Court Judges has shunned the theory of parental alienation.*

Mariam Elba and Mollie Simon contributed research. Michael Squires contributed reporting.

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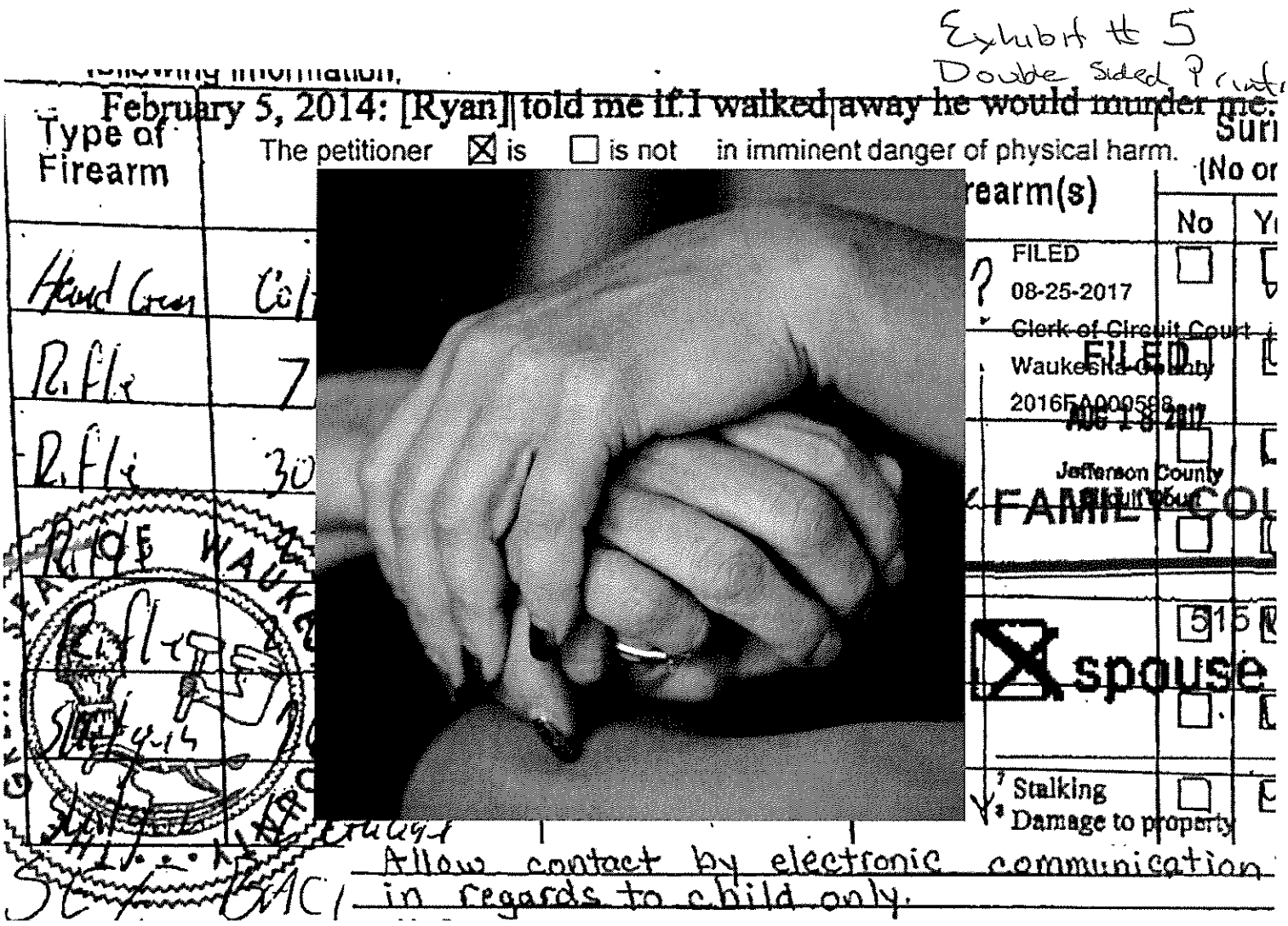


Survivors of spousal abuse have turned to each other for support in the face of a custody system that they say often disregards their safety. Andrea Wise/ProPublica; Photo: Taylor Glascock for ProPublica

He Beat Her Repeatedly. Family Court Tried to Give Him Joint Custody of Their Children.

Wisconsin is considered a leader in the movement to treat fathers as equal caregivers when parents separate. Shared parenting is usually better for children — but the model fails for many women forced to co-parent with their abusers.

by Megan O'Matz

Sept. 16, 2021, 5 a.m. EDT

ProPublica is a nonprofit newsroom that investigates abuses of power. Sign up for Dispatches, a newsletter that spotlights wrongdoing around the country, to receive our stories in your inbox every week.

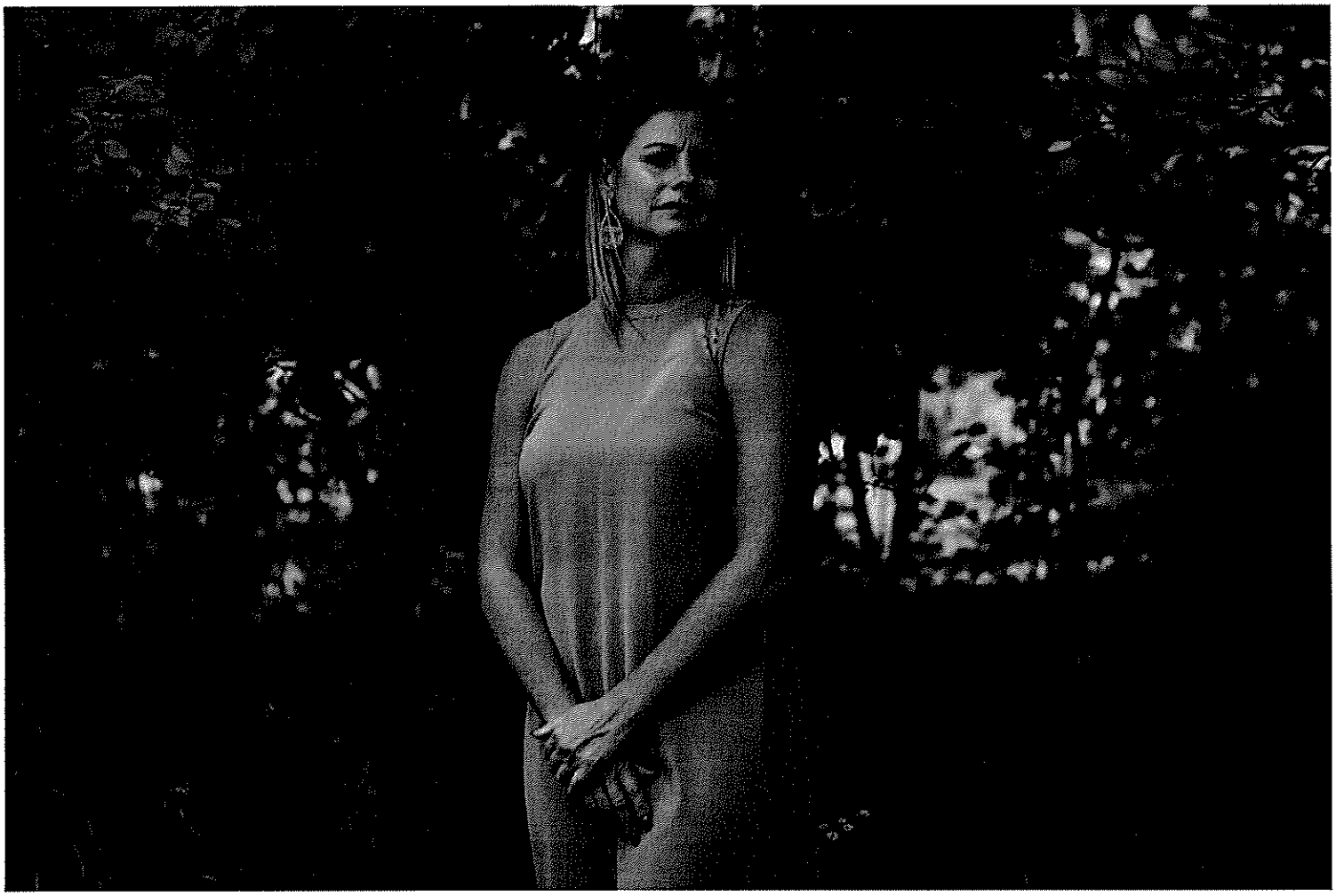
Jennifer Moston was about seven months pregnant when, she said, her husband grabbed her by the arms, picked her up and threw her against the staircase. Each time she tried to get up, he pushed her down again.

Such abusive episodes continued for several years, she said, until 2016, when he allegedly tried to strangle her. She went to the police and filed for divorce.

It seemed obvious to Jennifer that her husband, Ryan, shouldn't get custody of their 3-year-old son, as Ryan now faced felony charges of domestic violence. How could someone with a violent history be trusted with a child? How could she stay out of harm's way if she was interacting with him for drop-offs?

Jennifer assumed that the family court in her Wisconsin county would make her safety and that of her son a priority, and that the system would help her cut off contact with Ryan.

But it didn't.



Jennifer Moston Taylor Glascock for ProPublica

Court professionals handling her case disregarded or downplayed her allegations despite the pending criminal charges, plus 20 pages of notes she took describing more than 50 incidents in which she said Ryan had physically attacked or threatened her. On top of that, in a separate proceeding, he had admitted to abusing his first wife.

Jennifer Moston eventually got the protections she sought. But it took 2 1/2 years, and it wasn't in family court.

Following Ryan's 2018 conviction for assaulting her, she pleaded with a criminal judge to take a hard line. "Please," she said, "do not let this man around my son again ... keep me safe from him."

The judge listened. He ordered Ryan imprisoned for 8 1/2 years and barred from seeing his son for another 10.

Ryan Moston, who has maintained his innocence and is appealing his conviction, did not respond to a written request for an interview for this story.

Wisconsin is considered a leader in the movement to treat fathers as equal caregivers, and its percentage of cases with shared custody is among the highest in the nation. But that model, while based on altruistic goals, still has not adjusted to the realities of domestic violence.

To examine the impact, ProPublica interviewed a dozen survivors of domestic abuse in Wisconsin, reviewed court documents and police files, and talked to experts in the field. Spouses who've been abused say the courts seem unwilling to listen to their fears and then unable to keep them safe. Jennifer Moston, who has become a voice for survivors of domestic violence, was startled to find that the difficult decision to leave her abuser left her facing a new battle in court: a harrowing fight for credibility and protection.

Advocates for women in Wisconsin describe the family court system as unprepared for the complexities presented by domestic violence, often giving little consideration to the risk of harm to women and children and compounding the trauma they face. And experts from around the country say the court process is still influenced by outdated ideas about abuse and abusers — held not just by judges but by lawyers and social workers who assist victims.

"The culture prefers to cling to its belief that most men are fine, and a lot of women are liars or vengeful or crazy," said Joan Meier, the lead author of a widely cited 2019 national study of custody decisions involving alleged child abuse or domestic violence.

That's exactly what a group of mothers in La Crosse, Wisconsin, complained about last year when they began a campaign to draw attention to what they saw as the failure of local courts to take domestic violence accusations seriously. But they remain frustrated by a lack of action in their county.

Absent convincing proof of a parent hitting a child, some family courts seem to view domestic violence as unrelated to parenting, experts say. Judges who don't understand the complex dynamics of domestic violence sometimes conclude that once a couple splits up, the toxicity will end and the abusive spouse will be a decent parent, said Jenna Gormal, director of public policy at End Domestic Abuse Wisconsin, a statewide anti-violence coalition that trains judges and other legal professionals.

Yet even when the child is not at risk, the abused spouse can remain a potential target for more violence.

In Calumet County in January 2018, the local prosecutor asked that Robert K. Schmidt not be allowed contact with his three children while free on bail after allegedly holding a gun to his wife's head on New Year's Eve, tying her up with cord and duct tape and raping her. But the criminal court judge disagreed.

Schmidt's wife, Sara, who had filed for divorce after the New Year's Eve attack, was dropping off her children at her in-laws for a visit with Robert five days after the judge's decision when Robert emerged from the house with a gun. He fatally shot her, then used the same gun to kill himself.

The Law and the Reality

Like most other states, Wisconsin uses what it determines is in "the best interest of the child" in deciding custody cases. Domestic violence is one

parent has a drug or alcohol problem.

The state presumes that parents will share the responsibility of legal custody — making major decisions for a child — unless there is a "pattern or serious incident" of domestic violence. Similarly, for deciding the proportion of time a child spends with each parent, domestic violence should upend the goal of giving both parents "regularly occurring, meaningful periods" of time with their children. In such cases, state law says, the safety of the abuse survivor and the children must be "paramount."

But the current law, passed in 2003, leaves a lot of room for interpretation. It does not specify that an abusive spouse cannot have any interaction with their child. Courts can provide for the safety of survivors of abuse by requiring children to be exchanged "in a protected setting" or insisting that visits be supervised by a relative or a social worker.

Dolores Bomrad, who heard custody cases in Washington County, said it can be "hard to reach the level of proof" needed to show that a parent is unsafe.

"It's very, very difficult in Wisconsin law for there to be no contact between a parent and a child," said Bomrad, who was a court commissioner, someone appointed by a judge to help handle family law matters. "The general rule is it's best for children to have contact with both parents, but that's as long as it's safe. And as long as it's in the best interest of the child and isn't placing the child at risk."

A 2018 study by End Domestic Abuse Wisconsin concluded that decisions in family court are not sufficiently accounting for domestic violence.

Researchers in 20 Wisconsin counties reviewed every divorce case between 2010 and 2015 in which one parent had a prior conviction for felony domestic abuse or misdemeanor battery against the other parent. There were a total of 361.

They found that half the cases resulted in joint legal custody, requiring victims to cooperate in decision-making with their abusers, despite the law's protections. The study's authors were surprised that so many survivors ended up working jointly with their abusers to make legal decisions for their children. In more than 80% of all cases reviewed, the parties reached negotiated settlements. Researchers concluded that family court lawyers "adhere to the notion that divorcing spouses must learn to cooperate."

When it came to apportioning time with children, final custody orders placed them solely or primarily with the abuse survivor in about two-thirds of the cases, but the courts typically did not include any safety provisions for visits, the study found.

The reviewers also found that only 27% of the cases made any reference at all to domestic violence, despite the prior criminal convictions.

"It suggests that Wisconsin family law case processing does not systematically account for abuse," the findings, published by the State Bar of Wisconsin, concluded.

Wisconsin for Children and Families, a support group made up largely of fathers who've gone through family court, gives little weight to the End Domestic Abuse study. Tony Bickel, the group's president, said the results shouldn't be seen as a failure of the court system, because the majority of custody decisions are made through voluntary agreements between two parents.

Bickel said that people with domestic violence convictions often can co-parent effectively and that many parents agree to do just that. He said that the courts must distinguish between someone who makes a "one-time mistake" and a habitual abuser.

"We feel shared parenting is best in most cases for our kids, and we have to find a way to safely do that," Bickel said, pointing to a 2018 Wake Forest University review of 60 studies showing that children in joint custody arrangements fare extremely well. If need be, safety provisions could include exchanging kids at police stations or public places with many cameras, he said.

To an abused spouse, such arrangements can seem incomprehensible. Many can't afford a lawyer or the court fees to fight drawn-out legal battles, so they reluctantly settle.

"Can you imagine if you are a survivor who was beaten or raped or hurt by this person and now you have to turn over your child? It's a reasonable reaction, I think, to be afraid and to be cautious, and many women are put in that position," said Carmen Pitre, president and CEO of the Sojourner Family Peace Center, in Milwaukee. The center is the largest nonprofit service provider for survivors of domestic abuse in Wisconsin.

Jennifer Moston, who suffered from regular abuse, found the court system's safeguards flimsy. At least once, she told a judge, she had to hand

over her son in the early morning at a small-town police station. At that hour, it was unstaffed.

"He Wishes I Were Dead"

Jennifer was not the first woman to allege abuse by Ryan.

His first wife, Tracy, won a restraining order against him in 2008 after she described the terror she felt when he lashed out. She detailed how Ryan had threatened her, slapped her and spit on her during their brief marriage. He did not dispute her allegations.

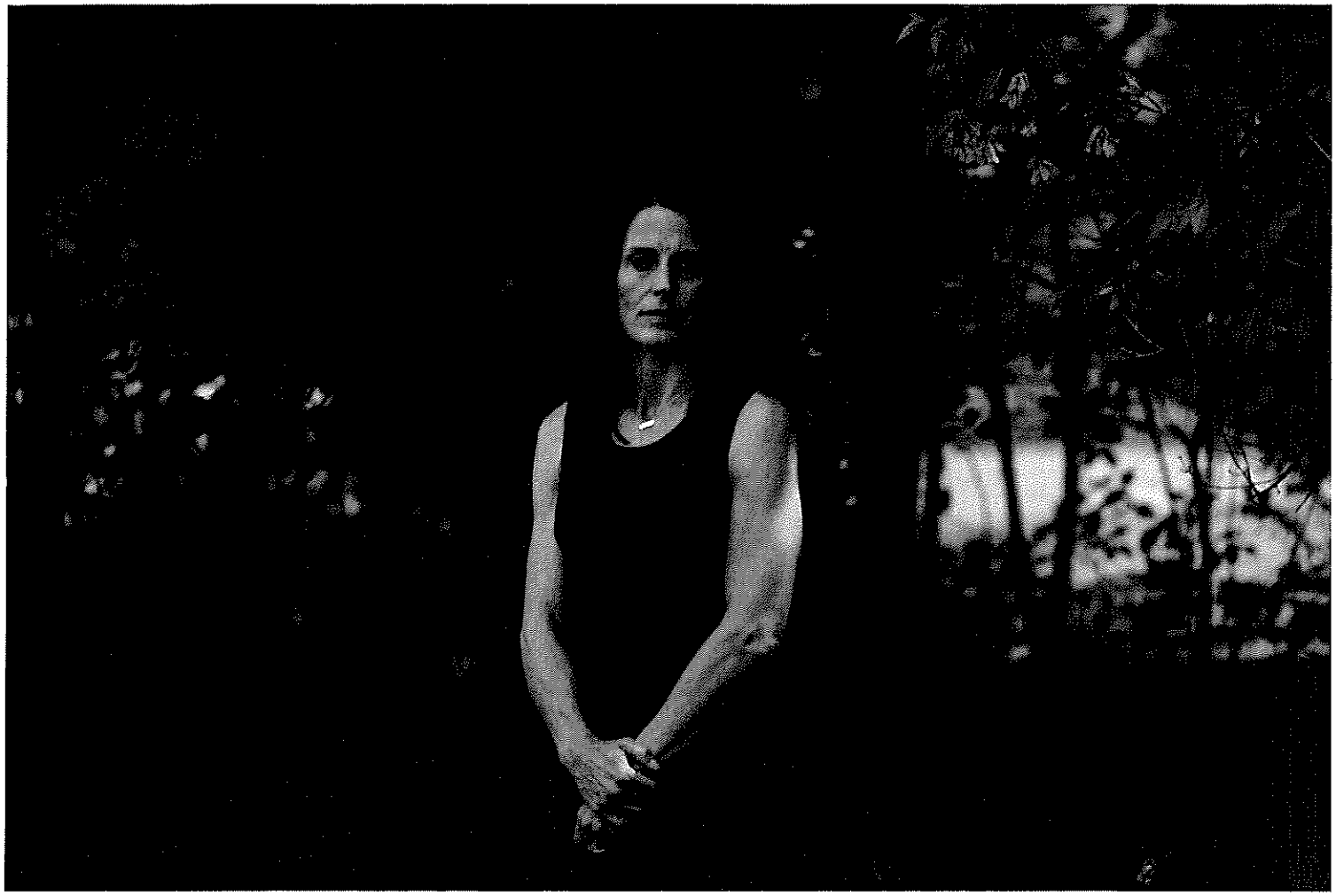
"On one occasion after an argument Ryan grabbed a rock we have in the bathroom and said I would like to smash you in the head with this," Tracy wrote. "He has also said on several occasions that he wishes I were dead."

In their 2008 divorce, a Jefferson County court commissioner had expressed concerns about Ryan's "ability to control his rage and impulses."

He was ordered into a lengthy batterers' treatment program because of the incidents with Tracy. The program consisted of six individual therapy sessions and 28 group sessions, court records state.

While Ryan was in treatment, Jefferson County allowed him frequent visits with his eldest child, including overnights to be supervised by Ryan's dad.

Then, after he completed the batterers' program, under the terms of his divorce settlement with Tracy, he was allowed to spend a few hours unsupervised with the boy one or two weeknights and overnight two weekends a month.



Tracy Taylor Glascock for ProPublica

Those visits filled Tracy with fear. Fear that her son might be harmed by a man she knew to be violent. Fear that her son might witness violence in the new relationships Ryan was forming.

"You bring this beautiful child into the world," said Tracy, who asked that her last name not be published to protect her family's privacy. "The last thing you want to do is put them in an environment where they're getting hurt."

Ryan, at the time a school teacher, married Jennifer, the managing director of a financial services firm, in 2013. She had three children from a prior marriage and soon bore another son with Ryan.

In the spring of 2014, while dropping off her stepson at Tracy's, Jennifer confided to her: "I'm being abused by Ryan. I'm scared. I don't know what to do."

Tracy said she understood Jennifer's concerns, and didn't hesitate when it came to helping her. At Tracy's suggestion, Jennifer secretly began keeping a journal of the abuse she endured. She emailed detailed, dated entries to herself, in case she needed evidence later for a restraining order or, worse, if she was found dead. She noted when Ryan made his hand into the shape of a gun and pretended to shoot her in the head. When he called

her vulgar names and threatened her. And how he broke her wrist in a 2015 incident.

One night in January 2016, police were summoned to their home in Waukesha County. Jennifer alleges that Ryan tried to strangle her in bed, she screamed and her brother, who was visiting, rushed to her aid. Ryan and the brother fought. When police questioned Jennifer and Ryan together, she denied being attacked.

Ryan's older son, who had been in his father's home that night, told Tracy about the police visit, and Tracy became alarmed. She obtained the police report, then called Jennifer. The call prompted Jennifer to go to the Oconomowoc police station to admit she had lied about not having been attacked by Ryan, and to ask for help. Tracy met her at the police station for emotional support.

Jennifer petitioned the Waukesha County court for a restraining order against her husband and attached what a judge later described as a "diary of domestic violence." The court granted the order of protection.

Five days later, Tracy filed a motion asking the family court in neighboring Jefferson County to restrict Ryan's parenting time with the son they shared. She included a copy of Jennifer's restraining order and excerpts from a 2014 deposition given by an earlier girlfriend of Ryan's who testified he had threatened to slit her throat with a buck knife.

Jefferson County held a family court hearing in March 2016 and issued an order barring Ryan from being alone with his older son, citing the "number of incidents of battery and domestic abuse, the severity of the incidents, and the dimensions and pattern of domestic abuse alleged." Eventually he was allowed supervised visits for two hours once a week.

In Waukesha County, in Jennifer's case, the district attorney charged Ryan with one count of strangulation in April 2016 for the alleged attack on Jennifer. Jennifer filed for divorce the following month.

Initially a court commissioner allowed Ryan to spend alternate weekends and Tuesdays overnight with the boy. As with Ryan's oldest son, these would be supervised by Ryan's dad.

Only after prosecutors in Waukesha County filed nine additional criminal counts against Ryan in August 2016, including stalking, false imprisonment and numerous incidents of battery, did the Waukesha family court tighten its conditions. Ryan Moston could spend one evening a week visiting with his son at a local library for two hours, under the supervision of a social worker.

When Women Are Not Believed

In Wisconsin family court, judges rely heavily on the input of attorneys appointed to advocate for the best interest of the child.

By law, these "guardians ad litem" have a vital task: to investigate whether there's evidence of domestic violence and report back to the judge.

A 2021 University of Wisconsin report on family court cases involving domestic abuse described the challenges guardians ad litem face. They do not have enough resources for evidence collection or expert help, and they lack training about domestic abuse.

These court-appointed advocates, concluded the study produced by the university's Robert M. La Follette School of Public Affairs, "are often asked to do a job that exceeds the original boundaries of their role, one in which they do not currently have the expertise and resources to achieve. This can make addressing a large societal problem, like domestic abuse, very difficult or nearly impossible in some situations."

The researchers surveyed guardians and published some of their anonymous comments. Said one: "Some GALs meet with scared kids for 15 minutes at their office and then think they know everything about the children, and then the court takes the GAL's recommendation as gospel. It's frightening, really."

That respondent said the inconsistent approach of guardians turns the process into a "free-for-all": "There's no clear definitions of what is in the best interests of the children, so it leaves it up to each individual GAL to define for themselves."

As a result of the End Domestic Abuse study, the state Supreme Court agreed as of Jan. 1 of this year to require guardians ad litem to obtain at least three credit hours of training in family violence. Compliance, however, is not tracked by the state.

And throughout the system, even in the aftermath of the #MeToo movement, there remains distrust of women's stories of abuse, according to women's advocates.

In Dane County, a family court judge denied a restraining order requested by a woman who claimed her partner tried to throw her off a balcony and pointed a gun at her in front of a child. The judge told her to "take a deep breath and try to co-parent more effectively" because "injunctions make family cases worse," according to a 2019 report by Domestic Abuse Intervention Services, a nonprofit in the county, summarizing observations from its Court Watch program. Staff in the program monitor proceedings to gauge how well courts respond to requests for restraining orders.

According to the report, the judge reasoned that the pain documented in the woman's medical records was "not severe" and that the petition detailed "only one incident."

Kimberly Theobald has represented parents as an attorney and has been an advocate for children as a guardian ad litem. She represented Ryan Moston in family court when Tracy sought to limit his contact with their son. Theobald told ProPublica she believes that, at times, men and women

lie in custody cases. She noted there can be a financial incentive to lie: The parent awarded more time may receive more in child support.

"Be very clear on this: that someone who has truly been abused is not worrying about the money from that angle. They're worrying about their safety, and they are worrying about their child's safety," Theobald said in an interview. "What I am saying is there are people who make the allegation where there's not even smoke, much less fire, in order to gain an upper hand in the custody and placement wars."

She said of Jennifer Moston's claim to police of being strangled: "It was an act."

Joan Meier, a professor of law at George Washington University, set out to gather data on the outcomes of family court cases in which parents accuse each other of abuse or alienation from their kids. Her 2019 report studied a 10-year period and found 222 published court opinions across the nation where fathers claimed mothers were lying about abuse to keep them away from their children. In those instances, the researchers found the tactic was highly successful in deflecting the abuse allegations. The courts were almost twice as likely to disbelieve the mothers' claims of abuse in those scenarios.

What's more, in half of the cases the moms lost custody.

The study urged greater awareness of the bias and dangers in outright rejecting abuse claims and called for "new and mandated trainings to return the courts to their most important mission: protecting at-risk children."

In Waukesha County, Jennifer felt first rejection during her court case, and then outrage.

By April 2017, Waukesha County family court social worker Deanna Stevlingson and Lori Fabian, the guardian ad litem for Jennifer's son, had listened to Jennifer's litany of abuse and seen her documentation. They were aware of the serious charges Ryan was facing.

Yet their report to the family court judge recommended that the Mostons share legal decision-making for their child and that Ryan be allowed to spend two weekends a month and every Wednesday overnight unsupervised with his son. (Attempts to reach Stevlingson and Fabian for comment for this story were unsuccessful.)

"We are jaws on the floor," Jennifer's lawyer, Scott Schmidlkofer, recalled of hearing the report's recommendation. He found it inexplicable. But he said anybody, even an accused abuser, can be charming in an hourlong interview.

The report lists Stevlingson's numerous record checks and interviews with people in Ryan and Jennifer's lives. But that list did not include the district attorney prosecuting Ryan, the detective in the criminal case, Ryan's first wife nor the girlfriend who in 2012 filed for a restraining order against Ryan in Dane County but settled for a mutual no-contact order.

The report mentions that Stevlingson reviewed records from three police departments and the Dane County Sheriff's Office. But it makes no specific mention of the criminal case against Ryan in Waukesha County.

"This recommendation is based on the information available to me at this time," Stevlingson wrote. "I believe it is in the child's best interest."

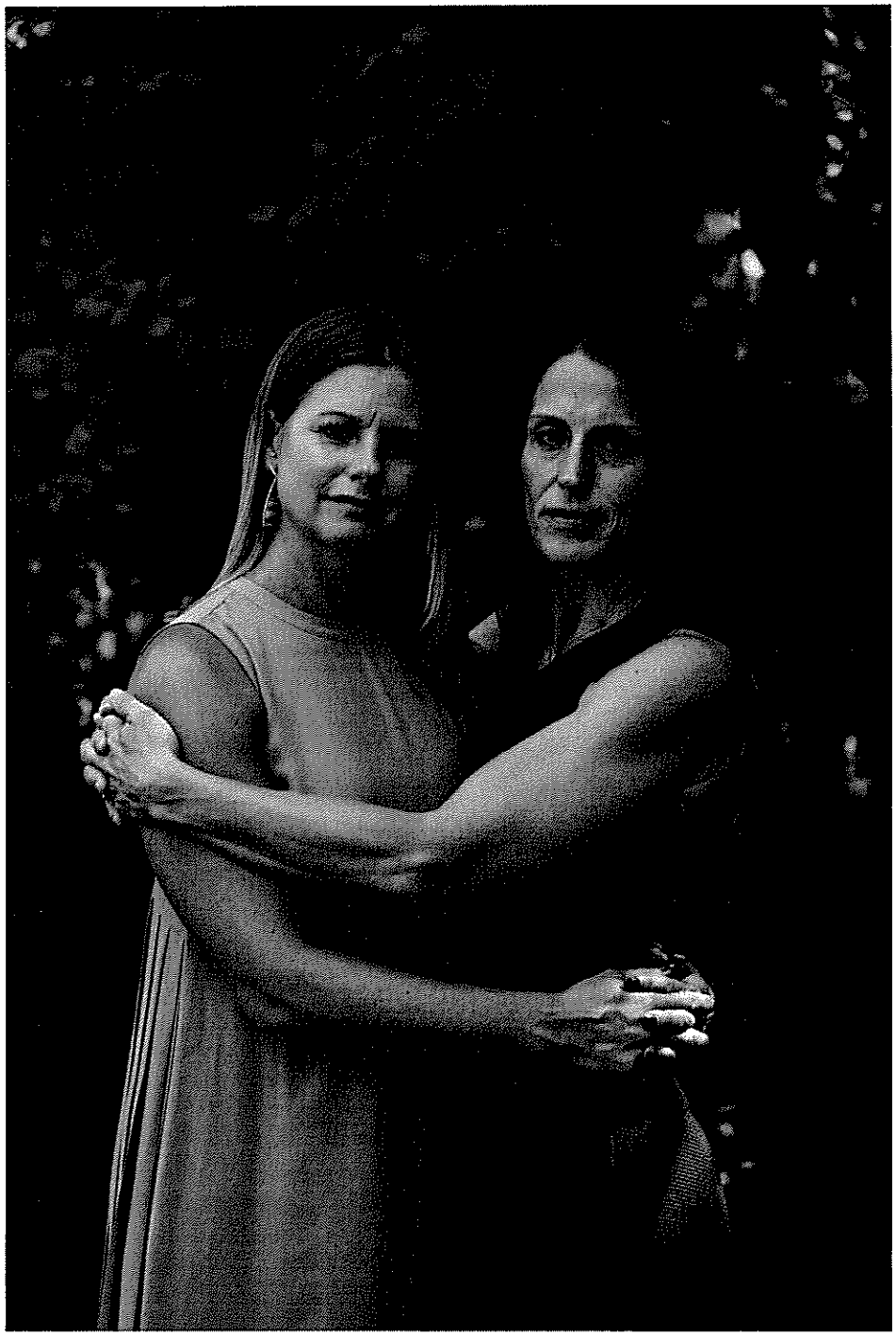
Stevlingson wrote that she attempted to obtain unspecified records from the Waukesha County Sheriff's Department but was told "they could not provide these records to me at this time." The sheriff's office is part of the same county — and in the same building — as Family Court Services, her employer.

In Jennifer's view, the system had once again favored Ryan.

Under Attack in Family Court

Jennifer Moston did have one important ally, however: her husband's first wife.

The two women supported each other in parallel custody battles against Ryan in their neighboring Wisconsin counties.



Jennifer and Tracy Taylor Glascock for ProPublica

Tracy's custody case in Jefferson County, reopened because of the criminal charges, went to trial first. Jennifer was the first witness called by Tracy's lawyer so she could recount what Ryan had done to her.

Ryan's attorney was Theobald, the part-time guardian ad litem for children but in this case serving in her other capacity as a legal advocate for a parent. In closing arguments in June 2017, Theobald did everything in her power to discredit Jennifer, casting her as a desperate, conniving woman.

The diary Jennifer had kept? Fabricated, the lawyer claimed.

The pictures she took of her injuries? Too grainy to discern the marks or even say for sure the photos were of Jennifer.

Her support of Ryan's first wife? Deceitful collusion.

Finally, Jennifer was dumbfounded to hear Theobald tell the judge that she had attempted to bait her estranged husband by wearing a "tight blouse" on the stand, "complete with her nipples being incredibly pronounced."

"It literally made me want to throw up," Jennifer recalled. "The thought of someone trying to accuse me of trying to come on to the man who tried to kill me."

Theobald, in an interview, stood by her remarks in court, saying, "It was inappropriate attire unless she was going out clubbing somewhere."

Theobald argued in court that Ryan Moston was a caring father and should continue to have contact with Tracy's son. Ryan himself testified, "I love my son, and we have a great relationship. I never harmed him. I never would bring harm to him ever."

Ultimately, the judge in Jefferson County sided with Tracy.

Calling it the "most significant case of domestic violence that I have ever experienced," Judge Jennifer Weston expressed doubt that Ryan would change. He'd already gone through two certified batterer's programs by then: in 2009 and voluntarily during the pending of his criminal charges.

"We're not proactive. Is there a point at which we have to become proactive because there's so much history that supports that the next 10 years are going to be the same as the past 10 years?" Weston asked.

Two months later, Weston issued a 28-page decision stripping Ryan, "a chronic batterer," of all contact with his eldest son. "This is a full denial, to include no telephone contact or contact by any other means," the judge wrote.

"The trauma to Tracy, and now to Jennifer, is recurring every day they are required to release their children" to Ryan, Weston wrote, "even into the hands of a supervisor."

The boy "is in danger — physically, mentally and emotionally — every time he is with his father," the judge concluded, finding that Ryan "is able to snap at any second having failed to learn how to cope."

It had taken Tracy a decade of court hearings and legal negotiations to get what she thought was best for her son.

Jennifer, however, remained skeptical of what would happen in her case in the adjacent county. The April 2017 report from the guardian ad litem and the social worker, as well as her conversations with them, made her concerned about how a judge would rule.

On the advice of her lawyer, Jennifer and Ryan did not go to trial over their divorce but arrived at a settlement in October 2017.

Ryan agreed to give Jennifer sole legal custody of their son, then nearly 4, according to the divorce decree. He was allowed phone calls three times a week with the boy and hourlong weekly visits to be supervised at Parents Place, a social service agency.

Schmidlkofer considered it the best deal he could get for Jennifer, given the position of the guardian ad litem and the social worker and the likely influence this would have on the court. Had Jennifer gone to trial, he said, her total legal fees could have easily reached $50,000.

In custody cases, he said, "99.9% of people get joint legal custody. She got sole."

Still, it was not enough to ease Jennifer's fears.

Fixing the System

Family court drama typically is hidden from public view. But it garnered attention in Wisconsin recently when a group of nearly 30 women in La Crosse, a small city on the Mississippi River, joined forces to speak out about the system and call for change.

On their website, and in public forums, the women described their frustration with court-appointed evaluators, including guardians ad litem, who recommend parents cooperate in child rearing even when there are accusations of domestic violence. The women had hoped that county officials would listen and begin to make reforms. But that hasn't happened.

"When we look at the family court system, there are no checks and balances," said Elizabeth Cline, one of the La Crosse moms, whose own court battle has stretched over six years.

Wisconsin Judge Ramona Gonzalez, a past president of the National Council of Juvenile and Family Court Judges, is among those who believe family courts should respond more effectively. The emphasis by courts on shared parenting does not work in cases involving "coercive, controlling people," said Gonzalez, who is based in La Crosse.

For instance, the law in Wisconsin talks about a pattern or serious incident of interspousal battery. But there are a whole host of behaviors that many consider abusive that do not involve violence, including a spouse restricting another's access to money, tracking their movements, monitoring their emails or cutting them off from friends and family.

Advocates also are trying to address what they describe as other blind spots in the state law. For instance, a bill pending in Madison would allow family court judges to check their own criminal court system to learn whether a parent had any prior conviction for domestic violence or child abuse or was subject to a restraining order.

The goal is to address an information gap that can hinder family court judges when litigants are not represented by attorneys or when the reports

from evaluators are thin. Under the Wisconsin Code of Judicial Conduct, judges are prohibited from conducting independent investigations. As neutral parties they can only consider evidence the parties bring to them, though they are allowed to question litigants.

The bill's sponsor, Rep. Robert Brooks, said in an April committee hearing that the legislation would enable the judges to "have all of the relevant information" when deciding custody cases. The bill has passed out of the state Assembly but still needs approval from the Senate.

"The court," he said, "is frequently unaware if a family has a history of domestic violence, even when a parent has a conviction or injunction that is publicly available in court records."

Free of Fear, for a Time

On Sept. 14, 2018, a Waukesha County jury came back with its verdict against Ryan Moston. He was acquitted on the strangulation charge against him. (A police officer had testified that he saw no marks or redness on Jennifer's neck.) But the jury found Ryan guilty of felony charges of stalking, false imprisonment and battery with intent of bodily harm, as well as six misdemeanor charges.

At sentencing the following month, Jennifer and Tracy urged Waukesha Judge Michael P. Maxwell to incarcerate Ryan for the maximum time possible. The women wanted years free of violence, manipulation and fear.

"I beg of you," Jennifer told the judge. "Family court is not going to save [my child] or me."

The judge's sentence fell short of the maximum, but he still gave Ryan 8 1/2 years in prison and another 10 years of "extended supervision" in the community, during which time Ryan can have no contact with Jennifer or their son.

There have been no allegations that Ryan ever tried to hurt his children. But Maxwell rejected any notion that Ryan was a good and devoted father.

"The first job that a father has to do with a son is to demonstrate to that son how to treat women," the judge wrote in his opinion. "The first place you do that is how you treat that child's mother. Whether you show that child's mother respect, whether you show that child's mother kindness and caring, those are the first things that a boy picks up on. In this case, based upon the evidence that was brought in, Ryan Moston failed that job miserably."

Ryan Moston is incarcerated at the Oakhill Correctional Institution in Dane County.

Jennifer is working, raising her family and trying to help raise awareness on issues related to violence against women. She testified at a 2019 hearing in Madison on the need for more training for guardians ad litem and, more

recently, shared the story of her marriage for a Milwaukee Journal Sentinel article about the rise of domestic abuse during the pandemic.

Now twice divorced, Jennifer said she will never remarry "because he had so much control over me ... and I don't want to be that close to someone again."

She is pro-gun, supports concealed carry laws and plans to get a firearm for self-defense. "He's going to be out in six years," she said. "One hundred percent I am having a gun to protect my family. It's scary. I think about it every single day."

Jennifer knows that the boy, now 7, may want to see his dad when he becomes an adult. She doesn't want her son exposed to Ryan's hostile treatment of women, to perpetuate a cycle of abuse.

"I do not want to say it's better for him growing up without a father," she said. "It's better for him to not have *that* father."

Megan O'Matz
Megan O'Matz is a reporter at ProPublica, where she covers issues out of Wisconsin.

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Exhibit #6
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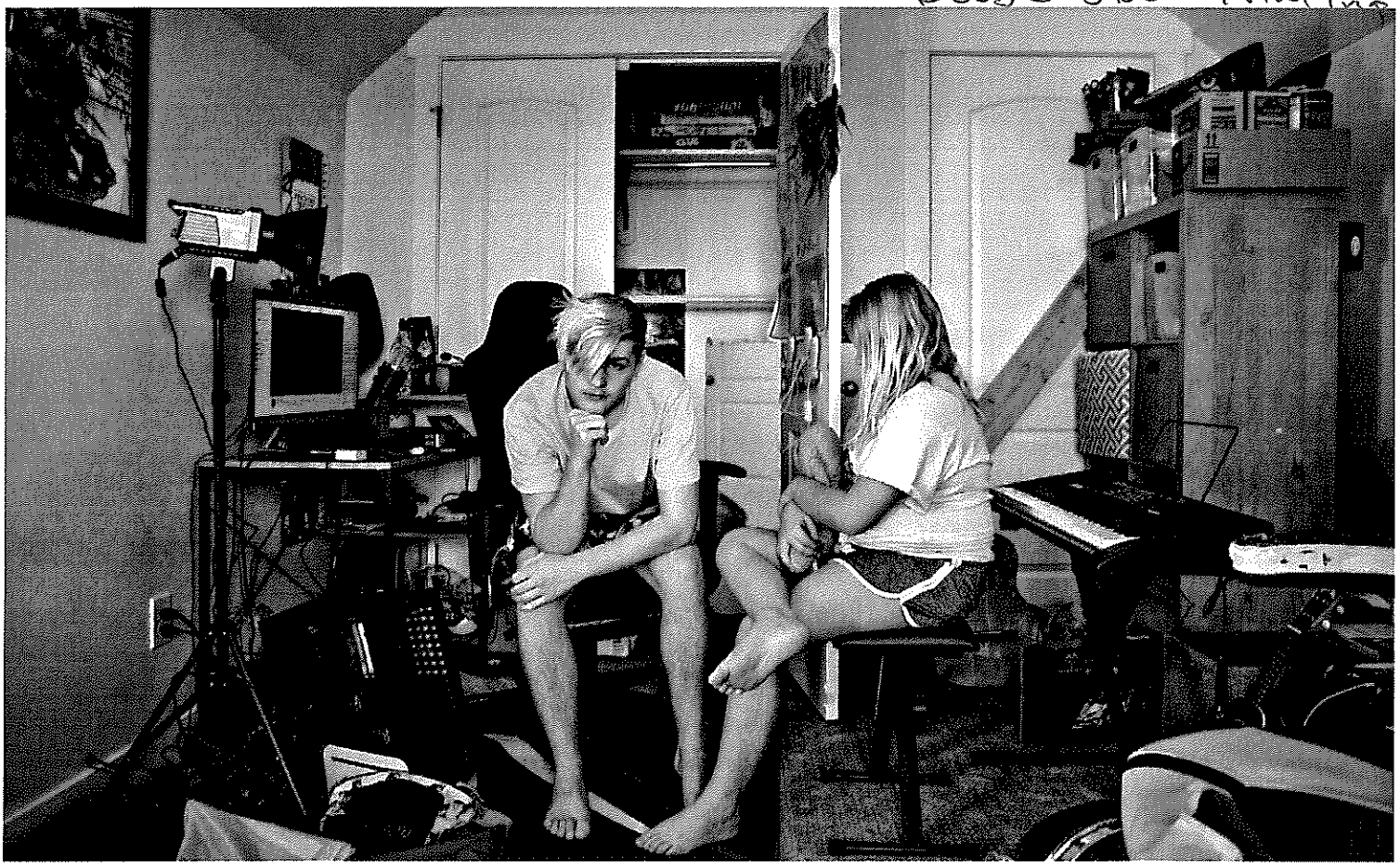


Ty Larson, left, livestreams on TikTok from a barricaded bedroom. Police have attempted to return him and his sister, Brynlee Larson, to the custody of their father, who they say sexually abused them. Kim Raff for ProPublica

Courts

Barricaded Siblings Turn to TikTok While Defying Court Order to Return to Father They Say Abused Them

A judge concluded the children were victims of "parental alienation," which continues to influence family courts despite being rejected by mainstream scientific groups, and authorized police to use "reasonable force" to remove them from their mother.

by Hannah Dreyfus

Feb. 26, 5 a.m. EST

Co-published with The Salt Lake Tribune

This story describes in detail the sexual abuse of children.

Two siblings in Utah have barricaded themselves in a bedroom at their mother's home in defiance of a judge's order to return to the custody of

The judge has authorized police to use "reasonable force" — including entry into locked rooms — against Brynlee Larson, 12, and Ty Larson, 15. Ty has spent the last month livestreaming on TikTok to call attention to their case.

The showdown is the fallout from the latest family court battle over "parental alienation" — a disputed psychological theory in which one parent is accused of brainwashing a child to turn them against the other parent.

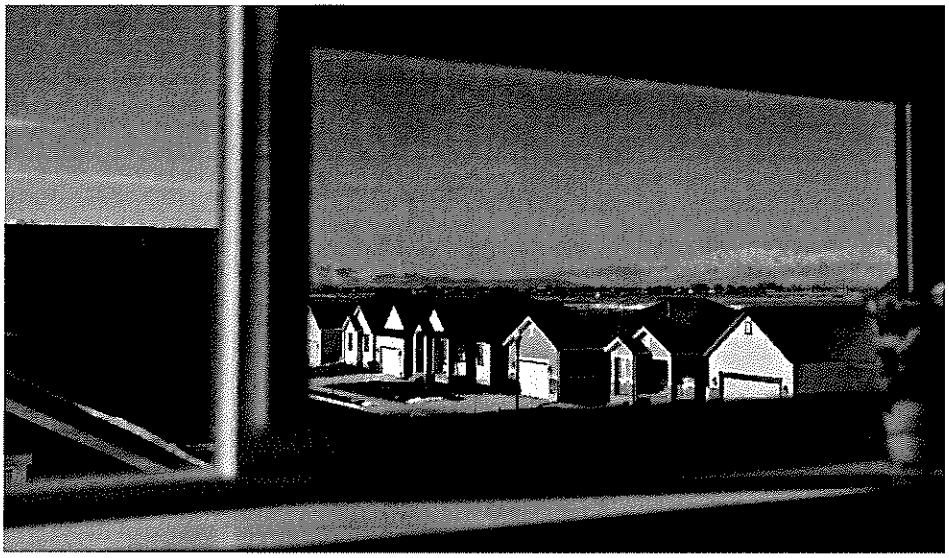
"My own word does not matter, and they don't believe my truth," Ty said in a video posted to TikTok last month that received more than 370,000 views. "The court system isn't trying to save us, nobody's trying to keep us safe. I am the one that's going to have to choose my own safety."

Police visited the home in December and attempted to remove the siblings but decided not to break down the door despite the father's request that they do so, according to police reports. Given the "potentially combustible situation," officers have asked for clarification from the court before carrying out Judge Derek P. Pullan's order, according to court records.

In 2018, Utah's Division of Child and Family Services found that the father, Brent Joel Larson, had sexually and emotionally abused his children. Investigators categorized the abuse as "severe & chronic." The findings led to Larson's parenting time being restricted to a handful of supervised monthly visits, as well as a 150-day restraining order that prohibited him from having any other contact with the children.

This month, the Salt Lake County District Attorney's office said there is an ongoing criminal investigation into Larson related to new allegations against him, according to an office spokesperson who declined to comment further. A previous criminal investigation stalled in February 2021, when prosecutors determined they did not have enough evidence to lead to a probable conviction.

Two Utah police departments, Herriman and Lone Peak, are investigating Larson for child abuse, according to spokespersons for the departments.



The view from Ty and Brynlee's Utah bedroom Kim Raff for ProPublica

Larson, through his attorney Ron Wilkinson, disputed the 2018 finding that he had abused the children.

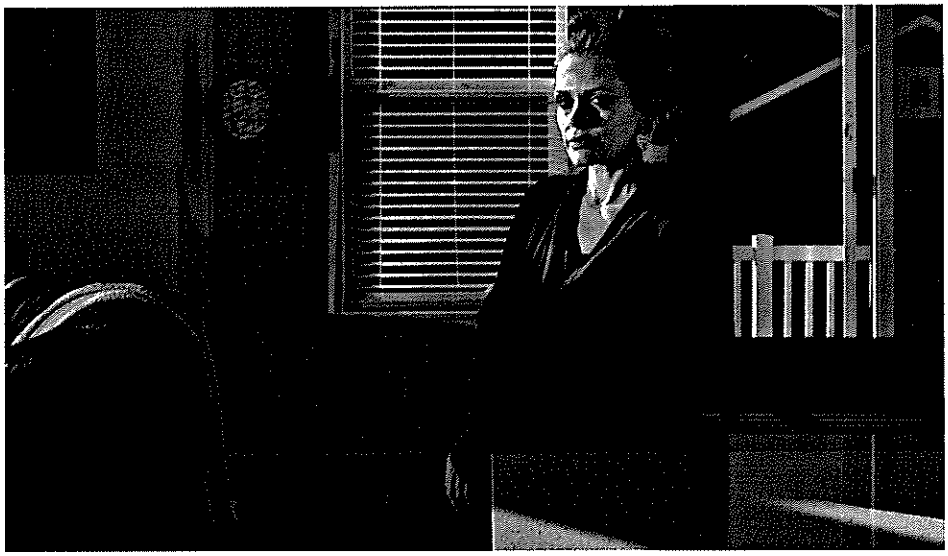
In response to the new allegations, Wilkinson said in a statement: "There have been similar false claims — repeatedly, for years. The stories continue to change and expand each time — always about the same events."

Larson has accused the children's mother, Jessica Zahrt, of sabotaging his relationship with Ty and Brynlee through a campaign of "parental alienation."

Mainstream scientific groups, including the American Psychiatric Association, which compiles the Diagnostic and Statistical Manual of Mental Disorders, and the World Health Organization, which publishes the International Classification of Diseases list, have rejected the theory and said it is not a legitimate diagnosis. It has also been shunned by the National Center for Juvenile Justice for failing to meet court evidentiary standards.

That has not stopped some courts across the country from recognizing parental alienation and mandating treatments to reverse it.

In a January order, Pullan found Zahrt's "campaign" of parental alienation to be the cause of the children's "abuse narrative" and ordered that Ty and Brynlee undergo "reunification therapy" at an out-of-state facility to address the alleged harm. Pullan also determined that switching custody to their father is the "only way to recover the children from this psychological battlefield."



Ty and Brynlee's mother, Jessica Zahrt, in her Utah home. Kim Raff for ProPublica

Despite ordering the children placed back in their father's legal custody, Pullan prohibited Larson from having unsupervised parenting time with the children or spending overnights with them, instead ordering Ty and Brynlee to be separately housed at their paternal relatives' homes pending further court orders.

"The children are being maltreated by their mother. It is heartbreaking," Wilkinson, Larson's attorney, told ProPublica. "All that is hoped for is that the children can recover from the damage their mother has inflicted upon them."

Ty said the claim that their mother is brainwashing them to disclose abuse is "100% fake — and if you don't see that you're as blind as a bat."

Zahrt said since she and Larson split in 2012, she has supported her children having a healthy relationship with their father.

The Utah Attorney General's office has received a slew of complaints about the court order and pleas for authorities to intervene, mostly from people who have learned about the case on social media, public records show. Last week, about 50 people, including advocates for family court reform, gathered at the Utah Capitol to protest the court's handling of the case.

A small crowd, including Ty and Brynlee's grandmother, protests the Utah family court's handling of the children's case. Kim Raff for ProPublica

A court spokesperson said Pullan is prohibited from commenting on the case. "I know Judge Pullan spent many, many hours going through evidence and testimony before he made his ruling," the spokesperson told ProPublica in an email.

Ty spoke to ProPublica from his barricaded bedroom with his TikTok livestream on but his mic muted. Brynlee sat nearby on a futon mattress eating ramen that she prepared using hot water from a bathroom sink. To access the bathroom without entering the hallway, Ty said, he used a drill to cut a hole in the wall without telling his mother.

"I'm scared for my life," the teen told ProPublica, who left school in December to avoid being forced into his father's custody. Ty told child welfare investigators in 2018 that his father had threatened him by saying, if he told anyone about the abuse "he would kill his mother and sister."

Larson, through his attorney, denied the allegation and described the claim as "inconsistent with prior claims."

Brynlee, who has also left school to avoid returning to her father, said the court is "controlling my life." "I could be in the middle of playing with my friends right now," she said.

Brynlee makes ramen in the sink of the bathroom. Her brother barricaded the bathroom door and cut a hole in the wall to connect it to their bedroom. Kim Raff for ProPublica

driver's seat and are free to determine when, where, and on what terms parent-time will occur. They are not."

The judge criticized Zahrt for continuing to "wash the children's clothes and to bring food to the barricaded room" because it enabled their continued rejection of their father.

Zahrt said the children would starve if she didn't bring them food.

Pullan, citing the opinion of a court-ordered reunification therapist, chastised Zahrt for weaponizing the children in a "social media campaign aimed at achieving her desired end" and found her in contempt of court for failing to facilitate her ex-husband's visitation on one occasion. Pullan ordered Zahrt to be jailed for five days, but will allow the contempt filing to be purged if she participates in a high-conflict parenting course.

Dr. David Corwin, a professor and director of pediatric forensic services at the University of Utah and the past president of the American Professional Society on the Abuse of Children, said parental alienation — which he described as "an ideology that is not based upon adequate research" — is too often an "easy sell" to courts seeking an alternative explanation for abuse claims.

"It really is one of the best defenses against accusations of sexual abuse," said Corwin, who co-authored a position statement for his society in January warning professionals against its use in child custody decision-making. "Claiming that a child has been programmed or coached by the other parents creates enough uncertainty for a court to believe the easier narrative: that a parent would lie, rather than that a parent would sexually abuse a child."

Jessica Zahrt talks to her children through their barricaded bedroom door. She has been criticized by the judge for enabling the children's rejection of their father by bringing them food and washing their clothes. Kim Raff for ProPublica

Larson first accused Zahrt of parental alienation a few months after Brynlee accused her father of sexually abusing her in May 2018. Zahrt said when she heard the phrase "parental alienation," she had to look it up. "I literally had to wrap my brain around what I was even being accused of," she told ProPublica. "I've watched them create this story about me, and it doesn't matter what the truth really is."

The so-called reunification camp that Ty and Brynlee have been ordered to attend with their father, Turning Points for Families, is run by Linda

Gottlieb's services include taking the children to an undisclosed location for a four-day "sequestration period." During treatment, the children meet with the "unjustifiably rejected" parent. Afterward, they remain in the alienated parent's custody for 90 days and are prohibited from having contact with the other parent or related family members.

In an interview with ProPublica, Gottlieb said she is dismayed at how social media is being used to attack her program and others like it.

"We can't have what happened in Utah happen again," said Gottlieb, who said she will be requesting that courts that refer minors to her program issue orders prohibiting parents and children who resist from speaking publicly about their cases.

In his January ruling, Pullan postponed enforcing his order for the siblings to attend Turning Points and said a hearing might be necessary first.

Pullan's rulings did not mention the 2018 DCFS findings that substantiated the children's allegations of emotional and sexual abuse by their father.

Brynlee was 7 years old when she first began disclosing details of the abuse to her mother, according to state records. Zahrt reported her daughter's claims to the local police department and DCSF, which opened a case. In subsequent forensic interviews, Brynlee told investigators that her father had penetrated her anus with his finger and touched her inappropriately, resulting in significant pain, according to child welfare records. She told a police detective that her father did not take her to a doctor when she complained about the pain. According to police reports, Larson expressed "shame" for not bringing her to the doctor. On April 3, 2018, DCFS found Brynlee's allegations of sexual abuse against Larson to be "supported."

Brynlee, now 12, first started reporting abuse to her mother in early 2018. Shortly thereafter, DCFS found her allegations of sexual abuse against her father "supported." Kim Raff for ProPublica

pediatrician for severe anxiety and panic attacks, according to child welfare reports. He disclosed that when he was about 4 years old, his father held his head under water in the bathtub while running the faucet in his anus until he couldn't breathe. He reported that around age 7 his father put soap and a water gun in his anus while he was in the shower. Around age 8, he said, several times a month his father would come into his room and touch his penis while he was asleep. He said that when he confronted his father about it his father threatened to kill his mom and family if he told them about the abuse. On Nov. 29, 2018, DCFS found Ty's allegations of sexual and emotional abuse against Larson to be "supported."

Records show police corroborated DCFS' findings, but did not arrest the father. Police records do not explain why, and the department would not comment further.

According to child welfare reports, two other minors who are connected to Larson also alleged he sexually abused them. A DCFS investigation found those accusations "unsupported." In April 2018, the children's mother petitioned the court for an ex parte child protective order against Larson.

Larson, via his attorney, told ProPublica that "these years-old claims have previously been addressed."

Michelle Jones, a reunification therapist appointed by the court to work with Ty and Brynlee, told ProPublica that the children's allegations of abuse are a "false narrative." Asked about state welfare workers finding chronic and severe sexual abuse, Jones said "sometimes they accidently make a substantiation."

She declined to detail how she reached that conclusion, citing therapist-patient confidentiality.

Jones' conclusions were contradicted by a forensic psychologist hired by both parents in 2019 to evaluate the case. Monica D. Christy, who holds a Ph.D. in development and clinical psychology, wrote in a report that "at the very least" she found Larson's behavior to be "unusual and inappropriate." "Whether or not these were sexually-motivated actions and constitute child sexual abuse is for the Court to decide," she wrote. Christy did not respond to ProPublica's request for comment.

Jones told ProPublica she is frequently appointed by the court to advise on cases involving abuse allegations. She is also a vocal defender of parental alienation and presents on the subject at national conferences. A slide from a 2013 presentation Jones gave depicts a mother speaking to a child, "Now that we falsely accused Daddy in Family Court, we can have ice cream for supper, play video games and go to the park all day, and wait for the support checks to roll in!"

Daniel Eyre, a guardian ad litem assigned by the court to represent Ty and Brynlee's interests in the case, also found parental alienation to be the

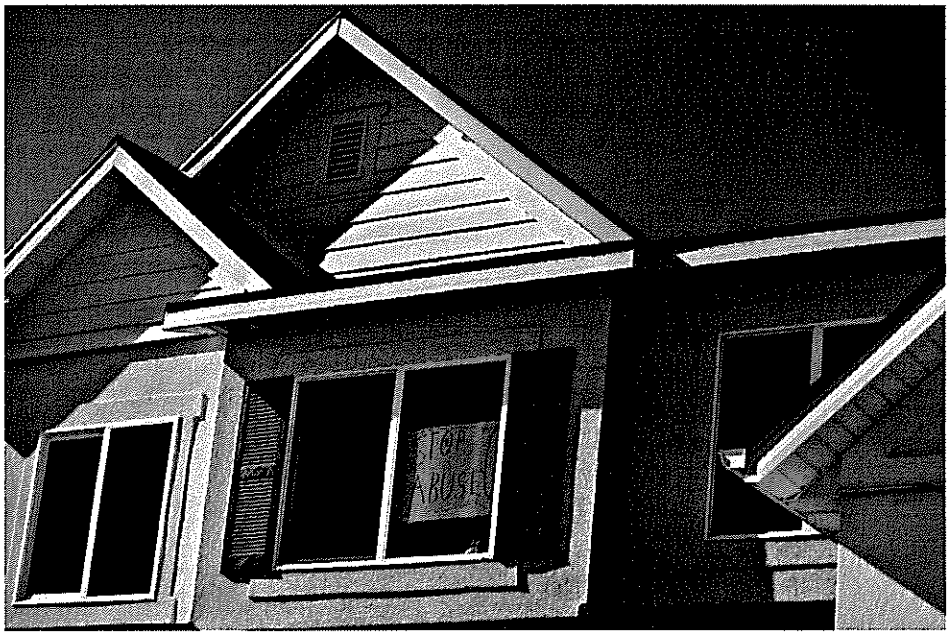
Some defenders of parental alienation claim an absence of abuse or neglect is necessary for the diagnosis, but others, including Gottlieb and Jones, accept cases involving allegations of abuse, including when abuse has been substantiated by authorities, like in the Larson case.

Gottlieb said determining child abuse has occurred is the responsibility of the courts.

"Turning Points only accepts cases by court order," said Gottlieb, adding that demand from courts has prompted her to scale up operations and open two new locations in Texas and California. "The court had to have already made the determination that the child is safe with the alienated parent and that abuse didn't occur — or that it was so long ago, it was remediated."

Ty partially attributes the court's decision to delay sending him and Brynlee to Turning Points to his online activism. He livestreams around the clock, including while he sleeps. He calls the followers who "stand guard" while he sleeps his "dream catchers."

"I know this is happening to so many kids," Ty said. "What separates me is that I have hundreds of people watching."



Signs in Ty and Brynlee's window calling for a stop to abuse Kim Raff for ProPublica

CORRECTION

Feb. 27, 2023: *This story originally misspelled the last name of the mother of the barricaded siblings. She is Jessica Zahrt, not Zhart.*

Mollie Simon and Mariam Elba contributed research.

Filed under —
Courts

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Exhibit #9

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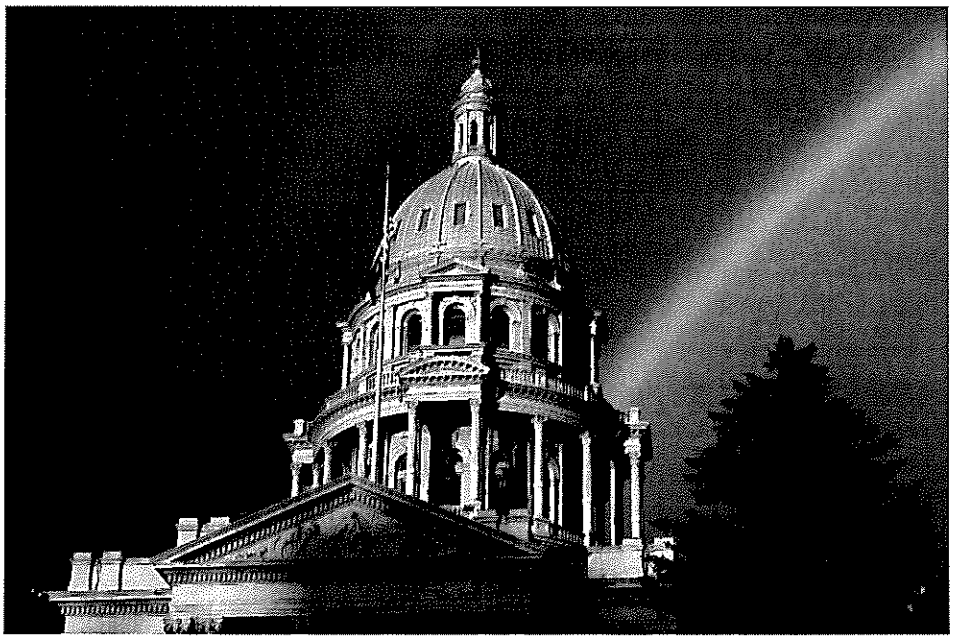
Colorado Lawmakers Consider Reforms to the Way Family Courts Handle Abuse Allegations

Several people who testified in favor of the proposed reforms are plaintiffs in a class-action lawsuit against former custody evaluator Mark Kilmer, alleging fraud and breach of contract.



Lawmakers at the Colorado capitol introduced two bills that would reform the state's custody evaluation system. Michael Ciaglo/Getty Images

by Hannah Dreyfus

March 2, 2:45 p.m. EST

ProPublica is a nonprofit newsroom that investigates abuses of power. Sign up for Dispatches, a newsletter that spotlights wrongdoing around the country, to receive our stories in your inbox every week.

Colorado lawmakers are considering two bills that would reform the way family courts in the state handle cases involving allegations of domestic abuse, saying ProPublica's reporting on the issue has catalyzed efforts to change the state's custody evaluation system.

four custody evaluators on the state-approved roster last year had been charged with harassment or domestic violence. In one case, the charges were dismissed. One case — that of psychologist Mark Kilmer — led to a conviction. In the two others, it is unclear how the charges were resolved.

Rep. Meg Froelich, a Democrat representing Englewood and a co-sponsor of one of the bills, said she gave a copy of the article to every judiciary committee member before the legislative session got underway.

"We don't usually see in-depth coverage on this kind of thing," Weissman said.

Meanwhile, Kilmer, who was suspended from working as a custody evaluator following publication of ProPublica's story, is being sued by six plaintiffs over his involvement in their cases.

ProPublica's story revealed that Kilmer was appointed to evaluate custody disputes involving allegations of domestic abuse despite Kilmer himself being charged with assault in 2006, after his then-wife said he pushed her to the bathroom floor, according to police reports. He pleaded guilty to harassment in 2007. Kilmer told ProPublica that his guilty plea was a result of poor legal representation and that his ex-wife made false allegations to get him arrested.

Kilmer was quoted in the story saying he did not believe about 90% of the claims of abuse he encountered in his work — an estimate he said was based on experience, not scientific research.

The bill co-sponsored by Froelich would require experts who advise the court on custody proceedings to have expertise in domestic violence and child abuse and would restrict judges from ordering forced "reunification" treatments that cut a child off from their protective parent, meaning the parent who expressed concerns about abuse or neglect. Court-ordered reunification "camps" often prohibit contact between minors and the protective parent as part of "therapeutic" treatment.

Among those testifying on behalf of the legislation was Elina Asensio, a teenager who was featured in the ProPublica article. Elina's father was charged with felony child abuse and pleaded guilty to misdemeanor assault after dragging her up a flight of stairs. Kilmer was appointed to evaluate the case and recommended that she remain under the authority of her father. The parties ultimately resolved the custody dispute through arbitration and Elina remains partially under her father's authority.

"The system failed me. My voice did not matter," Elina, 17, told the committee. "My childhood has been taken for me. To this day, I still don't know what peace feels like."

Through his lawyer, Elina's father, Cedric Asensio, told ProPublica that while the initial charge of felony child abuse against him was "very serious," the case's ultimate resolution — a misdemeanor assault plea — indicated "there is much more to the story."

would create a task force to study training requirements for judicial personnel on the topics of domestic violence and sexual assault, among other crimes.

The plaintiffs suing Kilmer, who include Elina's mother, Karin Asensio, allege fraud and breach of contract related to his work on their cases. They accuse Kilmer, who is licensed as a psychologist in Colorado, of violating the American Psychological Association's code of conduct by advising the court on matters related to domestic violence and child abuse despite his history of domestic violence.

The plaintiffs claim they would not have hired Kilmer had they known his personal history and views about abuse allegations, which they learned of from ProPublica's reporting, according to the complaint.

In Colorado, the fees for parental responsibility evaluations — expert psychological assessments intended to inform judges' custody decisions — are paid by the parties to a case. Fees are not capped and typically range between $12,000 and $30,000 for a custody evaluation, with some Colorado parents reporting that they paid over $50,000.

Kilmer didn't immediately respond to a request for comment.

Following his suspension last fall, Kilmer wrote to the court and criticized ProPublica's investigation as the work of a "nonsense journalist" and apologized to his colleagues "for any inconveniences my well-intentioned interview may have caused for party/client relations past, present and future."

"I have little experience with the print media, personally or professionally," Kilmer told the court in an email obtained through a public records request. He said he had been willing to publicly discuss his work as a custody evaluator because "I assumed that it might help the practice here in Colorado, as it is an esoteric world that most people have little or no idea of how it works. Inadvertently, I entered into a political maelstrom that I did not understand existed."

Since his suspension, Kilmer has continued to testify on cases to which he was previously appointed by Colorado courts. In one February hearing, Kilmer told a judge that the suspension was informal and he was continuing his state appointment.

Jaime Watman, who oversees custody evaluators for the Colorado State Court Administrator's Office, told ProPublica that Kilmer has been removed from the rosters of custody evaluators, but the decision about whether he completes the appointments he was previously given "is at the discretion of the appointing court."

Lauren May Woodruff, one of the plaintiffs in the lawsuit, also testified about her experience with Kilmer at the House Judiciary Committee hearing on the bill to require courts to consider past evidence of abuse before allocating custody.

advised the court that Woodruff should share custody and decision-making power with her daughter's father, despite multiple mandatory reports to Colorado's Department of Human Services — including one filed by Kilmer himself — that the father had endangered the child through reckless driving, including driving over 100 mph at night. Custody orders in the case are pending.

Woodruff's soon-to-be-ex-husband, William F. Woodruff, said in a statement: "None of these allegations have been founded by DHS or the Court."

In his evaluations, Kilmer routinely cites parental alienation, a disputed psychological theory in which one parent is accused of brainwashing a child to turn them against the other parent. In email correspondence between Kilmer and Jennifer J. Harman, an associate professor of psychology at Colorado State University and a parental alienation scholar, Harman sympathized with Kilmer after ProPublica's report was published.

"I can tell the article is part of a larger strategy," Harman wrote.

At the legislative session, a handful of individuals voiced opposition to the bills, including Katie Rubano, who runs a parental alienation support group for parents in Colorado. Rubano, citing Harman's research on the subject, argued that "passing this bill would not solve the problem of child abuse in Colorado."

"We need experts but we need them to be better and be trained in all forms of child abuse, including parental alienation," she said.

Froelich's bill would align Colorado with federal efforts to encourage family court reform. Last year, President Joe Biden signed a law that allocates additional federal funds to states that update their child custody laws to better protect at-risk children.

Weissman said he has felt momentum on family court reform gathering in Colorado over the past few years and said he "wouldn't be surprised" if the state was one of the first to pass an equivalent to Kayden's Law, a Pennsylvania act named for a child who was killed by her father during court-ordered unsupervised custody time, which he was granted despite his history of violence. Last March, Biden included provisions of Kayden's Law in the reauthorization of the Violence Against Women Act, committing federal funding to states that update family court laws to better protect children.

Colorado has frequently been a "leader in all manner of policy areas," Weissman said, including legalizing cannabis and regulating ride-sharing companies. "We're a place where we try new things when it becomes evident that they need to be tried."

Update, March 2, 2023: *This story has been updated to include a statement from William F. Woodruff.*

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Exhibit # 8

For New York Families in Custody Fights, a 'Black Hole' of Oversight

Critics say a state office's professed inability to review the work of mental health experts in Family and Matrimonial Court leaves children at risk.

by Joaquin Sapien, March 7, 2017, 1:12 p.m. EST

When Anna Frank lost custody of her 9-year-old son, she blamed her husband and the judge who decided the case in his favor.

She also faulted Barbara Burkhard, a psychologist appointed to evaluate the family and advise the court on the matter. According to Frank, Burkhard concluded — after meeting Frank once and without interviewing her son — that their claims of abuse were invented and that Frank had poisoned her child against his father.

Frank ultimately regained custody of her son, based partly on testimony from other psychologists who disputed Burkhard's contentions. But before she did, she sought sanctions against Burkhard from the agency that oversees licensed psychologists in New York.

Frank's densely detailed, 12-page complaint to the Office of Professional Discipline was never investigated, let alone acted upon.

"Due to our inability to access records or discuss the services rendered with this psychologist, we are unable to investigate this matter or to initiate disciplinary action based upon your complaint," a letter from the office, from the spring of 2012, explained. "I am sorry we cannot be of more assistance to you."

The office's response was typical, a ProPublica examination shows.

Though psychologists who appear in New York's Family and Matrimonial Courts help shape decisions of grave consequence — from custody to child protection to juvenile delinquency — their work is subject to little or no professional oversight, purportedly because the confidentiality of such proceedings makes them hard to penetrate even for regulators.

Several lawyers who have represented parents in such court cases say they and their clients have received similar responses when they've tried to pursue complaints against court-appointed psychologists with OPD.

"They rely upon a bureaucratic Catch-22 to avoid having to take a hard look at misconduct and take their responsibility of oversight seriously," said Timothy Tippins, who wrote a 2016 article for the New York Law Journal on inadequate oversight of such evaluators. "You can't make this bureaucratic bullshit up."

Pace University law professor Merril Sobie, a former chair of the New York State Bar Association's Committee on Children and the Law, has pressed OPD on what recourse exists for families who challenge the competence or objectivity of the psychologists in their cases. The agency has provided few answers.

"It's a black hole," Sobie said.

When ProPublica asked OPD several months ago to explain why it did not investigate complaints against psychologists working in family and matrimonial courts, officials responded with little more than a description of the office's mandate and staffing. They declined requests for interviews.

This month, when we pressed again, the office — an arm of the New York Department of Education — issued a short statement indicating it was seeking more authority to gather information in such investigations:

> *"The State Education Department investigates every complaint that alleges conduct constituting professional misconduct through its Office of Professional Discipline," the statement said. "The Department's ability to investigate court-appointed psychologists can be hampered because the records necessary to pursue such an investigation are, by law, private and open to inspection only upon*

> *permission of the Family Court. To help eliminate this potential obstacle to a thorough investigation, the Department is discussing with the New York State Legislature amendments to the law that would give our professional conduct officers greater access to court records. We will continue to pursue such an amendment this legislative session."*

Without intervention by OPD, there's virtually no place to take complaints against court evaluators.

Since 2008, New York City's Appellate Court has had a committee that certifies the just over 200 psychologists and psychiatrists who get court appointments and can adjudicate complaints against them. Through June 2015, it had received 10 complaints and issued two admonitions.

But while the committee can bar problem practitioners from testifying in court, it has no authority over psychologists' licenses. Moreover, court systems elsewhere in the state haven't set up such committees, partly out of fear that certification requirements might dissuade qualified professionals from taking appointments in regions where practitioners are difficult to find.

"They didn't want to put things in the way of getting people to do this work," said Jacqueline Silbermann, a former top New York Matrimonial Court judge who was involved in setting up the city's certification committee and pushed courts outside the city to do the same. "The bottom line is they didn't."

That leaves OPD, whose investigators are tasked with responding to complaints not only about the state's nearly 14,000 licensed psychologists, but nearly 50 other kinds of professionals, from dentists to massage therapists.

The agency, also known as the Office of the Professions, has come under fire before for its weak enforcement. A 2016 ProPublica investigation found it had not implemented criminal background checks for nurses that are routine in other states and often took years to administer discipline. Critics say it is also impeded by its unusual structure. As part of the Department of Education, OPD comes under the state's Board of Regents, whose primary responsibility is to oversee the state's vast public education system, and needs board approval to impose its stiffest sanctions.

But in the case of Family and Matrimonial Court psychologists, OPD's oversight is not so much flawed as it is absent entirely.

Since 1994, according to a review by ProPublica, only one evaluator who is today approved for court work in New York City has been disciplined by

the state, and it is unclear whether that action had anything to do with work he may have done for the courts. Since Family and Matrimonial Court evaluators elsewhere in the state aren't certified, it's impossible to know if any have been disciplined.

At a 2012 public hearing, Nancy Erickson, one of the attorneys who represented Frank, called OPD's approach to overseeing psychologists one of the court system's most troubling aspects.

"This refusal of OPD means that psychologists who are incompetent or even corrupt can continue to make money by doing custody evaluations that could end up misleading the courts and harming children and their families," she said.

The tumultuous saga of the Frank family provides as good a window as any into court evaluators' pivotal role in custody cases.

Anna Frank had filed for divorce in 2007 in Suffolk County Supreme Court, which handles matrimonial matters. She says her husband of 16 years, Michael Frank, was prone to screaming fits and physical aggression. Police records show she called local officers to complain of physical abuse several times as the marriage unraveled. Each parent had had the other arrested over domestic disputes. Their young son allegedly bore witness to their violent fights and later said he, too, suffered abuse at the hands of his father.

Michael Frank denies ever abusing either his wife or son, and insists the police reports were based on false allegations.

Anna Frank, though, did get a one-year order of protection against her husband and sought to dissolve the marriage. The Franks then came before Suffolk County Supreme Court Judge Andrew Crecca, with Anna seeking custody of her son, child support, and what she deemed her share of the family's finances and Michael, the primary breadwinner, seeking to protect his assets and gain full custody of his son himself.

To sort through the competing accusations, the judge appointed Barbara Burkhard. Burkhard's company, Child and Family Psychological Services, P.C., had provided therapeutic services to children since 1999 under a contract with Suffolk County's Department of Social Services. (Burkhard did not respond to repeated emails and phone messages regarding this story.)

In the Frank case, Burkhard started out in 2008 functioning as what's known as the Franks' "parenting coordinator," where she would oversee

transfers of the child by his warring parents.

Then Judge Crecca took the somewhat unusual step of appointing Burkhard to complete a forensic psychological evaluation of the family. Normally these roles are kept separate in order to avoid preconceived notions on the part of the evaluator.

In January 2009, Burkhard was part of a chaotic dispute involving the Franks. Anna was supposed to drop her son off at Burkhard's office so he could be picked up by Michael. But he refused to get out of her car. Burkhard tried to speak with the boy in the car. He was crying, yelling, telling her he did not want to go. He said his father had abused him, sexually and physically. When the boy's father arrived, he, too, tried to talk to him in the car. In a terror, the boy got out of the car and darted across a busy street. With some coaxing from Burkhard's staff, the boy came back and embraced his mother, insisting he go home with her. The police arrived and questioned everyone at the scene and the boy went home with his mother.

Based on what she saw, Burkhard recommended in a "preliminary report" that the boy be removed from his mother's care immediately. She determined that what the boy needed most was more time with his father, outside of his mother's sphere of influence. She recommended that Michael Frank receive temporary, sole custody while the divorce proceedings progressed. The judge followed her recommendation.

Anna Frank felt the actions were unfounded and unfair and that the court had essentially awarded sole custody to her husband based on a single episode. Burkhard never interviewed her, or her son, and now, in Anna Frank's view, the psychologist was putting him in harm's way.

And according to court records, the boy did suffer. His behavior and state of mind deteriorated after that. Usually a strong student, his grades began to decline. Rather than completing assignments, he'd scrawl all over them that he wanted to see his

mother. He complained to teachers and social workers that his father had beaten him with a belt and locked him in a basement. His behavior grew increasingly erratic. He tried to run away. He broke windows. He urinated and defecated around the house. Social workers with Child Protective Services became a regular presence at the boy's home, but their reports echoed Burkhard's belief that Anna Frank was encouraging the boy to make false allegations of abuse.

Burkhard, in report after report, told the court the boy had become "enmeshed" with his mother, potentially succumbing to something akin to what's known as "Parental Alienation Syndrome." Burkhard's reports suggested his mother may have convinced him to make up abuse allegations, in order to heighten her chances of winning custody.

Burkhard had the boy evaluated by more mental health professionals, and Judge Crecca decided the boy should be removed from both parents and live at a residential treatment center called Little Flower, in Wading River, about 30 minutes from where the Franks lived. He first came to the home in December 2009.

Over the next few years, Frank said she spent every penny she had battling her husband in court to get her son back. She lost her job as a school psychologist after Child Protective Services filed a neglect charge against her — deeming her responsible for her boy's fear of his father. The school, she said, decided she couldn't work with children with such a charge pending against her.

"They tried to strip me of everything I cared about," Frank said, in a recent interview. "It was devastating."

She said she supported herself by taking jobs in retail, making a meager $10 an hour after growing accustomed to an $80,000 annual salary.

She said Little Flower came to believe her son was telling the truth about his father all along and helped her regain custody.

In January 2010, Little Flower delivered a report to the court stating that the boy's relationship with his father remained deeply strained and that his psychiatrist was concerned about the boy's tales of abuse.

Anna Frank said staff from the home agreed to testify on her behalf, urging the judge to believe the boy. Again, Burkhard weighed in, recommending that if the boy were to leave Little Flower, he should move back in with his father. The home's staff disagreed. They told the judge if the boy wasn't going to move in with his mother, he'd be better off in foster care, Anna Frank said.

Ultimately, Michael Frank consented to a settlement that granted custody of the boy to his mother.

In an interview, Michael Frank said he never "abused his son or her, never, never, never." He said his wife lied in a number of ways: The police reports were false, and Little Flower never took her side. And he claimed Anna lost her job not because of the neglect charges, but because she "stopped showing up to work."

He said he was the "stable parent." He said his wife had "brainwashed" their son. He repeatedly cited the fact that she is a trained psychologist, which, as he put it, "gave her plenty of knowledge on how to manipulate young kids. And that's exactly what she did."

But by the end, he said he had little choice but to "give up." He said his son was clearly suffering and their relationship felt irrevocably fractured.

He said Burkhard had handled the case professionally.

"There was no rush to judgment," he said.

Robert Gallo, one of several court-appointed attorneys who wound up representing Anna Frank over the five-year court battle, told ProPublica that the case, taken as a whole, reflects a dire need for outside oversight:

"I don't want to sound like I am bashing Burkhard," he said. "In that case, I thought she was wrong. But I've had others where I thought she was right. Take her out of the mix, and a different psychologist may have just looked at the same facts and got a whole different view. Which is why there should be some oversight and some real clear rules. I don't think anybody is doing that today."

Anna Frank sure tried.

During the custody battle, she was determined to hold Burkhard accountable for the assessment that helped lead to the loss of her child. She complained to OPD in April 2011.

The agency's investigators are charged with ensuring "public protection" from "professional misconduct" across a variety of licensed professions. When it comes to psychologists, their complaint process is no different for practitioners doing evaluations for Family Court than for matters such as fraudulent billing or disclosing private medical information that might come up in private practices.

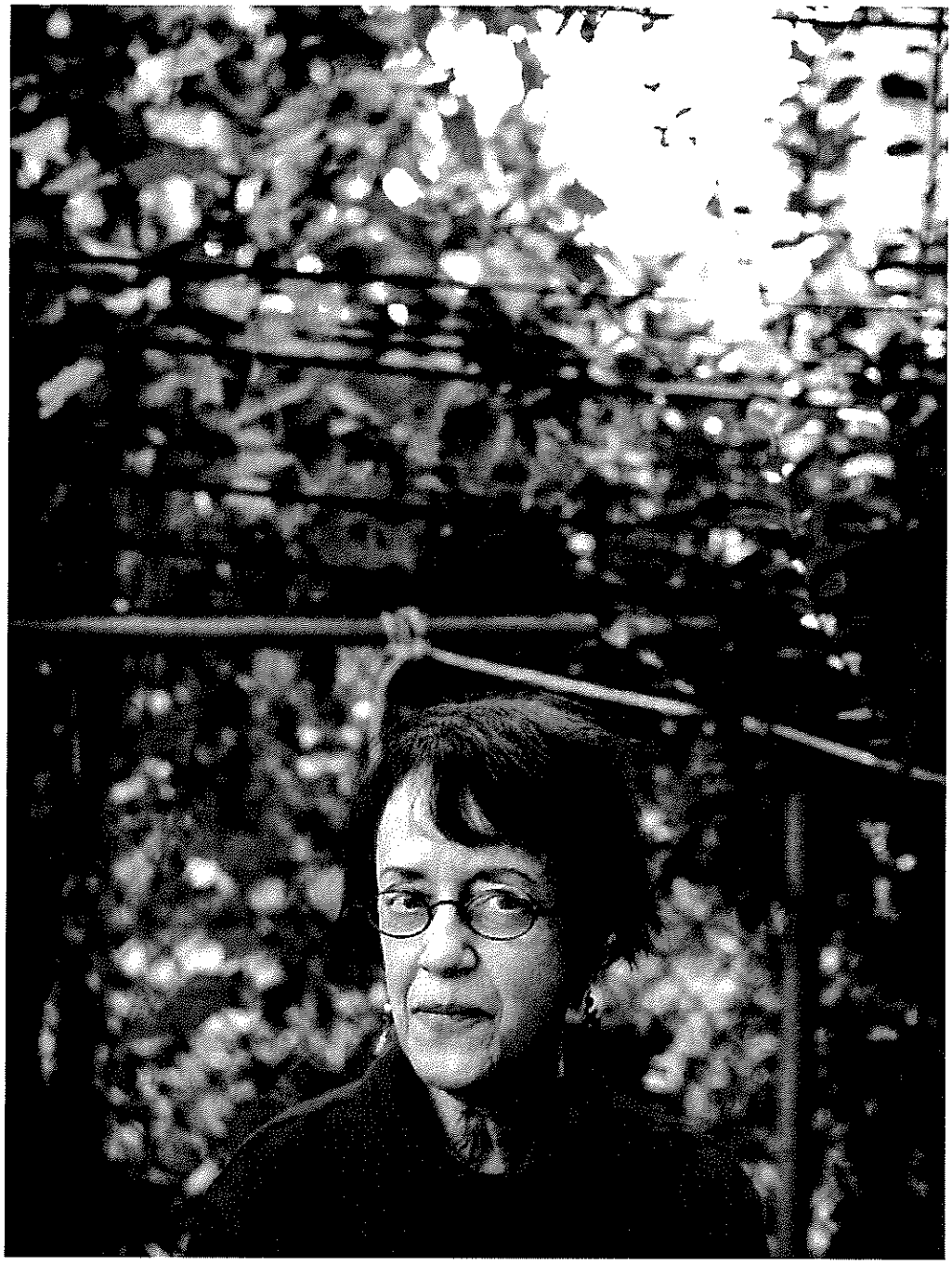
In cases in which OPD's investigators substantiate complaints, the agency can issue administrative warnings for minor violations or — in more serious cases, which are reviewed by a violations committee — fine or censure licensees.

The committee can also refer cases to the state Board of Regents, which can refer the most egregious cases to the state attorney general for criminal prosecution. The board can also revoke a professional's license.

Complaints against psychologists are relatively rare and discipline is even rarer. In 2015, for example, 88 complaints were filed against psychologists statewide and OPD issued one warning, two violation decisions, and four regent actions.

But to Erickson, Frank's lawyer, OPD's professed unwillingness to even look into complaints about the subset of practitioners acting as court evaluators is particularly problematic.

Erickson brought Frank's case and several others like it to the state bar association's Children and Family Law committee, then run by Merril Sobie, in April 2011. OPD seemed to have "a policy against investigating complaints that arise out of a court proceeding," Erickson told the committee.



Nancy Erickson, an attorney who helped Anna Frank with her case (Chad Batka for ProPublica)

She pointed out that complainants had few good options other than OPD. The American Psychological Association, for example, publishes non-mandatory guidelines for forensic evaluations and looks into complaints about practitioners, but has little enforcement power. A "psychologist can simply drop his or her membership," Erickson said.

Sobie was struck by what he described as OPD's "hands-off" policy and decided the committee should pursue an explanation for it.

ProPublica obtained Sobie's subsequent correspondence with OPD and its director, George Ding.

In his first letter, dated December 2011, Sobie described the problems his committee saw in OPD's handling of complaints about evaluators.

He said complainants were often told to address their concerns to the judge presiding over their custody case, when the judge "would in all likelihood advise the litigant to file a complaint with OPD, the APA, or another office," Sobie wrote. OPD also advised litigants to write to the court "to release their reports and relevant records" so that it could begin an investigation, a step Sobie said would risk stirring up the "hornet's nest" by demanding the presence of their ex-spouse after a grueling custody battle.

"The Committee believes that this policy may place many children in danger; unfortunately, no matter how many valid complaints are filed against a court-ordered custody evaluator OPD will not investigate," Sobie wrote. "An incompetent (or unethical) evaluator could continue to harm children."

Sobie closed the letter by offering to help Ding develop a better approach. "We would happily assist you in improving procedures to better protect New York's children," he said.

Then he waited. And waited.

The New Year came and went. He sent the same letter again in late January 2012.

"We would appreciate the courtesy of a reply," he wrote.

Still, nothing.

"I was not happy," he said, recalling his dismay in an interview. "I didn't think they were fulfilling their responsibility. I didn't think that was the appropriate way to respond to the state bar association. And they wouldn't put a goddamn thing in writing."

The following month, in February 2012, Erickson brought another complaint filed with OPD to Sobie's committee's attention.

In this instance, the psychologist — a highly active forensic evaluator based in Brooklyn named N.G. Berrill — was not even appointed by the court. He was retained directly by a man who sought to halt his ex-wife's unsupervised visits with their children.

According to the complaint, Berrill never contacted the mother and never attempted to question the statements the ex-husband made about himself. And yet he concluded the mother's relationship with the kids had a

potentially damaging effect. Berrill wrote a letter to the court recommending that her visitations with her children be supervised by state social workers from then on. The woman wound up losing custody.

Asked about the Family Court case by ProPublica, Berrill declined to respond to the allegations in the complaint and said in an email he did not want his work "discussed" in this article.

When an investigator with OPD wrote back to the complainant, the responses struck her as bizarre.

The letter said that since the woman herself was "not the parent who requested the report from Dr. Berrill" and since the office could not "interview the children or obtain copies of the necessary records without the consent of the father, this office could not adequately conduct an investigation."

It also noted that Berrill disclosed the fact that he never spoke to the woman and "the court recognized that fact."

"It is based on this that the decision was made to close your file."

Sobie, more alarmed than ever, wrote to Ding again in May 2012.

"It has come to our attention OPD's policies are perhaps more seriously flawed than we thought," he said, laying out the details of the complaint.

"The response from OPD is frankly incomprehensible," he said. "When we wrote our December 1, 2011 letter, we thought OPD took a 'hands off' policy only when the licensee was appointed by a court; the current example indicates that even a licensee who is not court appointed will not be investigated."

Ding never wrote back.

After weeks of prodding, Sobie said he finally got a phone call from him.

"Essentially he said they can't get involved if it's a court ordered forensic because of confidentiality," Sobie said. "I said 'You are a state agency charged with enforcing professional discipline, I don't see how you couldn't do this. Don't you have subpoena power? I find it very difficult to believe that a judge upon motion of a state agency who is charged with that responsibility would deny the motion. Did you ever do that?' And of course, they never did that."

Ding did not respond to questions about Sobie's version of their back-and-forth.

In 2012, Sobie's tenure as chair of the Children and Law Committee came to a close. The committee subsequently lost some of its interest in evaluators.

Erickson said she continued to hear from mothers who felt OPD had unjustly dismissed their complaints.

In one such case, a woman was told by an OPD investigator that it found no "evidence sufficient to support taking action against the subject" but then explained that "a request for the official documents and the evaluation was denied by Family Court."

Once again, OPD had apparently closed an investigation without getting the records it would need to even start it.

That case was featured in Tippins' law journal article, titled "Custody Evaluators: Where's the Oversight?"

Tippins, a veteran attorney who has become the go-to expert in how to effectively challenge their work, has written extensively on the topic of oversight. In the article, he declared the OPD's professed unwillingness or inability to investigate Family Court evaluators to be "as dangerous as it is derelict."

"Evaluations are often flawed by bias, methodological deficiency, or both," he wrote. "While many evaluators strive to present reliable expertise, incompetent or unethical evaluators are hardly strangers to the courts."

He went on to explain that thorough cross examination of evaluators is rare and that cases are often settled on the basis of their work, making outside oversight an absolute imperative.

In his view, OPD provides nothing of the kind.

"If the subject were not so serious, this rigmarole would be worthy of Abbott & Costello," he wrote.

In his response to Tippins, Ding asserted that his office "investigates every complaint which alleges conduct constituting professional misconduct."

Ding said he could not supply evidence of the office taking action against a court-appointed evaluator because its data "is not maintained in a manner that is based on the information that you are seeking."

Tippins' article helped reinvigorate the bar association committee's interest.

Ding accepted an invitation to their annual meeting last December.

Finally, Sobie and Erickson thought they might get some answers.

But Ding didn't show up.

He apologized, saying he got the date wrong, and called in by phone, answering questions for an hour.

According to people who attended the meeting, he stuck to his claim that his office can't investigate Family or Matrimonial Court cases because it attorney general had other priorities.

OPD disputes this version of events, but would not supply details as to what happened.

Ding did call the current head of the Children and Law Committee to complain that someone on the committee had described the meeting to ProPublica. He said it put him in "a very bad position" with the Attorney General's office.

Sobie said the meeting left him certain of one thing:

"There is no professional oversight."

Joaquin Sapien
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 Exhibit # 9

Dr Richard A. Gardner

Child psychiatrist who developed the theory of Parental Alienation Syndrome

Saturday 31 May 2003 00:00 • Comments

Richard Alan Gardner, psychiatrist: born New York 28 April 1931; MD 1956; twice married (one son, two daughters); died Tenafly, New Jersey 25 May 2003.

In a contentious child custody dispute in the suburbs of Pittsburgh a few years ago, three teenage boys begged a family court judge not to force them to continue visits to their father because, they said, he was physically abusive towards them. Rather than believe the boys, the judge relied on the testimony of an expert witness retained by the father, a Columbia University professor of clinical psychiatry, Richard A. Gardner.

Gardner insisted the boys were lying as a result of brainwashing by their mother and recommended something he called "threat therapy". Essentially, the Grieco boys were told they should be respectful and obedient on visits to their father and, if they were not, their mother would go to jail. Shortly afterwards, 16-year-old Nathan Grieco, the eldest of the brothers, hanged himself in his bedroom, leaving behind a diary in which he wrote that life had become an "endless torment". Both Gardner and the court were unrepentant even after the suicide, and it was only after an exposé in the local newspaper that custody arrangements for the two surviving boys were changed.

This "threat therapy" was part of a much broader theory of Gardner's known in family courts across the United States as "Parental Alienation Syndrome". The theory - one of the most insidious pieces of junk science to be given credence by US courts in recent years - holds that any mother who accuses her spouse of abusing the children is lying more or less by definition. She tells these lies to "alienate" the children from their father, a shocking abrogation of parental responsibility for which she deserves to lose all custody rights in favour of the alleged abuser.

This is not only tawdry logic, guaranteed from the outset to protect the interests of

destroyed the lives of hundreds, maybe thousands, of American families over the past 15 years. In state after state, courts deferred to Gardner's academic credentials and put children in the custody of their alleged abuser, even in cases where police records, medical records and testimony by teachers and social workers supported the mother's accusations.

By now, the concept of "parental alienation" has entered case law and swayed thousands of disputes in which Gardner himself played no part. Yet it has no scientific basis whatsoever. It is not recognised by the American Psychiatric Association or any other professional body. The stream of books that Gardner produced on the subject from the late 1980s were all self-published, without the usual peer review process. His method for determining the reliability of sex abuse allegations was denounced by one noted domestic violence expert, Jon Conte of the University of Washington, as "probably the most unscientific piece of garbage I've seen in the field in all my time".

Nobody with experience of high-conflict divorce cases would deny that mothers, in some cases, make false allegations against their spouses. But Gardner went much further. He believed that 90 per cent of mothers were liars who "programmed" their children to repeat their lies, and never mind the corroborating evidence. He theorised that mothers alleging abuse were expressing, in disguised form, their own sexual inclinations towards their children.

And he suggested there was nothing much wrong with paedophilia, incestuous or not. "One of the steps that society must take to deal with the present hysteria is to 'come off it' and take a more realistic attitude toward paedophilic behaviour," he wrote in *Sex Abuse Hysteria - Salem Witch Trials Revisited* (1991). Paedophilia, he added, "is a widespread and accepted practice among literally billions of people". Asked once by an interviewer what a mother was supposed to do if her child complained of sexual abuse by the father, Gardner replied: "What would she say? Don't you say that about your father. If you do, I'll beat you."

It beggars belief that such a figure would be taken seriously by family court judges but, in an adversarial system where fathers often have more money to spend on

the American Academy of Child and Adolescent Psychiatry wrote in 1996 that a book of Gardner's, *Protocols for the Sex-Abuse Evaluation*, was "a recipe for finding allegations of sexual abuse false, under the guise of clinical and scientific objectivity. One suspects it will be a bestseller among defence attorneys." And so it has proved.

Gardner's work has created a generation of mothers and children scarred psychologically and, in many cases, physically by the court rulings he has influenced. In one of his earliest cases, a Maryland physicist he labelled a "parental alienator", unfit to retain custody of her children, was subsequently shot dead by her ex-husband. Still Gardner did not change his view that the wife was the true villain; her lies, he insisted, had made the husband temporarily psychotic.

Richard Gardner's background was surprisingly conventional. Born in the Bronx, New York, in 1931, he studied medicine and psychiatry at various prestigious New York universities, and served a stint as a US army psychiatrist in Germany. Appointed to the Division of Child Psychiatry at Columbia in 1963, where he became Clinical Professor of Psychiatry in 1983, he was respected for many years as an expert on childhood experience of divorce.

After he developed his Parental Alienation Syndrome in the 1980s, however, he and Columbia slowly distanced themselves from each other and he spent most of his time in private practice in New Jersey. Along the way, he also turned into an authentic American monster.

Andrew Gumbel

Exhibit 10
RJW note at end

20 Common Mistakes in Evaluations Judges Miss

Article by Barry Goldstein

The original sin family courts made in responding to domestic violence cases was turning to mental health professionals as if they were the experts. It is not that psychologists have nothing to contribute, but they do not have the specialized knowledge of domestic violence, child sexual abuse and other critical issues. The original mistake was based on the popular assumption at the time that DV was caused by mental illness or substance abuse. We now know the original assumptions were wrong, but courts continue to rely on these outdated practices.

In one case, Barry was asked at least 15 questions about the fact he doesn't have a mental health degree. The academic work to obtain a mental health degree does not provide any knowledge about domestic violence or child abuse. Psychologists may try to use general psychological principles, but much about DV is counterintuitive.

The Saunders Study found court professionals need training in very specific subjects that include screening for DV, risk assessment, post-separation violence and the impact of DV on children. Most evaluators do not have this needed expertise. They often attempt to screen for DV with psychological tests that tell us nothing about DV. As a result, evaluators often use non-probative information to discredit true reports of abuse. We have never seen an evaluation that says the mother reports strangulation and if this is true there is an increased risk of lethality. Post-separation abuse analysis almost never mentions alleged abusers' litigation and economic abuse as a continuation of domestic violence or the likelihood an abuser will assault future partners which means custody or unsupervised visitation will result in more exposure of children to domestic violence. Few evaluators are familiar with ACE or focus on the harm caused by fear and stress. This means evaluators are not using the specific knowledge Saunders says is needed to respond effectively to domestic violence. In other words, the courts are relying on professionals who routinely minimize and deny true reports of abuse. Many domestic violence cases do not include an evaluation, but the judges and other court professionals are influenced by the misinformation evaluators provided in other cases.

Few evaluators relied on by custody courts have the critical knowledge needed to recognize and respond effectively to possible domestic violence or child abuse cases. They are unfamiliar with critical scientific research like ACE (adverse childhood experiences), Saunders, Meier, Bala, gender bias or child murders in custody cases. The evaluators do not understand domestic violence dynamics or batterer narratives that help explain abuser motives. Evaluators and other court professionals are oblivious to the widespread failure of custody courts to protect children. All the mistakes caused by failing to use current scientific research minimize the harm from abuse and make it harder for courts to recognize true reports. The courts are influenced by the superior financial resources of abusers who usually control family finances, and the cottage industry of lawyers and evaluators that make large incomes by promoting practices that favor abusive fathers. The result is DV custody cases are severely tilted in favor of abusive fathers and towards risking children.

Court professionals are satisfied with the present practices, and defensive about the painful tragedies they cause. The Bartlow Study found judges and court administrators failed to create reforms in the face of preventable child murders. They thought these tragedies were exceptions. In the last 13 years, the Center for Judicial Excellence found over 800 tragic "exceptions."

Domestic violence experts can recognize mistakes by evaluators in abuse cases. This is why Saunders found courts should be using a multi-disciplinary approach. Some judges cannot imagine how a DV expert can help a court recognize errors by evaluators regarding DV and child abuse. Saunders found DV advocates have more of the specific knowledge courts need about DV than judges, lawyers or evaluators. We quickly came up with a list of over 80 common mistakes about DV that evaluators routinely make because they don't have the specialized DV knowledge needed. In this article, we are sharing 20 of these common mistakes. The full list of common evaluator DV errors will be available on our website at www.Barrygoldstein.net.

1. Evaluator failed to make distinction between public and private behavior: Most abusers are able to control their behavior and do so in public. Attorneys for abusers often present evidence from friends, family, and colleagues about his good behavior and how he could not be an abuser. Evaluators often rely on this non-probative behavior, but mothers and children see a very different side of the abusive father in the privacy of their home.

2. Evaluator only considered physical abuse: The purpose of domestic violence is not to cause great pain but to coerce and control the victim. In DV custody cases there is often one or a few physical incidents and thousands of other DV tactics. The abuser does not need to keep assaulting her because once he does, she knows what he is capable of. The physical abuse can be "minor" as pushing or blocking a door and are combined with emotional, psychological and other tactics. The other types of abuse serve as a reminder of what can happen if she doesn't obey. ACE tells us it is the fear and stress abusers cause, that does most of the harm to children. Evaluators often pay lip service to other types of abuse but mainly or exclusively focus on physical abuse. This is based on outdated beliefs from the 1970s. This mistake reduces the available evidence and minimizes the harm abusers cause.

3. Evaluator fails to understand most of the harm from DV is caused by fear and stress rather than immediate physical injuries: The ACE Research is exciting because it could be used to dramatically reduce a wide range of serious illnesses and social problems. This would greatly increase life expectancy and achievement. Prevention is the key to providing these benefits and improving children's lives. Contested custody cases are often the last chance to save children from the consequences of exposure to ACEs. In most cases the courts are not even considering this opportunity.

4. Evaluator assumed unfounded child protective case meant the reports of abuse are false: Caseworkers often face heavy caseloads that lead to reports of abuse being unfounded for non-probative reasons. Examples include: child refused to speak to caseworker; not enough time to investigate; failure to take cases during litigation seriously; the child is living with the safe parent; caseworker manipulated or intimidated by abuser; reliance on the myth that mothers often make deliberate false reports; and the lack of expertise regarding DV and child sexual abuse. Unfounded cases often prove to be true

reports much later. Evaluators save time and resources by treating unfounded cases as if they prove the reports were wrong. Unfortunately, these practices don't save children.

5. Evaluator failed to consider ACE and Saunders: Perhaps the biggest reason custody courts are failing children in abuse cases is the failure to use scientific research like ACE and Saunders. They go to the essence of the well-being of children. ACE tells us the fear and stress abusers cause will shorten children's lives and cause a lifetime of health problems. Saunders tells us courts are relying on the wrong experts for abuse cases and this results in courts frequently disbelieving true reports of abuse. There are judges and evaluators that use ACE and Saunders and this results in better decisions for children. Most courts however rely on outdated practices that do not include this research. This mistake is not neutral. It favors abusive fathers and risks children.

6. Evaluator blamed mother for father's abuse: In a safe family, if a child came home complaining about something the father did, the mother would ask the father about it. If a father heard the child was complaining about sexual abuse, he would want an investigation to find out who did it or if there was a misunderstanding such as an unintentional boundary violation. When the father is an abuser, the mother is afraid to discuss the complaint with him and the father immediately claims alienation and tries to silence the child. In these and other situations, untrained evaluators blame the mother for not cooperating and communicating. If the evaluator is part of the cottage industry, she will be called an alienator. And in each instance, it is the fear caused by the father's abuse that created the problem, but mothers are often blamed. This is an example of gender bias that most court professionals do not have the training or humility to recognize.

7. Evaluator failed to recognize shared parenting is inappropriate in cases involving possible DV or child abuse: Courts promote shared parenting because laws favor it, and co-parenting is viewed as the best way to promote settlements. Shared parenting was never meant for domestic violence cases. The unequal power in DV cases makes it dangerous. Good research like Saunders says shared parenting should never be used in DV cases. Abusers use decision-making to block anything the mother wants and particularly to prevent or undermine therapy where the child might reveal his abuse. Shared parenting in inappropriate cases is great for court professionals' bank accounts because more services will be needed but works poorly for children. Even in the rare cases where abuse reports are false, the bad relationship makes co-parenting a mistake.

8. Evaluator focused on how to pressure victims to accommodate the abuser instead of how abuser can reduce fear and stress: Most contested custody is really DV cases involving the worst abusers. They believe she has no right to leave so are using custody to regain control. Accordingly, they will not agree to anything reasonable. Evaluators who fail to understand DV dynamics, pressure victims and children to accommodate the abuser as the best way to promote a settlement. ACE tells us that the fear and stress abusers cause will have lifelong negative effects on the children. Accordingly, best practices require pressuring abusers to reduce the fear and stress they are causing if they want a relationship. Evaluators unfamiliar with ACE don't even know these best practices.

9. Evaluator used psychological tests to screen for DV: Psychological tests were developed for people who may need to be hospitalized. They tell us nothing about domestic violence. It was originally used when many believed the false assumption that DV was caused

by mental illness or substance abuse. There can be valid uses of psychological tests in some cases, but when evaluators use them to screen for DV, it says more about the ignorance of the evaluator than the circumstances of the case.

10. Evaluator does not understand primary attachment so recommended a harmful outcome case: Harmful outcome cases give custody to the alleged abuser and limit a safe, protective mother who is the primary attachment figure to supervised or no visitation. The Saunders Study found harmful outcome cases are ALWAYS wrong and based on flawed practices. The reason they are always wrong is that denying children a normal relationship with their primary attachment figure, a harm that includes increased risk of depression, low self-esteem and suicide is greater than whatever benefit the court thought it was providing. The frequency of these always wrong cases, a decade after Saunders was published, exposes the failure of custody courts to adopt current scientific research.

11. Evaluator used non-probative factors to discredit reports of abuse: The Saunders Study says court professionals need to learn how to screen for DV. They need to know what information to look for but also how to avoid non-probative information. Common examples include: she returns to her abuser; she seeks a protective order but doesn't follow up; she doesn't have a police report or medical records. All of these are normal responses by women abused by their partners for safety and other good reasons. Another example is a professional observes the alleged abuser playing with the children and the kids show no fear. Unqualified professionals assume this means he cannot be abusive, but the children know he wouldn't hurt them in the presence of witnesses, so it is safe to play with a father they still love. Inadequately trained professionals often use these non-probative issues to discredit true reports of abuse.

12. Evaluator assumes just because he hurts the mother doesn't mean he will hurt the children: This one is scary. Evaluators, lawyers, and judges continue to say this out loud even after children have been murdered by abusive fathers because of this mistake. Fathers who abuse mothers are 40-60% more likely to also abuse the children. The worst abusers have learned the best way to hurt the mother is to hurt her children. Many evaluators never consider this.

13. Evaluator failed to make the health and safety of children the first priority: The health and safety of children was always the most important consideration for custody courts and the ACE Studies make this so much clearer. ACE did not make domestic violence and child abuse more harmful to children, but rather made us aware of the full harm caused by our long tolerance of behavior we now define as domestic violence and child abuse. The courts cannot allow defensiveness, inertia, ignorance of scientific research, "father's rights," or the incomes of court professionals to be placed above the well-being of precious children. Evaluators who fail to make children the first priority, other than with lip service, must be corrected.

14. Evaluator failed to understand that a father who causes PTSD to the mother or child is an unfit parent: PTSD cannot be caused from something benign. It requires the most traumatic event or a series of traumatic events such as occur with domestic violence. Abusers and too often court professionals minimize a father's abuse to keep him in a child's life. This is based on the belief that a child benefits from having both parents in their lives. This is usually

true, but not when a parent is an abuser and certainly not if the parent was so abusive as to cause PTSD.

15. Evaluator failed to recognize behavior associated with higher risk of lethality: Saunders found court professionals need training in risk assessment. There are specific behaviors associated with higher risk of lethality. This would include strangulation; hitting a woman while pregnant; forced or pressured sex; hurting animals; violating court orders; threats of murder, kidnapping or suicide; violating court orders; access to guns; and the belief she has no right to leave. Cases involving these behaviors should be taken extremely seriously and evaluators have a duty to make judges aware of these risks.

16. Evaluator failed to consider the danger associated with offensive or threatening language based on research on batterer narratives: Most evaluators do not have the DV knowledge needed for DV cases and research about batterer narratives is therefore rarely considered. Most abusers would say it is wrong to assault a woman and then say EXCEPT. The major exceptions are she did something he defines as improper, or she is a (insert the slur). These offensive sexist terms tell women and should tell court professionals the mother is in danger. It also sends horrific messages to children. This information would help courts understand DV cases better, but not when this is never discussed.

17. Evaluator treats dismissal of child sexual abuse complaints as proof of coaching: The Bala Study reviewed child protective cases involving reports of child sexual abuse. This is the definitive study about false reports, and found mothers make deliberate false reports less than 2% of the time. Nevertheless, when fathers claim alienation, abuse reports are believed by the courts less than 2% of the time. The alleged abuser gains custody 85% of the time. The failure of our society and custody courts to protect children from sexual abuse is the next big scandal waiting to be exposed. When mothers raise concerns about child sexual abuse there are several possible explanations. The most likely is the report is true. Other common circumstances include: no abuse but the child was uncomfortable because of boundary violations; exposure to pornography or sexual behavior; the evidence is equivocal or a good faith but mistaken report. The least likely is coaching, but courts routinely only consider the report is true, which requires overwhelming evidence or they jump to coaching, based on assumptions rather than actual evidence. As a result, courts are often never told about sexual abuse, so that they have no chance to protect children.

18. Evaluator focused on unscientific alienation theories: Most custody cases, like any litigation are settled more or less amicably. The problem is the 3.8% of cases that require trial and often much more. Between 75-90% of these cases involve domestic violence, which is obscured by high conflict approaches. DV is about control, including financial control which means the alleged abusive father usually controls most of the family resources. Richard Gardner understood this when he concocted Parental Alienation Syndrome (PAS). He needed an approach that could be used to help abusive fathers take custody from mothers who are the primary attachment figures. PAS was not based on any research but only Gardner's experience, beliefs, and biases. This included many public statements that sex between adults and children can be acceptable. This was the start of the cottage industry for lawyers and mental health professionals who made large incomes by using bogus practices that hurt children. The superior financial resources and manipulation skills helped promote PAS. When it developed a deserved bad reputation, the cottage industry published new articles based on the old lack of research and changed the name to alienation, parental alienation, gatekeeping

or whatever was convenient. Twice PAS, was rejected by the American Psychiatric Association for inclusion in the DSM because there is still no research to support it. The DSM is the compendium of all valid mental health diagnoses, so it is unethical when cottage industry professionals tell courts the mothers or children suffer from alienation. Despite this repudiation by the leading professional organizations and the enormous harm to children, courts continue to listen to this biased and sexist theory. The recent Meier Study from the National Institute of Justice found alienation is used in a biased way so that only fathers benefit from a finding of alienation. In most cases alienating behavior by fathers against mothers is not even discussed. This means this sexist theory with no supporting research is implemented to deny mothers due process and equal protection. In most cases, the supposed alienation is assumed rather than proven with actual evidence. The use of alienation raises ethical issues because it often creates the appearance of corruption even if the judge acts in good faith. The extreme decisions and catastrophic harm unscientific alienation theories cause children makes it hard to believe corruption isn't involved.

19. Evaluator failed to recommend play therapy in disputed child sexual abuse cases: Child sexual abuse is hard to prove for some good reasons. Young children often have difficulty speaking to people they don't know. Caseworkers and evaluators often expect children to speak about the most embarrassing and painful episode in their lives without taking the time to develop a trusting relationship. This is one cause of false claims of coaching. Best practices for young children is play therapy. The child will reveal whatever they need to through their play and artwork. This takes coaching off the table because a parent can't coach a young child how to draw a picture or play with Legos. This is particularly helpful as inept and unscrupulous people seek to discredit reports and retaliate by claiming coaching and alienation.

20. Evaluator focuses on approaches asking victims to just "get over it": Just get over it is often used to pressure children to interact with abusive parents they fear. ACE tells us this is a harmful approach. Courts have the power to force children to spend time with an abusive parent but have no ability to remove the fear and stress the abuser causes. This means the fear and stress will be pushed deeper inside the child where it will inevitably come out later in much more harmful forms. Evaluators and judges need training to avoid these dangerous mistakes.

Conclusion

Evaluators have legitimate expertise in psychology and mental illness. If they make mistakes, there are professional standards and other professionals who can flag their errors. These are subjects the court hears often and can make judgments about.

The problem discussed in this article concerns issued related to domestic violence and child abuse. The present evaluation system was created at a time when no research was available, and the courts have failed to update practices even after multiple research studies proved many common assumptions are wrong. Today, there is rarely an expert available in a case to recognize and correct standard mistakes evaluators make regarding abuse issues. Even if a protective mother calls a DV expert, judges may not understand that experts in child sexual

abuse or domestic violence have a better understanding of their specialized areas than mental health professionals.

We are discussing clear errors that court professionals feel comfortable stating openly, but novice DV advocates would recognize immediately. There can be no dispute that abusers usually act differently in public than in private, but courts routinely base decisions on non-probative public behavior. Saunders says court professionals need training in risk assessment. Law enforcement and DV advocates have been using this knowledge for decades, but custody courts still make decisions without risk assessment.

DV advocates have told us for many decades that physical abuse is not the worst part of domestic violence. No one listened because the advocates usually do not have advanced degrees, there was no scientific research to support their knowledge, they were viewed as biased because they are always against DV, and they are mostly women. The ACE Studies confirmed the advocates were absolutely right and still the courts routinely make the outdated mistakes of focusing mainly or completely on physical abuse.

The authors of this article are not qualified to analyze a psychological test or diagnose a parent. We do know and can share with the court that psychological tests were not created for the populations seen in family court and tell us nothing about domestic violence. We quickly found over 80 common mistakes evaluators make because they do not have the needed expertise in domestic violence and especially child sexual abuse.

This is why the Saunders Study recommends a multi-disciplinary approach to DV custody cases. Custody courts have no other way to obtain needed expertise about DV and child abuse than from specialized experts. Judges, lawyers, and psychologists usually want to get any training from other judges, lawyers and psychologists. Although Saunders found DV advocates have more of the specific DV knowledge courts need, court professionals often don't want to listen to people they view as less knowledgeable.

Psychologists usually have far more formal education than experts in DV and child abuse. Nevertheless, more than four decades since DV became a public issue, evaluators continue to make blatant DV 101 mistakes and none of the other court professionals recognize and discredit these clear errors. Children pay an awful price for the insistence by court professionals on continuing to use the same outdated practices.

Contested custody cases are usually the last chance to save children from the life-altering harm caused by exposure to ACEs. ACEs, evaluators rarely even discuss in their reports.

About Barry

Barry Goldstein is the co-author with Elizabeth Liu of Representing the Domestic Violence Survivor REPRESENTING THE DOMESTIC VIOLENCE SURVIVOR, co editor with Mo Therese Hannah of DOMESTIC VIOLENCE, ABUSE and CHILD CUSTODY and author of SCARED TO LEAVE AFRAID TO STAY. He has been an instructor and supervisor in a NY Model Batterer Program since 1999. He was an attorney representing victims of domestic violence for 30 years. He now provides workshops, judicial and other trainings regarding domestic violence particularly related to custody issues. He also serves as a consultant and expert witness.

Barry's new book, The Quincy Solution: Stop Domestic Violence and Save $500 Billion demonstrates how we can dramatically reduce domestic violence crime with proven practices. Contact Barry today to speak at your event, consult or as an expert witness!

Note: He doesn't say one thing different than I do – he just says it differently, had more time to edit his web page than I have have to write for this committee, and has been qualified as an expert witness if various courts. What he describes here is exactly what I am attempting to convey to this committee about court practices in NH.

Paula Werme, Esq. (retired)

Exhibit 2, see Bio below.

Goldstein is an attorney who qualifies as an expert in the courts.

Dear Judge Responding to DV Custody Cases

Article by Barry Goldstein

The National Council of Juvenile and Family Court Judges seeks to train other judges about important scientific research like ACE (adverse childhood experiences) and Saunders. We now have a specialized body of research and knowledge about domestic violence and child abuse that can help courts recognize true reports of abuse and craft responses that help protect children.

The purpose of this letter is to ask the court to be open to considering the research and avoid standard approaches the research demonstrates work poorly in domestic violence custody cases. Most custody cases are settled more or less amicably. The problem is the 3.8% of all cases that require trial and often much more. The research shows that 75-90% of contested custody are really domestic violence cases. These cases involve abusers who believe she has no right to leave, and they are often willing to hurt the child to protect their "rights."

Many present practices were developed over 40 years ago at a time when little research about DV was available. It was based on the assumption that DV is caused by mental illness or substance abuse. The research demonstrates these assumptions were wrong, but courts have been slow to modify the practices. Mental health professionals are experts in psychology and mental illness but not DV or child abuse. Every year, 58,000 children are sent for custody or unprotected visitation with dangerous abusers and since 2008, The Center for Judicial Excellence found over 850 children involved in contested custody have been murdered, mostly by abusive fathers.

ACE is peer-reviewed medical research from the CDC. ACE found that children exposed to DV, child abuse and other traumas will live shorter lives and face a lifetime of health and social problems. Most of the harm is not from any immediate physical injuries, but from the fear and stress abusers cause. This means practices that minimize older abuse; limit inquiries to physical abuse; assume the end of the relationship ends the risk; or ask children to just get over it have no chance to work.

Contested custody cases are usually the last chance to save children from the awful consequences. Medical doctors say children exposed to multiple ACEs can avoid the harm, but it requires two responses standard court practices prevent.

The children will need medical treatment and therapy to respond to problems as they develop and to reduce the fear and stress. This means the safe parent must control health decisions because abusers use decision-making to block anything the mother wants and particularly to prevent or undermine therapy because the child might reveal his abuse. Shared parenting in these cases ends the child's chance for a full and healthy life.

The second response the doctors say is needed is that the children cannot be exposed to more abuse or situations that renew the fear and stress. This means any visitation must be supervised until the abuser changes his behavior. When courts rush to resume or continue normal visitation without requiring fundamental changes by the abuser, courts take away the child's chance for a full and healthy life. Fundamentally, without ACE, courts inevitably minimize the harm from DV and child abuse and err on the side of risking children.

The Saunders Study is peer-reviewed scientific research from the National Institute of Justice in the US Justice Department. The purpose was to review the domestic violence knowledge of judges, lawyers and especially evaluators. Saunders found court professionals need more than generalized knowledge about DV. They need knowledge about specific subjects that include screening for DV, risk assessment, post-separation violence and the impact of DV on children. Professionals without this specific knowledge tend to focus on the myth that mothers frequently make false reports and unscientific alienation theories. This leads to recommendations and decisions that harm children. Most evaluators fail to screen for domestic violence in an effective way and judges and lawyers have spent their careers influenced by evaluator's misinformation about DV and child abuse. As a result, Saunders found most court professionals do not have the specific DV information they need for DV custody cases. DV advocates have more of the specific DV information courts need than judges, lawyers, or evaluators. This makes sense because they are the only profession to work full time on domestic violence prevention and safety. Saunders recommends courts use a multi-disciplinary approach that would include DV and child abuse experts when this is important to the case. Without Saunders, courts routinely rely on the wrong professionals for DV cases and so often disbelieve true reports of abuse.

The first part of screening for DV is to avoid discrediting true reports based on non-probative factors. Common examples include: the mother left an alleged abuser, but returned; she sought a protective order, but didn't follow-up; she has no police or medical reports; the professional failed to differentiate between an abuser's public and private behavior; the child appears to be doing well on the surface; and a child shows no fear interacting with the alleged abuser in front of a professional. These are all common responses for safety and other reasons and tell us nothing about the validity of reports about abuse.

Instead, courts should consider which parent is afraid of the other parent. Courts should consider the motives of the alleged abuser. Is there evidence that the

purpose of his tactics is to maintain power and control; coerce the victim to do what the abuser wants and based on the belief that the man has the right to make the decisions? The court should then look for the pattern of coercive and controlling behaviors. Most DV is neither physical nor illegal. This means there is much more evidence of DV available when we know what to look for. Common tactics include emotional, psychological, economic, litigation and physical abuse, plus stalking, monitoring, isolating and similar tactics.

Risk assessment refers to the fact that there are many common DV tactics that are associated with increased risk of lethality. These tactics should be taken even more seriously. Examples include strangulation, assaulting a woman while pregnant; hurting animals; forced or pressured sex; threats of murder, suicide, or kidnapping; stalking; access to guns; and the belief she has no right to leave. I have reviewed over 1000 evaluations and have never seen an evaluator report something like, "the mother alleges the father strangled her, and if this is true it raises serious concerns of potential lethality." This failure is a common example of minimizing the risk from an abuser.

There are two parts to post-separation violence and neither have to involve physical violence. DV custody cases usually involve abusers using custody to regain control over the victim and punish her for leaving. Saunders found abusers sometimes use exchanges to harass or even assault their victims. More commonly, we see economic and litigation abuse as part of the cases. Courts often dismiss the issue as typical to litigation, but it means the abuser has not changed.

Significantly, abusers do not hurt their victims because of anything she said or did. This means they are likely to abuse future partners. If they already have a new partner, he is likely to treat her well because he needs her testimony, but eventually will resume his abusive tactics. This means children will witness more DV and therefore cannot heal.

At least forty states and many judicial districts have created court-sponsored studies of gender bias. They have used a variety of methods over four decades but have found widespread bias against women litigants. Common examples include holding women to a higher standard of proof, giving mothers less credibility, and blaming the victim for her normal reaction to the father's abuse. This is a difficult problem to overcome because gender bias is usually unintentional and subconscious. At the same time the needed discussions are discouraged because of the risk that reporting gender bias may result in defensiveness or even retaliation. The Meier Study from the National Institute of Justice found courts have made little progress in overcoming gender bias. A good way to check for gender bias is to ask how a situation would have played out if the genders were reversed.

Sexist alienation theories were deliberately developed to help abusive fathers gain custody. Richard Gardner and the cottage industry of lawyers and mental health professionals needed an approach to justify changing custody from safe, protective mothers who are the primary attachment figures to abusive fathers who often had little involvement in childcare during the relationship. Gardner concocted Parental Alienation Syndrome (PAS) for this purpose based on no research, but only his personal experience, beliefs, and bias. This included many public statements that sex between adults and children can be acceptable. I don't believe judges would have wanted to be associated with this theory if they were aware of the heinous basis for its creation. DV is about control, including financial control. This means in most contested custody cases, the abusive father controls most of the financial resources. The cottage industry developed for these financial reasons and the financial incentive has contributed to custody courts receiving frequent and aggressive misinformation, particularly about alienation.

Gardner sought to include PAS in the DSM-IV which is the compendium of all valid mental health diagnoses. The American Psychiatric Association rejected it because there is no scientific research to support alienation. PAS developed a deserved bad reputation, particularly that it clearly is not a syndrome, and Gardner committed suicide. The cottage industry sought to continue using PAS but wrote articles offering a slightly milder version and used different names such as alienation, parental alienation, or gatekeeping. The cottage industry and male supremacist groups lobbied aggressively to include unscientific alienation theories in the DSM-V which is the present compendium. It was again rejected because there is still no valid research to support the theory. I am not aware of any other court that continues to rely on a theory that has been twice rejected by the leading professional association.

There is an interesting finding in the Meier Study. They found that when courts believe a father is being alienated, this provides a strong boost for the father and helps them gain custody. When the court believes the mother is alienated, it has no effect on the outcome. This means unscientific alienation theories are being applied in a gender biased manner that violates due process and equal protection. What is really happening is that in our still sexist society, mothers continue to provide most of the childcare and therefore have a stronger relationship with their children. Court professionals are less worried about the mothers' relationship and so pay less attention to alienating behavior by fathers. This is another example of unintentional gender bias.

Some judges have suggested they don't need research because common sense tells us that parents do make negative statements about each other. This is true, even in intact families. This approach would be acceptable if the courts didn't then accept the rest of unscientific alienation theories. These theories assume a bad relationship with the father could only be caused by alienating behavior. More likely causes include DV, child abuse, limited involvement, or other bad parenting practices. The theories seek to ASSUME alienation based on speculation about

what the mother must be saying. The father rarely has personal knowledge of what is said in the privacy of the mother's home but are often allowed to speculate. The findings rejecting unscientific alienation theories from the DSM-V means it is caused by bad behavior rather than mental illness. This means that mental health professionals, and especially the cottage industry have no special expertise to inform the court. The alienation theories assume alienation creates the worst possible harm to children. In intact families, negative statements rarely have long-lasting effects. A false statement against one parent is more likely to hurt the relationship with the parent making the false statement. ACE demonstrates that domestic violence and child abuse have far more harmful consequences. There is no valid research that demonstrates the harm from alienation because there is no standard definition of alienation. The purported research, based on the original bogus PAS finds harm to children that is more likely caused by DV and child abuse. Indeed, Gardner assumed that almost all reports of abuse by mothers or children are false. Objective research like the Bala Study found mothers in contested custody cases make deliberate false reports less than 2% of the time.

A recent decision by the Oregon Psychology Board is particularly helpful in understanding the use of unscientific alienation theories in custody courts. A custody evaluator used other language in the DSM-V to claim alienation is supported in the DSM-V. This is false because it was specifically rejected despite aggressive lobbying. The evaluator was disciplined for diagnosing something that doesn't exist (in the DSM-V). Hopefully more cottage industry professionals will face accountability and stop poisoning custody courts with their biased theories.

The reliance on unscientific alienation theories has done enormous harm to children, but also to the reputation of family courts. It is outrageous that an unscientific theory, twice rejected by the American Psychiatric Association has more influence in the courts than ACE and Saunders that are peer-reviewed scientific research from highly credible sources. ACE is used in many areas of society to benefit individuals. It is used by medical doctors to diagnose and treat patients; therapists to treat patients; schools to help traumatized students and public health officials to support reductions in diseases and social problems. ACE is often compared to the Surgeon General's Report linking smoking and cancer. Both studies can be used to discourage harmful behavior (smoking, DV and child abuse) and in doing so save millions of lives and trillions of dollars. In contrast, unscientific alienation theories are only used to help abusive fathers gain custody.

The parent who provides most of the childcare in the first two years of a child's life is and always will be the primary attachment figure. In most cases this parent is the one the children turn to when they need assistance; the primary parent is usually the better parent based on more practice and knows the children's providers as well as their needs and strengths. Denying children, a normal relationship with their primary attachment figures increases the risk of

depression, low self-esteem, and suicide. The importance of primary attachment is often minimized by custody courts in part because of gender bias.

There is a section in the Saunders Study about harmful outcome cases. These are extreme decisions in which the alleged abuser receives custody and a safe, protective mother who is the primary attachment figure is limited to supervised or no visitation. Saunders found harmful outcome cases are ALWAYS wrong and based on the use of flawed practices. The reason they are always wrong is the harm from denying children a normal relationship with their primary parent is greater than any benefit the court thought it was providing. In most cases, the flaws used by the court resulted in an arrangement that is the opposite of what works best for children.

Context is critically important in recognizing domestic violence. Courts often miss the context in an attempt to save time because of crowded dockets. Decontextualizing is a common abuser tactic. They seek to start the story immediately after their abuse and simply describe the victim's response. At early hearings, courts often limit the discussion to the immediate issue and in doing so miss the long history of abuse. Arbitrary time limits for presenting a case are not neutral as they are intended. Victims need more time to explain the context and explain (as in this letter) that many standard practices favor abusers. The alleged abuser need only deny the alleged abuse and encourage courts to maintain the biased practices.

In the typical DV custody case, the father wanted the mother to provide most of the childcare during the relationship. In any other court, this would properly be understood as an admission by the father that the mother is a good parent, or else he would have sought a different arrangement. When the mother seeks to leave her abuser and report his abuse, fathers often retaliate by seeking custody and claiming the mother is suddenly unfit. They often claim the mother is mentally ill and/or alienating. What are the chances a mother suddenly becomes unfit because the relationship ended, and she reported his abuse? In the real world the chances are close to zero, but custody courts that fail to use current scientific research, rely on professionals without the needed DV expertise and miss the context often make this unlikely finding.

Conclusion

The use of shared parenting has pushed the court towards an ideological approach and away from the best interests of children. This was one of the purposes of the male supremacist groups that have pushed for equal parenting. There is a legitimate argument for shared parenting in cases with two good and safe parents. This was never intended for use in DV custody cases. The most favorable research for shared parenting says it can be beneficial for children when both parents want shared parenting; the parents can communicate effectively;

neither parent is afraid of the other and they live nearby. This does not apply to DV custody cases. Saunders found shared parenting is never appropriate in DV custody cases.

One of the problems with "high conflict" approaches is that it immediately pushes the parents for co-parenting even though in most cases it would be a mistake. High conflict creates a false equivalency between a safe, protective mother who is the primary attachment figure and an abusive father. In many cases, victims are punished for trying to protect their children and the desire to save court time is substituted for the desire to keep children safe.

ACE and Saunders demonstrate that many standard court practices and many standard evaluation practices are harmful to children. The resultant mistakes are not neutral in the sense that they apply equally to both parents. All the mistakes caused by a failure to use current scientific research help abusive fathers and place children in additional risk. Practices that minimize the harm from DV and child abuse and make it harder for courts to recognize true reports of abuse are harmful to children.

Expert witnesses are the only witnesses allowed to give their opinions. Family courts rarely differentiate between subjective and objective opinions. Subjective opinions work great for the experts, particularly from the cottage industry because they just have to say what they believe or what supports their client. Cottage industry professionals do not have the specific knowledge Saunders says is needed and are biased in favor of abusive fathers. They should never be permitted to serve as neutral professionals. The subjective opinions are often contradicted by the research the experts fail to consider. Objective opinions are much more useful for courts because it is evidence-based information that focuses on what works best for children.

Dr. Vincent Felitti, lead author of the original ACE Study believes prevention is the most important use for his research, especially in Family Court. This research is so exciting because it can be used to reduce cancer, heart disease, diabetes, mental illness, substance abuse, suicide, crime and many other health and social problems. It is especially important for courts to use this knowledge in cases that are likely to be the last chance to save children from the awful consequences of exposure to multiple ACEs.

About Barry

Barry Goldstein is the co-author with Elizabeth Liu of Representing the Domestic Violence Survivor REPRESENTING THE DOMESTIC VIOLENCE SURVIVOR, co editor with Mo Therese Hannah of DOMESTIC VIOLENCE, ABUSE and CHILD CUSTODY and author of SCARED TO LEAVE AFRAID TO STAY. He has been an instructor and supervisor in a NY Model Batterer Program since 1999. He was an attorney representing victims of domestic violence for 30 years. He now provides workshops, judicial and other trainings regarding domestic violence particularly related to custody issues. He also serves as a consultant and expert witness.

Barry's new book, The Quincy Solution: Stop Domestic Violence and Save $500 Billion demonstrates how we can dramatically reduce domestic violence crime with proven practices.
Contact Barry today to speak at your event, consult or as an expert witness!

About Veronica [York]

After a 20 year Sales and Marketing career in the Television Industry, Veronica York felt a passion and a calling to make a career change. Following a 10 year marriage that was both mentally and emotionally abusive, and going through a difficult custody battle, she started her High Conflict Coaching practice. During her experience with the family court system, she realized that the best interest of the children was not the first priority. Parental rights are trumping children's rights and children are suffering unnecessarily due to the outdated practices of judges and other court professionals. Along with helping her clients navigate their custody battles, she is also an advocate for change in the family court system as well as a champion for Domestic Violence training and education. Veronica is certified with the High Conflict Divorce Certification Program and has advanced training in family law mediation. She performs speaking engagements and writes articles regarding the topics of Child Custody Issues that involve Intimate Partner Violence and Child Abuse. She also does training on the misuse of Parental Alienation and the effects of Post Separation Abuse during a divorce.

PJW Note: Goldstein doesn't say one thing different than what I have been trying to convey to this committee. He uses different language, has a different writing style, and has had more time to edit and polish his article. **He said it better than I have**. He has far more experience than I do, and has been qualified in courts around the country as an expert, but we are on the same page. I found all of this to be true in the NH Family Division. The most time consuming part of my week is putting together the hard examples bad judicial behavior you want. It's a lot of pulling up case summaries, and in some cases, judicial orders. To find proof of what I know to be true.

Studies Goldstein discusses submitted as exhibits as well, to the extent I could get them. One author sent me two for submission this week, gratis.

Respectfully submitted as an exhibit,

Paula Werme, Esq. (retired)

Exhibit 11

May 9, 2019

Paula J. Werme, Esq. (ret).
429 New Wharf Rd.
Milford, DE 19963

The Honorable David King
NH Circuit Court Adminstrative Office
1 Granite Place, Suite N400
Concord, NH 03301

Re: Right to Know Request /
Request under Associated Press v. State, 153 N.H. 120 (2005)

Dear Judge King,

As you know, the NH Supreme Court has held that the courts records are part of the public's Right to Know, subject to "some overriding consideration or special circumstance."

I am requesting from you at this time:

Information on who conducts training, where, and how NH Circuit Court judges are trained.

The length of time a newly appointed Circuit Court judge trains prior to assuming duties on the bench.

A copy of all training materials used in the training of NH Circuit Court judges. If the materials are lengthy and cannot be supplied on the enclosed thumb drive because of size limitations, a copy of the training summary (table of contents of any materials used), the amount of time spent on each topic covered in training, and the name, business addresses and/or other contact information, and qualifications of all people used to train circuit court judges.

If the training is conducted all or in part by private entities out of state, the names and addresses of those entities and the approximate location of training. City and state will suffice for location of training only. This part of my request does not negate the fact that I want specific names and contact information for all persons involved in NH Circuit Court judge training.

If you choose to refuse to supply the materials, a detailed explanation of what specific overriding considerations or special circumstances you believe exempts you from answering this request to keep the courts open and accountable to the people of the state.

Sincerely,

Paula J. Werme, Esq. (ret.)
NH Bar # 12173

cc: NH ACLU

Draft. Original was signed

THE STATE OF NEW HAMPSHIRE

JUDICIAL BRANCH

NH CIRCUIT COURT

ROCKINGHAM COUNTY — 10th CIRCUIT – FAMILY DIVISION – PORTSMOUTH

In the Matter of
Kimberly [redacted] Petitioner, and David [redacted], Respondent
Case No. 670-2013-DM-00114

STATUS CONFERENCE ORDER

A Status Conference was scheduled on July 11, 2017. The hearing was scheduled as directed after last Telephonic Conference was held. The purpose of the hearing was to review reunification efforts. The Court notes that there are a number of unrelated issues also pending in the case which may also require a further hearing, but that will be ruled upon separately.

Preliminarily, the Court asks (as it indicated on the record) that if a party intends to submit a large amount of documentary information in a 30 minute review hearing, that the lawyers first attempt to obtain the agreement of the opposing counsel or party. If there is no objection, than the Court asks that the information be filed before the hearing date so that the Court has time to review it before the hearing. There was an extensive amount of information to review in the file prior to this hearing, including the 22-page Family Systems update from Dr. Johnson. The Court also received extensive information at the hearing from counsel.

The Court, prior to the hearing, reviewed the updated recommendations from Kathy Forbes Fisher, the master parenting coordinator appointed in the case, and the update by Dr. Douglas Johnson relative to his initial 54 page Family Systems Assessment. At the start of the hearing the Court was presented by Petitioner's counsel with a letter from Dr. Joshua Gear, the Child, Adolescent and Adult Psychiatrist treating the two children. The Court referenced on the record some concern over the letter. Dr. Gear in an unsigned letter indicated "It is my understanding that efforts are being made for them to be reconnected with their father despite the fact that they are not ready. Reunification is likely to be

complicated and could very well be dangerous to the girls' emotional stability if done before they are ready". The letter indicates that Dr. Gear does not have all of the information relative to this issue, including the what Dr. Johnson recommendations were or what the Court's orders to date are. Dr. Gear, is the children's treating psychiatrist. His opinion is relevant as a treating doctor. It is important that he have a complete picture of the status of the case free of either parties understandable bias. Similarly, the Court had concerns with the tone of the St. Anne's Home, Inc. correspondence though the Court notes the St. Anne's Home letter offers more details. The letter indicates staff there had reached out to Dr. Johnson and offered input which staff at St. Anne's appears to believe is not being heard.

The Court heard from both sides and briefly heard from the father, David [redacted] The Court understands David T[redacted] was charged criminally in Massachusetts with criminal acts pertaining to his two children. He was acquitted on all counts in Massachusetts and has not seen his children in over the four years. The Court is also familiar with the issues relating to the children's various counseling, the extensive amount of money that has been expended by this family, and to prior expressed concerns about conscious or subconscious alienation by the mother.

The Court, in hearing from all parties, notes that all parties agreed that Dr. Johnson's recommendations should be instituted in a therapeutic and safe manner. The Court orders Dr. Johnson's recommendations to be instituted as currently proposed by Dr. Johnson. The Court recognizes the concerns of N[redacted]'s counselor, Megan Sjurson-Rich. As discussed it is necessary the child feel comfortable and trust a counselor. To the extent Ms. Sjurson-Rich should decline to participate, and the parties cannot agree to an appropriate therapeutic alternative to work with N[redacted] then the parties shall return to Court for further Orders. Alternatives may include an alternative counselor or Kathryn Forbes Fisher for the introduction and/or meeting with Dr. Johnson. That hearing may be conducted by Telephonic Hearing if all parties agree. To be clear, at this stage Dr. Johnson's recommendations are not contemplating direct contact. The recommendations envision Dr. Johnson having a meeting with the each child and the child's counselor to assess the children and their ability to tolerate and benefit from news of and some input from their

father. As a second stage in this process if and when deemed appropriate Dr. Johnson would then introduce the letter by the father, which the father is current drafting with the assistance of Kathy Forbes Fisher. Again this would be done in a therapeutic setting.

The Court schedules this matter for a Further Hearing in 90 days as a status hearing. The purpose will be to review progress on parenting issues. That may be accomplished telephonically upon request.

SO ORDERED,

July 13, 2017
Date

Judge John T. Pendleton

NOV 09 2017

10th Circuit Court
Family Division - Portsmouth

10th CIRCUIT COURT **STATE OF NEW HAMPSHIRE**
FAMILY DIVISION – PORTSMOUTH

In the Matter of Kimberly [redacted] and David [redacted]
Case Number 670-2013-DM-00114

ASSENTED TO MOTION
TO CONDUCT NOVEMBER 16, 2017 REVIEW HEARING
TELEPHONICALLY

NOW COMES the Plaintiff, Kimberly [redacted] by and through her counsel, ***sklawyers, pllc*** and hereby requests that the Review Hearing be conducted telephonically, stating in support as follows:

1. There is a Review Hearing scheduled for November 16, 2017 at 10:30 AM.
2. The Petitioner would prefer not to take time off from work to attend this Review Hearing, and she does not want to incur the additional attorney's fees associated with attending the Review Hearing at the Court versus telephonically.
3. The Petitioner, Kimberly [redacted] assents to this request for the Court to conduct the Review hearing telephonically.
4. The Respondent and his counsel assent to this request for the Court to conduct the Review hearing telephonically.

WHEREFORE, the Petitioner respectfully requests that this Court:

A. GRANT this assented to motion and conduct the November 16, 2017 10:30 AM Review Hearing telephonically; and
B. For such other and further relief as is just and equitable.

Respectfully submitted,
Kimberly [redacted]
By Her Attorneys,
sklawyers, pllc.

Date: 11/6/17

Melissa M. Zani, Esq. (ID# 10254)
835 Hanover Street, Unit 103
Manchester, NH 03104
Tel: (603) 606-2112

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading was mailed postage prepaid to the Petitioner, the Respondent's counsel and the Guardian ad Litem.

Date: 11/6/17

Melissa M. Zani, Esq.

Motion granted
11/14/17
John T. Pendleton
Judge

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT

ROCKINGHAM COUNTY

10th CIRCUIT – FAMILY DIVISION – PORTSMOUTH

In the Matter of
Kimberly T[redacted], Petitioner, and David Tomaras, R[redacted]
Case No. 670-2013-DM-00114

TELEPHONIC HEARING ORDER

The Court held a Telephonic Hearing with counsel for both parties and the GAL today. The purpose of the Hearing was to determine the appropriateness for referral of this matter to the Complex Case Docket. Previously, Attorney Zani had requested referral to the Complex Case Docket. At that time, the Court understood that Mr. [redacted] did not object. Based on discussions today, it was clear that Mr. T[redacted] would prefer the case not go to the Complex Case Docket because the parties were working towards a reunification plan with a master of family therapists, the Family Systems Evaluator, Dr. Johnson, and, with other providers, including the Guardian *ad Litem*.

Attorney Zani believed that the case still should be referred to the Complex Case Docket, because it would allow, in theory, increased access to the Court, which may be necessary to address various issues in a timely fashion. She noted, for example, that the Court previously had ordered the matter be scheduled for a Hearing in 90 days, but it had not yet been scheduled. The Court is sympathetic to this concern, especially given that the Court's docket has very limited remaining time on it for 2017.

In the interim, this matter is to be scheduled for a 90-day Hearing, from the date of the issuance of the last Order, as the Court previously ordered. Additionally, the Court, at this time, does not make a referral to the Complex Case Docket, although it will make inquiry to the panel intake coordinator relative to whether or not the case would be an eligible case, given the other factors involved in the case.

In the interim, the Court encourages Attorney Zani, the GAL, and Attorney Shimer-Brenes to cooperate in regard to the reunification plan. As discussed, the Court

understands that the minor's current individual counselor, Ms. Sjurson-Rich, does not wish to participate as a counselor directly by presenting the father's letter to the minor as part of the reunification process. Understandably the counselor is concerned with undermining her relationship with the minor child. The Court's prior Orders and the discussions with Dr. Johnson, the parties, and the GAL, include alternatives to address this situation, and the Court hopes the parties continue to move forward in good faith. The status of the process will be addressed at the hearing being scheduled.

So Ordered.

October 2, 2017
Date

Hon. John T. Pendleton, Presiding Judge

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT

10th Circuit - Family Division - Portsmouth
111 Parrott Ave.
Portsmouth NH 03801-4402

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
http://www.courts.state.nh.us

NOTICE OF DECISION

FILE COPY

Case Name: **In the Matter of Kimberly [redacted] and David [redacted]**
Case Number: **670-2013-DM-00114**

Enclosed please find a copy of the Court's Order dated November 29, 2017 relative to:

Review Hearing Order

January 19, 2018

Diane P. Caron
Clerk of Court

(0132)
C: Melissa Meallo Zani, ESQ; Ellen C Shimer-Brenes, ESQ; Lynn Elizabeth Aaby, ESQ

THE STATE OF NEW HAMPSHIRE

JUDICIAL BRANCH

NH CIRCUIT COURT

ROCKINGHAM COUNTY — 10th CIRCUIT – FAMILY DIVISION – PORTSMOUTH

In the Matter of
Kimberly T[redacted] Petitioner, and Dave T[redacted] Respondent
Case No. 670-2013-DM-00114

REVIEW HEARING ORDER – NOVEMBER 16, 2017

The Court held a Review Hearing telephonically on November 16, 2017. The purpose was to see how the parties' reunification efforts were proceeding. Attorney Zani was present for Kimberly T[redacted] Ellen Shimer-Brenes was present on behalf of David T[redacted] The GAL, Attorney Lynn Aaby, was present, as well.

The Court was updated by GAL Aaby, learning that that Dr. Johnson, the family system evaluator, was going to schedule a meeting with Megan Sjurson-Rich (counselor to Marissa) to review a letter written by David [redacted] It had been reported previously that Counselor Sjurson-Rich had been apprehensive to be involved in this process. After Kimberly T[redacted] described the process to Ms. Sjurson-Rich, Ms. Sjurson-Rich indicated she would participate in reviewing the letter from David with Marissa.

Dr. Johnson is also scheduling an appointment with [redacted]'s counselor in Vermont. [redacted]'s counselor's name is Julie. This counselor has also indicated a willingness to work with Dr. Johnson in reviewing the letter.

Kathy Forbes Fisher, as the couple's master family therapist, is working with Kimberly to develop a script for [redacted] to employ to ensure that [redacted] acts in a manner supporting the work being done by Dr. Johnson.

There have been previous requests by [redacted]'s counsel that the case be transferred to the complex docket. David[redacted] initial objected because he did not want the case transferred to a new judge again (given the fact that up to 5 different judges have previously handled this case. Attorney Shimer-Brenes reported at the Status hearing that David, now welcomes referral to the Complex Case Docket. Attorney Shimer-Brenes indicated that David is concerned that due to the 10th Circuit Family Divisions case load, if

emergency consideration of reunification issues becomes necessary, expedited access to the Court may not be available. Attorney Zani indicated that her client, Kimberly [redacted] at this point does not want the case transferred to the Complex Case Docket, because she does not want a sixth judge to work on the case.

As the GAL pointed out, the fact that the parties have now flipped their prior position on the Complex docket is an example why this case is complex. The Court will inquire of the Complex Case Docket as to whether it is available to this case to address David [redacted] concerns, or to oversee the reunification process.

From the Court's perspective, the reunification process is going slowly. The children have a limited period of time to reunify with their father while they are minors. To the extent the Complex Case Docket feels it may be able to bring the reunification efforts to a conclusion and/or service that case more efficiently, then this Court notes it is appropriate to make the referral. The Court does not intend to predict that reunification will end up being successful, but David [redacted] has the right to have the process move forward as efficiently and quickly as possible. The Court is aware that it has been over four years since he last saw his children because of the criminal charges in Massachusetts. The Court is also aware he was acquitted on all counts. His frustration with the delays is understandable. The Court is also aware that if the current cooperative reunification efforts are not successful, then the matter may still require a Final Hearing on David's parenting requests. An overall prompt resolution also benefits the children.

Attorney Zani raised the issue of whether or not the GAL should remain in the case. There has previously been a motion for the GAL to withdraw. The Court asked the GAL to stay in the case. At this point, given the number of professionals in the case, Attorney Zani argued that it would be more appropriate for Dr. Johnson and/or Kathy Forbes Fisher to file reports with the Court than adding another layer through the GAL. Attorney Aaby indicated her only concern was that there was no specific person to report to the Court if she was not present and/or to consolidate the information. The Court's belief is that requiring Dr. Johnson and Kathy Forbes Fisher to both file reports for each Review Hearing would be more expensive than allowing the GAL to summarize, based on phone contact with these professionals. The Court also appreciates having the GAL's involvement in the

case and believes it is the most efficient way to bring the reunification process to an end. The Court recognizes David and Kimberly's frustration with expenses incurred, but believes, in regard to efficiencies in the case, that they are both best served by leaving the GAL in the case.

This matter shall be scheduled for a Further Review Hearing in approximately 45 days. The Hearing will be conducted telephonically. The Court's interest in scheduling this Hearing is to ensure the reunification process continues to move forward as rapidly as is therapeutically appropriate.

SO ORDERED,

November 29, 2017
Date

Judge John T. Pendleton

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT

10th Circuit - Family Division - Portsmouth
111 Parrott Ave.
Portsmouth NH 03801-4402

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
http://www.courts.state.nh.us

NOTICE OF DECISION

FILE COPY

Case Name: **In the Matter of Kimberly [redacted] and David [redacted]**
Case Number: **670-2013-DM-00114**

Enclosed please find a copy of the Court's Order dated February 07, 2018 relative to:

Telephonic Review Hearing Order

February 07, 2018

Diane P. Caron
Clerk of Court

(0132)
C: Melissa Meallo Zani, ESQ; Ellen C Shimer-Brenes, ESQ; Lynn Elizabeth Aaby, ESQ

THE STATE OF NEW HAMPSHIRE

JUDICIAL BRANCH

NH CIRCUIT COURT

ROCKINGHAM COUNTY **10th CIRCUIT – FAMILY DIVISION – PORTSMOUTH**

In the Matter of
Kimberly T[redacted], Petitioner, and Dave T[redacted], Respondent
Case No. 670-2013-DM-00114

TELEPHONIC REVIEW HEARING ORDER – FEBRUARY 7, 2018

The Court held a Review Hearing telephonically without a record (because of a technical issue with the Court's conference line telephone) on February 7, 2018, following up on the November 16, 2017, review hearing. Attorney Zani was present for Kimberly T[redacted] Ellen Shimer-Brenes was present on behalf of David T[redacted] The GAL, Attorney Lynn Aaby, was present, as well. In the process of preparing for the call, the Court became aware that its Order signed on November 29, 2017 was not issued until January 19, 2018. The delay of approximately 2 months is inappropriate, in particularly in this reunification case where the father has not seen the minor children for 5 years. **David T[redacted] request that the case be referred to the complex docket is granted. The referral is made today, with this Order.**

The purpose of today's hearing was again to monitor reunification efforts. The Court learned that the meeting with Dr. Johnson and the children, discussed at the November 16, 2017 hearing had not yet occurred. The meeting has been scheduled, however. The meeting is to review David's letter to each child, with the children in a supportive therapeutic environment. Both meetings are scheduled for February 22, 2018. While the Court was concerned the meeting had not happened yet, it understands there were complicating factors in scheduling it. The delays, however, lend further support that this case is appropriate for the complex docket. The Court's concern that the meetings reviewing the letter with the children from the father has not yet occurred stems from the fact that this issue has been discussed since the summer of 2017, but it has taken 6-8 months to put just this simple step in place. As in the Court's November 29, 2017 Order,

The Court reiterates the importance of moving this case forward, and recognizes the importance of bringing it to an efficient resolution.

The Court corrects its prior Order to the extent that it indicated [redacted]'s counselor was in Vermont. That was an error. The Court understands that St. Anne's school is located in Massachusetts.

This matter shall be scheduled for a Further Review Hearing in approximately 45 days if the case has not been transferred to the complex panel at that point. A hearing notice for that hearing is to be sent with this Order to ensure it is scheduled in a timely manner. The Hearing will again be conducted telephonically unless a party requests otherwise to limit costs to the parties.

SO ORDERED,

February 7, 2018
Date

Judge John T. Pendleton

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT

10th Circuit - Family Division - Portsmouth
111 Parrott Ave.
Portsmouth NH 03801-4402

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
http://www.courts.state.nh.us

NOTICE OF DECISION

FILE COPY

Case Name: **In the Matter of Kimberly T[redacted] and David[redacted]**
Case Number: **670-2013-DM-00114**

Enclosed please find a copy of the Court's Order dated February 09, 2018 relative to:

Order Of Reassignment to Family Division Complex Case Docket

All future pleadings must be filed with the Rochester Family Division at the address indicated in the Order of Reassignment

February 09, 2018

Diane P. Caron
Clerk of Court

(0132)
C: Melissa Meallo Zani, ESQ; Ellen C Shimer-Brenes, ESQ; Lynn Elizabeth Aaby, ESQ

State of New Hampshire

Circuit Court

Administrative Order 2018-0005-CCD

Order of Reassignment to Family Division Complex Case Docket

Pursuant to RSA 490-F:2 and Circuit Court Administrative Order 2014-59, *In the Matter of: Kimberly* [redacted] *Petitioner, and David* [redacted] *Respondent*, Case No. 670-2013-DM-00114, currently pending in the 10th Circuit – Family Division – Portsmouth, is reassigned to the Family Division Complex Case Docket, to be heard and decided by Circuit Court Judge Robert J. Foley, Presiding Judge of the Family Division Complex Case Docket.

All future pleadings shall be filed at the 7th Circuit Court – Family Division – Complex Case Docket, located at the Grimes Justice & Administration Building, 259 County Farm Road, Dover, New Hampshire 03820, and hearings shall be conducted at that court location, unless otherwise ordered by the Presiding Judge.

Edwin W. Kelly, Administrative Judge
New Hampshire Circuit Court

February 9th, 2018

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT

STRAFFORD COUNTY

7TH CIRCUIT – FAMILY DIVISION – ROCHESTER

In the Matter of:
Kimberly [redacted] Petitioner, and David [redacted] Respondent
Case No. 670-2013-DM-00114

PRELIMINARY ORDER

As the parties and their counsel are aware, this matter was transferred to the Family Division Complex Case Docket by Order of 2/9/17. We received the file on 2/28/18, and I had an opportunity to review it the next day.

My Case Manager is instructed to schedule a Telephonic Structuring Conference, at which I will discuss with counsel and the GAL the scheduling of appropriate next events.

So Ordered.

March 5, 2018
Date

Hon. Robert J. Foley, Judge

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT

7TH CIRCUIT – FAMILY DIVISION – ROCHESTER

STRAFFORD COUNTY

In the Matter of:
Kimberly Tomaras, Petitioner and David Tomaras, Respondent
Case No. 670-2013-DM-00114

ORDER FROM TELEPHONIC STRUCTURING CONFERENCE

On March 22, 2018, I conducted a Telephonic Structuring Conference with counsel for both parties, the GAL, and Kimberly [redacted] Mr. [redacted] was not required to attend.

The GAL and counsel described a long and difficult parenting journey, the pace of which continues to frustrate Mr. [redacted] who has not seen his girls in approximately five years. Dr. Doug Johnson and Kathy Forbes-Fisher are both involved. Dr. Johnson has done a family systems evaluation. Kathy Forbes-Fisher is the reunification therapist. I have confidence in both of those mental health professionals.

When discussing next appropriate events, Mr [redacted] through his counsel, appropriately voiced frustration but by the end of the conversation, was willing to participate in the therapeutic process as long as it had the Court's scrutiny, some structure, and some deadlines. Ms. Tomaras and her counsel did not object to that approach. That approach was welcomed by the GAL.

Consequently, it is more specifically ordered as follows:

1. My Case Manager shall notice a Structuring Conference to be conducted at the Family Division Complex Case Docket in the County Building in Dover on May 2, 2018 at 1:00 p.m. Up to two hours will be allowed for the Structuring Conference.

2. I have requested the GAL to solicit the telephonic involvement in that Structuring Conference of both Kathy Forbes-Fisher and Dr. Johnson so that I can prepare an outline of the therapeutic process envisioned in the next month or two and issue an order that is consistent with an appropriately aggressive therapeutic process, which also protects the safety and needs of both girls.

3. I am aware that Mr [redacted] ives far away and both parties have full-time jobs. In the future, their telephonic participation in structuring conferences may be possible. However, for this first Structuring Conference, I really think it is most appropriate for everybody to be

present except for the mental health professionals, for whom I hope to keep the expenses minimized.

So Ordered.

March 23, 2018
Date

Hon. Robert J. Foley, Judge

7TH CIRCUIT COURT DOVER FAMILY DIVISION

IN THE MATTER OF KIMBERLY [redacted] AND DAVID [redacted]
CASE NO. 670-2013-DM-00114

PARTIALY ASSENTED TO MOTION TO CONTINUE STRUCTURING CONFERENCE

NOW COMES the Petitioner, Kimberly [redacted]y and through her counsel, ***sklawyers, pllc*** and hereby requests that the Structuring Conference be continued, stating in support as follows:

1. Pursuant to the March 23, 2018 Order, the Court scheduled a two (2) hour Structuring Conference for May 2, 2018.

2. Attorney Zani has taken a brief and unexpected medical leave of absence.

3. The Petitioner assents to the continuance because, although she does not want to delay this case any further, she has been represented by Attorney Zani from the inception of this matter.

4. The Petitioner was able to review Dr. Johnson's report with Attorney Zani and not only agrees with his recommendations but she has already begun the process and met with Kathy Forbes Fisher on April 24, 2018.

5. The Petitioner agrees with the timeline recommended by Dr. Johnson to the extent that the girls' therapists and medical professionals support the recommendations and timeline.

6. Given the complexity of this matter and the fact that both parties agree to proceed with Dr. Johnson's recommendations, it would be unreasonable and unfair to require the Petitioner to go forward with the Structuring Conference on May 1, 2018.

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7. Attorney Zani has represented the Petitioner throughout this lengthy case and possesses an in depth knowledge and understanding of the complexities involved and it would be prejudicial to the Petitioner to require her to go forward without counsel for this first in-person hearing with Judge Foley on the complex case docket.

8. Further, there is no other family law attorney from Attorney Zani's firm who is available on May 1, 2018 to attend the structuring conference with the Petitioner.

9. Attorney Ellen Shimer-McGuire has been contacted and the Respondent does not assent to this Motion to Continue.

10. The Guardian ad Litem has been contacted and assented to this Motion to Continue.

11. There will be no prejudice to either party nor will there be a delay in the implementation of Dr. Johnson's recommendations if the Court were to grant this Motion and reschedule the two hour Structuring Conference to a date in early June when Attorney Zani will be available to attend and the reunification process will be well underway.

WHEREFORE, the Petitioner respectfully requests that this Court:

A. Continue the Structuring Conference scheduled for May 1, 2018;

B. Reschedule the Structuring Conference to an available date in early June when Attorney Zani will be available to attend taking into account the following dates that Attorney Zani is not available: May 31 and June 4, 7, 8 and 11; and

C. Grant such other and further relief as is just and equitable.

Respectfully submitted,
Kimberly [redacted]
By Her Attorneys,
sklawyers, pllc.

4/25/18 /s/ Melissa M. Zani
Date

Melissa M. Zani, Esq. (Bar #10254)
835 Hanover Street - Unit 302
Manchester, NH 03104
603-606-2112

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading was e-mailed and mailed by first-class mail, postage prepaid, to the Petitioner, the Respondent's counsel and the Guardian ad Litem.

4/25/18 /s/ Melissa M. Zani
Date

Melissa M. Zani, Esq.

4/26/18 Granted.

Robert J. Foley
Judge

DOCUMENT	FILING DATE
VS FORM	
GAL REPORT	
Preliminary	
Interim/Supplemental	
Final	
EXHIBITS	
Petitioner	
Respondent	
Unmarked/Other	
SEALED DOCUMENT	
Other	4/27/18 Family Systems Assessment Dated: 4/13/18
QDRO	
Lab Results/Drug	
Lab Results/Paternity	
LADAC	
Criminal Record Release	
DHHS Record Release	
FINANCIAL AFFIDAVIT	
Petitioner	
Respondent	
DVP INFORMATION	
Confidential Info Sheet	
Def. Info Sheet	
PDFCS	
DV Fax Info	

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THE STATE OF NEW HAMPSHIRE

STRAFFORD COUNTY, SS

7TH CIRCUIT COURT
ROCHESTER FAMILY DIV.

IN THE MATTER OF KIMBERLY [redacted] AND DAVID [redacted]
CASE NUMBER: 670-2013-DM-00114

RESPONDENT'S OBJECTION TO PETITIONER'S PARTIALLY ASSENTED TO MOTION TO CONTINUE STRUCTURING CONFERENCE

NOW COMES Respondent in the above captioned matter, David [redacted] by and through his attorney, Ellen C. Shimer-McGuire, Esq., and hereby **OBJECTS** to a continuance of the May 2, 2018, Court date for the following reasons:

1. Respondent, David [redacted] ("David"), has not been allowed to see or speak with his children since February of 2013. Five years and 2 months have since elapsed.

2. Judge Foley was extremely clear during the March 22, 2018 Telephonic Hearing that all Parties, Counsel, GAL, Dr. Johnson, and Kathy Forbes Fischer were to be available for the May 2, 2018, Court Hearing.

3. Opposing Counsel is now requesting a Continuance - 1 week prior to the previously scheduled Court Event.

4. This Case has been riddled with delays, stays, vacations, etc. It is precisely the reason why Father insisted that this case be transferred to the Complex Case Docket.

5. Both children and Mr. [redacted] are undeniably harmed by any further delay in this case.

6. While Attorney Zani is currently unavailable, her firm (S K Lawyers Pllc), boasts that it is a firm with 12 competent attorneys. I am certain that 1 of those 12 attorneys could assist in the upcoming Court event.

WHEREFORE, Respondent, David [redacted] respectfully requests that this Honorable Court order:

A. All Parties, available Counsel, & GAL appear in person for the previously scheduled hearing on May 2, 2018 (with Dr. Johnson and Kathy Forbes Fischer telephonically); and

B. For all other relief which is deemed appropriate and just.

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Respectfully submitted,

David [redacted]
By his attorney,

Ellen C. Shimer-McGuire

Ellen C. Shimer-McGuire, Esq.
NH Bar ID: # 20726
483 Main Street
Haverhill, MA 01830
Tel: 603-819-4940
Fax: 603-819-4941
Email: Eshimer@s-dlegal.com

CERTIFICATION OF COPIES TO PARTIES

This is to certify that a copy of the above Objection to Motion to Continue was emailed this 25th day of April, 2018, to Melissa Zani, Esq. and to GAL Lynn Aaby, Esq.

Ellen C. Shimer-McGuire

Ellen C. Shimer-McGuire, Esq.

JUDICIAL BRANCH
NH CIRCUIT COURT

Circuit - Family Division - Rochester
J County Farm Road, Suite 302
ver NH 03820

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
http://www.courts.state.nh.us

NOTICE OF HEARING

FILE COPY

Case Name: **In the Matter of Kimberly [redacted] and David [redacted]**
Case Number: **670-2013-DM-00114**

The above referenced case(s) has/have been scheduled for:

Telephonic Conference - To Address Use of Dr. Johnson's 2nd Updated Report and Meeting. (Parties not required, but may participate if they choose to do so.)

Date: May 17, 2018
Time: 8:00 AM
Session Length: 15 Minutes

259 County Farm Road
Dover, NH 03820
Courtroom 4-7th Circuit-Family Division-Rochester

Please advise immediately if this is not sufficient.

If you are unable to appear at this scheduled hearing, you must request a continuance from the Court in writing which, except for good cause shown, shall be filed within ten (10) days from the date of the mailing of the notice of a hearing. You must also send a copy of the request to the opposing party, unless restricted from doing so. Motions to continue filed fewer than 10 days in advance of hearing will only be granted if the Court finds that an emergency or exceptional circumstance exists. You mus appear on the scheduled date unless you receive notification from the Court that a request to continue the hearing has been granted. There are no child care facilities at the courthouse, so you should make appropriate child care arrangements.

Should you fail to appear at the hearing, all issues raised by the pleadings may be decided by the court without your participation.

If you will need an interpreter or other accommodations for this hearing, please contact the court immediately.

Please be advised (and/or advise clients, witnesses, and others) that it is a Class B felony to car firearm or other deadly weapon as defined in RSA 625.11, V in a courtroom or area used by a c

BY ORDER OF THE COURT

May 01, 2018

Cheryll-Ann Andrews
Clerk of Court

207
C: Lynn Elizabeth Aaby, ESQ; Ellen C. Shimer-McGuire, ESQ; Melissa Meallo Zani, ESQ

Sched 15 min tele Conf counsel, Dr + parties, if they wish, to address use of Dr J 2nd updated report and meeting described therein.

NHJB-2173-F (12/15/2014)

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STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH

Strafford, ss.

7th Circuit – Family Division
Rochester

In the Matter of Kimberly [redacted] and David [redacted]
Case No. 670-2013-DM-00114

ASSENTED TO MOTION TO CONTINUE MAY 17, 2018 TELEPHONIC HEARING

NOW COMES the Petitioner, Kimberly [redacted] by and through her counsel, ***sklawyers, pllc*** and hereby requests that the Telephonic Hearing currently scheduled for May 17, 2018 at 8:00 a.m. be continued, stating in support of said motion:

1. This case has been pending for years and is currently on the complex case docket;
2. Petitioner's counsel has had a death in her family last night and is out of state and not available on May 17, 2018;
3. The Petitioner assents to this Motion to Continue;
4. The Respondent and his counsel assent to this Motion to Continue; and
5. The Guardian ad Litem assents to this Motion to Continue.

WHEREFORE, the Petitioner respectfully requests that this Court:

A. Continue the telephonic hearing scheduled for May 17, 2018; and
B. For such other and further relief as is just and equitable.

5/16/18 Granted

Date: 5/15/18

Robert J. Foley
Judge

Respectfully submitted,
Kimberly [redacted]
By Her Attorneys,
sklawyers, pllc.

Melissa Zani by MKC

Melissa M. Zani, Esq. (ID# 10254)
835 Hanover Street, Unit 103
Manchester, NH 03104
Tel: (603) 606-2112

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading was mailed postage prepaid to the Petitioner, the Respondent's counsel, Ellen Shimer-McGuire and the Guardian ad Litem, Lynn Aaby.

Date: 5/15/18

Melissa Zani by KBC
Melissa M. Zani, Esq.

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT

STRAFFORD COUNTY

7TH CIRCUIT – FAMILY DIVISION – ROCHESTER

In the Matter of:
Kimberly [redacted] Petitioner and David [redacted] Respondent
Case No. 670-2013-DM-00114

ORDER FROM TELEPHONIC STATUS CONFERENCE

Mr. [redacted] has not seen his two daughters in five years. Dr. Johnson was appointed to conduct a Family Systems Evaluation, and his first report was received by the Court on 2/25/16. Given the passage of time, an updated Family Systems Evaluation was conducted, and Dr. Johnson's updated report was received on 4/27/18.

It was originally contemplated by my 4/23/18 Order that a Structuring Conference would be scheduled for two hours and would include the telephonic participation of both Dr. Johnson and Kathy Forbes-Fisher, who is the Master Therapist in this therapeutic process. That two hour conference was continued to June 6, 2018. In the meantime, Dr. Johnson's updated report arrived, and Ms. [redacted] expressed in her attorney's pleading her complete support for the findings, recommendations, process, and timelines set out therein. I had no similar input from Mr. [redacted] Thus, the primary purpose of the short 5/29/18 Telephonic Status Conference was to discuss the parties' investment in Dr. Johnson's newest recommendations and whether a two-hour conference on 6/6/18 was still required, particularly given the language on page 1 of Dr. Johnson's Updated Assessment Report: "Counsel agreed a meeting is to take place with the intent of implementing the recommendations of Dr. Johnson's extensive Family Systems Evaluation. The meeting will include the GAL, the Master Family Therapist, and each of the children's therapists. The goal of the meeting will be to move forward with implementation of the Johnson recommendations."

Counsel for Mr [redacted] quickly indicated that he also supported the findings, recommendations, and timeline established by Dr. Johnson's Updated Assessment Report. Everyone agreed under those circumstances that the hearing scheduled for 6/6/18 was no longer necessary.

Consequently, it is more specifically ordered as follows:

1. Pursuant to their expressed agreement, the parties are ordered to follow the recommendations of Dr. Johnson's Updated Assessment.
2. The hearing now scheduled for 6/6/18 is cancelled.
3. A **Telephonic Status Conference** will be conducted on **July 23, 2018 at 8:00 AM.**

So Ordered.

June 4, 2018
Date

Hon. Robert J. Foley, Judge

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THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT

STRAFFORD COUNTY — 7TH CIRCUIT – FAMILY DIVISION – ROCHESTER

In the Matter of:
Kimberly [redacted] Petitioner and David [redacted] Respondent
Case No. 670-2013-DM-00114

ORDER FROM TELEPHONIC PARENTING REVIEW HEARING

As anticipated by my Order of 6/4/18, on 7/23/18, I conducted a Telephonic Conference with the GAL and counsel for both parties. The purpose of the hearing was to gauge the parties' therapeutic progress, following their receipt of Dr. Johnson's updated Family Systems Evaluation and their mutual expression of support for and investment in Dr. Johnson's findings, recommendations, and timeline.

On 7/23/18, the GAL reported that Kathy Forbes-Fisher had been working with both girls and Mr. [redacted] They had some productive meetings that went well in the eyes of Kathy Forbes-Fisher. Mr. [redacted] took the therapeutic suggestions given to him and did a good job incorporating them into his presentation. Kathy Forbes-Fisher wanted to follow up with both parents. Mr. [redacted] told the girls during these meetings that he would not force them to reunify with him or to have a regular relationship if they did not want to. The GAL offered that according to Kathy Forbes-Fisher, the girls need some time to process these meetings with their own therapist and with Kathy Forbes-Fisher at once a month check-ins. If either of the girls wants to go forward and have another meeting with their father, Kathy Forbes-Fisher will facilitate such a meeting.

Counsel for Ms. [redacted] indicated tha[redacted] counselor was at the Kathy Forbes-Fisher's meeting with [redacted] She reaffirmed on behalf of Ms. [redacted] that the girls were told they would not be pushed or forced.

Counsel for Mr. [redacted] expressed his ongoing concern with the slow pace of this process and related concern that the momentum, recently achieved, could be lost if there wasn't mandated follow up.

The GAL reminded Mr. [redacted] through his counsel that she totally understood his feelings in that regard, but wanted him to be careful not to break his promise to the girls that they would not be forced, in which case there would be "blow back" against reunification. The GAL also emphasized that the girls will remain in individual therapy as this process unfolds.

I decided that in order to give the therapeutic process a continuing opportunity to work, as recommended by Kathy Forbes-Fisher, we should have another Parenting Review Hearing conducted telephonically in 60 days, at which both parents will also be participating at least by being on the phone.

I have no intention of allowing the case to fall through the cracks or the therapeutic process to fail from lack of attention. I am also very aware that Mr. [redacted] has a due process right to decide that he would rather litigate than continue a process that is too slow or too unlikely to work.

Consequently, it is more specifically ordered as follows:

1. The Case Manager shall schedule a Further Telephonic Parenting Review Hearing on 9/21/18 at 8:00 a.m. Both parties shall participate. The hearing would have been in the Court but for the fact that the hearing had to be scheduled at 8:00 a.m. to accommodate a full docket and also because M[redacted] would be driving 2-1/2 hours to Dover.

2. The GAL shall file a report 7 days in advance of the hearing.

So Ordered.

August 2, 2018
Date

Hon. Robert J. Foley, Judge

THE STATE OF NEW HAMPSHIRE

JUDICIAL BRANCH

NH CIRCUIT COURT

STRAFFORD COUNTY — 7TH CIRCUIT – FAMILY DIVISION – ROCHESTER

In the Matter of:
Kimberly [redacted] Petitioner and David [redacted] Respondent

Case No. 670-2013-DM-00114

ORDER FROM SECOND TELEPHONIC PARENTING REVIEW HEARING

As anticipated by my Order of 8/2/18, following the last Telephonic Parenting Review Hearing on 7/23/18, I conducted a Telephonic Parenting Review Hearing on 9/21/18. Both parties participated with their counsel. The Guardian *ad Litem* participated as well.

As my 6/4/18 Order reflects, both parties had agreed to adopt and follow the recommendations in Dr. Johnson's updated report of 4/27/18. By the time my Order of 8/2/18 was issued, there had been some sessions with Kathy Forbes-Fisher between Mr [redacted] and the girls, which Kathy Forbes-Fisher felt went well. In one such session, Mr. [redacted] promised the girls he would not push or force them to have a relationship with him. As the 8/2/18 Order reflects, that promise by M[redacted] has been difficult for him to honor; and the Guardian *ad Litem* admonished him that violating that promise would likely result in serious "blow back", which could irrevocably damage the reunification process.

In my Order of 8/2/18 I also promised the parties that I would keep close oversight on this case and the related therapeutic process.

On 9/17/18 the Guardian *ad Litem* reported that there has been a bit of a reversal [redacted] was described by Dr. Johnson in his 4/13/18 report, as the child seriously considering pursuing a relationship with her father. Now apparently [redacted] is refusing to meet with Kathy Forbes-Fisher, saying that she does not want to pursue reunification at all. Dr. Johnson's 4/13/18 report also expressed concern that i[redacted] went back home to her mother from St. Agnes Home this summer of 2018, [redacted]s exposure to the "unholy alliance" of [redacted] and their mother could be harmful to [redacted]

Guardian *ad Litem* reported that Mr. [redacted]s "justifiably" concerned that Ms. [redacted] and her significant other, Rob, are unduly influencing [redacted] against Mr. [redacted]

Dr. Johnson's report of 4/13/18 had described Rob as the voice of reason.

The Guardian *ad Litem* wants to insure that, while she is holding off Mr [redacted] from pushing the girls into reunification, the girls are being provided a neutral environment, in which to make these difficult decisions more objectively. This is particularly so now that [redacted] is apparently less adamant about not wanting a relationship with Mr. [redacted]

The Guardian *ad Litem* asked for an Order, obligating Ms [redacted] o get both [redacted] and [redacted] to monthly sessions with Kathy Forbes-Fisher and enjoining Ms. [redacted] and Rob from taking

any steps to undermine this reunification exploration process. Since Rob is not a party to this case, I have no authority to issue such an Order against him. The Guardian *ad Litem* also effectively asked for an Order, keeping Mr. [redacted] out of the skirmish, so that he can appear to the girls to have kept his promise not to push them.

During the Telephonic Hearing the Guardian *ad Litem* clarified that Court Orders, enforcing the girls opportunity to make an objective decision in a neutral, therapeutic environment with Kathy Forbes-Fisher, did not violate the promise of Mr. [redacted] to the girls.

Ms [redacted] through counsel denied being against the girls reuniting with their father. She denied being opposed to a therapeutic process, but she described the process put in place by Dr. Johnson as "flawed." Ms [redacted] denied that she or Rob have said anything derogatory about Mr. [redacted] However, her counsel offered, somewhat inconsistently, that the girls have already made their decision.

Mr. [redacted] when his counsel was pressed by the Court for plain language, is now ready to give up on the therapeutic proceedings and litigate instead. However, when I pose the theoretical litigation outcome of placing the girls with him in order to remove them from their mother's alleged alienating influence, pursuant to Miller and Todd, Mr. [redacted] quickly stated that he does not want the kids taken away from their mother. His allegations of alienation, his request for a relationship with the children, and that expressed outcome are also probably inconsistent.

My thinking is that litigation is easy and too often mindless, particularly when it comes to the complexities involved in this case and these kinds of cases. Therapy is difficult and often slow. However, if Ms. [redacted] is unduly influencing the children, as suspected by Dr. Johnson and alleged by Mr. [redacted] drastic outcomes are often recommended, which could also place the girls well-being at risk. No one wants that.

I agree with the Guardian *ad Litem* that the therapeutic process, designed to give the girls an objective opportunity in a neutral, therapeutic environment, to make their own decision about whether they want a relationship with their father, is still the way to go. Blowing up therapy and moving to litigation now, in the face of what the girls perceive as their father's promise not to push them, regardless of what he intended, I am afraid will doom Mr. [redacted] the eyes of his daughters.

Consequently it is more specifically ordered as follows:

1. Ms. [redacted] is hereby ordered to get both girls to Kathy Forbes-Fisher on a monthly basis so that they can decide for themselves, without the influence of others, whether they want a relationship with their father or not.

2. Ms. [redacted] is enjoined and restrained from degrading Mr. [redacted] or doing anything to undermine the process recommended by Dr. Johnson and the Guardian *ad Litem* and originally agreed to by the parties.

3. The Guardian *ad Litem* shall inquire of Kathy Forbes-Fisher approximately how many such sessions she envisions needing to allow the girls to make such decisions, and thereafter, the Guardian *ad Litem* shall file a brief report with the Court setting out that timeframe.

4. If after that timeframe is exhausted, assuming full compliance by Ms. [redacted] Mr. [redacted] still wants his due process right to litigate; he will get it.

5. A Parenting Review Hearing shall be scheduled by my Case Manager in approximately 90 days at 3:00 p.m. It will be in the Rochester Family Division in Dover and no one will participate telephonically.

So Ordered.

September 28, 2018
Date

Hon. Robert J. Foley, Judge

DOCUMENT	FILING DATE
VS FORM	
GAL REPORT	
Preliminary	
Interim/Supplemental	10/22/18 Notice to the Court
Final	
EXHIBITS	
Petitioner	
Respondent	
Unmarked/Other	
SEALED DOCUMENT	
Other	
QDRO	
Lab Results/Drug	
Lab Results/Paternity	
LADAC	
Criminal Record Release	
DHHS Record Release	
FINANCIAL AFFIDAVIT	
Petitioner	
Respondent	
DVP INFORMATION	
Confidential Info Sheet	
Def. Info Sheet	
PDFCS	
DV Fax Info	

THE STATE OF NEW HAMPSHIRE

STRAFFORD COUNTY, SS

7TH CIRCUIT COURT
ROCHESTER FAMILY DIV.

IN THE MATTER OF KIMBERLY [redacted] AND DAVID [redacted]
CASE NUMBER: 670-2013-DM-00114

RESPONDENT'S MOTION FOR CONTEMPT REGARDING PETITIONER'S ONGOING REFUSAL TO ACKNOWLEDGE JOINT LEGAL CUSTODY

NOW COMES Respondent in the above captioned matter, David [redacted] by and through his attorney, Ellen C. Shimer-McGuire, Esq., and hereby files the instant Motion for Contempt regarding Petitioner's ongoing refusal to acknowledge joint legal custody. Further stating:

1. Father's shared legal custody was reinstated on December 16, 2016, when the Court adopted the GAL's recommendations (GAL report dated 12/9/2016);

2. There is a Court Order presently in effect indicating that the Parties share legal custody;

3. Yet, Petitioner refuses to acknowledge Father's shared legal custody;

4. Petitioner has withheld, and continues to withhold, vital information regarding the minor children (ex. Multiple suicide attempts, multiple inpatient hospitalizations, physical assaults on family members, community outbursts, etc.);

5. Petitioner refuses to provide documentation regarding her NH Medicaid Program approval, and/or the children's approval, despite repeated requests for same (Father continues to pay for 50% of uninsured medical expenses for the children);

6. Petitioner refused to consider a 3rd Party review of the children's numerous medications, despite Father's repeated requests;

7. Petitioner refused to discuss with and/or involve Father in the decision to transition the minor child from inpatient hospitalization back home to Petitioner (September 2018);

8. Petitioner refuses to discuss with Father what the safety plan is for the children now that [redacted] has transitioned home (i.e., what mental health services are presently in place in the home);

9. Petitioner continues to vilify Father in the presence of the children, making it impossible for the children to form their own independent opinion of him;

10. Most recently, Petitioner unilaterally signed the child up for braces and indicated that it would cost $11,750.00, and that Father was responsible to pay $5,875.00. No discussion

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was ever had regarding orthodontia, and the total amount of the braces is $5,875.00 **NOT** $11,750.00;

11. Petitioner refuses to discuss any issue with Father, and insists upon running up their legal fees rather than abiding by the joint custody provision.

12. Father has offered to sit with Petitioner (either with or without Counsel present) in an effort to work together toward the best interest of the children. Petitioner refuses any co-parenting effort, unless it deals with money (i.e., child support, medical expenses, etc.).

13. Father asserts that the children deserve better than this.

WHEREFORE, Father, David [redacted] respectfully requests that this Honorable Court order:

A. Petitioner to abide by the Joint Legal Custody order of the Court;

B. Petitioner to reimburse Father $500.00 in legal fees for needlessly involving attorneys in the "dental issue", in addition for having to file this Contempt Motion with the Court; and

C. For all other relief which is deemed appropriate and just.

Respectfully submitted,

David [redacted]
By his attorney,

Ellen C. Shimer-McGuire, Esq.
NH Bar ID: #20726
483 Main Street
Haverhill, MA 01830
Tel: 603-819-4940
Fax: 603-819-4941
Email: Eshimer@s-dlegal.com

12/28/18 This Motion shall be set with the rescheduled Contempt Review Hearing.

Robert J. Foley
Judge

CERTIFICATION OF COPIES TO PARTIES

This is to certify that a copy of the above Objection to Motion to Continue was emailed this 7th day of December, 2018, to Melissa Zani, Esq. and to GAL Lynn Aaby, Esq.

Ellen C. Shimer-McGuire, Esq.

THE STATE OF NEW HAMPSHIRE

7th CIRCUIT

FAMILY DIVISION - ROCHESTER

In the Matter of Kimberly [redacted] and David [redacted]

Case Number 670-2013-DM-00114

PETITIONER'S OBJECTION TO RESPONDENT'S MOTION FOR CONTEMPT REGARDING PETITIONER'S ONGOING REFUSAL TO ACKNOWLEDGE JOINT LEGAL CUSTODY

NOW COMES the Petitioner, Kimberly [redacted] by and through her attorneys, ***sklawyers, pllc*** and does respectfully object to Respondent's motion, stating in support as follows:

1. Respondent's Motion alleges that the Petitioner refuses to acknowledge Father's shared legal custody. Petitioner is well aware of the 12/16/16 Order on Ex Parte Motion awarding the parties "joint decision making responsibility for both children. **All major decisions regarding the children to be discussed between the parties through the Master Family Therapist**." Emphasis added. Perhaps the Respondent should re-read the Order before he files a motion for contempt.
2. Respondent's Motion alleges that the Petitioner has "withheld, and continues to withhold, vital information regarding the minor children". He goes on to cite examples from years ago, presumably to cast Petitioner in a negative light. Respondent's allegations are completely baseless, with no current examples of any alleged behavior to support his position.
3. Respondent alleges that the "Petitioner refused to discuss with and/or involve Father in the decision to transition the minor child from inpatient hospitalization back home to Petitioner (September 2018)". Respondent's counsel sent St. Ann's a letter months earlier threatening legal action if not notified and included in conferences. Mr. [redacted] was notified of the case conference by St Ann's and he was invited to join in via phone. He never responded to the invite or attended the conference outlining and plannin[redacted]s transition home. This meeting reviewed services and safety and treatment plans for [redacted] Mr. [redacted] has

never requested any such information from Petitioner via the Master Family Therapist, which is the procedure pursuant to the December 16, 2016 Order.

4. The Respondent can contact St. Ann's for the written review of the conference he elected not to attend. The written review will include all the information that Mr. [redacted] complains he was not given. The Respondent has been invited to participate in the process and attend care plan meetings, but he has not taken advantage of the opportunity to do so, perhaps because it is easier and more advantageous for him to shift the responsibility to the Petitioner and then accuse her of making unilateral decisions, and not following the Court Order.
5. The allegation that the "Petitioner unilaterally signed the child up for braces and indicated that it would cost $11,750.00" is again, a complete distortion of the truth. Petitioner did not sign [redacted] up for braces, rather she took her for a long-awaited consult and paid the full cost of $375.00 for the diagnostics to determine the treatment plan, which she requested in writing with a payment plan prior to any orthodontic work beginning, so that she could present it to the Respondent for review. Undersigned counsel wrote to Respondent's counsel, attaching the estimate from Dr. Nista which clearly states the total cost would be $5,875.00. Petitioner did not "indicate that it would cost $11,750.00" as alleged.
6. When the Petitioner pointed out undersigned counsel's mistake (undersigned counsel misread the estimate and quoted the total monthly cost, not the Respondent's share), she notified Respondent's counsel, who replied in part:

"There is no reason why your client could not have reached out to David directly regarding this issue. There was no reason to involve attorneys. And yet here we are...again...It appears that while you indicate you were mistaken regarding the dollar amount for braces, we must wonder if this was simply another attempt on the part of your client to have David pay 100% of yet another bill...there is no trust here...of that we can most assuredly agree..."

Petitioner's counsel replied in part:

"It is disappointing and disturbing that your client can't see past his anger at Kim to understand that accusing her, and me, of attempting to trick him into paying the full cost of [redacted]s braces is such a huge step in the wrong direction. All he has to do is pick up the phone and call Dr. Nista, or look at the second paragraph C on the Financial Agreement for Orthodontic Treatment form that I included

with my 11/27/18 letter where it states the following: "C) THE BALANCE DUE of $5,500.00 may be divided into 20 equal monthly payments of **$275.00 each**." I misread this and thought that "each" parent had to pay $275.00 per month, when it clearly means that "each" monthly payment is $275.00. I have an email from Kim date stamped just after I sent you the letter about the braces where she corrects me about the cost. In fact, all of the communication on this issue is attached in chronological order".

7. The parties' Divorce Agreement requires that they each pay half of any uninsured medical and dental treatment for the children. The Petitioner obtained the information and presented it, through counsel, to the Respondent. The Respondent initially refused to pay, and provided information about other options that he researched, apparently without talking to Dr. Nista's office. Now the Petitioner has incurred substantial legal fees on the issue of [redacted] braces, and the Respondent has only agreed to pay a portion, which is less than half of the total cost. The Petitioner understands the obligations laid out in the 12/16/16 Order on Ex Parte, and none of them require her to "pick up the phone and call him about braces".
8. Respondent's motion alleges that the Petitioner "refused to discuss with and/or involve Father in the decision to transition the minor child from inpatient hospitalization back home to Petitioner (September 2018)". Apparently, the Respondent does not understand that the Petitioner has not made a single unilateral decision regarding the children's treatment. There has always been a team of professionals involved, both academic and mental health, and the Respondent has been invited to participate but has not bothered to do so.
9. Respondent alleges that the Petitioner refuses to "discuss any issue with Father, and insists upon running up their legal fees rather than abiding by the joint custody provision", but the Respondent elected to file a motion for contempt consisting of two issues from 2018 (braces and [redacted] transition home), both of which he has not tried to discuss with the Petitioner through the Master Family Therapist as required by the 12/16/16 Order on Ex Parte.
10. Respondent accuses the Petitioner of refusing to provide documentation regarding NH Medicaid Program approval for the children. This is simply not true. When

Respondent's counsel emailed undersigned counsel on this issue, undersigned replied stating "I also have multiple emails from 2017 documenting that I provided the information of the girls' Medicaid coverage to you so I don't understand where the accusation that I am "wholly ignoring" your request for the Medicaid information comes from. Copies of those emails are also attached." However, Respondent chose to include this accusation in his Motion despite the clear documentation to the contrary.

11. It is interesting to note that the Respondent points out that he continues to pay for 50% of uninsured medical expenses for the children, but this means he has actual knowledge of the fact that NH Medicaid now pays for much of their treatment because his share of the uninsured medical expenses has decreased significantly since they were approved.
12. Respondent alleges that the Petitioner "refused to consider a 3rd Party review of the children's numerous medications, despite Father's repeated requests". Again, this is simply not true, and it most definitely is not a current issue.
13. The Respondent's Motion for Contempt was filed with unclean hands. Respondent acted in bad faith by filing while his attorney was actively communicating with Petitioner's counsel regarding [redacted]'s orthodontia treatment, which was the only current issue in his Motion. A simple telephone call prior to filing would have avoided the unnecessary and wasteful use of Petitioner's, and the Court's, resources.
14. The Petitioner has not intentionally or knowingly violated the 12/16/16 Order on Ex Parte, and the Respondent's Motion flies in the face of what the Petitioner, the Court, the Guardian ad Litem and the Master Family Therapist are trying to accomplish through the special assignment to the Complex Case Docket.
15. It would be in the best interests of the children if both parties abided by their Divorce Decree, including Mr. [redacted] payment of half of the uninsured medical and dental expenses. All the bills are submitted to Mr. [redacted] with proper documentation. The continued acrimony and false accusations, and accruing unnecessary legal bills, goes against everything in Dr. Johnson's

recommendations for helping heal these children. Mr. [redacted] s right, the children do deserve better.

WHEREFORE, the Petitioner respectfully prays that the Court:

A. DENY Respondent's Motion for Contempt;

B. DENY Respondent's prayer for reimbursement of attorney's fees; and

C. For such other and further relief as is just and equitable.

Respectfully submitted,
Kimberly [redacted]
By Her Attorney,
sklawyers, pllc.

Date: 12/20/18 By: _____

Melissa M. Zani, Esq. (ID# 10254)
835 Hanover Street, Unit 103
Manchester, NH 03104
Tel: (603) 606-2112

CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing pleading was mailed postage prepaid to Respondent's counsel, Ellen C. Shimer-McGuire, Esquire, 483 Main St., Haverhill, MA 01830, and to the Guardian ad Litem, Lynn E. Aaby, Esquire, 19 Hampton Road, Unit A2, Exeter, NH 03833.

Date: 12/20/18 _____
Melissa M. Zani, Esq.

DOCUMENT	FILING DATE
VS FORM	
GAL REPORT	
Preliminary	
Interim/Supplemental	
Final	
EXHIBITS	
Petitioner	
Respondent	
Unmarked/Other	Bksp's 11/5/19 (large manila envelope)
SEALED DOCUMENT	
Other	
QDRO	
Lab Results/Drug	
Lab Results/Paternity	
LADAC	
Criminal Record Release	
DHHS Record Release	
FINANCIAL AFFIDAVIT	
Petitioner	
Respondent	
DVP INFORMATION	
Confidential Info Sheet	
Def. Info Sheet	
PDFCS	
DV Fax Info	

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DOCUMENT	FILING DATE
VS FORM	
GAL REPORT	
Preliminary	
Interim/Supplemental	
Final	
EXHIBITS	
Petitioner	
Respondent	
Unmarked/Other	
SEALED DOCUMENT	
Other	12/26/05 Letter from Atty Zani re Atty Bailey
QDRO	
Lab Results/Drug	
Lab Results/Paternity	
LADAC	
Criminal Record Release	
DHHS Record Release	
FINANCIAL AFFIDAVIT	
Petitioner	
Respondent	
DVP INFORMATION	
Confidential Info Sheet	
Def. Info Sheet	
PDFCS	
DV Fax Info	

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THE STATE OF NEW HAMPSHIRE

STRAFFORD COUNTY, SS

7th CIRCUIT COURT

ROCHESTER FAMILY DIV.

In the Matter of Kimberly [redacted] and David [redacted]

Case Number: 670-2013-DM-00114

STATUS UPDATE

1. This case transferred to the Complex Case Docket, pursuant to David [redacted] request, back on February 7, 2018.

2. Pursuant to the telephonic Conference held on March 22, 2018, GAL Aaby relayed to both Kathy Forbes-Fisher and Dr. Douglas Johnson that the Court would like to "establish a therapeutic reunification plan for Dave with the children to include reasonable deadlines and measurements of progress towards reunification".

3. Father met with each child one time in the presence of Kathy Forbes-Fisher.

4. On August 2, 2018, this Honorable Court issued an order from the Telephonic Parenting Review Hearing which, in part, stated the following: "The GAL offered that according to Kathy Forbes Fischer, the girls need some time to process these meetings with their own therapist & with ***Kathy Forbes Fischer at once a month check-ins***".

5. However, because this language was written in the body of the decision, and not specifically made an order of the Court, the children were not brought by Mother to Ms. Forbes-Fisher for monthly check-ins.

6. In that same Order, the Court stated that: " Counsel for Father expressed his ongoing concern with the slow pace of this process and related concern that the momentum, recently achieved, could be lost if there wasn't mandated follow up."

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7. No follow-up occurred as a result of the August 2, 2018, Court Order, as Father had feared.

8. However, on September 28, 2018, this Honorable Court issued a more specific order stating in part: ***"Ms. [redacted] is hereby ordered to get both girls to Kathy Forbes-Fisher on a monthly basis so that they can decide for themselves, without the influence of others, whether they want a relationship with their Father or not."***

9. Mother has produced the children to the Master Family Therapist ("MFT") only 1 time in the last 5 months.

10. Upon information and belief, Mother needed to be prodded into bringing the children in for that 1 appointment.

11. According to the GAL Notice to the Court dated October 19, 2018, "Ms. Forbes-Fisher requests at least 4 consecutive monthly sessions to develop a therapeutic relationship with each child". To date, this has failed to occur.

12. Mother knew of the required 4 consecutive monthly visits, and still did not produce the children monthly to Ms. Forbes-Fisher, as was ordered by this Court.

13. At this rate and inconsistency, another full year will pass before the Court will obtain any information from the Master Family Therapist.

14. This is precisely why Father has serious ongoing reservations regarding the "therapeutic process".

15. The therapeutic process only works if Mother complies with Court Orders, and supports the independent decisions of the children, which she clearly does not.

16. This is not the first time that Mother has intentionally delayed complying with a Court Order so as to stall Court proceedings.

17. Father has lost nearly 6 years of parenting time with the children, and nothing can be said or done to change that fact.

18. Facing another full year with no contact from the children is simply unbearable, not to mention unconstitutional.

19. Father has been told that Mother has not "deliberately alienated him from the children". However, Father has read the professional reports, was present during the marriage when Mother berated him in front of the children, and remembers Mother threatening him by stating, ***"You will be lucky to see the children under Court supervision"***.

20. Only 1 week after the divorce paperwork was signed by the Parties in 2013, Mother brought forward the sexual abuse allegations, and Father was immediately prevented from seeing his children.

21. After years of extensive litigation and a "Not Guilty" verdict, Father still has no contact with the children.

22. Mother continues to badmouth Father to the children, and refuses to engage Father in any dialogue concerning the welfare of the children, despite having shared legal custody.

23. Additionally, Mother continues to delay any/all Court matters in an effort to have the children emancipate before having an opportunity to resolve matters with Father.

24. It is unclear why Mother would rather see her children remain in pain versus utilizing the therapeutic professionals assigned to this case.

25. Father believes that no one will ever be able to understand what it is like to be falsely accused of the worst crime imaginable, to feel completely helpless, invisible and alone, and to love your children more than anything but be deprived of any contact with them whatsoever.

26. Father understands that this case is about what is best for [redacted] & [redacted] emotional/physical well-being, but falsely believing their Father is a monster and does not love them cannot be in their best interest.

WHEREFORE: Father respectfully asks this Honorable Court to:

(A) Mandate that Mother bring the children to the MFT monthly, indicating that failure to do so will have actual repercussions (monetary penalties and/or jail time);

(B) Order that Father be allowed to be an active participant in the therapeutic process together with the MFT; and

(C) For all other Orders that this Honorable Court deems fair and just.

Respectfully Submitted,

David [redacted]
By his Attorney

Dated: 12/27/18

Ellen C. Shimer-McGuire

Ellen C. Shimer-McGuire, Esq.
NH Bar ID#: 20726
Shimer & Dauksewicz, LLC
483 Main Street
Haverhill, MA 01830
Tel: 603-819-4940
Fax: 603-819-4941

THE STATE OF NEW HAMPSHIRE

JUDICIAL BRANCH

NH CIRCUIT COURT

STRAFFORD COUNTY

7TH CIRCUIT – FAMILY DIVISION – ROCHESTER

In the Matter of:
Kimberly [redacted] Petitioner, and David [redacted] Respondent
Case No. 670-2013-DM-00114

ORDER FROM PARENTING REVIEW HEARING

As my Order of 6/4/18 reflected, Mr. [redacted] had not seen his children [redacted] (16), and [redacted] (14), for five years at that time. Dr. Doug Johnson had done a detailed Child Centered Family Systems Evaluation, which was updated on 4/27/18. Both parties and the GAL adopted his findings and recommendations.

By 8/2/18, I reported that Kathy Forbes Fisher had some productive meetings with the girls and their father. Part of the message from Mr. [redacted] to the girls was that he was not going to force reunification if they did not want it. The GAL reported that Kathy Forbes Fisher wanted to give the girls some time to process what was going on and to decide in which direction they wanted to move. Mr. [redacted] was understandably concerned about the slow pace of reunification therapy, and he feared a potential loss of momentum. He was reminded by the GAL of his promise not to push.

On 9/17/18, the GAL filed a report, as requested by my 8/2/18 Order. As set out in my Order of 9/28/18, the GAL had reported that by 9/21/18 a "bit of a reversal" had occurred with [redacted] who had previously seriously considered pursuing a relationship with her father, but who was then refusing to even meet with him and Kathy Forbes Fisher. My Order of 9/28/18 alluded to Dr. Johnson's 4/13/18 report, in which he expressed concern that if [redacted] went back to live with her mother for the summer of 2018, after she got out of the St. Agnes home, [redacted]s exposure to what Dr. Johnson called the "Unholy Alliance" of [redacted] and her mother could be harmful to [redacted]

The GAL expressed concern that Ms. [redacted] and her significant other were unduly influencing [redacted] against her father. The GAL remained cautious about pushing the girls into reunification; but she asked, nevertheless, for an order, obligating Ms. [redacted] to get both girls into monthly sessions with Kathy Forbes Fisher so they would have the benefit of a more neutral environment, in which to form these important decisions about having a relationship with their father or not.

Ms. [redacted] denied unduly influencing the girls and maintained she continued to support the "flawed" reunification process. Counsel for Ms. [redacted] suggested that the girls had already made their decisions.

When counsel for Mr. [redacted] reported that Mr. [redacted] was prepared to litigate under these circumstances, I reminded him and his counsel of the potentially drastic parenting ramifications of the Miller and Todd case, which Mr. [redacted]s wanted no part of. Mr. [redacted] did not want the Court to

[redacted]

[redacted]

even consider taking the girls, even from the allegedly alienating influence of their mother. I praised him for not wanting to subject the girls to those additional risks. On 9/28/18, I ordered Ms [redacted] get both girls to monthly sessions with Kathy Forbes Fisher. I enjoined Ms [redacted] from undermining the therapeutic process and asked the GAL for another updated report. My Case Manager was asked to schedule another Parenting Review Hearing in 90 days, which was originally set for 12/28/18, but briefly continued to 1/15/19. The GAL updated her report on 10/19/18, essentially saying that the process with Kathy Forbes Fisher was ongoing and could take another twelve months. She clarified that Kathy Forbes Fisher wanted consecutive monthly sessions with the girls.

On 1/15/19, the parties appeared with counsel and the GAL for that Parenting Review Hearing, as well as a Hearing on the 12/10/18 Motion for Contempt, filed by Mr [redacted] at Court Doc. #147, in which he alleged Ms. [redacted] refused to involve him as a joint decision maker, and that she continues to vilify him in the girls' presence. The Court's Order of 12/16/16 reinstated joint decision making.

In her Objection, Ms. [redacted] adamantly denied the allegations referenced above.

On 1/15/19, I learned that Ms. [redacted] sees herself as a very busy woman, who cares for both daughters while working full time. Her significant other, Rob, travels a lot for work. Ms [redacted] offered through counsel that she was unable to get the girls to Kathy Forbes Fisher in November, as ordered. The girls saw Kathy Forbes Fisher on 12/11/18. They will be seeing her again on 1/22/19, 3/12/19, and 4/16/19.

I see this schedule of sessions between the girls and Kathy Forbes Fisher to be in substantial compliance with my 9/28/18 Order. Strict compliance would have the last of the four sessions occurring in February of 2019.

I appreciate that Mr. [redacted] as not seen his girls in nearly six years now. [redacted] is 16, and a two-month further delay to him is a very big deal. Timely compliance with my Orders, particularly in reunification cases, is also very important to me. However, I do not see this delay by Ms. [redacted] as an appropriate reason to effectively blow up this aspect of the reunification process and find another reunification therapist, as the GAL offered as an option, which Mr. [redacted] apparently favored. I seriously doubt that Mr. [redacted] will rediscover his lost time by moving in that new direction, while at the same time jeopardizing his chances of having a long-term relationship with these girls, whom he promised not to push.

I find Mr. [redacted] skepticism and lack of trust in Ms. [redacted] words are totally understandable. I find his impatience and frustration with the slow pace of this reunification process are appropriate under the circumstances. However, I also find his willingness to risk his long-term relationship with the girls in the interest of a faster process is misplaced, arguably self-centered, and potentially reckless. On 1/15/19, it was Mr. [redacted] who prioritized the girls' needs: "They are broken." Helping to "fix" them would need to include preserving their long-term relationship with their father, from which they are statutorily presumed to benefit.

If Mr. [redacted] wants to waive the Constitution around, as his counsel did, his due process rights are waiting for him in my courtroom, where he both ironically and empathetically said he does not want to drag his children.

[redacted]

If Mr. [redacted] wants to explore reunification by a different means, I would be more receptive to such a request in April of 2019, after we have let this aspect of the therapeutic process run through Kathy Forbes Fisher.

If Mr. [redacted] wants to pull his promise to the girls not to push them through reunification, the GAL needs to first learn and report whether taking such a risk is likely to damage one or both of the girls.

If Mr. [redacted] wants to really pursue his Constitutional rights, he need only state that it is he, who is done with the therapeutic process, and request a due process hearing, the ultimate purpose of which he would also need to be clarified.

Consequently, it is more specifically ordered as follows:

1. The GAL shall inquire of Kathy Forbes Fisher, and/or the girls' individual therapists, to ascertain whether the girls would be likely to be emotionally harmed by Mr. [redacted] withdrawing his promise not to push them to reunification.

2. The GAL shall file a brief report containing her associated findings.

3. After Kathy Forbes Fisher sees the girls on 4/16/19, she is requested to file a written report, explaining her findings and recommendations, moving forward.

4. The Motion for Contempt of Mr. [redacted] s denied. He did not sufficiently sustain the allegations contained therein in the face of some documentary evidence to the contrary.

5. St. Ann's Home is hereby requested to forward to the attention of Mr. [redacted] any and all notices, directives, and written communications, which they send to Ms. [redacted]

6. The GAL is requested to meet with both girls.

7. Moving forward, the Court will not accept any exhibits offered by either party unless a copy of that exhibit was shared with the GAL and the opposing party at least five days in advance of the hearing.

8. My Case Manager shall schedule a 60-minute Parenting Review Hearing on April 30, 2019.

So Ordered.

January 16, 2019
Date

Hon. Robert J. Foley, Judge

JUDICIAL BRANCH
http://www.courts.state.nh.us

Court Name: 7th Circuit - Family Division - Rochester at Strafford County Building

Case Name: In the Matter of Kimberl[redacted] and David[redacted]

Case Number: 670-2013-DM-00114
(if known)

CHANGE OF ADDRESS NOTIFICATION

I, Melissa M. Zani, Esquire, hereby notify the court of my change of address
(Print Name)

☑ effective immediately ☐ effective on _____

New Address:

Street Address	One Park Avenue - Unit 4G
Mailing Address	
City, State & Zip	Hampton, NH 03842
Telephone ([redacted])	(603) 778-1985 Telephone (Home)

Previous Address:

Street Address	835 Hanover Street - Unit 302
Mailing Address	
City, State & Zip	Manchester, NH 03104
Telephone ([redacted])	(603) 606-2112 Telephone (Home)

2/12/19
Date

Melissa M. Zani
Signature

I certify that on this date I provided a copy of this document to Ellen Shimer-McGuire & Lynn Aaby (other party's attorney) by: ☐ Hand-delivery OR ☑ US Mail OR ☐ E-mail (E-mail only by prior agreement of the parties based on Circuit Court Administrative Order). (other party) or to

This notice requirement does not apply to the Plaintiff in a Domestic Violence or Stalking action.

2/12/19
Date

Melissa M. Zani
Signature

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THE STATE OF NEW HAMPSHIRE

7th CIRCUIT FAMILY DIVISION - ROCHESTER

In the Matter of Kimberly [redacted] and David [redacted]

Case Number 670-2013-DM-00114

MOTION FOR CONTEMPT

NOW COMES the Petitioner, Kimberly [redacted] by and through her attorneys, ***sklawyers, pllc*** and does respectfully move this Honorable Court to find the Respondent in contempt, stating in support as follows:

1. Pursuant to the parties' April 29, 2013 Divorce Judgment, Exhibit E, Paragraph 6, "The parties shall share equally (50/50) the uninsured medical, dental, psychiatric/psychotherapy, orthodontic, prescription, vision and hospital expenses of the unemancipated children. If either party pays an uninsured medical/dental expense for a child, documentation of that expense is to be provided to the other party by the fifth day of the following month, and the other party is to reimburse his/her share of that amount by the 15th day of that month."
2. While the parties, through their respective counsel, were communicating about the orthodontists' bill for Danielle's braces in December, 2018, Mr. [redacted] filed a Motion for Contempt alleging in paragraph 5 that

   "Petitioner refuses to provide documentation regarding her NH Medicaid Program approval, and/or the children's approval, despite repeated requests for same (Father continues to pay for 50% of uninsured medical expenses for the children)";

   and in paragraph 10 that

   "Most recently, Petitioner unilaterally signed the child up for braces and indicated that it would cost $11,750.00, and that Father was responsible to pay $5,875.00. No discussion was ever had regarding orthodontia, and the total amount of the braces is $5,875.00 NOT $11,750.00."

3. Pursuant to the January 16, 2019 Order From Parenting Review Hearing, paragraph 4, "The Motion for Contempt of Mr. [redacted] is denied. He did not

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sufficiently sustain the allegations contained therein in the face of some documentary evidence to the contrary."

4. However, two days after the January 18, 2019 Notice of Decision, Mr. [redacted] wrote to Ms. [redacted] on January 20, 2019 that he received her submission of uninsured medical expenses for the prior month in the amount of $263.50, but that he wants **"documentation specifying whether the preceding medications were/are now covered by N.H. Medicaid. As a recipient/payer – I simply want to ensure that I have not previously paid for what N.H. Medicaid covers."**

5. On February 6, 2019 undersigned counsel emailed Attorney Shimer-McGuire that **"Kim has not received anything from Medicaid explaining the benefits that they have paid, or not paid. Quite some time ago, when there were a few medications that weren't covered, Kim called Medicaid and was advised that the medications were not covered. Then, a few months later, Medicaid started covering those medications and she was grateful, and did not call Medicaid to ask why. If Dave has questions about what Medicaid has covered, he has the right, to call Medicaid himself and ask for a breakdown of everything they've covered and haven't covered. In the meantime, please advise your client that he owes his share of last month's uninsured medical expenses that were submitted with valid receipts, despite the fact that he has questions about receipts from over one year ago. He also still owes his half of [redacted]s orthodontist bill from November. Please advise when my client will receive these overdue reimbursements."**

6. The total cost for [redacted]s braces is $5,875.00. This includes the $375.00 initial charge for the evaluation, x-rays and impressions. Mr. [redacted] refuses to pay his half of the initial charge, $187.50, because he believes Ms. [redacted] made a unilateral decision, something that the Court declined to find based on documentary evidence submitted to the contrary.

7. Mr. [redacted] still owes $451.00 to Ms. [redacted] $263.50 January, 2019 and $187.50 November, 2018) despite numerous email communications, including undersigned's April 1, 2019 email indicating that Ms. [redacted] was going to file a motion for contempt if payment was not made.

8. Mr. [redacted] failure to pay these expenses is a willful and intentional contempt of the 2013 Divorce Judgment, and he continues to withhold payment despite the fact that the Court denied his Motion for Contempt because he failed to sustain his allegations.
9. Ms. [redacted] has incurred considerable attorney's fees and costs as a result of Mr. [redacted] contempt.

WHEREFORE, the Petitioner respectfully prays that the Court:

A. GRANT this Motion and find Mr. [redacted] in contempt;
B. ORDER Mr. [redacted] o reimburse Ms. [redacted] 451.00 within 7 days;
C. ORDER Mr. [redacted] to reimburse Ms. [redacted] her attorney's fees and costs related to his failure to pay his share of the uninsured medical expenses; and
D. For such other and further relief as is just and equitable.

Respectfully submitted,

4/19/19
Date

Kimberly [redacted]

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

April 19, 2019

Personally appeared the above-named Kimberly [redacted] who took oath that the statements contained herein are true to the best of her knowledge and belief.

4/29/19 Please notice this Motion for 5/8/19.

MELISSA M. ZANI
MY COMMISSION EXPIRES JAN. 27, 2021
NOTARY PUBLIC NEW HAMPSHIRE

Before me,

Notary Public
My commission expires:

Date: 4/19/19

By:

Melissa M. Zani, Esq. (ID# 10254)
1 Park Ave., Unit 4G
Hampton, NH 03842
Tel: (603) 778-1985

Robert J. Foley
Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was emailed and mailed postage prepaid to Respondent's counsel, Ellen C. Shimer-McGuire, Esquire, 483 Main St., Haverhill, MA 01830, and to the Guardian ad Litem, Lynn E. Aaby, Esquire, 19 Hampton Road, Unit A2, Exeter, NH 03833.

Date: 4/19/19

Melissa M. Zani, Esq.

THE STATE OF NEW HAMPSHIRE

7th CIRCUIT

FAMILY DIVISION - ROCHESTER

In the Matter of Kimberly [redacted] nd David [redacted]

Case Number 670-2013-DM-00114

MOTION FOR CONTEMPT AND MODIFICATION OF DECISION MAKING AUTHORITY

NOW COMES the Petitioner, Kimberly [redacted] by and through her attorneys, ***sklawyers, pllc*** and does respectfully move this Honorable Court to find the Respondent in contempt, and for modification of the decision making authority, stating in support as follows:

1. Pursuant to the parties' April 29, 2013 Divorce Judgment, Exhibit A, Custody and Parenting Plan, Paragraph 4, "Mother shall keep Father apprised of the children's medical appointments and provide Father with any new contact information of new physicians, therapists, or other medical or mental health professionals with whom the children treat. Mother shall notify the Father when the children are undergoing testing or evaluation or taking new or adjusting any prescription medications. Father shall be entitled to attend medical visits, communicate directly with medical providers and obtain the children's medical records."
2. Pursuant to the March 26, 2013 Ex Parte Order the Petitioner, Kim [redacted] was awarded temporary sole decision making and residential responsibility for the two minor children.
3. Pursuant to the May 9, 2013 Order On Ex Parte Orders, the prior 3/26/13 Ex Parte Orders remain in effect.
4. The Guardian ad Litem made recommendations in her December 8, 2016 Updated Report of the Guardian ad Litem that were adopted by the Court in the December 16, 2016 Order On Ex Parte Motion. The following three recommendations concern the issues of Mr. [redacted] contact with the children and the parties' decision making rights:

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4. The parties to be awarded joint decision making responsibility for both children. All major decisions regarding the children to be discussed between the parties through the Master Family Therapist.

5. If the parties are not able to agree on major decisions involving the children then the Master Family Therapist shall make a professional recommendation and this recommendation will be followed by the parties pending further order of the court if either party chooses to have the decision reviewed by the court.

8. Pending further order of the court, David [redacted] to have no contact with either child. This includes gifts, letters, cards, telephone calls, texts or any other type of contact.

5. In January, 2019 Mr. [redacted] was invited to participate in a team meeting at St. Ann's where [redacted] attends and he did so by calling in for the meeting.
6. Mr. [redacted] was notified by St. Ann's of the next team meeting scheduled for March 13, 2019. Mr. [redacted] never responded to the invitation. Mr. [redacted] then appeared at St. Ann's for the meeting, waiting in the general lobby that [redacted] walks through between classes throughout the day. He did not let anyone know that he was going to attend and the team had no warning to be able to make arrangements to ensure that [redacted] would not run into him while he was on campus.
7. On March 15, 2019 undersigned counsel sent the following email to the Guardian ad Litem, Attorney Lynn Aaby:

"I wanted to let you know that Dave showed up fo[redacted] team meeting at St. Ann's (he was notified of the meeting by the school) without giving notice that he would be attending in person. Dave came in and sat in the lobby near Kim without saying a word and when the school members came out to get Kim and the others from the school district Dave jumped up and tagged along. The school was confused who he was and why he was joining in. When he spoke up, Kim also made it clear he couldn't be in the room if [redacted] was in the room. When it was time to get [redacted], Dave stood up and said "I guess I should excuse myself so as not to upset anyone" and left after indicating he wanted to "join school tours". [redacted] was brought into the school through the underground tunnel to avoid a run in with him. There was a good chan[redacted] could have walked through the lobby where Dave was sitting prior to the meeting, which would have been

very traumatizing for her. The school was as surprised as Kim that he just showed up without notice and sat in the lobby without introducing himself or explaining why he was there. Of course he has the right to attend the meeting, but it was reckless of Dave not to notify the school that he would be there during the day whil[redacted] was also on campus so that arrangements could have been made to ensure that [redacted] did not see him. Also, I'm not sure what Dave meant when he said he wanted to "join school tours" but this is not something that he should be doing based on all of the Orders currently in effect that he is not to have any contact with the children at this time. In the future if Dave is going to attend a meeting at the school where the children are present, or anywhere that the children are present, he should be required to give notice in advance."

8. The Guardian ad Litem never responded to this email.
9. Mr.[redacted] was invited to attend the Open House at St. Ann's later in March and he indicated at the March 13, 2019 team meeting that he was going to attend. The team at St. Ann's told Ms.[redacted] that they were going to meet with Mr. [redacted] prior to the Open House to let him know that he cannot be on the grounds wher[redacted]s there. Mr.[redacted] did attend the Open House.
10. Mr.[redacted] willfully and intentionally violated the 2013 and 2016 Court Orders to have no contact with the children. This is not the first time that Mr.[redacted] has violated the "no contact" provisions of this Court's Orders: In November, 2016 he showed up at Franciscan's Hospital in Boston wher[redacted] was an inpatient, allegedly trying to give her flowers and a card, and ran into[redacted] in a hallway and tried to engage her in conversation.
11. On April 7, 201[redacted] had to be rushed to the hospital after Ms[redacted] found her in bed having a seizure. She was transferred from Exeter Hospital to Children's Hospital in Boston where she was in the ICU under constant supervision until she was medically stable and she has now been admitted to the inpatient psychiatric department at Children's Hospital. Ms.[redacted] learned that [redacted] had been a victim of cyberbullying by classmates at St. Ann's and she took medications in an attempt to end her life.
12. [redacted] had been travelling with her class to Washington, D.C. the week leading up to the incident, but she was home when it happened on April 7, 2019, and when she finally saw [redacted] at the hospital [redacted] told her what she had

done. Ms[redacted] was able to get [redacted] see her counselor that week because there had been a cancellation, and [redacted] is going away for school vacation from April 20, 2019 to April 28, 2019.

13. Ms. [redacted] notified undersigned counsel in the evening on Sunday, April 7, 2019. The next morning undersigned counsel notified the Guardian ad Litem and Kathy Forbes-Fisher who was scheduled to see both girls in the afternoon on April 9, 2019 (the meetings were changed from the originally scheduled date of April 16, 2019). As a result of this incident, the girls could not see Ms. Forbes-Fisher on April 9th.
14. On Sunday, April 14th Ms. [redacted] and [redacted] were driving to Children's Hospital to visit [redacted] (this was the first time that [redacted] saw [redacted] who was now medically stable and transferred to the psychiatric unit). While driving to Boston Ms. [redacted] answered a call from Children's Hospital thinking it was [redacted] who calls her all the time asking when she is going to be there. [redacted] was excited that her status had been upgraded from "red/lockdown" to "yellow" meaning she could go outside, supervised, for fresh air and it was a beautiful day. The call was from the nurse in the psychiatric unit who immediately said "we have a problem. [redacted] is okay, but the lobby just called to say that her biological father was there demanding to see [redacted] and screaming that he had 'joint decision making'". Because Ms [redacted] answered the call on her Bluetooth in the vehicle [redacted] heard that Mr. [redacted] had been at the hospital.
15. On Sunday, April 14th undersigned counsel informed the Guardian ad Litem about this incident by email.
16. On Tuesday, April 16th undersigned counsel sent a second email to the Guardian ad Litem asking her to acknowledge receipt of the email and confirm that she had spoken with Mr. [redacted] and/or his counsel.
17. On Tuesday, April 16th at 8:26pm the Guardian ad Litem sent an email addressed to "Melissa and Ellen" but the email was not copied to Respondent's counsel, Ellen Shimer-McGuire. In the email she states:
    a. She spoke with Mr. [redacted] and he denies that he went to the hospital;

b. She doesn't understand wh[redacted] would be anxious at the thought that Mr. [redacted] could be at the hospital (where she was headed with her mother to visit her sister for the first time) because "David has taken no steps in the time that I have been involved with the family which would indicate that he would harm Kim[redacted] or [redacted]. This statement completely overlooks the extensive Family Systems Evaluation performed by Dr. Doug Johnson in which he explains the psychological trauma both girls have suffered.

c. "David has joint decision making responsibility for the children. He was not informed of[redacted]'s hospitalization until 2 days after she was taken to the hospital. The only information David received was from me and I assure you that I did not have much information to give him…David has called the hospital and attempted to obtain information regarding[redacted] and her treatment plan…He should be fully involved in discussing her treatment plan with her providers. Kim and David should be making treatment decisions together." This simply is not true. Undersigned counsel received the information in the evening of April 7, 2019 and immediately contacted the Guardian ad Litem who was out of state at the time. In the first few days of [redacted] hospitalization Ms[redacted] was only able to use her phone on very quick breaks to send text messages and every piece of information she relayed to undersigned counsel was immediately relayed to the Guardian ad Litem.

d. "I do not know what "red lockdown" is and why it may be in place. I need to have written information from the hospital. David was told that[redacted] is on a secure ward because of her mental health. If, in fact, this has something to do with David then we all need to know this…I need to see evidence which supports these allegations. Otherwise, I take David at his word that he has not been to the hospital." Ms.[redacted] immediately contacted the hospital after learning that Mr.[redacted] denied being there on April 14th and the hospital was as surprised as she was that he denied being there. The social worker promised to look into the incident and she has now told Ms.[redacted] that there may have been a miscommunication between the staff person in the

main lobby and the psychiatric unit, but she confirmed that the unit was told "We have [redacted]s father here", which prompted the call to Ms [redacted] and the decision made by the medical professionals to pu[redacted] back to the "red lockdown" level, meaning she could not go outside as planned.

e. "I am not clear why [redacted] was allowed to overhear a conversation between Kim and hospital staff. Any information regarding [redacted] is highly sensitive and should not be shared with [redacted] When the call came in and was on Bluetooth it should have been ended and Kim could have called back when [redacted] was not present." There is nothing that can be done about the fact that [redacted] knows what happened with [redacted] She was at home, and [redacted] also told her. When Kim answered the call and learned it wasn't [redacted] calling, the caller very quickly said "we have a problen[redacted] is okay, but her father is here demanding to talk to her". Kim has since told [redacted] that it may have been a miscommunication that her father may not have been there in person, rather he called. [redacted] understands and has seen her own counselor since the incident.

18. The provisions of the parties' 2013 Divorce Judgment regarding joint decision making and the December, 2016 Order that all major decisions are to be discussed by the parties with the Master Family Therapist are contradictory. Ms. [redacted] has to make decisions about [redacted]s current care very quickly. For example, she was told that [redacted] needed to be transferred to a psychiatric unit but that there was a waiting list for a placement. She then got a call and was told she had 30 minutes to decide if [redacted] would take an opening at Anna Jacques Hospital. Then, before the 30 minutes were up, she was told that there was an opening at Children's hospital and she had to answer within 30 minutes or they would give the spot to someone else on the waiting list.

19. Mr. [redacted] has spoken with a member of [redacted]s medical team on at least one occasion, if not more, and he agreed with their recommendation that [redacted] should be transferred to a CBAT program. He has been given all of the information, and he has agreed with the most recent medical decision.

WHEREFORE, the Petitioner respectfully prays that the Court:

A. GRANT this Motion and find Mr. [redacted] in contempt;

B. ORDER that Ms. [redacted] have temporary sole decision making authority pending further orders of the Court;

C. ORDER that Ms. [redacted] notify Mr. [redacted] of all major decisions as soon as possible;

D. ORDER that Mr. [redacted] continue to have the right to communicate with and be informed regarding all medical and educational issues of the girls;

E. For such other and further relief as is just and equitable.

Respectfully submitted,

Date: 4/19/19 By: Melissa M. Zani

Melissa M. Zani, Esq. (ID# 10254)
1 Park Ave., Unit 4G
Hampton, NH 03842
Tel: (603) 778-1985

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was emailed and mailed postage prepaid to Respondent's counsel, Ellen C. Shimer-McGuire, Esquire, 483 Main St., Haverhill, MA 01830, and to the Guardian ad Litem, Lynn E. Aaby, Esquire, 19 Hampton Road, Unit A2, Exeter, NH 03833.

Date: 4/19/19 Melissa M. Zani

Melissa M. Zani, Esq.

4/29/19 Please notice this Motion for 5/8/19.

Robert J. Foley
Judge

THE STATE OF NEW HAMPSHIRE

7th CIRCUIT **FAMILY DIVISION - ROCHESTER**

In the Matter of Kimberly [redacted] and David [redacted]

Case Number 670-2013-DM-00114

AFFIDAVIT OF KIMBERLY [redacted]

NOW COMES Kimberly [redacted] and upon oath, deposes and says as follows:

1. I am the Petitioner in this matter.

2. I have reviewed the Motion For Contempt and Modification of Decision Making Authority dated April 19, 2019, and confirm that to the best of my knowledge and belief, its contents are true and accurate.

AND FURTHER, THE AFFIANT SAYETH NAUGHT.

Dated:

Kimberly [redacted]

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

Subscribed and sworn to before me at Rockingham County, State of New Hampshire on this 19th day of April, 2019.

~~Justice of the Peace~~/Notary Public
My Commission expires:

MELISSA M. ZANI
MY COMMISSION EXPIRES JAN. 27, 2021
NOTARY PUBLIC
NEW HAMPSHIRE

By:

Melissa M. Zani, Esq. NH Bar ID#10254
One Park Ave., Unit 4G
Hampton, NH 03842
(603) 778-1985

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THE STATE OF NEW HAMPSHIRE

STRAFFORD COUNTY, SS

7TH CIRCUIT COURT
ROCHESTER FAMILY DIV.

IN THE MATTER OF KIMBERLY [redacted] AND DAVID [redacted]
CASE NUMBER: 670-2013-DM-00114

FATHER'S OBJECTION TO PETITIONER'S MOTION FOR CONTEMPT AND MODIFICATION OF DECISION MAKING
&
FATHER'S OBJECTION TO PETITIONER'S MOTION FOR CONTEMPT

NOW COMES Respondent/Father in the above captioned matter, David [redacted] by and through his attorney, Ellen C. Shimer-McGuire, Esq., and hereby **OBJECTS** to the above-referenced motions for the following reasons:

1. Father has not violated any Court Order.
2. Father has not been to children's hospital in over 10 years.
3. Father should not be stripped of shared legal custody.
4. Father has prepaid dental bills through July 2019.

Regarding Father's Alleged Contempt and Modification of Decision-Making.

1. [redacted] attempted to kill herself, for the 3rd time, on April 6, 2019. She was discovered by Petitioner on the morning of April 7, 2019.
2. On April 7, 2019, Petitioner failed to inform Father o[redacted] 3rd suicide attempt.
3. On April 8, 2019, Petitioner failed to inform Father o[redacted] 3rd suicide attempt.
4. In fact, Father was finally informed not by Petitioner, but by the GAL, of [redacted] suicide attempt on the evening of April 8, 2019.
5. This is now the 3rd time Petitioner has refused to inform Father of [redacted] attempt on her life.
6. This is now the 3rd suicide attempt [redacted] as made while in Petitioner's care.
7. Petitioner is in Contempt of Court, not Father.
8. When Father said he fears tha[redacted] will not live to the age of majority so that he may reunify with her as an adult, his fears are absolutely justified. In fact [redacted] attending physician at Children's Hospital states that there exists a high likelihood of a repeat occurrence.
9. Father firmly believes [redacted] may die by her own hand if she returns home to Petitioner.

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St. Ann's School

10. Father actively participated in [redacted] Team Meeting in January 2019 via telephone (Father only became aware of this meeting last minute via the GAL while in Court. Father had never received any invitation directly from the school).

11. On March 3, 2019, Father sent an email to Kristen Galvin [redacted] current therapist, indicating that he would be attending the team meeting in person. Additionally, Father inquired if he could then meet with Ms. Galvin 1:1 after the team meeting to further discuss [redacted] progress. Ms. Galvin indicated she did not have time after the session to meet, but she did agree to meet with Father on March 27, 2019 at 3:30 PM, before the Open House.

12. At no point prior to the meeting on March 13, 2019, did Ms. Galvin or any other member of St. Ann's School, indicate that Father should not appear on campus.

13. Father then appeared in person for [redacted] Team meeting on March 13, 2019, at 11:00 AM. Father believed tha[redacted] would be brought in at the very end of the meeting, and that he would leave prior to her arrival. The school has been aware of the "no contact" order between Father and [redacted] since her enrollment.

14. As the meeting began winding down, Father took the initiative and asked to be excused, because he was aware of the no contact order. Father was then escorted out of the meeting. Only after Father left the building did staff then bri[redacted] into the meeting.

15. On March 27, 2019, St. Ann's had a scheduled Open House from 4:00 PM – 6:00 PM. Father learned of the Open House through an unsolicited mailing he received from the school. However, just days prior to the Open House, Father received a telephone call from the school indicating that Mother and [redacted] might be in attendance so it would be best if Father did not attend.

16. Father DID NOT attend the Open House at St. Ann's School. Furthermore, Father also cancelled the 1:1 wit[redacted] therapist so as to be sure he would not inadvertently encounter[redacted]

17. Father had no contact with [redacted] at St. Ann's School on that day, Wednesday, March 13, 2019, the only day he was ever there.

18. Father is not in Contempt of any Court Order.

19. Father has been systematically denied information regarding the children by Petitioner. Now that Father is asserting his right to actively engage in the decision-making process regarding the children, Petitioner is once again attempting to "remove' Father from their lives.

20. Father's sole intention in attending the March 13, 2019, educational school meeting and wanting to attend the Open House was so that he could better understand what [redacted] was academically and physically experiencing at the residential school program.

21. Petitioner is attempting to paint Father in a negative light in an effort to deflect from the fact that she, yet again, failed and refused to notify Father of [redacted] suicide attempt.

Boston Children's Hospital

22. Father has not been to Boston Children's Hospital in over 10 years.

23. Father **DID NOT** go to Boston Children's Hospital to see Danielle, or anyone else.

24. Father **DID NOT** request to speak to Danielle over the telephone.

25. Father has called the hospital in an effort to be kept up-to-date with [redacted]s medical condition.

26. At all times, Father has been respectful in dealing with hospital personnel over the telephone.

27. More specifically, whe[redacted] was in ICU and another Unit, Father successfully called and received medical updates. However, on April 14, 2019, Father encountered an issue when he telephoned the hospital [redacted] had been moved to Bader Unit #5. The RN who answered the telephone indicated that there was a Security Code required prior to disseminating medical information regarding [redacted]. Father stated he had joint legal custody ordered by the Court. The RN replied that the code was put in place, per Mother's request. The RN then terminated the call.

28. Petitioner's installation of a "Security Code" initially blocked Father from receiving information concerning [redacted] but those efforts ultimately failed.

GAL Involvement

29. Father is grateful for the GAL in this case, as the GAL and Kathy Forbes Fischer are the only people that communicate with him regarding the status of the children.

30. Petitioner has a history in this case of keeping information concerning [redacted] suicide attempts from Father.

31. Father is extremely thankful that the GAL was able to provide him with information regarding [redacted] as soon as she returned from her trip. However, it is Petitioner's responsibility to notify Father of significant medical issues concerning the children. It should not be the GAL's responsibility.

32. Interestingly enough, Counsel for Father called Counsel for Petitioner on April 8, 2019, during business hours in an effort to find out information regarding th[redacted] Family. Counsel for Petitioner never returned the telephone call, despite having the office telephone number, personal cell phone number, email, etc.

33. It appears that Counsel for Petitioner is attempting to assert as fact something that was clearly "miscommunicated" (to use her own words) by the hospital staff, all in an effort to divert attention away from Petitioner's refusal to communicate with Father regarding life and death situations concerning the children.

34. The solution to the problem in this case is not to strip Father of his legal custody, but rather for Petitioner to work with Father regarding issues concerning the children, something she still clearly refuses to do.

35. Father has grave concerns regarding the safety o[redacted] in the event she is to return home to Petitioner.

Dental Bills & Other Uninsured Medical Expenses

36. Regarding the braces, Parties are on a monthly payment plan in the amount of $137.50 per parent, per month, totaling $275.00 per month for 20 months ($5,500.00).

37. Father paid $1,000.00 in December 2018.

38. As such, Father has currently prepaid dental expenses through July 2019.

39. Additionally, Petitioner unilaterally took [redacted] for the dental consultation without Father's input or consideration, contrary to the current Court Order regarding joint legal custody. The charge for this consultation was $375.00. Father researched and identified less costly/aesthetically appealing viable alternatives. Petitioner refused to discuss those alternatives. As such, Father does not believe he should be responsible for ½ of that charge.

40. Regarding other uninsured medical expenses, Petitioner was approved for NH Medicaid for the children in June of 2017. During the Medicaid coverage period, Father received receipts fo[redacted] prescription and other medical care. Father paid these expenses as they were received.

41. More specifically, from June 1, 2017 – April 2018, Father paid $371.91 for[redacted] uninsured medical care.

42. As of April 2018 – present, receipts for [redacted]s prescription uninsured medical expenses ceased.

43. Father is unclear as to why he was initially paying for uninsured medical expenses during the Medicaid coverage period.

44. Father has been continually requesting documentation to prove that the $371.91 that he has paid was not, in fact, already covered by NH Medicaid. No documentation has been received.

45. Father has repeatedly requested to Petitioner and Counsel that these financial issues should be resolved directly by the Parties, without Attorney involvement/expense. Petitioner refuses to work directly with Father on this, or any other issue.

46. Father then attempted to contact NH Medicaid directly via telephone, but there are 2 different programs and Father did not have enough specific information to move forward.

47. Father believes that he may be entitled to a $371.91 credit.

48. In January 2019, Petitioner submitted uninsured medical expenses in the amount of $263.50. Father agrees that these are recognized expenses. Without the requested supporting documentation from Petitioner, Father believes he may have overpaid in the amount of $371.91 for past medical expenses. The difference between the credit of $371.91 and the legitimate expenses of $263.50, translates into Father having a potential remaining credit of $108.41.

49. Father is not in Contempt for any uninsured medical/dental bills.

50. Why Petitioner is worried about dental bills whe[redacted] lays in a hospital bed should be a question the Court considers carefully.

WHEREFORE, Father, respectfully requests that this Honorable Court:

A. DENY Petitioner's Motions for Contempt, as there is no evidence to support same;

B. Find Petitioner in Contempt for failing to timely notify Father of [redacted] 3rd suicide attempt;

C. Find Petitioner in Contempt for refusing to acknowledge Father's shared legal custody rights;

D. Order that Petitioner work with Father and include him on all relevant issues concerning the children;

E. Order Petitioner to pay attorney's fees for having to defend this frivolous motion, and

F. For all other relief which is deemed appropriate and just.

Respectfully submitted,

David [redacted]
By his attorney,

Ellen C. Shimer-McGuire

Ellen C. Shimer-McGuire, Esq.
NH Bar ID: # 20726
483 Main Street
Haverhill, MA 01830
Tel: 603-819-4940
Fax: 603-819-4941
Email: Eshimer@s-dlegal.com

CERTIFICATION OF COPIES TO PARTIES

This is to certify that a copy of the above Objection was emailed this 24rd day of April, 2019, to Melissa Zani, Esq. and to GAL Lynn Aaby, Esq.

Ellen C. Shimer-McGuire

Ellen C. Shimer-McGuire, Esq.

THE STATE OF NEW HAMPSHIRE
7th CIRCUIT FAMILY DIVISION - ROCHESTER

In the Matter of Kimberly [redacted] and David [redacted]
Case Number 670-2013-DM-00114

RESPONSE TO OBJECTION TO MOTION FOR CONTEMPT AND MODIFICATION OF DECISION MAKING AUTHORITY AND RESPONSE TO OBJECTION TO MOTION FOR CONTEMPT

NOW COMES the Petitioner, Kimberly [redacted] by and through her attorneys, ***sklawyers, pllc*** and does respectfully respond to the Respondent's Objections, stating in support as follows:

1. The Respondent's Objection states at least three times in the first page alone that this was "Danielle's 3rd suicide attempt"; that Respondent "firmly believes [redacted] may die by her own hand if she returns home to Petitioner"; that "Petitioner has a history in this case of keeping information concernin[redacted]s suicide attempts from Father"; and that "Father has grave concerns regarding the safety of [redacted] in the event she is to return home to Petitioner". These accusations that [redacted] April 7, 2019 suicide attempt are somehow Petitioner's fault are extremely disturbing for a number of reasons that the Respondent knows:
   a. [redacted] has never before tried to kill herself. In the pas[redacted] was hospitalized when she asked for help due to suicidal thoughts, but she has never before attempted suicide.
   b. [redacted] acted impulsively when she took the pills, and impulsivity has been a long standing issue fo[redacted]
   c. [redacted] stated that she will never return to St. Ann's school, and that she tried to kill herself when she was the victim of cyberbullying by her peers, not because of any issue with her mother or her family at home.
   d. The password established at Boston Children's Hospital was a safety precaution to preven[redacted]s peers from attempting to see or speak with her.
   e. The Guardian ad Litem met with both girls approximately ten (10) days before the April 7th incident and there was no indication th[redacted] was having any problems at home or at school.

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2. These exaggerated, baseless accusations do nothing to reduce the acrimony between the parties, something that Dr. Johnson has continued to state is very important to the girls' wellbeing.
3. The Petitioner discovere[redacted] at approximately 11:30am on Sunday, April 7, 2019. She had to be rushed to the hospital, and then transported to Children's Hospital because she had another seizure in the emergency room at Exeter Hospital. [redacted] was in the ICU for several days because the doctor was concerned that the medications she took may have damaged her heart, and the resultant seizures may have caused brain damage. During this time the Respondent was provided with a number to call the hospital for updates on [redacted]s condition, and the Petitioner provided updates through her counsel that were shared immediately.
4. The Petitioner contacted her counsel in the evening on Sunday, April 7, 2019, once [redacted] was stable enough to allow her to leave the room.
5. Petitioner's counsel notified the GAL the next morning, as well as Kathy Forbes-Fisher who was scheduled to see [redacted] n[redacted] on April 9, 2019.
6. Petitioner's counsel sent an email to Respondent's counsel in the afternoon of April 8, 2019 after receiving a telephone message that Respondent's counsel had called. Respondent's counsel replied to the email, and then later that same day she sent a second email that simply stated "I just spoke to Lynn…"
7. The Respondent was informed o[redacted]'s attempted suicide and resultant hospitalization within 24 hours.
8. The Petitioner provided the hospital with documentation that the Respondent may not visit or cal[redacted] but that he was able to receive information on her condition, and she provided the proper phone number for the Respondent or the GAL to use.
9. The Petitioner provided brief text message updates to her counsel over the course of the next 2 to 3 days and all of those updates were immediately forwarded. On April 11, 2019 the Petitioner sent an email to the GAL and Kathy Forbes-Fisher with an update, including a picture [redacted] showing her improving, and explained that [redacted] attributes her attempted suicide to cyber bullying from school.

10. The password at Children's Hospital was put in place for any incoming phone calls asking to speak wit[redacted] for her safety and protection following severe bullying at school which prompted her suicide attempt.
11. The Guardian ad Litem met with both girls at the end of March, and in her latest report she, and Kathy Forbes-Fisher, clearly state that both girls reported being happy and safe at home. [redacted] attended therapeutic school at St. Ann's every day the week prior to the attempt, and she saw her at home therapist and her in school therapist that week. [redacted] had many supports in place and acted impulsively in a matter of minutes over peer bullying. The Respondent has been in contact with the hospital and was given this information, but in his Objection he goes out of his way to blame this very serious incident on the Petitioner.
12. The Respondent has also discussed with [redacted] medical providers at Children's Hospital the plan to find a placement for her in a CBAT program, and he stated that he agreed with this course of action.
13. Petitioner's counsel emailed the Guardian ad Litem on March 15, 2019 regarding the care plan meeting at St. Ann's on March 13, 2019 when the Respondent attended in person. The Guardian ad Litem never responded and it was not until Petitioner received Respondent's Objection that she learned M[redacted] had notified the school that he was going to attend the meeting.
14. Petitioner has since spoken with St. Ann's school and they told her that when Respondent emailed that he would attend the meeting, the day program staff person who responded was not aware of the Ex Parte Orders that prohibits Mr. [redacted] from having any contact wit[redacted] an[redacted]. For some reason when [redacted] was transferred from the residential program to the day program, the court paperwork was not transferred with her file. It was not until after the March 13th meeting that the day program received the court order, after which they notified the Respondent that he could not be on campus wh[redacted] was attending school there.
15. The Respondent knows that he cannot be within 350 feet o[redacted] pursuant to the Ex Parte Order. He participated in prior school team meetings by telephone, and it was an intentional violation of the March 26, 2013 Ex Parte Order for him to attend in person when [redacted] was on campus and scheduled to participate in

the meeting. The Respondent previously violated the ex parte order in 2016 when he showed up at Franciscan's Hospital in Boston with flowers and a card for [redacted] who was a patient there at the time.

16. With regard to the incident on April 14, 2019, Petitioner's motion states the following facts:
    a. Petitioner answered the call from the hospital while she was in the car with [redacted] headed to se[redacted] because she assumed it wa[redacted] calling to find out when she would be there, just like she called every other day that Kim was on her way to the hospital;
    b. The hospital staff person who called told the Petitioner that Mr. [redacted] called demanding to speak with [redacted] and yelling that he has "joint custody";
    c. As a result, [redacted] status was changed from yellow safety status to red lockdown status by the hospital because they believed Mr[redacted]as in the building;
    d. Petitioner was later informed that Respondent called from the hospital lobby and had to be asked to leave;
    e. The GAL was notified, and a couple of days later she replied and said that Mr[redacted] denied being at the hospital;
    f. The Petitioner immediately contacted the hospital who confirmed that she was called and told that Mr. [redacted] was in the building, and that upon further investigation, there may have been a miscommunication and that he may have only called versus physically being at the hospital;
17. The Respondent's Objection, paragraph 33, accuses Petitioner's counsel of "attempting to assert as fact something that was clearly "miscommunicated" (to use her own words) by the hospital staff, all in an effort to divert attention away from Petitioner's refusal to communicate with Father regarding life and death situations concerning the children."
18. Respondent's counsel appears to have misread the facts plead in Petitioner's motion. Fortunately, the Guardian ad Litem has since spoken with the Director of Nursing at Children's Hospital who confirmed that the Petitioner was called and told that Mr. [redacted] was there, and that there was a misunderstanding or

miscommunication between staff members at the hospital who called the Petitioner stating that Mr. [redacted] was there. The GAL goes on to say that "he was able to confirm [redacted]'s status the same day" and "the situation has been straightened out and David has had contact with the unit and has updates regarding [redacted]".

19. The Petitioner is seeking relief from the Court with regard to the joint major decision making provision of the December, 2016 Order that requires the parties to address all major decisions with the Master Family Therapist. Pursuant to the current 2016 Order, the Petitioner would not be able to respond t[redacted]s treatment team until she scheduled and had a meeting with Kathy Forbes-Fisher and Mr. [redacted] The Petitioner works with [redacted]s medical team every single day regarding her treatment plan and things are changing daily and it is not in [redacted] best interests for her mother to be unable to make the extremely time sensitive decisions that her condition requires. The Petitioner is not trying to take away Mr. [redacted] rights; rather she is asking to have the authority to make timely major medical decisions. Mr [redacted] would still have the right to be informed, and to access any medical records or talk with any medical practitioners.
20. The Motion for Contempt regarding Respondent's ongoing failure to pay his portion of the current uninsured medical expenses was written prior t[redacted]s April 7, 2019 attempted suicide. In fact, Petitioner's counsel sent Respondent's counsel a lengthy email on the issue on April 1, 2019 stating "we will be filing a Motion for Contempt with a request for Dave to pay $451.00 ($187.50 and $263.50) forthwith; $1,750.00 to be paid to Kim before July 1, 2019 for his half of the monthly braces payment; and attorney's fees. There was no response.
21. The Petitioner has always paid the uninsured medical expenses in full in the first instance and then submits receipts to Respondent and he sends his 50% share. The outstanding medical bills are important to Petitioner who has missed a significant amount of work to care for [redacted] and she continues to do so as her inpatient treatment requires family therapy at least twice a week a Boston Children's Hospital.

22. The Respondent's Objection is filled with accusations that she is trying to paint him in a negative light and that she is trying to take away his decision making authority for the girls. Again, Respondent or his counsel appears to have misread Petitioner's Motion which includes prayers for relief that ask the Court to Order that Ms. [redacted] notify Mr. [redacted] of all major decisions as soon as possible, and that Mr. [redacted] continue to have the right to communicate with and be informed regarding all medical and educational issues of the girls, which is in line with the parties' 2013 Divorce Judgment regarding legal custody.

WHEREFORE, the Petitioner respectfully prays that the Court:

A. GRANT Petitioner's Motion For Contempt And Modification Of Decision Making Authority including the following prayers for relief:

i. GRANT this Motion and find Mr [redacted] n contempt;

ii. ORDER that Ms [redacted] have temporary sole decision making authority pending further orders of the Court;

iii. ORDER that Ms. [redacted] notify Mr. [redacted] of all major decisions as soon as possible;

iv. ORDER that Mr. [redacted] continue to have the right to communicate with and be informed regarding all medical and educational issues of the girls;

B. GRANT Petitioner's Motion for Contempt with regard to uninsured medical expense reimbursements owed by the Respondent including the following prayers for relief;

i. GRANT this Motion and find Mr. [redacted] n contempt;

ii. ORDER Mr. [redacted] to reimburse Ms [redacted] 5451.00 within 7 days;

iii. ORDER Mr. [redacted] o reimburse Ms. [redacted] her attorney's fees and costs related to his failure to pay his share of the uninsured medical expenses; and

Respectfully submitted,

Date: 5/7/19

By: [signature]

Melissa M. Zani, Esq. (ID# 10254)
1 Park Ave., Unit 4G
Hampton, NH 03842
Tel: (603) 778-1985

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was emailed and mailed postage prepaid to Respondent's counsel, Ellen C. Shimer-McGuire, Esquire, 483 Main St., Haverhill, MA 01830, and to the Guardian ad Litem, Lynn E. Aaby, Esquire, 19 Hampton Road, Unit A2, Exeter, NH 03833.

Date: 5/7/19

Melissa M. Zani, Esq.

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
http://www.courts.state.nh.us

Court Name: 10th Circuit - Family Division - Portsmouth
Case Name: In the matter o[redacted] and David[redacted]
Case Number: 670-2013-DM-00114
(if known)

APPEARANCE/WITHDRAWAL

APPEARANCE
Please enter my appearance as
☐ Counsel for _____

☐ I will represent myself (*pro se*).

WITHDRAWAL
Please withdraw my appearance as
☑ Counsel for David [redacted]

05/29/2019
Notice of Withdrawal sent to my clients on:

[redacted]
Princeton, MA 01541

I certify that on this date I provided a copy of this document to party(s) listed below by:
☐ Hand-delivery ☐ US Mail ☑ Email (E-mail only by prior agreement of the parties based on Circuit Court Administrative Order)

Melissa Zani, Esq.
Name

835 Hanover Street, Unit 103
Manchester, NH 03104

5/29/2019
Date

Ellen C. Shimer-McGuire
Signature

Ellen C. Shimer-McGuire, Esq.
Printed Name

483 Main Street
Haverhill, MA 01830

(978) 225-6197 ext 20726
Telephone NH Bar ID #

eshimer@s-dlegal.com
Email Address (optional)

RECEIVED
MAY 31 2019
10th Circuit Court
Family-Portsmouth

THE STATE OF NEW HAMPSHIRE

JUDICIAL BRANCH

NH CIRCUIT COURT

STRAFFORD COUNTY

FAMILY DIVISION COMPLEX CASE DOCKET

In the Matter of:
Kimberly [redacted] Petitioner and Davi[redacted] Respondent

Case No.: 670-2013-DM-00114

ORDER OF CASE CLOSURE AND REASSIGNMENT

This case has closed and will now exit the Family Division Complex Case Docket program. The case is being reassigned back to its court of origin, the 10th Circuit – Portsmouth Family Division, located at 111 Parrott Avenue, Portsmouth, NH 03801

Any subsequent issues arising from the case shall be filed in the Portsmouth Family Division, either as a petition to change court order pursuant to Family Division Rule 2.30, notwithstanding Rule 2.30(c)(1), or as a petition for contempt pursuant to Family Division Rule 2.31.

So Ordered.

5/21/19
Date

Hon. Robert J. Foley, Presiding Judge

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DOCUMENT	FILING DATE
VS FORM	
GAL RPTS	
Preliminary	
Interim/Supplemental	
Final	
EXHIBITS	
Petitioner	
Respondent	
Other	
SEALED DOCUMENT	
Other	Agreement for Judgment 5/18/19
QDRO	
Lab Results/Drug/Paternity	
LADAC	
Criminal Record Release	
DHHS Record Release	
Reports	
FINANCIAL AFFIDAVIT	
Petitioner	
Respondent	
Other	
DVP INFORMATION	
Confidential Info Sheet	
Def. Info Sheet	
PDFCS	

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THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT

10th Circuit - Family Division - Portsmouth
111 Parrott Ave.
Portsmouth NH 03801-4402

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
http://www.courts.state.nh.us

NOTICE TO PICK UP EXHIBITS

FILE COPY

Destroyed 7/11/19

Case Name: **In the Matter of Kimber[redacted]and Davi[redacted]**
Case Number: **670-2013-DM-00114**

TO WHOM IT MAY CONCERN:
In the above-entitled matter, the Clerk's office is in the possession of exhibits belonging to:

- ☒ Petitioner/Plaintiff
- ☒ Respondent/Defendant
- ☐ Unmarked by the Court

If you wish to have these exhibits returned, you must pick them up at this office no later than July 05, 2019. Any unclaimed exhibits will be destroyed after that date.

PLEASE BRING THIS LETTER WITH YOU.

June 19, 2019

Diane P. Caron, Clerk of Court

(670985)

C: Melissa Meallo Zani, ESQ; Dav[redacted]

RECEIPT
In the Matter of Kimber[redacted]and Davi[redacted]
Case Number: 670-2013-DM-00114

RECEIVED FROM ☐ Family Division ☐ District Division ☐ Probate Division

- ☐ Petitioner's/Plaintiff's Exhibits
- ☐ Respondent's/Defendant's Exhibits
- ☐ Unmarked by the Court

Date

Authorized Attorney/Party

NHJB-2290-DFP (02/14/2013)

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT

10th Circuit - Family Division - Portsmouth
111 Parrott Ave.
Portsmouth NH 03801-4402

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
http://www.courts.state.nh.us

NOTICE TO PICK UP EXHIBITS

FILE COPY

Case Name: **In the Matter of Kimberly [redacted] and David [redacted]**
Case Number: **670-2013-DM-00114**

TO WHOM IT MAY CONCERN:
In the above-entitled matter, the Clerk's office is in the possession of exhibits belonging to:

- ☒ Petitioner/Plaintiff
- ☒ Respondent/Defendant
- ☐ Unmarked by the Court

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PLEASE BRING THIS LETTER WITH YOU.

June 19, 2019

Diane P. Caron, Clerk of Court

(670985)

C: Melissa Meallo Zani, ESQ; David [redacted]

RECEIPT
In the Matter of Kimberly [redacted] and Dav[redacted]
Case Number: 670-2013-DM-00114

RECEIVED FROM ☐ Family Division ☐ District Division ☐ Probate Division

- ☐ Petitioner's/Plaintiff's Exhibits
- ☐ Respondent's/Defendant's Exhibits
- ☐ Unmarked by the Court

Date

Authorized Attorney/Party

162

NHJB-2290-DFP (02/14/2013)