No. 18-5199

In The

Supreme Court of the United States

Keith Warren Lewis,

Petitioner,

v.

Rachelle Hadari,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE NEW JERSEY SUPREME COURT

BRIEF OF RESPONDENT RACHELLE HADARI IN OPPOSITION TO GRANTING KEITH WARREN LEWIS' PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Petitioner Keith Lewis has filed a Petition seeking a Writ of Certiorari in a New Jersey State matrimonial matter relating solely to the issue of child custody under state law where the Petitioner refuses to be examined by the Respondent's psychologist expert claiming that such an examination by a party's expert violates his due process rights under the Fourteenth Amendment to the United States Constitution notwithstanding the fact that the State Court has also appointed a neutral expert on custody and further that Mr. Lewis never raised any constitutional issue below.

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TABLE OF CITED AUTHORITIES

New Jersey Court Rules:

New Jersey Statute:

OBJECTION TO JURISDICTION

As set forth in Point I of the Argument below, this Court lacks jurisdiction over the Petition for Writ of Certiorari because Mr. Lewis did not raise any federal or constitutional question below.

STATEMENT OF THE CASE

Petitioner Keith Lewis and Respondent Rachelle Hadari were married on October 29, 2014. One daughter was born of the marriage, namely Tzivia, who was born on April 1, 2016. Ms. Hadari filed a Complaint for divorce in the Superior Court of New Jersey, Chancery Division, Family Part, Morris County on November 22, 2016 based on irreconcilable differences between the parties and the resultant breakdown of their marriage. Ms. Hadari sought joint legal custody of their daughter and her designation as the primary custodian of Tzivia. (Complaint for Divorce at 2, at Respondent's Appendix attached hereto at 1-3 (hereafter "RA".))

Tzivia lives with Ms. Hadari who is her primary caregiver. (See Ms. Hadari's June 4, 2017 Certification, at RA 9-26.) Petitioner's visitation of his daughter has been minimal. By way of example, during the first six months of the parents' separation, Mr. Lewis has only seen their daughter for a total of 9 hours. (See May 9, 2017 Certification of Ms. Hadari at ¶9, RA 29.) Mr. Lewis also acknowledges that he requires help in caring for their daughter. (June 4, 2017 Hadari Certification at ¶10, RA 13.)

The New Jersey Family Court issued several orders relating to the custody of Tzivia. By Order dated April 26, 2017 the Honorable Maritza Berdote Byrne, Presiding Judge, Family Part,

instructed the parties to select a "joint expert" to conduct a best interest evaluation on the custody of their daughter. (A copy of the Court's April 26, 2017 Order is at RA 6-8.) Ms. Hadari's counsel attempted to select a mutually agreeable expert with Mr. Lewis pursuant to the Court's Order but the Petitioner would not agree on the joint expert and also claimed that he could not afford to pay his share of a mutually acceptable expert and insisted that his spouse pay for all of the fees of the joint expert, despite the fact that he was earning more income than his wife. (Certification of Julianne C. Smith, Esq., dated August 3, 2017 at ¶7, RA 37; Mr. Lewis' letter to Judge Berdote Byrne, RA 41.)

As a result of Petitioner's refusal to agree to the selection of a joint expert and to pay his share of the mutual expert's fees, Ms. Hadari was left with no choice but to borrow funds to retain a custody expert, Dr. Edwin A. Rosenberg, Ph.D., a licensed psychologist. (See June 4, 2017 Certification of Ms. Hadari at ¶49, RA 24.) Petitioner refused to be evaluated by Dr. Rosenberg resulting in the Court's June 21, 2017 Order in which the Court granted Ms. Hadari's request compelling Mr. Lewis to cooperate with the custody expert. (See Appendix A at ¶8 attached to the Petition for Certiorari.) Mr. Lewis refused to comply with the Court's Order and by subsequent Order entered on September 27, 2017 the Court held that Mr. Lewis was "in

violation of litigants' rights for failing to cooperate with the custody evaluator Dr. Rosenberg". (At Petitioner's Appendix B at ¶7 attached to the Petition for Certiorari.)

Mr. Lewis then requested the Court to appoint a neutral custody expert and the Court agreed, and by Order dated October 13, 2017 the Court appointed Dr. Mark Singer to conduct a best interest evaluation on custody and held that each side was to share the cost of this expert. (See October 13, 2017 Order of the Court at RA 45.) Dr. Singer's retainer was $8,000 and the Petitioner paid his one half share of Dr. Singer's retainer, as he acknowledges at page 3 of his Petition for Certiorari. (See Dr. Singer's retainer letter at 2, RA 47; and see Dr. Singer's 11/20/17 letter confirming his receipt of Mr. Lewis' share of the retainer, RA 53.)

Petitioner continued to violate the Family Court's custody Orders and the Court was again compelled to enter yet a third Order on December 24, 2017 (filed December 27, 2017) where the Court again held that Mr. Lewis is "in violation of litigant's rights for refusing to cooperate with [the] custody evaluator, Dr. Edwin Rosenberg". (At Appendix C at ¶1 attached to the Petition for Certiorari.)

The Court assessed attorneys' fees against the Petitioner in the amount of $2,686.95 for his continued violation of the Court's custody Orders. (Id. at ¶6.) The Court explicitly held

in its decision supporting its December 24, 2017 Order that Mr. Lewis was in violation of its Orders, stating as follows:

> Defendant [Mr. Lewis] concedes he has not complied with the September 27, 2017 Order as it relates to cooperating with Dr. Rosenberg. This is so despite very explicit instructions after oral argument. . . . Defendant was found in violation of litigant's rights on two prior occasions for failure to cooperate with Dr. Rosenberg. The Court explained Defendant's obligation to cooperate in detail when the parties appeared for oral argument on September 5, 2017. Defendant offers no explanation for his noncompliance other than his continued dissatisfaction that Dr. Rosenberg was retained by Plaintiff to perform the evaluation. He also presents no evidence he intends to comply with the Orders and avers he intends to cooperate with Dr. Singer only. Defendant is in violation of multiple orders. [Appendix C to Petition for Certiorari at 4.]

The Court concluded as follows: "The Court finds Defendant's steadfast refusal to comply with Dr. Rosenberg is in bad faith, particularly after extensive colloquy on the record as to his need to participate with Plaintiff's expert. It is evident Defendant is refusing to comply with Court Orders and has no intention of doing so." (Appendix C to Petition for Certiorari at 8.)

As indicated in Judge Berdote Byrne's Statement of Reasons to her December 24, 2017 Order, Mr. Lewis admits that he did not cooperate with Dr. Rosenberg. (At 4, Exhibit C to Petition for Certiorari.) As he again concedes at page 3 of his Petition: "On

October 3, 2017, I went to an appointment with Dr. Rosenberg but refused to answer his questions or be evaluated." As Mr. Lewis further stated in his Brief filed with the New Jersey Superior Court, Appellate Division: "with Dr. Rosenberg, I have out of respect for the court attended a preliminary session, and informed him that I would continue to attend as long as was required, although making clear that I did not consent to be examined." (Petitioner's Brief before the Superior Court of New Jersey, Appellate Division at 4, RA 57.)

Dr. Rosenberg issued an October 3, 2017 letter in which he indicated that Mr. Lewis had appeared at his office on that day but advised Dr. Rosenberg "that he was here 'to listen' but intended not to answer any of my questions." (At 1, RA 42.) Dr. Rosenberg informed Mr. Lewis that even though he had been retained by Ms. Hadari, it was his intention to conduct an "unbiased evaluation" as required by custody regulations governing his professional organization. As he set forth in his letter:

> I told Mr. Lewis that even though I had been retained by Ms. Hadari, it was my intention to conduct a thorough and unbiased evaluation and that my recommendations will be based solely on the data I collect, not on who retained me. I informed him that there are custody guidelines established by various professional organizations and that was my intention to follow these guidelines so that I could conduct an evaluation that was based on his daughter's needs and the

> ability of each parent to meet their daughter's needs. [At 1-2, RA 42-43.]

Despite this advice, according to Dr. Rosenberg Mr. Lewis "would not answer any substantive questions that I had for him." (At 2, RA 43.) As a result, Dr. Rosenberg stated that he could not conduct "a thorough and unbiased professional custody evaluation" and hence could not draw conclusions relative to the best interest of Tzivia and therefore had to suspend his evaluation. (See Dr. Rosenberg's October 3, 2017 letter, at 3, RA 44.)

Mr. Lewis filed a motion for leave appeal with the Appellate Division of the Superior Court of New Jersey dated January 5, 2018 seeking to reverse the trial Court's Order that he cooperate with Dr. Rosenberg and to reverse the award of counsel fees to Ms. Hadari. (RA 54-55.) By Order dated February 5, 2018 the Appellate Division denied Mr. Lewis' motion for leave to appeal the Family Court's Orders. (Appendix D to Petition for Certiorari.) Mr. Lewis then filed a motion for leave to appeal the Family Court's Orders to the New Jersey Supreme Court which was denied by Order dated May 1, 2018. (Appendix E to Petition for Certiorari.)

SUMMARY OF THE ARGUMENT

Mr. Lewis' Petition for Certiorari should be denied because of his failure to raise any constitutional issue below which he raises for the first time in his Petition. Mr. Lewis failed to comply with Supreme Court Rule 14 which requires him to delineate that part of the record below where he raised such an issue. At no time did he raise a Fourteenth Amendment due process constitutional issue in the lower state courts. His failure to raise this issue below is fatal to his present Petition under established precedent.

In addition to his failure to raise this issue below, Mr. Lewis' Petition for Certiorari should be denied because it does not raise any significant constitutional or federal issue which merits the invocation of this Court's discretionary authority. Mr. Lewis' Petition does nothing more but raise routine child custody issues governed by state law which do not implicate any federal law or constitutional violation.

Finally, although Mr. Lewis' claim does not raise any federal or constitutional issue, his Petition is not ripe since no expert reports have yet been submitted and the Family Court has not yet rendered its decision on the respective custody rights of the parties. Under established precedent, this Court will not entertain a petition where no final, dispositive ruling has been rendered which may moot the Petition altogether.

ARGUMENT

POINT I

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED BECAUSE THE PETITIONER FAILED TO RAISE THE CONSTITUTIONAL ISSUE WHICH HE NOW RAISES FOR THE FIRST TIME IN HIS PETITION

Mr. Lewis did not raise below the constitutional Fourteenth Amendment due process issue he is now bringing for the first time before this Court. Mr. Lewis was obligated under Supreme Court Rule 14, "Content of a Petition for a Writ of Certiorari," Section (g) to identify for this Court the specific parts of the record below where the Petitioner raised the constitutional issue he now seeks to bring before this Court. As set forth in Rule 14(g)(i):

> If review of a state-court judgment is sought, specification of the stage in the proceedings, both in the court of first instance and in the appellate courts, when the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they passed on by those courts; and pertinent quotations of specific portions of the record or summary thereof, with specific reference to the places in the record where the matter appears (e.g., court opinion, ruling on exception, portion of court's charge and exception thereto, assignment of error), so as to show that the federal question was timely and properly raised and that this Court has jurisdiction to review the judgment on a writ of certiorari.

Mr. Lewis has not complied with this obligation as required by this Court's Rules because he failed to raise any constitutional or federal issue with any of the State Courts below. At no time did Mr. Lewis ever raise the alleged violation of the due process clause of Fourteenth Amendment of the United States Constitution which he now raises for the first time before this Court.

Mr. Lewis cites only to the following statement which appears at page 9 of his Brief to the New Jersey Appellate Division in support of his motion for leave to appeal:

> I have faith in the courts of our country and am ready to appeal here and even all the way to the Supreme Court, where justices like the Honorable Neil Gorsuch uphold truth and justice and the rule of law. [RA 58; cited at page 4 of Petition for Certiorari]

Such an anamorphous, generalized statement is not tantamount to raising a specific constitutional or federal question. This Court has previously ruled that such failure to raise a federal or constitutional issue in the lower state Courts is fatal to a Petition for Certiorari. As this Court held in New York ex rel. Rosevale Realty Co. v. Kleinert, 268 U.S. 646, 650-651 (1925):

> It is clear, however, that no question as to alleged unconstitutionally of the substantive provisions of the Zoning resolution or of the particular provisions relating to E area districts, was presented by the petition for mandamus; and no such

> question appears to have been presented to any of the State courts, or to have been considered or determined by them. It is well settled that this Court is without jurisdiction to review the judgment of a State court on a writ of error, by reason of a federal question which was not raised below or called to the attention of or decided by the State court. Cincinnati, etc., Ry v. Slade, 216 U.S. 78, 83; El Paso and Southwestern R.R. v. Eichil, 226 U.S. 590, 597. The writ of error in the present case, therefore, does not bring up for our determination the question as to the constitutionally of the substantive provisions of the Zoning Resolution as to which it is now sought to invoke our decision.

The Court therefore dismissed the Petition.

This Court reiterated the principle that it lacks jurisdiction to rule on a matter where the federal issue was not raised below in Mazer v. Stein, 347 U.S. 201, 206 n.5 (1954). As the Court held in that decision:

> We do not reach for constitutional questions not raised by the parties. Chicago & G.T.R. Co. v. Wellman, 143 U.S. 339, 345; New York ex rel. Rosevale Realty Co. v. Kleinert, 268 U.S. 646, 651; C.I.O. v. McAdory, 325 U.S. 472, 475. The fact that the issue was mentioned in argument does not bring the question properly before us. Herbring v. Lee, 280 U.S. 111, 117.

It is therefore respectfully submitted that the Petition for Certiorari should be denied based on the Petitioner's failure to raise any constitutional issue below.

POINT II

THE PETITION FOR A WRIT OF CERTIORARI SHOULD ALSO BE DENIED BECAUSE THE PETITION DOES NOT RAISE A SIGNIFICANT FEDERAL OR UNITED STATES CONSTITUTIONAL ISSUE

In addition to Mr. Lewis' failure to raise any constitutional issue below, his Petition for Certiorari should also be denied as it does not present any paramount federal question that compels the granting of such a Petition. United States Supreme Court Rule 10 specifically provides that: "A petition for a writ of certiorari will be granted only for compelling reasons."

The Petition fails to fall within any of the paragraphs of Rule 10 which "indicate the character of the reasons the Court considers" whether to grant a Petition. Rule 10(a) pertains only to a ruling of a United States Court of Appeals and therefore is not applicable to this case. Rule 10(b) applies only where "a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States Court of Appeals." This section is also inapplicable to the present Petition as the New Jersey Supreme Court denied Mr. Lewis' leave to appeal by Order and did not render any decision which is typical of such denials.

Rule 10(c) applies where "a state court or United States court of appeals has decided an important question of federal

law that has not been, or should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court." This provision also is not applicable to this Petition. The only Court below which rendered any decision was the Morris County New Jersey Family State Court which rendered a decision relating solely to the issue of custody under New Jersey State Law. The New Jersey Family Court never addressed any issue involving federal law whatsoever let alone "an important question of federal law". Rule 10 further provides that a Petition for a Writ of Certiorari "is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."

In short, the Family Court's Orders and decisions below did not address or implicate any federal law or any provision of the United States Constitution. The trial Court's Orders related solely to issues of local state law pertaining to the best interest of a child in determining custody. Such custody decisions are rendered routinely by our state courts. Petitioner's attempt to raise such child custody orders governed solely by State law which focus on the best interests of the child to a constitutional violation would open up a Pandora's box with no end in sight to a plethora of unending appeals of routine Family Court decisions.

The trial Court below did not apply or address any federal law or constitutional provision but simply applied New Jersey state law applicable to custody-parenting disputes. Further, New Jersey Court Rule 5:3-3(b), which is reproduced at Exhibit F of the Petitioner's Appendix, requires that all reports rendered by an expert relating to custody disputes between parents must be unbiased and rendered in the best interest of the child, no matter which parent has retained the expert. Thus, New Jersey Rule 5:3-3(b) provides as follows:

> (b) Custody/Parenting Disputes. Mental health experts who performed parenting/custody evaluations shall conduct strictly non-partisan evaluations to arrive at their view of the child's best interests, regardless of who engages them. They should consider and include reference to criteria set forth in N.J.S.A. 9:2-4, as well as other information or factors they believe pertinent to each case.

Indeed, Dr. Rosenberg in his October 3, 2017 letter cited above expressly referenced his obligation to prepare a neutral, unbiased report in the best interest of the child. (RA 42-43.)

The New Jersey Statute referenced in Rule 5:3-3(b) makes it clear that the rights of both parents relating to child custody are equal. As set forth in N.J.S.A. 9:2-4:

> The Legislature finds and declares that it is in the public policy of this State to assure minor children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage and that it is in the public

> interest to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy. In any proceeding involving the custody of a minor child, the rights of both parents shall be equal . . . .

(N.J.S.A. 9:2-4 is reproduced in its entirely at RA 59-60.)

New Jersey Court Rule 5:3-3(d) also provides that the custody/parenting experts can be selected by mutual agreement of the parties or independently by the Court. The Court initially instructed the parties to select a joint expert by mutual agreement but it was Mr. Lewis who refused to select such a joint expert and to pay his share of the fees for a joint expert, thus leading to Ms. Hadari's retention of a custody expert. Although Mr. Lewis claims he did not have adequate funds to pay for a mutually agreed upon custody expert, he did subsequently pay $4,000 for a Court-appointed expert after the Court ruled that he was in violation of the Court Orders. Thus, the issues Mr. Lewis complains about were brought about by his refusal to abide by the Court's initial Order for the parties to retain a joint custody expert. Mr. Lewis' Petition also lacks merit and again does not rise to a federal or constitutional level as the Family Court Judge did appoint a neutral expert upon Mr. Lewis' request.

New Jersey Court Rule 5:3-3(d) and (h) allow for the presentation of expert testimony both from a court-appointed

expert as well as from private experts retained by the parties. The New Jersey Court Rule mirrors many of the provisions of Federal Rule of Evidence 706. Federal Rule of Evidence 706(a) and (e), like the State Court Rule, provides that the Court can appoint an expert mutually agreed upon by the parties or can appoint its own expert and a party can also retain its own expert. (Federal Rule of Evidence 706 is reproduced at RA 61-62.)

Of course, it is not unconstitutional for parties to present their respective expert testimony at trial. Numerous cases decided by this Court and courts nationwide involve such testimony from experts retained by the parties. See, for example, Whole Woman's Health v. Hellerstedt, 136 S Ct.2292, 2301 (2016) (the court received "the opinions from expert witnesses for both sides"). Our Courts have ruled that there is no constitutional requirement of the appointment of a neutral expert. As the Tenth Circuit United States Court of Appeals held in Oklahoma Natural Gas Co. v. Mahan & Rowsey, Inc.,786 F. 2nd 1004, 1007 (1986), cert. denied, 479 U.S. 853 (1986):

> Finally, MRI argues that they are being deprived of substantive due process of law because of the district court's failure to appoint its own independent expert witness. MRI asserts that without the aid of an independent witness, the district court lacked the expertise to weigh the scientific principles involved. The district court has discretion to appoint an independent expert

> witness. See Rule 706(a), Federal Rules of Evidence, Kian v. Mirro Aluminum Co., 88 F.R.D. 351 (E.D. Mich. 1980). The fact that the parties' experts have a divergence of opinion does not require the district court to appoint experts to aid in resolving such conflicts. Georgia-Pacific Corp. v. United States, 226 Ct. Cl. 95, 640 F.2d 328 (Ct. Cl. 1980). We conclude that the district court was in no way obligated to appoint an expert in this case and its failure to do so cannot give rise to error.

Mr. Lewis thus has no reason to complain. Although not constitutionally required, the state court below did comply with his request to appoint an independent custody expert.

It is therefore respectfully submitted that Mr. Lewis' Petition for Certiorari should be denied as there was no violation of any federal law or Constitutional Amendment.

POINT III

THE PETITION FOR A WRIT OF CERTIORARI SHOULD ALSO BE DENIED BECAUSE IT IS NOT RIPE FOR ADJUDICATION SINCE NO EXPERT OPINION ON CUSTODY HAS YET BEEN RENDERED AND NO COURT DECISION HAS YET BEEN ISSUED AS TO THE CUSTODY RIGHTS OF THE PARTIES

Mr. Lewis' Petition is also speculative and not ripe as no expert opinion has been rendered by either Dr. Rosenberg or Dr. Singer nor has any decision been rendered by the Family Court as to the disposition of the custody of the parties' child. Indeed, it may be that Mr. Lewis may not object to the ultimate resolution of the parties' custody of their daughter.

This Court has consistently denied a Petition for a writ of Certiorari where a final decision has not been rendered below. As set forth in Brotherhood of Locomotive Firemen & Enginemen v. Bangor & A.R. Co., 389 U.S. 327, 328 (1967):

> Petitioners seek certiorari to review the adverse rulings made by the Court of Appeals. However, because the Court of Appeals remanded the case, it is not yet ripe for review by this Court. The petition for a writ of certiorari is denied. See Hamilton Shoe Co. v. Wolf Brothers, 240 U.S. 251, 257-258 (1916).

This Court in Parker v. County of Los Angeles, 338 U.S. 327 (1949), dismissed writs of certiorari where state lawsuits were still pending without final determinations having yet been rendered. This Court held that the petitions were premature until the state courts had addressed the constitutional issues raised below:

> Due regard for our Federal system requires that this Court stay its hand until the opportunities afforded by State courts have exhausted claims of litigants under State law. This is not what is invidiously called a technical rule. The best teaching of this Court's experience admonishes us not to entertain constitutional questions in advance of the strictest necessity. Decent respect for California and its courts demands that this Court wait until the State courts have spoken with knowledge of the events brought to light for the first time at the bar of this Court. Since the writs must be dismissed because constitutional questions which brought these cases here are not ripe for decision, all subsidiary questions fall. See Rescue Army v. Municipal Court, 331 U.S. 549, 585; Alabama State Fed. of Labor v. McAdory, 325 U.S. 450; C.I.O. v. McAdory, 325 U.S. 472. [At 338 U.S. at 332-333]

It is therefore respectfully submitted that Mr. Lewis' Petition for Certiorari should also be denied as it is not ripe for adjudication by this Court.

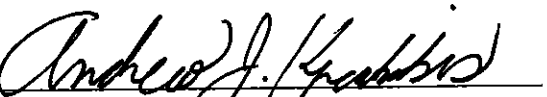
CONCLUSION

For the reasons set forth herein, it is respectfully submitted that the Petition for a Writ Certiorari filed by Petitioner Keith Warren Lewis should be denied.

Respectfully submitted,

WEINER LAW GROUP LLP

Counsel for Respondent
Rachelle Hadari

By: 
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Dated: August 8, 2018
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APPENDIX

WEINER LESNIAK LLP
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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, FAMILY PART
MORRIS COUNTY
DOCKET NO.: FM-14-608-17

RACHELLE HADARI,

Plaintiff,

vs.

KEITH WARREN LEWIS,

Defendant.

CIVIL ACTION

COMPLAINT FOR DIVORCE

Plaintiff, RACHELLE HADARI, residing at 3 Tikvah Way, Morristown, New Jersey 07960, by way of Complaint against the Defendant says:

1. Plaintiff was lawfully married to the Defendant, KEITH WARREN LEWIS, on the 29th day of October, 2014 in a civil ceremony in Morris Township, New Jersey.
2. Plaintiff was a bona fide resident of the State of New Jersey when this cause of action arose, and has ever since and for more than one year next preceding the commencement of this action, continued to be such bona fide resident.
3. Defendant, KEITH WARREN LEWIS, resides at 7 North Rigaud Road, Spring Valley, New York 10977.
4. The parties have suffered irreconcilable differences which have caused the breakdown of the marriage for a period of six (6) months and which make it appear that the marriage should be dissolved and there is no reasonable prospect of reconciliation.

5. One (1) child was born of the marriage, namely, Tzivia Lewis, born April 1, 2016.

6. The parties have acquired real or personal property throughout the marriage that is subject to equitable distribution.

7. There have been no prior proceedings between the parties.

WHEREFORE, Plaintiff, RACHELLE HADARI, demands judgment:

a. Dissolving the marriage between the parties pursuant to N.J.S.A. 2A:34-2(i);

b. Awarding the parties joint legal custody of the minor child of the marriage with Plaintiff being named the Parent of Primary Residence pursuant to N.J.S.A. 9:2-4(a);

c. Compelling the Defendant to contribute to the support and maintenance of the minor child of the marriage pursuant to N.J.S.A. 2A:34-23;

d. Equitably distributing all property, both real and personal, which was legally and beneficially acquired by the parties, or either of them, during the marriage pursuant to N.J.S.A. 2A:34-23.1;

e. Compelling the Defendant to pay the Plaintiff's counsel fees and costs pursuant to R. 5:3-5(c); and

f. For such other relief that the Court may deem equitable and just.

Dated: 11/21/16

Tanya L. Freeman
Attorney for Plaintiff

CERTIFICATION PURSUANT TO R. 4:5-1

We hereby certify pursuant to R. 4:5-1, that except as set forth herein, the matter in controversy is not the subject of any other action in any other Court. We further note that, to our knowledge, no other party should be joined in this action.

Dated: 11/21/16

Tanya L. Freeman
Attorney for Plaintiff

DESIGNATION OF TRIAL COUNSEL

Tanya L. Freeman, Esq. is hereby designated as trial counsel in this matter.

Dated: 11/21/16

Tanya L. Freeman
Attorney for Plaintiff

CERTIFICATION OF VERIFICATION AND NON-COLLUSSION

I, RACHELLE HADARI, of full age, hereby certify:

I am the Plaintiff in the foregoing Complaint for Divorce. The allegations of the Complaint are true to the best of my knowledge, information, and belief, and the Complaint is made in truth, and in good faith, and without collusion for the causes set forth in it.

I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: 11/21/16

RACHELLE HADARI, *Plaintiff*

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Our File No.: FAM1905-001

RACHELLE HADARI,

Plaintiff,

vs.

KEITH WARREN LEWIS,

Defendant.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, FAMILY PART
MORRIS COUNTY
DOCKET NO.:

CIVIL ACTION

CERTIFICATION BY ATTORNEY AND CLIENT PURSUANT TO 5:4-2(H)

I, Tanya L. Freeman, Esq., being of full age, hereby certifies as follows:

1. I am the attorney for the ☒Plaintiff ☐ Defendant in the above captioned matter.

2. I make this Certification pursuant to New Jersey Court Rule 5:4-2(h).

3. I have provided my client with a copy of the document entitled "Divorce – Dispute Resolution Alternatives to Conventional Litigation".

4. I have discussed with my client the complementary dispute resolution alternatives to litigation contained in that document.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: 11/21/16

Tanya L. Freeman
Attorney for Plaintiff

I, RACHELLE HADARI, being of full age, hereby certifies as follows:

1. I am the ☒Plaintiff ☐ Defendant in the above captioned matter and am represented in this divorce matter by Tanya L. Freeman, Esq.

2. I make this Certification pursuant to New Jersey Court Rule 5:4-2(h).

3. I have read the document entitled "Divorce – Dispute Resolution Alternatives to Conventional Litigation."

4. I thus have been informed as to the availability of complementary dispute resolution alternatives to litigation.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: 11/21/16

RACHELLE HADARI, *Plaintiff*

Prepared by the Court

RACHELLE HADARI, Plaintiff, V. KEITH WARREN LEWIS, Defendant.	: SUPERIOR COURT OF NEW JERSEY : CHANCERY DIVISION – FAMILY PART : COUNTY OF MORRIS : DOCKET NO.: FM-14-608-17 CASE MANAGEMENT ORDER *Pursuant to Rule 5:5-7*

FILED
APR 26 2017
Maritza Berdote Byrne, P.J.F.P.

THIS MATTER being opened to the Court on April 26, 2017.

Plaintiff being represented *by* Tanya L. Freeman, Esq. from the firm of Weiner Lesniak, LLP.

Defendant being represented *pro se*.

And good cause existing for entry of this Order,

IT IS on this ____ day of April, 2017, ORDERED that the above matter is assigned to the following track. (If custody is in issue the case shall be placed on the Priority Track.)

A. EXPEDITED TRACK ☐ (Discovery shall not exceed 90 days)
(If "A" is checked – go directly to Page 3)

B. STANDARD TRACK ☐ (Discovery shall not exceed 120 days)

C. PRIORITY TRACK ☐ (Discovery to be set at first Case Management Conference)

D. COMPLEX TRACK ☒ (Discovery to be set at first Case Management Conference)

(custody cases must be at least priority track)

IT FURTHER APPEARING that on the issue of Custody and Parenting Time:

☐ There are no children.
☐ All issues relating to Custody and Parenting Time have been resolved pursuant to a Custody and Parenting Time Consent Order which shall be filed with the Court no later than seven (7) days from the entry of this Order.
☒ Custody is an issue.
☐ A Domestic Violence Order is in effect.
☐ The children are emancipated.

☐ The matter is referred to Custody/Parenting Time Mediation.
☒ The Custody/Parenting Time Plan, required pursuant to R. 5:8-5 will be submitted to the Court by _____, 20____, at _____ a.m.

IT FURTHER APPEARING that the following issues are in dispute:

- [x] Child Support
- [ ] Alimony
- [ ] Equitable Distribution
- [x] Counsel Fees
- [ ] Medical Insurance
- [ ] Life Insurance
- [ ] Cause of Action
- [ ] Other Issues: ———

IT IS FURTHER ORDERED that the following be furnished no later than the dates indicated:

- Case Information Statement filed? Plaintiff (Yes ☐ No ☒) - Defendant (Yes ☐ No ☒)
  CIS to be filed by Plaintiff ☐ Defendant ☒ Both ☐ by May 5, 2017.
- ☒ Plaintiff/Defendant shall propound Interrogatories/Notice to Produce by May 15, 2017.
- ☒ Plaintiff/Defendant shall answer Interrogatories and comply with Notice to Produce by June 15, 201
- ☒ Plaintiff/Defendant shall complete Depositions by ~~June 15, 2017.~~ July 30, 201
- ☒ Plaintiff/Defendant shall produce proof of bank account balances, pension(s), or other records, by June 15, 2017.

☒ Plaintiff/Defendant shall also:

	Date (00/00/00)	Joint or Court Appt'd Expert	Plaintiff Expert	Defendant Expert	Cost paid by (Husband/Wife)
Real Estate appraisals to be completed by: Expert:		☐	☐	☐	
Personalty appraisals to be completed by: Expert:		☐	☐	☐	
Business appraisals to be completed by: Expert:	06/30/17	☐	☐	☐	Joint
Pension appraisals to be completed by: Expert:		☐	☐	☐	

Other (Expert Reports or related issues)

- ☐ Vocational Evaluation Expert:
- ☒ Custody/Parenting Time Evaluation Expert: Joint expert.
- ☐ Psychiatric Evaluation Expert:

IT IS FURTHER ORDERED that this matter shall be scheduled before the County Early Settlement Panel on Aug. 9th 2017 at 8:40 a.m.

IT IS FURTHER ORDERED that a second telephonic Case Management Conference be scheduled on Aug 2, 2017 at 9:30 a.m., before the Honorable Maritza Berdote Byrne, P.J. F.P. The COURT SHALL INITIATE THE CALL.

IT IS FURTHER ORDERED that all motions, emergent applications, plenary hearings and the ultimate trial of this matter, if necessary, shall be handled by Judge Berdote Byrne, P.J.F.P. All future correspondence to the Court shall be forwarded to the Judge assigned. The attorney(s) appearing in Priority or Complex Track Cases should be familiar with and have full authority to participate in the case.

IT IS FURTHER ORDERED:
SEE ATTACHED RIDER, Best Interest evaluator to be retained no later than 20 days after unsuccessful parenting time mediation.

☐ Trial Date: at ☒ Trial Date to be Determined

Maritza Berdote Byrne
Maritza Berdote Byrne, P.J.F.P.

Maritza Berdote Byrne

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Our File No.: FAM1905-001

RACHELLE HADARI, **Plaintiff,** vs. KEITH WARREN LEWIS, **Defendant.**	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION, FAMILY PART MORRIS COUNTY DOCKET NO.: FM-14-608-17 CIVIL ACTION CROSS MOTION CERTIFICATION OF RACHELLE HADARI

I, RACHELLE HADARI, of full age, hereby certify as follows:

1. I am the Plaintiff in the above-captioned matter and, as such, I am fully familiar with the facts set forth herein. I make this Certification in opposition to Defendant's Motion dated May 1, 2017, in support of my Cross Motion, and in further support of my Motion filed on May 11, 2017.

CUSTODY AND PARENTING TIME

2. From the moment Tzivia was born, I have and continue to be her primary caregiver.

3. I bathe her, feed her, clothe her, do her laundry, change her sheets, care for her when she's sick, take her to the doctor for scheduled visits as well as when I feel she is not acting like her usual self. I ensure Tzivia's immunizations are up-to-date and give her medications when required. I nursed her for as long as my body would provide her with the amount of nutrients she required. I then bottle fed Tzivia since she required more calories than my milk could provide. I provide her with opportunities for social interaction with other

children; I play with her, read books to her, teach her words, songs and holiday customs. I plan and celebrate birthdays and holidays with Tzivia. I have bought her toys and gifts. I take her with me on errands, and when needed, I book babysitters for her. I have checked in on Tzivia by video call when she is with a sitter. I took the initiative to keep Tzivia in touch with Defendant's immediate family and I even take her to visit with Defendant's family and friends in the community. I oversee Tzivia's daycare arrangements, make her lunches and provide her with her with all the necessities she requires when she is at daycare. I take her to and from daycare and because I work in the same building, I am even able to check in on Tzivia throughout the day. I am in constant communication with Tzivia's daycare to make sure they are aware of anything that would be significant to them or important for them to know, and they are in constant communication with me to share proud moments and discuss her daily routine. I laugh with her and play with her (making animal sounds is really her favorite these days). I cuddle Tzivia and love her with all my heart. I nurture and comfort Tzivia when she is sick, while monitoring her symptoms. I teach her how to explore new things, allowing her to be safely curious. I prepare her meals and snacks. I put her to sleep and am there if she wakes up in the night. I am the first face Tzivia sees every morning. I teach her prayers and take her to weekly children's services on the Sabbath. I have also taken her to holy vennes within our Jewish religion. I take her to the zoo and have taken her to a parade. I do crafts with her and tanght her to colour. I take lots of pictures and videos with Tzivia. I put cream on her skin so she does not get dry. I comfort her while she is teething as well as brush her teeth. I buy her diapers and wipes and continually buy her clothes she requires as she grows and with the changing seasons. I have prepared and packed for Tzivia on all the trips we have been on. I baby-proofed the house

by installing a baby gate and having furniture bolted to the walls. I have provided Tzivia with the stimulation required to learn and grow. I have been there to watch her learn to crawl and supported her while she took her first steps. I have been there when she falls, I have kissed her, and encouraged her to get back up. I cut her teeny, tiny fingernails and toenails. I take her on walks and to the park to play. I have given her, and will continue to give her, an environment that is full of love, stability and reliability.

4. Tzivia is my number one priority. I am the constant in Tzivia's life and will always be there for my daughter.

5. Tzivia's life would be turned upside down without me. Her "normal" would be no longer. Any constant she knew would be gone. She would essentially be surrounded by strangers and people who have never cared for her or know how to keep her safe.

6. By returning to Canada with Tzivia, her "constant" would not change. I would continue to be caring for her the way I have done, and I would continue to be her primary caregiver. Additionally, Tzivia would be surrounded by the love of her family – her maternal grandparents, aunts, uncles, and cousins who have all been an integral part of her life. There are many employment opportunities in my field in Toronto and, therefore, I would continue to be able to provide for Tzivia in Canada as I do now. There are more Jewish educational opportunities for Tzivia in Toronto than there are in Morristown. She would have her own room, right next to mine, in my mother's home and plenty of play space. Kosher food is more readily available there. Since I already have ties to the Toronto community, I will continue to engage Tzivia in social and leisure activities.

7. Defendant and I had never planned to reside permanently in Morristown. It was a temporary place for us to live. At one point, we seriously considered moving to Toronto

together. In fact, Defendant has more relatives in Toronto than he does in New Jersey, which is why the transition for us to Toronto would have been a smooth one.

8. Defendant's representation regarding his involvement in our daughter's life is entirely untrue.

9. Defendant has never been a major caregiver in Tzivia's life. He has never bathed Tzivia, cut her nails or prepared her meals. He has never bought her clothing. He has never cared for her when she's sick or taken her on his own to the doctor or arranged the appointments. He has never questioned if her immunizations are up-to-date or given her any prescription medications. In fact, there were only one or two times that he accompanied me on her trips to the doctor, and he only did so after I asked him to join us, as I wanted him to be more participatory. He has never brushed Tzivia's teeth. Defendant has never arranged any playdates for Tzivia or any other social interactions for her outside of daycare. He is not in constant communication with daycare regarding Tzivia's needs. He has never bought her toys, books or gifts. Since he moved out, Defendant made no attempt to celebrate any holidays with her. He has mostly had supervised visits with her over the last 6 months. Defendant has always left it to me to book the babysitters and arrange for our daughter's care. He has not initiated or maintained a relationship with his own family in Morristown, even for the sake of his daughter. The last time Defendant stayed in the same house with Tzivia overnight was when we lived together as a family over 6 months ago. Defendant has never taken Tzivia on his own to synagogue with him. He has never taken her on his own for a trip or packed for her. He has not taken opportunities to see her and has gone long periods of time with no contact with her whatsoever. Even during the marriage, between Defendant's work hours and time spent away at synagogue, he barely spent time with

Tzivia. Since Defendant chose to move to another state, away from our daughter, the time he spends with her is nominal. He has not demonstrated that she is a priority.

10. By Defendant's own admission, he requires help in caring for our daughter. Since our separation approximately 6 months ago, Defendant has only seen our daughter when he sporadically chooses to visit her at her daycare and on the 2 occasions he took her for a walk near my home. I have done nothing to keep him from visiting her more often than he currently does and has historically chosen. However, I have documented every one of Defendant's visits to the daycare and the length of time for each such visit; this information was provided to me by our daughter's daycare provider. **EXHIBIT A.**

11. Defendant has not visited Tzivia more than once per week since he moved out on November 18, 2016. **EXHIBIT A.** With the exception of a single visit that lasted 55 minutes on January 17, 2017, Defendant typically has not spent more than 15 to 30 minutes with Tzivia per week for the last 6 months.

12. Defendant also has gone long stretches of time without seeing our daughter whatsoever. For instance, Defendant recently went 25 days (between April 3rd and April 28th) without seeing Tzivia. He also went 8 days without visiting Tzivia from May 1st to May 9th. **EXHIBIT A.**

13. There is no Order in place restricting Defendant from visiting Tzivia at her daycare more frequently than he chooses. However, Defendant's failure to visit Tzivia more often than once per week, or even less frequently, is of his own volition; it is a result of his limited interest in seeing his own daughter and his lack of desire to be involved or even know about Tzivia's day-to-day routine; it is a continuation of Defendant's apathetic behavior toward our baby girl.

14. In his Motion, Defendant requests that he have parenting time with Tzivia every weekend, from Fridays at 1:00 p.m. until Sundays at 2:00 p.m. He further proposes that he "will stay then in Brooklyn, NY, with a family…who will help [him] care for [Tzivia]" and that the mother of this family "is a stay-home mother of two." Not only is Defendant's request an exaggeration of the time he is willing to commit to our daughter, but he does not have a suitable place to exercise any overnight parenting time with Tzivia.

15. Defendant has had no overnights with Tzivia since he moved out approximately 6 months ago and he will not be able to exercise any overnights with our daughter from June 16, 2017 through August 9, 2017. As set forth in my attorney's Certification, Defendant informed her during a recent telephone call that he will be out-of-State from June 16th until August 9th and, therefore, unavailable for his deposition initially scheduled for July 11th. **EXHIBIT B.** When my attorney asked whether he would be returning to the area whatsoever during this period, he responded "no"; in fact, he advised that it would be an inconvenience for him to return.

16. In fact, Defendant even executed a Consent Order illustrating that the deposition was rescheduled due to his out-of-state travel and unavailability from June 16th to August 9th. **EXHIBIT C.**

17. Additionally, Defendant's proposed parenting time schedule would exclude me from having any weekends with Tzivia. This is not only inequitable, but it is not realistic. As Defendant knows quite well and as illustrated above, I have been Tzivia's primary caregiver since her birth. She has never gone a weekend without me. Moreover, Defendant has never spent a weekend alone with Tzivia. As noted previously, Defendant is requesting a schedule that he cannot commit to. He is already reneging on his alleged desire to

exercise parenting time with Tzivia every weekend, as he would be unable to do so most of the upcoming summer.

18. Moreover, Defendant has not made Tzivia a priority in his life, as evidenced by his failure to spend more than about 30 minutes per week with her in the last 6 months, and his choice not to see her for 25 days in April. Nor does Defendant ever contact me to check in on Tzivia in his absence.

19. Defendant also failed to even visit Tzivia on her first birthday. Tzivia's birthday is April 1, 2016, which converts to 22 of the month of Adar2 on the lunar calendar which is the Jewish calendar that we also follow. This year, in 2017, Tzivia's Hebrew birthday (lunar calendar birthday) fell on March 20th. Defendant neglected to visit Tzivia on either March 20th or April 1st, demonstrating that he is either unaware of his own daughter's birthday, which he claims to celebrate, or he could not be bothered to visit her. Although Defendant visited the daycare 2 days after her Hebrew birthday, on March 22nd, the daycare informed me that Defendant made no effort to celebrate Tzivia's birthday during this visit.

20. Since the beginning of the school year (September 2016) to the day Defendant moved out on November 18, 2016, he commuted from Morristown to Monsey every Monday through Thursday, and sometimes on Sunday. It was important enough for him to make this commute for work, yet he does not maintain the same level of commitment in commuting to spend time with his own daughter. Defendant is trying to manipulate reality by stating that "commuting to Morristown is neither practical nor ideal" when he is the one who chose to move so far away from his daughter.

21. Defendant's claim that I am not "mentally stable" (as noted in paragraph #10 of his Reply Certification) and that "this is a matter of life and death" (as noted in paragraph #11 of his

Reply) is entirely false. Defendant has made similar allegations since we separated. However, Defendant's perception of what has actually occurred is not reality. When Tzivia was a few months old, I began feeling emotional and spoke to my ob/gyn who suggested I seek counselling, which I did. I did not feel comfortable with the psychologist and her counselling practice. It did not seem like a good fit and I could not trust her. I would leave her office feeling judged. I have since been told by other professionals that the way in which that psychologist diagnosed me was very unconventional.

22. Defendant, however, got stuck on every word she said, talking down to me and treating me as if I was a child, rather than his wife. Instead of trying to be supportive, Defendant chose to run away from our marriage. He had no interest in trying to work together to repair our marriage.

23. I took it upon myself to go for a second opinion; I spent multiple sessions with a psychiatrist with whom I felt comfortable and safe. She immediately recognized my transitory, post-partum, baby blues and the behavior that was evoked by the futility and frustration I felt in trying to get through to Defendant as he was becoming more somber, solitary, and withdrawn. I continued to go to this psychiatrist to complete her evaluation and until she felt I no longer needed to continue as a patient. I also followed up with my ob/gyn pursuant to my psychiatrist's recommendation. December 7, 2016 was my last appointment with my psychiatrist, at which time she advised that I did not need to continue meeting with her. In fact, since Defendant moved out and with the passage of time, I no longer feel those baby blues; I feel much more confident, independent, and happy. Friends have even made mention of this to me. I exercise and eat healthy meals, surround myself with positive, supportive people, and I try to get as much rest as possible. The distance I

now have from Defendant has certainly proved to be positive for me.

24. I asked Defendant if he wanted to review the report from my psychiatrist, but he declined. Defendant has no interest in the actual substance of the report. Instead, he claims my psychiatric evaluation, which he has never even reviewed, is baseless when in fact, I spent more hours working with the psychiatrist than I did with the first psychologist.

25. Based on Defendant's negative reaction toward my psychiatrist, I offered to seek a second evaluation, to which Defendant responded that he would not trust anyone. I have gone above and beyond to address his concerns, no matter how baseless and outlandish they are. However, Defendant has made it quite clear that he has no interest in having an "adequate investigation into the evidence", even when, as he states, it is a "matter of life and death."

26. My colleagues, the principal where I work, and the parents of the children I teach have never reported any concerns about my mental stability. These are people I spend most of my day with. Likewise, Tzivia's pediatrician has no concerns at all for Tzivia being in my care and has never voiced any concerns about my mental stability. I spend time weekly with Defendant's family in Morristown; they also have no concerns regarding my mental stability or concerns about me caring for Tzivia. It is Defendant alone who is making these claims, yet his actions do not match his concerns. He left our marriage and left our daughter in my care; he ran off to Israel for 3 weeks while leaving Tzivia in my care and, even on his return, waited 5 days before he even visited her. Defendant will be leaving for 2 months over the summer, again leaving Tzivia in my care. These are only a few examples of what seems to be Defendant's apparent attempt to malign and damage my reputation.

27. I have never hurt myself or my daughter. If Defendant was truly concerned for our daughter's wellbeing, why did he not show any care or concern when Tzivia had a

bronchial infection and I had to take her to Urgent Care? Not one time did Defendant follow up to see how our daughter was feeling. His lack of response to our daughter's needs is negligent. Once again, Defendant's claims and his actions do not align. Defendant's manipulative and controlling demeanor is hurting our daughter in the process.

28. Notwithstanding, Defendant's own actions and lack of involvement in our daughter's life shows how absurd his claim is regarding my stability. Defendant willingly chose to move to Monsey, and has only dedicated about 30 minutes per week to Tzivia for the last 6 months. By his own admissions, Defendant will be traveling for almost 2 months this summer and, therefore, unavailable to Tzivia. This does not seem like something a loving and caring parent would do if they truly believed their daughter was in an unsafe environment or being cared for by someone who was "mentally unstable," as Defendant suggests.

29. Defendant further states in his Reply Certification that it is no secret that he does not want Tzivia living with me. Again, this statement is absurd, as Defendant has made no effort to spend any amount of quality time with Tzivia in the last 6 months; nor does he apparently intend to do so this summer.

30. Defendant also does not have a suitable space where he can exercise parenting time with Tzivia, let alone overnights. Defendant apparently proposes that he exercise parenting time at the home of some friends of his in Brooklyn, approximately 40 miles away from Tzivia's home. I have only met Defendant's friends briefly a few times. I do not know them well at all, and have never spent any quality time with them. Nor do I know their children well. I do not know the accommodations that they would have for my baby in their new home. I have never visited their new home and I do not even know where they live; in fact,

Defendant failed to provide their address in his Motion. I do not know if Tzivia would have to share a room with the family's children or even if they have a crib. Defendant's friends have only met Tzivia as a young infant and have never cared for her. They have no first-hand knowledge of our daughter. If the Tarica-Lechter family truly cared for Tzivia's wellbeing, it seems peculiar that they have never contacted me to check in on her. Furthermore, Mr. Tarica-Lechter chooses to avoid eye contact with me and if he must address me, he does so through Defendant. This, of course, is of great concern to me, especially considering Defendant's absurd request to have this family care for or even assist in caring for Tzivia. Also, if this family is residing in Brooklyn, where Defendant says they currently live, they would not be allowed to take Tzivia out of the house during the Sabbath, as there is no *Eruv* in the area. An Eruv is a ritual enclosure within a Jewish community that permits you to carry objects outside of your house on the Sabbath. Given the amount of time Defendant spends at synagogue over the Sabbath, Tzivia would essentially be left in the care of a complete stranger to her.

31. As I have described in detail above, I have been Tzivia's primary caregiver since her birth. Defendant has had little physical presence in Tzivia' life and absolutely no involvement in her daily routine for more than 6 months.

32. I am asking that the Court allow me to return to my home in Toronto, where Tzivia and I can be surrounded by my family and friends.

33. Notwithstanding, it is not my intention for Defendant to not be involved in or to not have a physical presence in our daughter's life. As such, if the Court permits me to return to my home in Canada with Tzivia, I propose that Defendant exercise parenting time as follows:

    a. Defendant can spend one weekend per month with Tzivia in Toronto or

alternatively, a three-day period during the week. One visit alone would actually equate to more time than Defendant has chosen to spend with our daughter over the last 6 months. The driving time from Defendant's home in Monsey to my mother's home in Ontario is 7 hours and 14 minutes (per google maps). It is only a 1.5-hour flight. To the best of my knowledge, Defendant does not work on Fridays and he does not return to work until Monday afternoon. Therefore, he could either come out on Thursday evening or early Friday morning and return Monday morning. Defendant has family in Toronto; as such, he would not be required to pay for accommodations. Defendant has also stayed with other families in Toronto during past visits, so he certainly has ample housing accommodations with no out of pocket cost to him. Additionally, Defendant's mother comes to Toronto to visit with her family and she, too, would have time to spend with her granddaughter. Even if Defendant's mother comes to Toronto to visit at a time that Defendant is not there, I would certainly give her the opportunity to spend time with Tzivia if she requests to do so with fair notice. If there are times when Defendant decides to come to Toronto in addition to what is stated above, I would be prepared to discuss additional parenting time for him. As Tzivia gets older and can travel on her own, I recognize that we will most likely need to revise this proposed parenting schedule.

TZIVIA'S BANK ACCOUNT

34. Over the last 6 months, I have tried to obtain a printout from our daughter's TD Bank account to monitor the balance and ensure that Defendant does not make any unauthorized

withdrawals. However, I was unsuccessful in doing so, as I was advised by the bank that I was not listed on the account. The funds in this account were a gift to Tzivia from my grandparents when she was born. I asked Defendant to open the account for her when she was born, as I was at home caring for her.

35. Defendant indicates that he withdrew $400 from our daughter's TD Bank account "to pay our taxes, which were filed jointly, and for which we still have not received the return." If Defendant had the courtesy to contact me and advise that he required funds to pay our joint taxes, I would have gladly shared the cost with him. I certainly never would agree that he take money from our daughter's account. We had agreed that since the amount owing for taxes was basically cancelled out by the amount of the return, we did not have to equalize any payments between us. This is yet another example of Defendant's lack of communication. I was not raised to take things that do not belong to me. Defendant, however, was subject to this type of behavior as a young adult and obviously he feels it is acceptable to do the same to his daughter.

36. For these reasons, I ask that the Court compel Defendant to immediately add my name to Tzivia's TD Bank account so that I may have equal access to this account. I further request that the Court compel Defendant to provide proof to my attorney that he has, in fact, redeposited all of the funds he withdrew from our daughter's bank account with TD Bank.

IMMIGRATION APPLICATION

37. Defendant references an email and indicates that he has "attached the full email back and forth to this reply." However, the copy of Defendant's Reply Certification that I received has absolutely no attachments.

38. Defendant goes on to state in paragraph 12 of his Reply Certification that "a court case

involving deportation was not necessary..." However, if Defendant fails to sign my application, it may result in deportation proceedings, which are entirely out of my control.

39. Moreover, I currently work in a school, which is closed during the summer months. I have obtained alternate employment in New Jersey over the summer. However, if I do not have a valid green card, I will be unable to work and, therefore, unable to support myself and Tzivia.

40. I have absolutely no intention of being away from my daughter. Defendant has already proven that he is not willing and, in fact, cannot care for Tzivia on his own. He not only requires help from his friends, but Defendant will be unavailable to care for Tzivia for 2 months this summer. What does he propose happens to our daughter while he is away if I am deported to Canada?

41. Tzivia would not be "perfectly safe" in Defendant's care, as he claims, because he has no desire to care for her the way a loving and caring parent must. Defendant currently chooses to visit Tzivia at her daycare no more than 30 or so minutes per week, and the daycare even supervises, or assists, during Defendant's visits. I expect that Defendant believes he can just pawn our daughter off to someone else during his parenting time and that he can visit her for 30 or so minutes here or there, as he chooses. Defendant has demonstrated through his own actions and words that he has no intention of fully caring for Tzivia. He would rather have Samantha Tarica-Lechter, who is a complete stranger to Tzivia and a distant acquaintance to me, care for our daughter than agree to me caring for her. This not only shows Defendant's lack of cooperation and refusal to co-parent with me, but it is cruel and harmful to our daughter.

DEFENDANT'S SUPPORT PAYMENTS

42. In order to pay my monthly rent expense and other financial obligations in a timely manner, I worked around the commitment Defendant made to pay support to me by the 7th of each month. I am happy to work around his pay schedule, splitting the payment we mutually agreed to between the 7th day and the 21st day of each month, but I do require consistency so that my bills can be paid timely.

43. In paragraph 14 of his Reply Certification, Defendant states that he has been "fairly consistent of when and how" he provides support payments to me. My property owner is not okay if I am only "fairly consistent" in paying rent; likewise, credit card companies and other debtors do not find it acceptable if I am only "fairly consistent" in remitting payment. It is not adequate or responsible for Defendant to commit to an amount and due date for support, only to later arbitrarily choose when he wants to follow that agreement.

44. Throughout our marriage, we agreed Defendant would manage our bills. Yet, it wasn't until after we separated, that I found out they were not being paid in full or timely, resulting in interest payments and late fee charges. I am a responsible adult, and when I commit to something, I want to ensure I can and do meet my obligations.

45. In paragraph 15 of his Reply Certification, Defendant claims that it would be a hardship for him to pay the amount of support he agreed to, especially over the summer when he allegedly does not have income from his regular job. However, Defendant has already informed my attorney that he is traveling for 2 months this summer for employment. Therefore, although Defendant's Certification attempts to lead the court to believe that he will not have income, he has already admitted to the contrary. Defendant has supplied no financial documentation that would indicate that he cannot meet the obligation he and I

agreed to and that he has been following, albeit in an untimely manner.

DEFENDANT'S REFUSAL TO NEGOTIATE

46. I did not "break off" the mediation, as Defendant asserts. In fact, I attempted to continue working toward a resolution by attending mediation on 4 separate occasions. I agreed to drive from Morristown to Hackensack to meet with the mediator that Defendant unilaterally chose and insisted on retaining.

47. As we did not reach an agreement regarding custody and we were at an impasse at mediation, filing a complaint for divorce was, to me, the logical next step in having our outstanding issues resolved.

48. The decision to end the additional attempts at mediation ordered by the Honorable Maritza Berdote Byrne was not mine, but rather that of a competent mediator, as she recognized there was nothing further that we could resolve at that time.

CUSTODY EVALUATION

49. I have retained Dr. Edwin A. Rosenberg as my custody evaluator in this matter. As I simply do not have the funds for an evaluation, I had to borrow money for Dr. Rosenberg's retainer fee.

50. Defendant has been very difficult throughout the last 6 months and I anticipate this will continue during the remainder of this litigation.

51. Therefore, I ask that the Court compel Defendant to cooperate with my custody expert.

RELIEF REQUESTED

52. For the reasons set forth above, I ask that the Court deny Defendant's Motion dated May 1, 2017, and grant my Motion filed on May 11, 2017 as well as my Cross Motion.

53. Specifically, as it relates to my within Cross Motion, I ask that the Court designate me as

the parent of primary residence and Defendant as the parent of alternate residence on a *pendente lite* basis.

54. I further ask that the Court permit me to have sole decision-making authority regarding Tzivia's education, health, and religion on a *pendente lite* basis due to Defendant's lack of involvement and interest in our daughter's daily life.

55. I also request that the Court compel Defendant to cooperate with my custody/removal evaluator, Dr. Edwin A. Rosenberg.

56. Finally, I ask that the Court compel Defendant to immediately add my name to Tzivia's TD Bank account so that I may have equal access to this account, and that Defendant immediately provide proof to my attorney that he has, in fact, redeposited all of the funds he withdrew from our daughter's bank account with TD Bank.

I hereby certify that the foregoing statements made by me are true. I am aware that if the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: June 4, 2017

RACHELLE HADARI, *Plaintiff*

CERTIFICATION OF SIGNATURE

I, Tanya L. Freeman, Esq., of full age, hereby certify as follows:

1. I am an attorney at law with Weiner Law Group LLP, attorneys for the Plaintiff, RACHELLE HADARI. I am an attorney assigned to the handling of this matter and I am, thus, capable of making this Certification.
2. Pursuant to New Jersey Court Rule 5:4-2(h), the attached Cross Motion was forwarded to Plaintiff for review and signature. Plaintiff signed and returned the signature page via email; a copy of which is attached.
3. Pursuant to Rule 1:4-4(c), the original signature page will be filed at the request of the Court or a party to this action.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: June 5, 2017

Tanya L. Freeman
Attorney for Plaintiff

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Attorneys for Plaintiff
Our File No.: FAM1905-001

RACHELLE HADARI, **Plaintiff,** vs. KEITH WARREN LEWIS, **Defendant.**	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION, FAMILY PART MORRIS COUNTY DOCKET NO.: FM-14-608-17 CIVIL ACTION **CERTIFICATION OF PLAINTIFF, RACHELLE HADARI**

I, RACHELLE HADARI, of full age, hereby certify as follows:

1. I am the Plaintiff in the above-captioned matter and as such am fully familiar with the facts set forth herein, and I make this Certification in support of my Motion.

BACKGROUND

2. Defendant, KEITH WARREN LEWIS ("Defendant") and I were married on October 29, 2014.

3. We have one child together, a daughter named TZIVIA LEWIS, who was born on April 1, 2016.

4. After our separation in November 2016, Defendant and I attended mediation with Adam Berner, Esq., in Hackensack, New Jersey. Defendant insisted that if we were to attend mediation, it had to be with Adam Berner. In fact, Defendant requested that this be included in our Jewish Divorce document as he was not willing to go anywhere else. Though we did not sign an agreement, Defendant verbally agreed to payment of

unallocated support to me in the amount of $1,700 per month, which he agreed he would pay on the 7th day of each month. This support covers a portion of our daughter's childcare expense, which is $430 per month, as well as a portion of my Schedule A, B, and C expenses, including rent ($1,485 per month), car insurance, and groceries. These figures are set forth in my Case Information Statement. EXHIBIT A.

5. Defendant and I separated on November 18, 2016, at which time he moved to Monsey, New York. Defendant's new home is approximately one (1) hour from our rental home in Morristown, where I currently reside with our one (1) year old daughter.

6. I filed my Complaint for divorce on November 22, 2016.

7. Although we remain legally married, I received a "get" from Defendant on November 20, 2016. In essence, a "get" is a divorce document in Judaism. This document is being held by the Rabbinical court until a civil divorce is obtained.

8. Since our separation last November, the majority of the Defendant's visits with our daughter have been at her daycare, Cheder Lubavitch, in Morristown. During these visits, Defendant is supervised by the daycare faculty. On average, the Defendant spends only fifteen (15) to thirty (30) minutes per week with our daughter during each visit to her at daycare. Defendant has only taken our daughter on a few walks in my neighborhood since our separation.

9. To date, I estimate that Defendant has only seen our daughter a total of nine (9) hours since we separated almost six (6) months ago. He did not visit our daughter on her birthday or even request to do so. Nor did he visit her on Hanukkah, Passover, or Purim.

TRAVEL TO TORONTO & PASSPORT

10. I grew up in Canada and everyone in my family continues to reside there to date. My

mother, father, brother, aunts, uncles and cousins live in Toronto, Canada and my grandparents reside in Calgary, Canada. I have no real ties to the United States, let alone to New Jersey, now that Defendant and I are getting divorced.

11. Tzivia's great-grandmother and great-grandfather (my grandparents) are celebrating their 75th and 80th birthdays, respectively, this July. Tzivia's grandmother (my mother) is having a large family gathering to celebrate her parents' birthdays, which I would like to attend with Tzivia.

12. I would like to spend five (5) days, from July 20, 2017 to July 24, 2017, at my mother's home in Toronto, located at 15 Redondo Drive, Thornhill ON, L4J 7S7.

13. It would be a wonderful experience for my daughter to share in this special celebration with me and her extended family.

14. There is no reason Defendant should deny consent. He is not permitting me to travel with our daughter, out of spite. In fact, this is not the first time Defendant has denied his consent to allow me to travel with our daughter.

15. This past April, for the holiday of Passover, Defendant traveled to Israel. Since Defendant was planning to vacation in Israel for Passover, I asked for his consent to travel to Toronto with Tzivia to spend the holiday with my family, but he refused. Since he denied consent, I did not go to Toronto. I later learned from Defendant that he withdrew funds from our daughter's bank account, without my consent. Although the funds have been returned, this is the second time the Defendant has withdrawn funds from Tzivia's account without my consent.

16. Defendant would not be prejudiced in the least by Tzivia traveling with me this July to Toronto, as he has only spent about nine (9) hours with our daughter in the span of six (6)

months, and I would only be traveling for five (5) days. He typically doesn't see her more than once a week. In fact, this past April, the Defendant spent time away from our daughter for a period of three and a half (3.5) weeks.

17. Therefore, I respectfully request that the Court permit me to travel with my daughter to Toronto from July 20, 2017 to July 24, 2017.

IMMIGRATION APPLICATION

18. It is necessary that Defendant cooperate with my immigration application so that I may remain in the United States.

19. My green card expires on July 1, 2017, and since Defendant and I are still legally married, his signature is required on my application to remove conditions on my residence in the United States. I am required to submit the application form within the 90 days prior to the second anniversary of the date I was granted conditional permanent resident status (June 26, 2015).

20. I advised Defendant that I may face deportation if my application is incomplete. His response was "[j]ust go back to Canada and I will take care of Tzivia for now. I'm happy for you to visit." **EXHIBIT B.**

21. It is obvious from his email that Defendant either does not appreciate the importance of my circumstance, or he simply does not care.

22. Therefore, I respectfully request that the Court compel Defendant to cooperate with my immigration application.

23. Alternatively, I ask that the Court schedule a Plenary Hearing to occur prior to June 26, 2017, the second anniversary of the date I was granted conditional permanent resident status, to address the issue of my relocation to Toronto, Canada with my daughter.

DEFENDANT'S PAYMENT OF UNALLOCATED SUPPORT

24. As noted above, Defendant and I attended mediation at which time he verbally agreed to pay me $1,700 per month in unallocated support. Defendant has, in fact, been paying unallocated support to me in the sum of $1,700 per month.

25. However, although we agreed he would make the support payment by the 7th day of each month, Defendant's payments have been untimely. For instance, he did not make the April support payment until the last week of the month. I cannot pay bills on time if I cannot rely on timely support payments.

26. In accordance with our agreement and the status quo, I ask that the Court compel Defendant to continue paying me unallocated support in the amount of $1,700 per month, in equal payments of $850. The first payment by the 7th day of each month and the second payment by the 21st day of each month.

DEFENDANT'S REFUSAL TO NEGOTIATE

27. I previously sought Defendant's cooperation with each of the issues highlighted above to no avail.

28. On April 26, 2017, immediately following an in-person Case Management Conference with the Honorable Maritza Berdote Byrne, P.J.F.P., my attorney attempted to discuss these issues with Defendant, but he refused to speak with my attorney and walked away from the conversation.

29. On April 28, 2017, my attorney forwarded a letter to Defendant, addressing the aforementioned issues, and advised that I intended to file the within motion if my attorney did not hear from Defendant by May 3, 2017. EXHIBIT C. Defendant did not respond.

30. I am left with no recourse but to request that the Court grant my relief.

RELIEF REQUESTED

31. For the reasons set forth above, I ask that the Court grant my motion in its entirety.

32. In particular, I ask that the Court permit me to travel to Toronto with our daughter, Tzivia, from July 20, 2017 to July 24, 2017 so that our daughter may celebrate her great-grandparents' birthdays and enjoy a large family birthday celebration.

33. Furthermore, I request that the Court compel Defendant to pay direct unallocated support directly to me in the sum of $1,700 per month in two equal payments of $850 each. The first payment no later than the 7th day of each month and the second payment no later than the 21st day of each month in accordance with the status quo.

34. Finally, I ask that the Court compel Defendant to cooperate with my Immigration Petition to Remove Conditions on Residence in the United States in a timely manner. In the alternative, I ask that the Court schedule a Plenary Hearing to occur prior to June 26, 2017, the second anniversary of the date I was granted conditional permanent resident status, to address the issue of my relocation to Toronto, Canada with my daughter.

I hereby certify that the foregoing statements made by me are true. I am aware that if the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: 02:13

RACHELLE HADARI, *Plaintiff*

CERTIFICATION OF FACSIMILE SIGNATURE

I, Tanya L. Freeman, Esq., of full age, hereby certify as follows:

1. I am an attorney at law of the state of New Jersey with Weiner Law Group LLP. I am an attorney assigned to the handling of this matter and am thus capable of making this Certification.
2. The attached Certification was forwarded via email to RACHELLE HADARI for review and signature. RACHELLE HADARI then approved the contents of the Certification, signed, and returned the Certification via facsimile; a copy of which is attached.
3. Pursuant to Rule 1:4-4(c), the original signature page will be filed at the request of the Court or a party to this action.

I hereby certify that the foregoing statements made by me are true. I am aware that if the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: May 9, 2017

Tanya L. Freeman
Attorney for Plaintiff

WEINER LAW GROUP LLP
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Our File No.: FAM1905-001

RACHELLE HADARI, Plaintiff, vs. KEITH WARREN LEWIS, Defendant.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION, FAMILY PART MORRIS COUNTY DOCKET NO.: FM-14-608-17 *Civil Action* **CERTIFICATION OF JULIANNE C. SMITH, ESQ.**

I, JULIANNE C. SMITH, ESQ., of full age, hereby certify as follows:

1. I am an attorney-at-law with Weiner Law Group LLP, attorneys for the Plaintiff, RACHELLE HADARI, in the above-captioned matter. As such, I am fully familiar with the facts set forth herein. I make this Certification in opposition to Defendant's Motion dated July 18, 2017 and in support of Plaintiff's Cross Motion.

DEFENDANT'S MOTION FOR RECONSIDERATION

2. As a matter of law, Defendant is time barred from having his Motion for Reconsideration of the Court's June 21, 2017 Order heard. **EXHIBIT A.**

3. Pursuant to Rule 4:49-2, "a motion for rehearing or reconsideration seeking to alter or amend a judgment or order shall be served not later than 20 days after service of the judgment or order..."

4. Notwithstanding Defendant's failure to serve and file his Motion within the 20 days following the June 21, 2017 Order, Defendant fails to sustain his burden under Rule 4:49-2.

Specifically, the Rule requires Defendant to demonstrate that the Court has overlooked certain facts or law, or that the Court has otherwise erred in its decision. However, the Court did not err in compelling Defendant to cooperate with Plaintiff's custody/removal expert.

5. Defendant's account of the facts in this case and the law as it pertains to custody evaluators is entirely distorted.

6. The Court's April 26, 2017 Case Management Order indicated that a "Best Interest Evaluator to be retained no later than 20 days after unsuccessful parenting time mediation."

7. Despite numerous efforts, Defendant refused to agree to a joint custody evaluator. He indicated that he could not afford an expert and would not agree to anyone proposed by my office.

8. While Rule 5:5-3(a) indicates that the court *may* appoint a custody evaluator if, in its discretion, the court concludes that disposition of an issue would be assisted by expert opinion, subpart (h) of this same Rule explicitly states that "[n]othing in this rule shall be construed to preclude the parties from retaining their own experts, either before or after the appointment of an expert by the court, on the same or similar issues."

9. Accordingly, once it became clear that Defendant had no interest in working with me and my client on agreeing to a joint expert, Plaintiff engaged her own custody evaluator, which she was well within her right to do under the Court Rules.

10. On June 7, 2017, my office notified Defendant that Plaintiff retained Dr. Rosenberg to conduct a custody/removal evaluation; we simultaneously provided Defendant with Dr. Rosenberg's contact information and advised that the expert's office would be contacting Defendant directly to complete the necessary paperwork and schedule his initial

appointment. EXHIBIT B.

11. Upon being contacted by Dr. Rosenberg's office, Defendant sent an email to Dr. Rosenberg refusing to appear for an appointment and otherwise cooperate with the evaluation process. EXHIBIT C.

12. However, it is worth noting that Defendant explicitly states in his email that he was "not ordered by the court to undergo an examination by Dr. Rosenberg", thereby inferring that if he *were* ordered to undergo an examination by Dr. Rosenberg, he would cooperate. EXHIBIT C.

13. Although the Court ordered Defendant to cooperate with Dr. Rosenberg, Defendant still has not scheduled his initial evaluation appointment; nor has he completed and returned the paperwork provided to him by Dr. Rosenberg's office.

14. As set forth in paragraph nineteen (19) of Defendant's Motion, he has no intention of cooperating with Dr. Rosenberg. In fact, he has threatened to file an appeal of "the appointment of this biased evaluator if the ordered is maintained."

15. Once again, Defendant misconstrues the facts. Dr. Rosenberg was not "appointed" by the Court, as Defendant suggests. Rather, as noted above and in our June 7, 2017 letter to Defendant, Plaintiff retained Dr. Rosenberg to conduct an evaluation on her behalf. This is even reflected in the Court's June 21, 2017 Order, which compels Defendant to cooperate with *Plaintiff's custody/removal expert*. EXHIBIT A.

16. Like Plaintiff, Defendant had the option to retain his own custody expert pursuant to Rule 5:5-3(h). The fact that he chose not or even that he cannot afford to does not give rise to denying Plaintiff her equal right.

17. Defendant was even extended the option of selecting a joint custody evaluator to help

alleviate the cost associated with hiring an evaluator, yet he rejected all such opportunities. He now seeks to punish Plaintiff for seeking and retaining her own evaluator due to his own refusal to cooperate in the selection process.

18. Dr. Rosenberg, like all custody evaluators, is guided by Rule 5:3-3(b). He has been retained to conduct a strictly non-partisan evaluation to arrive at his view of the best interests of the parties' daughter, regardless of the fact that Plaintiff has engaged him. I have no doubt that Dr. Rosenberg will adhere to his obligations under the Court Rules. Notwithstanding, such a determination is left to the Court at the time of a final hearing regarding custody in this matter.

19. For the reasons set forth above, Defendant's Motion for Reconsideration of the Court's June 21, 2017 Order should be denied and the Court should find Defendant in violation of Plaintiff's litigants rights for willfully and deliberately violating the Court's June 20, 2017 Order by refusing to cooperate with Plaintiff's custody evaluator.

DEFENDANT'S REQUEST FOR THE APPOINTMENT OF A GUARDIAN AD LITEM

20. Defendant's request for the appointment of a *guardian ad litem* ("GAL") should be denied, as the circumstances in this case do not warrant such an appointment.

21. Under Rule 5:8B, the court *may* appoint a GAL to represent a child's best interests if the circumstances warrant such an appointment.

22. Here, Plaintiff has already engaged an expert to conduct a best interests evaluation. Dr. Rosenberg has been tasked with interviewing the parties, conducting diagnostic tests with the parties, interviewing collaterals proposed by either or both parties, obtaining relevant documentary evidence, and preparing an evaluation report upon reaching his determination as to what is in the best interests of the parties' daughter. Such tasks are akin to those

outlined in Rule 5:8B(a) in connection with the tasks assigned to a GAL. As such, the appointment of a GAL in this matter is redundant and unnecessary.

23. Moreover, Defendant has already advised the Court that he cannot afford to retain either a joint custody evaluator or his own. Therefore, I cannot fathom how Defendant anticipates contributing toward a GAL's expenses, as such costs are typically equivalent to, if not in excess of, that of a custody evaluator.

24. For these reasons, Defendant's request for the Court to appoint a GAL should be denied.

I hereby certify that the foregoing statements made by me are true. I am aware that if the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: August 3, 2017

Julianne C. Smith
Attorney for Plaintiff

B"H

Docket # FM 14-608-17

Justice Byrne
Morris County Courthouse
PO Box 910
Morristown, NJ 07960

On April 26, 2017, plaintiff Rachelle Hadari and I, defendant Keith Lewis, appeared before the court for our case management conference. There it was decided that after failed mediation (which occurred Wednesday, May 10) we had 20 days to hire a joint psychologist to conduct an examination of the mental fitness of Rachelle Hadari. This was to be funded jointly, without prejudice to the final decision.

I, however, am without funds to pay for the necessary unbiased psychological evaluation, as seen in my Case Information Statement. I live very frugally and pay regularly very generous child support and have a number of debts to service. In short, I do not have the money nor means of procuring the money to pay for this psychological evaluation.

Therefore, I am asking the court to order Rachelle Hadari to pay solely for this evaluation. Or, absent that, that the state itself should.

Any previous evaluations procured by Mrs. Hadari are insufficient and not a substitute for an unbiased expert opinion of a psychologist recommended by the court or decided upon jointly by the defendant and plaintiff. Any opinions procured without the input and point of view of both parties are dishonest and potentially misleading.

It is the responsibility of the court to ensure that a valid evaluation takes place, regardless of the defendant's financial situation. It is inconceivable that in a justice system such as ours lack of ability to pay should cause such a perversion of justice to take place, at the risk to a child.

I am even willing to put on record with the police my opposition to and concern for my daughter who might be, based on insufficient and biased evidence, left with someone completely unable to care for her.

Please take these considerations into account when making your decision.

Truly,
Keith Lewis

Note: This letter has been sent by email to both Mrs. Hadari and her lawyer, as well as by mail to her lawyer.

Dr. Edwin A. Rosenberg
LICENSED PSYCHOLOGISTS FORENSIC SPECIALISTS & Associates

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October 3, 2017

Via electronic mail
Julianne C. Smith, Esq.
Weiner Law Group
629 Parsippany Road
P.O. BOX 438
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Email: jsmith@weiner.law

Re: Hadari v. Lewis
Docket No.: FM-14-608-17

Dear Ms. Smith:

I am writing to inform you as to what transpired today, October 3, 2017, when I had my first meeting with Mr. Keith Lewis. Mr. Lewis was scheduled to meet with me today from 1:30 PM to 3:30 PM and he agreed to meet me for an interview.

Mr. Lewis arrived on time and accompanied me into my consulting room. He informed me at the outset of our meeting that he would like to audiotape our meeting. In an attempt at allowing Mr. Lewis to feel more comfortable with me, given his history of being reluctant to meet with me, I agreed to allow him to audiotape the meeting with the provision that if he were to use the tape recording at a legal proceeding he would have to authenticate the recording and have an expert review it to determine it had not been altered, the cost of that would be borne by him. He agreed to that provision.

After he agreed to that provision Mr. Lewis informed me that on September 5, 2017 the court appointed a court-appointed evaluator for this case, Dr. Mark Singer, and it is Mr. Lewis's intention to cooperate with Dr. Singer and that he was here "to listen" but intended not to answer any of my questions. I asked Mr. Lewis if he has been in touch with Dr. Singer's office and he said that he has reached out for appointment but has not heard back.

I told Mr. Lewis that even though I had been retained by Ms. Hadari, it was my intention to conduct a thorough and unbiased evaluation and that my recommendations will be based solely on the data I collect, not on who retained me. I informed him that there are custody guidelines

established by various professional organizations and that was my intention to follow these guidelines so that I could conduct an evaluation that was based on his daughter's needs and the ability of each parent to meet their daughter's needs. It was clear from Mr. Lewis's reaction to me that he viewed me as a "hired gun" and on that basis chose not to cooperate with the evaluation process.

I was able to have Mr. Lewis tell me his current address, his cell phone number, his date of birth, the number of years of education he has completed, and his employer and his place of employment. He also informed me that he is a teacher and teaches third and fourth grades.

I asked Mr. Lewis how often he sees his daughter and he told me that he sees his daughter one time per week for two hours, from 3 PM to 5 PM on Sundays. I asked where he sees his daughter and he said that he sees her in Morristown. I asked where in Morristown he sees his daughter and he said, "a neutral spot that varies from week to week." I asked Mr. Lewis if he has any contact with Ms. Hadari during the week and he said he did not. I asked Mr. Lewis if that arrangement was arrived at through agreement or some other way and he said that the arrangement was the result of a court order. He did acknowledge that there was a hearing and that he testified and, in answer to my question, acknowledged that he was not represented by counsel for the hearing. I asked Mr. Lewis if he was living and working where he currently is living and working when the hearing took place and he said that he was.

I informed Mr. Lewis that Ms. Hadari wishes to move to Canada with their daughter and because we are now in this process it was my assumption that he objected to Ms. Hadari's plan. I then asked what his objection was to her plan and he said, "I can't answer that question." I asked Mr. Lewis if he has a plan for parenting his daughter and he said, "I do have one but I'm not going to share it with you." I informed Mr. Lewis that I had some release forms that I wished him to sign so I could get information about his daughter from her preschool and from her pediatrician but he said he would not sign the release forms.

I gave Mr. Lewis a copy of the document entitled Custody/Visitation Evaluation Procedures and explained to him that this document will inform him as to the evaluation process that I intended to follow in this matter. I also gave to Mr. Lewis a copy of the Non-retaining Party Examination Agreement which gave him information as to how I conduct these evaluations. Mr. Lewis took both those documents with him.

I told Mr. Lewis that I would be contacting Ms. Hadari's attorney to inform the attorney that while Mr. Lewis did appear for his interview, he would not answer any substantive questions that I had for him. As a result, without him answering these questions and without him engaging in the interviews, I could not go forward with this evaluation.

Ms. Hadari is scheduled to see me again on October 18 for another interview. Had I been able to interview Mr. Lewis, I would have invited him to come back for second interview and arrange for times to observe him with his daughter and to observe Ms. Hadari with their daughter. It is clear from Mr. Lewis' attitude during this interview, that he will not be cooperative going forward.

Mr. Lewis's attitude precludes me from being able to conduct a thorough and unbiased professional custody evaluation. Unless I'm able to interview Mr. Lewis and observe his parenting of their daughter, I cannot draw conclusions relative to the best interest of the child. I believe that I must suspend my evaluation in this matter until there is a decision as to whether or not Mr. Lewis needs to cooperate with my evaluation. If it is decided that he does not need to cooperate with my evaluation, I plan to refund to Ms. Hadari the unused portion of her retainer and to end my involvement in this matter.

I am requesting guidance from you in this matter.

Very truly yours,

Edwin A. Rosenberg, Ph.D.

EAR/bk

PREPARED BY THE COURT:

RACHELLE HADARI, Plaintiff, v. KEITH LEWIS, Defendant.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION: FAMILY PART MORRIS COUNTY DOCKET NO. FM-14-608-17 CIVIL ACTION AMENDED ORDER

FILED
OCT 13 2017
Maritza Berdote Byrne, P.J.F.P.

THIS MATTER having been opened to the Court *sua sponte* and for good cause shown;

IT IS ON THIS 13th DAY OF OCTOBER 2017 ORDERED as follows:

1. The Court's September 27, 2017 Order shall be amended as follows:

   10. The Court hereby appoints Dr. Mark Singer to conduct a best interest evaluation. The parties shall contact Dr. Singer within fifteen (15) days of the receipt of this Order and share the cost of the best interest evaluation equally subject to reallocation pending final hearing.

2. All other provisions of the Court's September 27, 2017 Order remain in full force and effect.

Maritza Berdote Byrne

MARITZA BERDOTE BYRNE, P.J.F.P.

DR. MARK SINGER (NJ Licensed Psychologist #35SI00372500)

513 West Mount Pleasant Avenue, Suite 105

Livingston, New Jersey 07039

973-994-7177

Fax 973-994-7411

STATEMENT OF UNDERSTANDING TO PARTICIPATE IN A FORENSIC PSYCHOLOGICAL EVALUATION AND/OR BONDING EVALUATION

Name of Case: HADARI v LEWIS FM-14-608-17

GENERAL INFORMATION:

I have been appointed to complete an impartial forensic evaluation by Judge Berdiote Byrne.

My purpose in conducting this evaluation is to gather information that will enable me to formulate professional opinions and recommendations with respect to custody/parenting that is most likely in the best interests of your child/children. The exact referral questions are dictated by the Court Order. While the fees are paid by you consistent with the Court Order, the work that I am doing will be completed for the Court. Regardless of the source of the fee payments, an impartial evaluator is expected to operate as if he or she was employed by the Court. As an evaluator, I look forward to working with you in a cooperative fashion, knowing that the work being completed is for the Court.

CONFIDENTIALITY:

The principles of confidentiality and privilege do not apply in the context of this evaluation. All of the information provided by you and collateral contacts, in any form, may be shared with other individuals who are involved in this evaluation. By presenting information to others,

information may be verified. Statements made by children may have to be cited in this report and you are encouraged to insure that a child is not mislead to believe that information he/she provides will be held in confidence. Likewise, it is important that you understand that information you provide is not held in confidence and Dr. Singer cannot be responsible for how other individuals may use this information. Furthermore, information obtained from collateral sources will also become a component of this evaluation and may be used for evaluative purposes and shared with others.

Fees:

Fees are based upon an hourly rate of $350 for evaluative and administrative time (including preparing, conducting the evaluation, travel to locations outside of the office, data analysis, report writing, making collateral contacts, phone conversations, and any additional services needed to adequately prepare for and complete the evaluation) and $400 per hour for testimony, including phone testimony, depositions, testimony preparation, travel time, in-court activities, and any legal proceeding. Fees are typically not reimbursable through health insurance.

Failure to cancel an appointment with at least 24 hours notice will result in a no-show fee of $350.

If a service related to testimony is required, a retainer of $1950 for a half day and $3900 for full day is accepted prior to the delivery of that service and at least 1 week in advance. It is my practice that I be provided with a notice of appearance so that I may block out the time for you. I am not available for "stand by" testimony as such an arrangement does not afford you with the opportunity to insure that I am available. When you reserve my time, I am available to you for that time period and billing is completed accordingly.

Should I call for Dr. Singer to be deposed, I agree to provide Dr. Singer with a complete transcript of his deposition at no cost to Dr. Singer.

While there is no typical evaluation, time is billed in 15-minute increments and fees accrue from the time this case file is open as there is considerable time involved in preparing for an evaluation prior to conducting the evaluation. While I am happy to review any background information you and your attorney desire me to review, record review is billable at $350 per hour. It is to your advantage to organize any materials you want me to review and to consult with your attorney about presenting such material. Any material submitted for my consideration becomes a permanent part of my file and cannot be returned. Ideally, any documents or photos will not be the original and all material should be sent from your attorney.

A retainer of $6000.00 (split in accordance with any court directive) is due prior to the initial interview and is to be paid consistent with Court directive. Under most circumstances, the initial appointment will not be scheduled prior to receiving the requested retainer from all responsible

parties. As the evaluation process progresses, if the retainer is fully utilized, the attorney(s) will be notified and work will cease until additional funds to progress with the work are received.

If it should become necessary to report allegations to DCPP or other protective agency, the financially responsible parties will be billed for any time involved in making such a report, including any follow-up time accrued. All state statutes are followed with respect to mandated reporting and this examiner will clearly cooperate with any DCPP investigation.

The performance of evaluation related services by me does not cease once the report is issued. There are often follow-up requirements including, but not limited to phone calls, review of other reports, and other activities related to the publication of the report will be billed accordingly.

LIMITATIONS, RISKS, AND SERVICES NOT PROVIDED:

There are a variety of psychological methods used in assessing comparative custodial fitness and parenting. The methods that I employ have been chosen by me and, in my opinion, reflect the current state of the art in conducting such an evaluation. There is no one best tool or one set criteria. Any questions that you may have regarding the methods you may be discussed during our initial sessions.

The report that I publish is only advisory to the Court and the Court is not obligated to accept my recommendations. In some circumstances, based upon data gathered, I may not be able to offer an opinion to the Court within a reasonable degree of psychological certainty. While this occurs in rare cases, the inability to provide such an opinion does not result in a refund of any expended fees.

Every effort will be made to conclude the evaluation and publish a report in a timely manner. Of course, there may be instances where unforeseen delays arise. You are encouraged to work cooperatively and expeditiously as possible so that any delays are minimized. Consistent with practices, usually no more than 2 months from the point in time of obtaining all relevant data is required for the publication and submission of the report.

I desire to minimize any distress associated with this process. At the same time, there may be times where you feel that you are being interrogated. Please remember, I am obligated to be an impartial evaluator, not a therapist.

I cannot provide any psychological advice to any of the parties I am evaluating. If therapy is desired, I recommended that you consult your attorney. If at any time you have a psychological emergency, please contact 911 or go to the nearest emergency room. In the role of an evaluator, I cannot provide any psychological treatment and cannot provide parenting coordinator functions.

Consistent with the ethical principles of psychology, all test data will be retained by me and not released under inappropriate circumstances and/or without a Court Order.

At any time, should you require legal guidance, please consult with your attorney. It is highly inappropriate for an individual not trained in law to dispense legal advice.

At times, the complexities involved in a particular evaluation may require that I consult with other professionals. You will not be responsible for any fee incurred for my professional consultation and all identifying information regarding individuals involved in the evaluation will be protected.

Should this evaluation require the use of an interpreter, any fees incurred will be paid out of the retainer.

PSYCHOLOGICAL TESTING/INTERVIEW:

When an individual comes to the office for testing and/or an interview, it is expected that, under ordinary circumstances, they will come alone as other individuals may serve as a distraction. If a minor is being brought to the office for testing and/or an interview, it is imperative that the child be transported by a neutral party acceptable to both parents. Neither parent should transport the child to such an appointment unless so agreed upon by the parties and Dr. Singer.

No audio, video, or any other means of electronic recording is permitted. All cell phones must be shut off and cannot be utilized during any of the testing process. Should any unauthorized recording occur, the evaluative process will be terminated.

HOME VISITS:

Some evaluations require a home visit. If such visit is to occur, the time billed includes travel time to and from the home, door to door. In addition, while the home should reflect the routine family environment, any animals that may pose a risk of harm to strangers should be secured.

SUBMISSION OF DOCUMENTS:

Your attorney is probably well equipped to understand what documents would be of value for me as an examiner to have access to. All documents will be retained by myself and not released without appropriate authorization. Under no circumstances should a party involved in this evaluation make an unannounced visit to my office and/or delivery documents without prior knowledge of this examiner. No packages should be left by a door or mail slot as the security of the package cannot be guaranteed. It is also important that, under most circumstances, your attorney provide me with the documents directly.

It is imperative that information provided by an attorney or by yourself is appropriately communicated to any opposing counsel in order to insure for appropriate notification.

Pro Se litigants are held to similar standards that the attorneys are held to with respect to the sharing of information.

OUT OF SESSION CONTACT:

Out of session contact should be avoided. It is not of benefit to you to communicate information about an evaluation to the evaluator in an informal manner. Phone contact must be limited to scheduling and logistical discussions. Under ordinary circumstances, I will not accept over the phone any information deemed relevant to the evaluation.

Any e-mails or electronic communication is not secure and this service does not fall under HIPAA guidelines. Furthermore, unsolicited e-mails may not be acknowledged.

OBTAINING ADDITIONAL INFORMATION:

Individuals being evaluated authorize me to obtain necessary documents and to speak to individuals who I deem as having information needed to complete this evaluation. In most cases, information from professionals will be obtained via phone and/or examination of records. Individuals who are likely to serve as advocates for one party should provide information in writing. Phone contact may be necessary to clarify written information.

As an impartial examiner, I will make the determination regarding the review of information that may be more prejudicial than probative. No illegally obtained items will be reviewed and at no time should any participant violate the law in obtaining information. If information is obtained illegally, guidance will be sought from all attorneys involved and, if this does not resolve the issue, the Court will be consulted. All decisions regarding who is to be evaluated, the extent of any evaluation, and what information is needed to be obtained and reviewed will be made by me in order to fully address the referral issue(s).

If any individual is going to submit a letter on your behalf, the letter must be mailed directly to my office. It is your responsibility to insure that this individual understands that the content of the letter may be shared with other parties involved in this matter. I will accept information via fax and encourage any faxing party to confirm that I received the material. The office fax machine is accessible to other office personnel (psychologist, office staff) and the security of a fax document cannot be guaranteed.

CONTACT WITH ATTORNEYS:

Once appointed as an impartial evaluator, I endeavor to avoid ex parte communications with the attorneys representing litigants. Once my report is forwarded to the Court, I will be happy to discuss issues with the attorneys as directed by the Court and as agreed to by all of the attorneys. Any discussion involving substantive issues must commonly include both attorneys.

After a report is published, any additional information which is provided to Dr. Singer should be in writing and submitted through appropriate channels.

ALLEGATIONS OF ABUSE AND NEGLECT:

I am required by law to report allegations of abuse and neglect in a manner defined by law. If the need to make such a report arises, the report will be made and should not be interpreted to suggest that I support the veracity of any allegation or interpreted to suggest that I am supportive of the individual making such allegation or unsupportive of the individual who the allegation is made against.

POST-EVALUATION DEVELOPMENTS:

In some cases, there is a significant time period between the publication of a report and any legal proceedings. If the lapse of time has a potential bearing upon the validity and reliability of the evaluation, parties may be asked to meet with this examiner. If such a request is issued, it is expected that the parties will cooperate.

PARTICIPATION OF MINORS:

As previously noted, any minor who will participate in an interview and/or testing must be transported to this office by a neutral party and not by either parent or litigant (under ordinary circumstances). In addition, by signing this form, I am giving consent to Dr. Singer to have my minor child/children participate in the evaluation as deemed necessary to address the referral issue(s).

I request that you review this document thoroughly and discuss it with your attorney. The evaluation will not proceed until all parties have expressed their understanding of and willingness to abide by the policies and procedures set forth in this document.

Your signature below indicates that you understand the information contained in this document and will abide by the stated policies. By signing this form you are also waiving privilege with respect to any information in my file concerning this matter, and you are authorizing me to release information, including the report, to the Court, attorneys, and other parties to which I have been directed to release information to by the Court.

Though this must be signed and returned to me along with the retainer, you are encouraged to keep a copy for your records.

PRINT NAME: RACHELLE HADARI

SIGNATURE: Rachelle Hadari

DATE OF BIRTH:

ADDRESS: 3 Tikvah Way, Morristown NJ, 07960

HOME PHONE:

CELL PHONE:

DATE: 11/10/2017

NAMES AND DATES OF BIRTH OF THE CHILDREN: Tzivia Levvis

DR. MARK SINGER
513 West Mt. Pleasant Avenue, Suite 105
Livingston, New Jersey 07039
(973) 994-7177 Fax (973) 994-7411

Mark Singer, Ed.D., Lic. #3725 November 20, 2017

Ms. Freeman, Esq.
Via e-mail

Mr. Lewis, Pro Se
Via e-mail

Dear Mr. Lewis and Ms. Freeman;

This is to confirm that I have received the requested retainer from Mr. Lewis in the Hadari v Lewis matter.

Sincerely,

Mark Singer, Ed.D.
NJ Licensed Psychologist #3725

B"H

Superior Court of New Jersey
Appellate Division - Family Part
Docket No. FM 14-608-17

Keith Lewis
153 E 92nd St
Brooklyn, NY 11212
845-327-8354
Appellant / Defendant, *Pro Se*

Rachelle Hadari,

Respondent / Plaintiff,

Vs.

Keith Lewis,

Appellant / Defendant.

Notice of Motion for:
LEAVE TO APPEAL

An Interlocutory Order of the Superior Court of New Jersey, Chancery Division - Family Part, Morris County

Sat Below:
Honorable Maritza Berdote Byrne

To: Weiner Law Group, 629 Parsippany Rd, Parsippany, NJ 07054

And Morris County Superior Court
56 Washington St
Morristown, NJ 07960

PLEASE TAKE NOTICE that the undersigned hereby moves before the Superior Court of New Jersey, Appellate Division, for an Order granting leave to appeal and deciding:

1) To reverse the trial court's order that I cooperate with Dr. Rosenberg, Plaintiff's private medical expert;
2) Consequently to reverse the trial court's order award of counsel fees to Plaintiff for her most recent motion.

In support of this motion, I shall rely on the accompanying brief.

Date: 1/5/18

(Keith Lewis, Appellant / Defendant)

B"H

Certification of Filing/Mailing

I hereby certify that I have personally delivered an original and 4 copies of this notice of motion and accompanying brief to be filed with the Clerk of the Appellate Division.

In addition, I certify that I served a copy of the same by personally delivering it on this date to Weiner Law Group, 629 Parsippany Rd, Parsippany, NJ 07054, by regular and certified mail.

In addition, I certify that I personally delivered two copies to Honorable Maritza Berdote Byrne, Morris County Courthouse, PO Box 910, Morristown, NJ 07963.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Date: 1/5/18

(Keith Lewis, Appellant / Defendant)

B"H

Superior Court of New Jersey
Appellate Division - Family Part
Docket No. FM 14-608-17

Rachelle Hadari, Plaintiff / Respondent Vs. Keith Warren Lewis, Defendant / Appellant	On Appeal from an Interlocutory Order of the Superior Court of New Jersey Chancery Division - Family Part Morris County Sat Below: Honorable Maritza Berdote Byrne **Civil Action**

Brief and Appendix on Behalf of Keith Lewis, the Defendant and Appellant.

Keith Lewis, *pro se*
153 E 92nd St
Brooklyn, NY 11212
klewis434@gmail.com
(845) 327-8354

Statement of the Facts

Throughout the divorce, I have cooperated with anyone neutral. I worked with rabbis such as Chaim Jachter who guided us through the religious divorce, I cooperated fully and respectfully with court orders concerning child support and parenting time as difficult as it may be, and I even worked with mediation lawyer Adam Berner to attempt to resolve our divorce out of court. Even with Dr. Rosenberg, I have out of respect for the court attended a preliminary session, and informed him that I would continue to attend as long as was required, although making clear that I did not consent to be examined.

And most importantly I have cooperated fully and expeditiously with the court-appointed evaluator Dr. Singer. I immediately contacted the court to rectify the omission of his appointment from the September 27 court order (letter to the court Da27), and immediately thereafter contacted his office to schedule an appointment and pay the retainer (receipt from his office Da41).

Dr. Rosenberg, on the other hand, was chosen and hired by Plaintiff without consultation with me or the Court. This is a fact. Before hiring Dr. Rosenberg, Plaintiff did not communicate with me at all about mutually deciding upon a best interest evaluator, as ordered by the Court April 26.

I have consistently argued his non-neutrality from the day he contacted me, in motion papers and hearings. At the time he was hired, I did not fully understand the law about the appointment and hiring of medical experts, and the distinction between private experts and those appointed as explained in N.J. Rule 5:3-3. I do, however, understand that now, and therefore I demand that I be compelled to attend only a court-appointed, neutral evaluation.

Because a bribe or favor or payment naturally changes how one feels towards the payee, and ultimately how they and their position are considered. And this is how Jewish courts throughout the ages have judged. Indeed, the Talmud relates how Rabbi Yishmael recused himself from a case because it involved judging his own worker who worked quickly, doing more than necessary in his job (Makkos 24a). Was it because he did not know that he was required to act justly? Was he not wise enough? Of course not! He was one of the leading rabbis of his generation. But he knew that a judge needs to be completely neutral and if he has accepted any type of payment or favor then he cannot be.

And this is how I hope the court acts today, in keeping with the spirit of justice and its integrity that characterizes the American legal system.

Conclusion

I have been left with no recourse but to appeal. I have moved for the trial court to reconsider its ruling, explained in detail why I believe it to be mistaken, and even cooperated with it by attending a session with Dr. Rosenberg. But the court continues to force me to be evaluated by Dr. Rosenberg, and even attempts to coerce me into cooperating, forcing me to pay Plaintiff's counsel fees and threatening that I will not even be able to appear at a plenary hearing where my daughter's custody will be temporarily decided. How can the judge make an informed decision on issues of such magnitude when one party is not even represented? Is this justice?

It is not. And I hope that the Appeals Court will rectify this error of judgment. I have faith in the courts of our country and am ready to appeal here and even all the way to the Supreme Court, where justices like the Honorable Neil Gorsuch uphold truth and justice and the rule of law.

N.J. Stat. § 9:2-4

§ 9:2-4. Custody of child; rights of both parents considered

The Legislature finds and declares that it is in the public policy of this State to assure minor children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage and that it is in the public interest to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy.

In any proceeding involving the custody of a minor child, the rights of both parents shall be equal and the court shall enter an order which may include:

a. Joint custody of a minor child to both parents, which is comprised of legal custody or physical custody which shall include: (1) provisions for residential arrangements so that a child shall reside either solely with one parent or alternatively with each parent in accordance with the needs of the parents and the child; and (2) provisions for consultation between the parents in making major decisions regarding the child's health, education and general welfare;

b. Sole custody to one parent with appropriate parenting time for the noncustodial parent; or

c. Any other custody arrangement as the court may determine to be in the best interests of the child.

In making an award of custody, the court shall consider but not be limited to the following factors: the parents' ability to agree, communicate and cooperate in matters relating to the child; the parents' willingness to accept custody and any history of unwillingness to allow

parenting time not based on substantiated abuse; the interaction and relationship of the child with its parents and siblings; the history of domestic violence, if any; the safety of the child and the safety of either parent from physical abuse by the other parent; the preference of the child when of sufficient age and capacity to reason so as to form an intelligent decision; the needs of the child; the stability of the home environment offered; the quality and continuity of the child's education; the fitness of the parents; the geographical proximity of the parents' homes; the extent and quality of the time spent with the child prior to or subsequent to the separation; the parents' employment responsibilities; and the age and number of the children. A parent shall not be deemed unfit unless the parents' conduct has a substantial adverse effect on the child. The court, for good cause and upon its own motion, may appoint a guardian ad litem or an attorney or both to represent the minor child's interests. The court shall have the authority to award a counsel fee to the guardian ad litem and the attorney and to assess that cost between the parties to the litigation.

d. The court shall order any custody arrangement which is agreed to by both parents unless it is contrary to the best interests of the child.

e. In any case in which the parents cannot agree to a custody arrangement, the court may require each parent to submit a custody plan which the court shall consider in awarding custody.

f. The court shall specifically place on the record the factors which justify any custody arrangement not agreed to by both parents.

USCS Fed Rules Evid R 706

Rule 706. Court-Appointed Expert Witnesses

(a) Appointment Process. On a party's motion or on its own, the court may order the parties to show cause why expert witnesses should not be appointed and may ask the parties to submit nominations. The court may appoint any expert that the parties agree on and any of its own choosing. But the court may only appoint someone who consents to act.

(b) Expert's Role. The court must inform the expert of the expert's duties. The court may do so in writing and have a copy filed with the clerk or may do so orally at a conference in which the parties have an opportunity to participate. The expert:

(1) must advise the parties of any findings the expert makes;

(2) may be deposed by any party;

(3) may be called to testify by the court or any party; and

(4) may be cross-examined by any party, including the party that called the expert.

(c) Compensation. The expert is entitled to a reasonable compensation, as set by the court. The compensation is payable as follows:

(1) in a criminal case or in a civil case involving just compensation under the Fifth Amendment, from any funds that are provided by law; and

(2) in any other civil case, by the parties in the proportion and at the time that the court directs—and the compensation is then charged like other costs.

(d) Disclosing the Appointment to the Jury. The court may authorize disclosure to the jury that the court appointed the expert.

(e) Parties' Choice of Their Own Experts. This rule does not limit a party in calling its own experts.