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**OPINION OF THE
SUPREME COURT OF VERMONT
(JUNE 3, 2019)**

SUPREME COURT OF VERMONT

JENNIFER DASLER

v.

TIMOTHY DASLER

Supreme Court Docket No. 2018-301

Appealed from: Superior Court, Orange Unit,
Family Division, Docket No. 74-6-17 Oedm
Trial Judge: Michael J. Harris

Before: Beth ROBINSON, Associate Justice.,
Harold E. EATON, Jr., Associate Justice.,
Karen R. CARROLL, Associate Justice.

In the above-entitled cause, the Clerk will enter:

Husband appeals pro se from the trial court's final divorce order. Both parties were represented by counsel below. Husband challenges the court's award of primary legal and physical parental rights and responsibilities (PRR) to wife, its division of the marital estate, and its maintenance award. We affirm.

The parties were married for approximately five years and they have a child, T.D., born in August 2015. Both parties are young and in good health. Wife works in the clothing industry; husband currently works for

a construction company and pursues a side business as a luthier, making and repairing musical instruments. The parties separated in May 2017 following several incidents that led wife to obtain a relief-from-abuse (RFA) order against husband; husband was also charged with domestic assault. After evaluating the statutory best-interest criteria, the court awarded primary legal and physical PRR to wife based primarily upon wife's role as the child's primary care provider, although two other statutory best-interest factors slightly favored wife as well. The court established a 50-50 parent-child contact schedule consistent with the parties' stipulation. The court divided the marital estate and ordered wife to pay \$300 in monthly maintenance to husband for two years. The court made numerous additional findings and conclusions, discussed in additional detail below. Husband appealed.

In his brief, husband recounts his version of events. With respect to PRR, husband argues that the court ignored or mischaracterized wife's behavior. He asserts that the court should not have found wife credible because she made contradictory statements. Husband further argues that the court made erroneous findings and abused its discretion in evaluating the statutory best-interest factors. He raises numerous claims of error within this overarching argument, including a suggestion that the court was biased against him.

"The trial court has broad discretion in a custody matter, and we must affirm unless the discretion is erroneously exercised, or was exercised upon unfounded considerations or to an extent clearly unreasonable in light of the evidence." *MacCormack v. MacCormack*, 2015 VT 64, ¶ 4, 199 Vt. 233 (quotation omitted).

“Given its unique position to assess the credibility of witnesses and weigh the evidence, we will not set aside the family court’s findings if supported by the evidence, nor its conclusions if supported by the findings.” *Porcaro v. Drop*, 175 Vt. 13, 15 (2002) (quotation and alteration omitted). In considering the court’s factual findings, we “view[] the evidence in the light most favorable to the prevailing party and exclud[e] the effect of modifying evidence.” *Cabot v. Cabot*, 166 Vt. 485, 497 (1997) (quotation omitted).

At the outset, we emphasize that husband essentially asks this Court to reweigh the evidence and reach conclusions in his favor. It is the exclusive role of the trial court to assess the credibility of witnesses and weigh the evidence. *Kanaan v. Kanaan*, 163 Vt. 402, 405 (1995). We do not reweigh the evidence on appeal. The court applied the appropriate statutory standard in reaching its conclusion, its findings are supported by the record, and the findings support the court’s conclusion.

We begin by addressing husband’s challenges to specific factual findings, but we do not directly address all of husband’s challenges to the court’s assessment of the weight of the evidence. Husband asserts that the court erred in finding that after the parties’ child was born in August 2015, wife had “no overnight work travel” for the remainder of that year. This finding is supported by the evidence. Wife testified that in 2015, the parties traveled to Boston for a work/family trip, staying in an apartment next door to husband’s family. She stated that husband and the child visited with husband’s family during the day while she worked, and that she returned to the apartment in the evening. Even if this finding was not

supported by the record, the error would be harmless. The court recognized that both parents played a significant caregiving role for the child prior to their separation in May 2017. The court noted, however, that wife spent considerable time attending to child-rearing activities despite working full-time and that she was more active in setting up childcare and transporting the child to and from childcare. To the extent that the parties presented conflicting testimony on this issue, the court credited wife's testimony. The court also found that wife did more of the child-rearing tasks between May 2017 and February 2018. Looking over the child's entire lifetime, the court found that wife had been her primary caregiver. While husband disagrees with the court's conclusion, he fails to show error. *See, e.g., Meyncke v. Meyncke*, 2009 VT 84, ¶ 15, 186 Vt. 571 (explaining that arguments that amount to nothing more than disagreement with court's reasoning and conclusion do not make out case for abuse of discretion).

Husband also argues that the court erred in making a finding about the temporary visitation schedule that was in place following the alleged domestic-violence incidents. The court found that [a]lthough voluntary increased temporary visitation for [husband] did not occur, . . . the Parties generally abided by the temporary [parent-child contact] schedule." Husband's argument on this point is not clear but he appears to suggest that wife obstructed the "normalization" of contact during this period. In a similar vein, he argues that wife filed certain motions concerning visitation during this period in bad faith.

The trial court found otherwise. It explained that wife obtained a final RFA order against husband and

filed motions through February 2018 seeking to limit husband's visitation, citing safety concerns. While the court ultimately determined that supervised visitation was not required, it found that wife had not knowingly made false claims against husband and she had pursued supervised visitation based on her subjective belief that safety concerns required it. Since February 2018, wife had moderated her approach and tried to co-parent with husband. While the parties had strained communications with one another, the court did not find that either parent had interacted with the child in ways to undercut her relationship with the other parent. The parties had also improved their communication with one another. Husband fails to show that the court erred either in its findings or its evaluation of the parties' "ability and disposition . . . to foster a positive relationship and frequent and continuing contact with the other parent." 15 V.S.A. § 665(b)(5).

To the extent husband suggests that the court was biased against him because it found wife's testimony credible or awarded primary PRR to wife, we reject that argument. The fact that husband disagrees with the result does not demonstrate bias. *See Gallipo v. City of Rutland*, 163 Vt. 83, 96 (1994) (stating judicial bias cannot be demonstrated based on adverse rulings alone); *Ball v. Melsur Corp.*, 161 Vt. 35, 45 (1993) (stating that "bias or prejudice must be clearly established by the record," and "contrary rulings alone, no matter how numerous or erroneous, do not suffice to show prejudice or bias"), *overruled on other grounds by Demag v. Better Power Equip., Inc.*, 2014 VT 78, 197 Vt. 176. We also reject husband's varied

challenges to wife's credibility as we leave credibility assessments to the trial court.

Additionally, we reject husband's attempt to relitigate the incident that led to the RFA order against him as well as a criminal domestic-assault charge. The court credited wife's version of events, about which she testified at the final divorce hearing, for purposes of the divorce order. It did not err in considering husband's conduct and the RFA order in evaluating the statutory best-interest factors. *See* § 665(b)(9) (in evaluating child's best interests, court must consider "evidence of abuse, as defined in [15 V.S.A. § 1101], and the impact of the abuse on the child and on the relationship between the child and the abusing parent"). The court explained that the child was present during both incidents at issue, including when husband twice lifted a heavy tabletop and slammed it down and when husband, who was angry and swearing, grabbed wife by the arms and threw her to the ground. The court found that the May 2017 incidents had secondary impacts on husband's relationship with the child as well, including limits on visitation for a nine-month period. These were relevant considerations.

We have considered all of the arguments that husband raises in connection with the PRR award, including that his due process rights were violated and his arguments challenging the court's findings that wife's mental-emotional condition is stable, and we find them all without merit. Husband fails to show that the court abused its discretion in awarding primary legal and physical PRR to wife.

We next consider husband's assertion that the court's division of the marital estate was inequitable. Again, husband focuses on weight-of-the-evidence

issues. He challenges the court's valuation of various items, including vehicles, tools, and musical instruments. He also asserts, among other things, that the court erred in calculating the parties' income, determining the length of their relationship, considering contributions to earning power, and dividing the equity in the marital home.

The family court has broad discretion in dividing the marital property, and we will uphold its decision unless its discretion was abused, withheld, or exercised on clearly untenable grounds. *Chilkott v. Chilkott*, 158 Vt. 193, 198 (1992). The party claiming an abuse of discretion bears the burden of showing that the trial court failed to carry out its duties. *Field v. Field*, 139 Vt. 242, 244 (1981). "[T]he distribution of property is not an exact science and does not always lend itself to a precise mathematical formula; all that is required is that such distribution be equitable." *Victor v. Victor*, 142 Vt. 126, 130 (1982).

Husband fails to show that the court abused its discretion here. In making its property award, the court made the following findings. The parties had distributed all moveable personal property, including vehicles. They contested the values for some personal property items, particularly those involved with husband's luthier business. Apart from the parties' retirement accounts and wife's current bank accounts, the main asset was the marital home, which had equity of \$80,968.

In deciding how to divide the marital estate, the court considered the factors set forth in 15 V.S.A. § 751(b). It determined that the marriage was relatively short, lasting just under five years. It recognized that the parties had periods of cohabitation before the

marriage but found that the parties separated for a time after their initial cohabitation and that there was no indication at that time that they would resume their relationship. The court determined that the parties' lives became intertwined as a couple when they got married and purchased a home. It noted that they kept separate bank accounts until this time. The court has discretion concerning the weight to be given to the period of cohabitation prior to marriage in considering the length of the relationship. *See MacKenzie v. MacKenzie*, 2017 VT 111, ¶ 13, 206 Vt. 244 ("The superior court has broad discretion in considering each of the statutory factors [in § 751(b)], including how to calculate the length of the marriage under the circumstances of the case.").

The court found that the parties were young, healthy, and able to work in their respective professions. Wife had maintained steady work in her field and she had specialized skills that she could continue to use. She currently earned about \$80,000 per year. Wife had a greater earning capacity than husband and she was more likely than husband to accumulate capital assets and income in the future. Husband had the skills and abilities to run his own luthier business but thus far, he had not been able to earn more than a modest income at this endeavor. Husband also had carpentry skills and was currently earning about \$33,500 per year doing carpentry work. The court explained that during the marriage, husband chose to work thirty hours per week, rather than the offered forty, and used the remaining workdays to conduct his luthier business. Husband thus earned less income for the household than he would had he worked full-time. Finances were tight for the parties and the luthier

business earned no appreciable income between 2012 and 2017. Wife tolerated but did not like husband's choice. The court found that wife's forbearance in this regard allowed husband to further his luthier training skills while wife brought in the bulk of the household income. After the parties' child was born, husband chose to continue devoting his time to the luthier business, requiring the parties to pay for childcare on the days he was not working at his other job.

As indicated, the marital home had about \$81,000 in equity. Wife contributed about \$6000 to the purchase of the home. The court found that husband had contributed more "sweat equity" to the home than wife, but it could not track the impact of such labor on the home's fair market value in any reasonably accurate manner. The parties had approximately \$50,000 collectively in retirement accounts. Wife had about \$10,000 more in her retirement account than husband, but the court found that husband had cashed in an inherited IRA during the separation period.

Husband had physical business assets—specialized wood, tools, instruments, and accessories—that collectively had significant value. The court found that husband had valued his tools at \$4350, and it used that figure. Husband had also valued his instruments at \$43,660, which included three prized handmade violins worth \$20,000. Husband testified that the \$20,000 custom violin values were the full retail sale value for these custom instruments, which would be difficult to obtain at any point in time. The court recognized that husband's musical instrument inventory was not an asset that was readily liquidated for its full (potential) retail market price. Mindful that husband had not been able to regularly sell his custom violins during

the marriage, it adjusted the musical instrument figure from \$43,660 to \$33,660 for personal property valuation purposes. Taking the lower value into consideration, the court found that husband was receiving tangible personal property with a fair market value of approximately \$22,000 more in value than wife.

Based on these and other facts, the court awarded each party the personal property in his or her possession and awarded each their respective banking and retirement accounts. Each party received a piece of the child's artwork. Husband was awarded his tools, parts, wood, instruments and accessories, as well as any work-in-progress or billing invoices associated with his luthier or violin-selling business. Each party was awarded his or her respective vehicle and the court found that a third vehicle, a RAV4, had "minimal value to the extent it has not yet been junked or sold for any residual value." The court surmised that husband might have traded this car in to obtain his current vehicle. The court awarded wife the marital home and the obligations associated with the home. It awarded husband a cash payment of \$24,000, secured by the marital home and linked to its refinance and/or sale. Finally, the court ordered wife to pay husband \$300 in monthly maintenance for two years.

Husband fails to show that this division of assets was inequitable. He claims the right to "family heirlooms, family letters, objects made by family, and . . . the mutually agreed upon items" but there is no evidence before us that husband did not in fact receive those items nor is there an explanation as to why the failure to award such items to him renders the court's decision inequitable. Husband notes that wife had more money in her accounts than he did, but the court

was mindful of this fact. He fails to show that he raised any arguments about digital property or "privacy of accounts" below, but even if he had, this would not show that the award is inequitable.

As to the valuation of the vehicles, husband asserts that wife's car has more equity than his car. In its decision, the court recognized that husband asserted that wife's car had a certain fair market value and no debt. The court instead accepted wife's assertion that there was a loan against the car and it accepted her valuation of the vehicle. It noted that the difference in the court valuation of her car had no appreciable weight in the property division and maintenance award. The court was simply letting each party keep his or her own vehicle and pay all debt associated with it. As to the RAV4, the fact that wife testified that she obtained \$800 for it does not undermine the court's finding that it had "minimal value" and the fact that the court's surmise was incorrect is immaterial.

The court did not err in valuing husband's musical instruments or considering the value of the instruments he acquired during the separation period. Husband offers no legal support for this latter argument. *Cf.* 15 V.S.A. § 751(a) ("All property owned by either or both of the parties, however and whenever acquired, shall be subject to the jurisdiction of the court."). The court provided a reasonable explanation for why it reduced the value of these items. We note that husband was awarded his musical instruments.

Husband also argues that the court erred in valuing his tools. To the extent that the court made a mathematical error adding up the values provided by husband, we conclude that an \$800 difference does not render the court's division of the marital estate

inequitable. As the trial court emphasized at the outset of its decision, "the distribution of property is not an exact science" and "all that is required is that such distribution be equitable." *Victor*, 142 Vt. at 130. We note that husband was awarded his tools. We reject husband's remaining arguments in this vein, including his challenge to the court's recognition that wife made a \$6000 down payment on the home and the court's inability to value husband's sweat equity. Again, these are challenges to the court's evaluation of the weight of the evidence. We conclude that the court's division of the marital estate, including its division of the equity in the home, was equitable.

Husband next appears to challenge the court's maintenance award. He argues that the court erred in evaluating wife's ability to meet her reasonable needs while meeting his need for maintenance and determining the length of the relationship. Husband argues that wife should have been required to downsize and restructure her debts so that she could pay more maintenance. He questions why his child-support obligation was not included in the calculation and argues that he incurs unreimbursed travel and tool costs for his job. He argues that in the period that preceded the marriage, he sacrificed his own earning power by relocating to Vermont.

The court may award maintenance when it finds that a spouse lacks sufficient income and/or property to "provide for his or her reasonable needs" and the spouse is unable to support himself or herself "through appropriate employment at the standard of living established during the civil marriage." 15 V.S.A. § 752 (a); *Chaker v. Chaker*, 155 Vt. 20, 24-25 (1990). The maintenance must be in the amount and for the

duration the court deems just, based on the consideration of seven nonexclusive factors. *See* 15 V.S.A. § 752 (b). Once the family court finds grounds for awarding maintenance, it has broad discretion in determining the duration and amount. *Chaker*, 155 Vt. at 25. A maintenance award will be set aside only if there is no reasonable basis to support it. *Id.*

The court explained the basis for its maintenance decision in detail. We do not recount all of the court's findings here. In material part, the court found that husband lacked sufficient income to pay his reasonable expenses and that he could not support himself at the standard of living established during the marriage. The court explained why it was not considering child-related expenses in trying to review husband's expenses and needs. It also explained how it determined the duration of the relationship, as reflected above, reaching a decision that was within its discretion. The court considered wife's income and expenses and concluded that she lacked available income to make large maintenance payments. The court looked at the maintenance guidelines provided by statute. It recognized that the parties had significant earning capacity differences and that husband would have more difficulty than wife in meeting his reasonable monthly expenses. The court determined that it was appropriate to have wife pay lower monthly payments than the guidelines and maintenance factors might otherwise suggest, but to continue those payments for a longer period than might be typical for a five-year marriage. It found wife was more likely to be able to afford moderate sums for a slightly longer period than higher monthly amounts for a shorter period.

Husband fails to show that the maintenance award lacks a reasonable basis. While husband would like wife to be forced to “downsize,” the court reached a different conclusion. Husband would similarly like the court to have found that the parties’ relationship was longer than five years. Again, the court reached a contrary conclusion that is grounded in the evidence. We find no error in the court’s evaluation of the parties’ incomes. We note, moreover, that the court used an income figure for wife that included her expected raise thus bringing her income above her current salary. The court considered all of the relevant statutory factors, including husband’s reasonable expenses, and we find no abuse of discretion. Even if not explicitly rejected in this decision, we have reviewed all of husband’s arguments and find them all without merit. This includes husband’s arguments as to contributions to earning power and his assertion that wife should pay his attorney’s fees based on “abuse of process.”

Affirmed.

BY THE COURT:

/s/ Beth Robinson
Associate Justice

/s/ Harold E. Eaton, Jr
Associate Justice

/s/ Karen R. Carroll
Associate Justice

**FINDINGS AND ORDER OF
THE SUPERIOR COURT OF VERMONT
(AUGUST 17, 2018)**

STATE OF VERMONT
SUPERIOR COURT FAMILY DIVISION
ORANGE UNIT

JENNIFER DASLER,

Plaintiff,

v.

TIMOTHY DASLER,

Defendant.

Docket No.74-6-17 Oedm

Before: Michael J. HARRIS, Superior Court Judge.,
Hon. Joyce MCKEEMAN, Assistant Judge.,
Victoria N. WEISS, Assistant Judge.

On 6/11/18, 6/12/18 and 7/2/18 the court conducted a final divorce hearing in this matter. Plaintiff, Jennifer Dasler ("Ms. Dasler" or "Plaintiff"), was present with her counsel, Attorney John B. Loftus, III. Defendant, Timothy Dasler ("Mr. Dasler" or "Defendant"), was present with his counsel, Attorney Todd Steadman. The parties are collectively referred to in this matter as the "Parties". Contested issues for the final hearing were property and debt divisions, Mr. Dasler's request for spousal maintenance and a final parental rights

and responsibility ("PRR") and parent child contact ("PCC") order.

Based on the orders and pleadings in the record, and the evidence presented at the hearing, the court makes the following findings of fact and conclusions of law:

1. The Parties married in Quechee, Vermont in August 2012. They separated in May 2017.

2. They have lived separate and apart since that time lived and both resided in Orange County, Vermont, although Mr. Dasler now lived in New Hampshire. There is no reasonable probability that the Parties will resume marital relations.

3. The Parties have a daughter, Tenley Dasler (DOB 8/27/15) ("Tenley"), born during the marriage.

4. Both Parties seek to waive the nisi period.

Background-Ms. Dasler

5. Jennifer Dasler was born 5/6/83 and she is 35 years old. She graduated high school at Oxbow Union (2001), and attended Lasell College in Newton, MA where she earned a BA degree in fashion design and production in 2005.

6. Ms. Dasler's education and work experience allow her to work in the clothing and fashion design from the design stages right through production of garments.

7. After graduation she worked for about 18 months at a Massachusetts company that made lingerie (Bennett & Co.).

8. Ms. Dasler then worked (April 2007 to February 2010) for a women's apparel catalog company (Redcats USA) doing sourcing and design, based in greater Boston.

9. By 2010 she wanted to get out of the city, and landed a job in March 2010 with the Vermont-based Ibex clothing company. As noted below, she worked at Ibex until being laid off in November 2017 as the company had an economic downturn. The company went out of business in early 2018.

10. Following a three month job search, Ms. Dasler started work at the Cabot Hosiery company in Northfield, Vermont. Further details are provided later in this opinion.

Background—Mr. Dasler

11. Timothy Dasler has a DOB of 11/16/80 and is in good health.

12. Mr. Dasler grew up in Wisconsin, where he still has family.

13. After high school he completed a two year technical creditation program (Southeast Technical College in Minnesota) focusing on the making and repair of musical instruments.

14. In 2003 he went to work for the Johnson String Instrument ("Johnson") in the Boston area, doing violin repairs and met Ms. Dasler in 2004.

15. Mr. Dasler ceased his Johnson employment about 2 to 3 years later after they failed to provide training he was promised. He earned \$15/hour at the company and it had benefits.

16. He returned to Wisconsin for a time, and later returned to the Boston area (Jamaica Plain, MA) and sold cars, and was later laid off.

17. As he prepared to resume his relationship with Ms. Dasler (described elsewhere in this opinion) he took a temporary census bureau worker position.

18. After Ms. Dasler moved to Vermont the Parties soon moved in together.

19. Apart from Mr. Dasler's self-employment work in designing and building instruments and doing some private repairs, Mr. Dasler had other employment relating to his skills in making and repairing stringed instruments.

20. Mr. Dasler worked for a time for the Vermont Violin Shop company, which then had Burlington and Lebanon, NH locations. Mr. Dasler made \$15/hour and the position involved travel between the companies' three locations.

21. Eventually the position he was performing was eliminated.

22. Starting in or around 2011, Mr. Dasler resumed private studies in instrument design/construction with a reknown Boston instrument maker, Marilyn Wallin. He worked with her one to two times a week from 2011 until sometime in 2012.

23. In 2012, Mr. Dasler proposed working part time for the Ellis Music Company. Ellis Music primarily rents musical instruments on a large scale to school students. Mr. Dasler was hired to do instrument repairs, set up and other tasks. Although offered full time employment, he wanted to limit his time working

for them to 30 hours (three 10-hour days), to allow him to pursue his own luthier business goals.

24. Mr. Dasler quit Ellis Music 3/23/17 due to his belief they were using unethical business practices. He testified for example he was asked to set up and send out a cello with a defective neck that could injure a user and told not to collect tax on some materials used in repairs, and some of his repairs were sent out incomplete and/or uninspected.

Parties' Early Years—Pre Marriage

25. The Parties met in 2004, when Ms. Dasler was 21 years old or so and still in college. She was living at the time in a Waltham, MA one bedroom apartment. Mr. Dasler had an apartment in the same building.

26. The Parties started to date by Spring 2005. Mr. Dasler was working at the Johnson String Instrument company at the time.

27. They started to live together by summer of 2005. During the time they lived together in apartments, Mr. Dasler wanted to rent two bedroom units. He wanted to use the second bedroom as a woodworking area for his instrument-related repair and building-design work. Ms. Dasler was okay with renting such apartments and using second bedrooms in that manner.

28. The Parties shared the apartment rent and utilities on a 50/50 basis.

29. Over the next few years the Parties moved to different apartments. Some of the moves put one party or the other closer to his or her job, or involved

neighborhood safety concerns. There may also have been differences in the size, layout and amenities of the apartments that also played a role as the Parties made moves from Waltham to Somerville, MA, to Melrose, MA to Bridgewater, MA.

30. By this time it was Summer and into early Fall, 2007. Mr. Dasler quit his Johnson String Instrument job and went to see family in Wisconsin for a few months. Around this time Mr. Dasler pursued a claim against his former employer that was not successful. As between the Parries, their relationship was strained. Tight finances was one category of the issues. Mr. Dasler moved out in September to October, 2007, and Ms. Dasler lived in the apartment alone and completed the lease period through July 2008.

31. At this point the Parties were no longer going out.

32. Ms. Dasler then got an apartment (Sharon, NH) by herself in July 2008 and was still working in the greater Boston area.

33. As noted by February 2010, Ms. Dasler sought to leave the Boston area and by March 2010 had accepted a job offer from Ibex. She moved in February 2010 to Wethersfield, VT and rented an apartment on her own.

34. By early 2010 Mr. Dasler was seeking to resume his relationship with Dasler. She wanted him, among other things, to have employment or a source of regular income. He got a temporary job as a census worker, and moved in with Ms. Dasler in May 2010.

35. During the time the Parties resumed living together, they split rent and utilities for the apartment. They kept separate bank accounts.

36. Before the marriage, Ms. Dasler, who had health care benefits from her Ibex job, was able to add Mr. Dasler as an insured as the policy or coverage plan allowed coverage for unmarried domestic partners.

37. During this period, Ms. Dasler worked at Ibex, and after Mr. Dasler's census worker job ended, he was employed by Vermont Violins for about two years.

38. Mr. Dasler started his job at Ellis Music a few months before the Parties married.

39. Mr. Dasler's Ellis Music job became one bone of contention for the Parties.

40. Mr. Dasler was offered full time work, but only accepted 30 hours of work a week. He wanted time to work on his luthier/ instrument building and design skills and emergent business. As noted below after the Parties married and Tenley was born Ms. Dasler wanted him to accept the offered 40 hour/week work being offered.

41. The Parties married in August 2012.

The Marital Residence Acquisition (September 2012)

42. In September 2012, the Parties purchased their home at 74 North Road, Vershire, Vermont (the "Marital Home"). Ms. Dasler has since that time continuously lived there.

43. The Marital Home was purchased for \$170,000. (Tr. Ex. 2). The month before the property was appraised for \$200,000 (Tr. Ex. 3) by Vermont appraiser Bruce Taylor.

44. At the time the home was purchased Mr. Dasler had insufficient or poor enough credit and/or income. Consequently, when the home was purchased Ms. Dasler was the sole borrower. To accomplish the purchase she contributed just over \$11,000 from her funds towards the down payment and closing expenses (Tr. Ex. 2). Mr. Dasler lacked savings or funds to contribute to the home acquisition costs.

45. Because the Daslers got \$5,000 back from the seller at closing, as a credit, a portion of the sums shown expended by the Daslers towards closing was ultimately reimbursed by the sellers.

46. The Marital Home was purchased within the month of the marriage and was obtained in a "short sale".

September, 2012—August 2015 Period

47. During the early years of the marriage, before Tenley was born, Ms. Dasler worked full time (Ibex), and Mr. Dasler worked part time for Ellis Music and pursued his luthier skills development/ business.

48. The Parties maintained at first separate checking or bank accounts.

49. After the marriage they added a joint bank account. They each still deposited paychecks to their individual accounts, but on a roughly monthly basis tallied shared household related expenses (mortgage, food, utilities) and deposited sums into their joint account to equalize their contributions to such expenses.

50. Additionally each Party maintained his or her own individual account(s) to pay for their car related expenses and personal expenses. Ms. Dasler's work-

provided medical plan provided health insurance for the couple and she paid the employee/couple premium share.

51. Ms. Dasler gave Mr. Dasler her password and electronic access information for her personal account, as well as allowed him access to the paper statements. He did not give her access to statements for his personal accounts.

52. Throughout the August 2012—August 2015 period Mr. Dasler worked part time and his self-employment activities, to work as a luthier and develop a private instrument design/ building company, yielded negligible income, as described later in this opinion.

53. Around Christmas, 2014 the Parties learned Ms. Dasler was pregnant. In the Winter of 2014-15 and into Spring 2015 they made some house improvements so that work would be done before they had a child.

54. Mr. Dasler did some interior painting.

55. A second story deck project was undertaken, that included demolishing an existing deck, constructing a new one, changes to an entrance door, and ancillary work, including work on some of the home's siding. (See Tr. Ex. 5)

56. Mr. Dasler and Ms. Dasler's father and uncle demolished the old deck.

57. A hired contractor did some rot repair, laid new deck footings, and installed the framing (including deck posts) for the new deck. The contractor was paid from Ms. Dasler's earnings.

58. Mr. Dasler laid the deck surface and railings, and worked on the new entrance area and some of the siding work.

59. The deck was done by summer 2016. The court cannot determine to what extent it may have increased the fair market value of Marital Home.

60. Other 2012–2015 home maintenance/improvement projects included: Spring 2013 stripping, sanding and refinishing siding on the west side of the house (Parties performed labor); similar work on the south side of the house; sanding and re-finishing of first story's hardwood floors (labor performed by Parties and Ms. Dasler's parents).

61. The house siding work was normal and regular maintenance needed for the type of wood siding that was installed on the Marital Home when the Parties decided to purchase it in 2012. To the extent the siding and floors were not in pristine condition in September 2012 at the time of such purchase, the short sale \$170,000 purchase price and \$200,000 appraised value (Tr. Exs. 1 and 2) presumably reflected the home's condition.

August 2015 Birth of Tenley and Early Period (to May 2017)

62. As noted Tenley was born in August 2015. Mr. Dasler was working at Ellis Music three days a week. Ms. Dasler was on maternity leave from August to November 2015 and provided the primary care for Tenley when Mr. Dasler worked at Ellis Music or worked in his home shop on Thursdays and Fridays.

63. Tenley attended a daycare in West Fairlee, VT from November 2015 to February 2016 five weekdays

per week (8:30 am to 5:00 or 5:30 pm). Ms. Dasler did the bulk of the transport to and from the day care provider.

64. Transporting Tenley to and from the day care was a source of friction. Ms. Dasler wanted assistance, especially on the days Mr. Dasler was not working at Ellis. He felt the center was close enough to Ms. Dasler's commuting path to and from work so she should do the pickups and drop offs. Mr. Dasler agreed to do some of the Thursday and Friday morning drop offs, but was inconsistent.

65. Ms. Dasler did some evening computer work, from home, for her Ibex job. She would do that work after Tenley was in bed for the night, with possible rare to uncommon exceptions if a deadline loomed.

66. Ms. Dasler had to work an occasional weekend day but if so, she got "comp time" to take corresponding time off during the weekdays.

67. Ms. Dasler's Ibex job also required occasional weekend or evening work and travel.

68. In 2015 Ms. Dasler had no overnight work travel after Tenley was born (Tr.Ex.6). She was on family leave until November of that year.

69. In 2016 Ms. Dasler had 27 nights of overnight work travel (an average of 2 per month). Ms. Dasler's mother provided day or overnight care of Tenley for nine of those 27 days. (*Id.*)

70. In 2017, presumably up to the separation (or certainly Ms. Dasler's November 2017 Ibex lay off), she had 10 nights of overnight work travel. The grandmother provided care for three of those days or nights. In this same period Mr. Dasler spent a week in

South Carolina and Ms. Dasler was responsible for Tenley's care. (*Id.*)

71. Mr. Dasler's 10 hour shifts at Ellis Music and responsibilities there, meant he worked portions of evenings after Ms. Dasler got home from work and had picked up Tenley.

72. As to household chores, Ms. Dasler did the bulk of the shopping and cleaning, although Mr. Dasler did shopping and meal preparation on Thursdays and Fridays. Ms. Dasler did the laundry and housecleaning was shared. Mr. Dasler was on trash duty. At one point after Tenley was born and Ms. Dasler returned to work, a housecleaner was hired.

73. On or around March 23, 2017, Mr. Dasler quit his Ellis Music job. (*see further description below*)

74. The voluntary quit promptly became a source of friction for the Parties. The Daslers were already watching their money, even though they collectively earned about \$100,000 a year at the time. (*See Tr. Ex. 4, 2016 returns*). The job quit reduced their household income by about 35% overnight. (*Id.*)

75. Ms. Dasler urged Mr. Dasler to promptly find another job.

76. Following Mr. Dasler's March 2017 quitting of his job, Tenley remained in day care and Ms. Dasler was providing the bulk of the day care transportation.

77. Marital tensions became high. The frequency of mutual arguments increased.

May 12, 2017 Incident and Parties' Separation

78. On May 12, 2017 the Parties argued over who would take Tenley to day care. Ms. Dasler and Tenley

were seated in the eating area having breakfast. They were seated next to an approximately 3' X 5'-to-6'-sized table with a granite table top and wooden legs and frame. (Tr. Ex. 5).

79. Mr. Dasler stated his desire or need to get away by himself, and Ms. Dasler agreed.

80. An argument again ensued, and Mr. Dasler twice lifted the heavy table top from the long end, tilting it toward Ms. Dasler and the child, and slammed the table down. (Tr. 5, *see* pp. 2 and 3)

81. Tenley became very upset. Ms. Dasler angrily told Mr. Dasler he should leave and took Tenley upstairs to a bedroom.

82. Mr. Dasler followed Ms. Dasler upstairs, took Tenley from Ms. Dasler and when asked where he was going with her, reported he would take her to the day care.

83. Ms. Dasler said she would do so, and Mr. Dasler then stated he would take Tenley for a walk and left the home with her.

84. After Mr. Dasler returned to the home, Ms. Dasler took Tenley to the day care. While ruminating on the situation, she called her mother and Safeline. The marital tensions were escalating, and she decided to leave work early to pick up Tenley. Mr. Dasler had an angry outburst in front of the child and was stating he needed a break.

85. Ms. Dasler called Mr. Dasler and eventually reached him. Mr. Dasler stated he had already picked Tenley up and was going to take her camping. Ms. Dasler objected and asked where Mr. Dasler and Tenley were and he at first refused to tell her.

86. He then told her he was at Groton State Park (about a 90 minute drive from the Dasler home).

87. Shortly after that call Mr. Dasler and Tenley returned home. Ms. Dasler confronted Mr. Dasler about the untrue information about his whereabouts and he stated he still wanted to take Tenley camping. It was near Tenley's bed time, and Ms. Dasler suggested he take the camping trip without the child so the child's routine would not be disrupted.

88. Mr. Dasler persisted, stating his firm plans and intent to take Tenley. Ms. Dasler persisted in her position and said she would take Tenley for a walk to the nearby park while Mr. Dasler packed things to go camping by himself.

89. Mr. Dasler followed Ms. Dasler and Tenley to the park. The argument over whether Tenley would go camping or stay at home became more angry and heated. Mr. Dasler tried to physically pick up and take Tenley and Ms. Dasler resisted by placing herself between the child and father.

90. In the argument, Mr. Dasler, who was angry and swearing, grabbed Ms. Dasler by the arms and threw her to the ground, but left without Tenley.

91. The police were called and investigated, speaking to both Parties. Mr. Dasler was arrested, and eventually charged with domestic assault, which charge is currently pending.

92. The 5/12/17 incident occurred early that Friday evening. On Monday 5/15/17 Ms. Dasler applied for and received a temporary, and later final, relief from abuse (RFA) order.

93. The RFA order and criminal conditions of release resulted in Mr. Dasler being required to vacate the home and limited the Parties' contact as to this action and certain PCC visitation for Tenley. Those events started the Parties' separation.

94. This action was filed 6/13/17.

95. By 6/20/17 a fourth amended extended temporary order was filed in the RFA action (Tr. Ex. 7) that included a stipulated interim PCC schedule.

96. Mr. Dasler was to get two visits a week for two hours at the Upper Valley Aquatic Center or the Montshire Museum. The visits were unsupervised, but he was not to leave those premises. (*Id.*)

97. Mr. Dasler was also to "obtain anger management evaluation through HCRS and follow all recommendations by the evaluator". (*Id.*)

98. As to PCC the interim stipulated order contained the Parties' agreement and acknowledgment that "they do not expect or contemplate that contact between Timothy and Tenley will continue on the schedule currently agreed herein, and that they will work to normalize that contact as this matter progresses". (Tr. Ex. 7).

99. The interim PCC order allowed the Parties to have phone, electronic and third party contact and communications. (Tr. Ex. 7)

100. For a variety of factors, discussed below, such "normalize[ation]" did not occur.

101. Although voluntary increased temporary visitation for Mr. Dasler did not occur, and the issues noted below arose, the Parties generally abided by the

temporary PCC schedule. While the limited visitation under the temporary PCC order was available, Mr. Dasler used it. Some visits were cancelled due to inclement weather and/or Tenley's interim illnesses, and reasonable make up time offered. Some requests of Mr. Dasler to shift his days were accommodated. (*See* Tr. Ex. 8)

102. The fact the Parties have reasonably accommodated each other on visitation issues is reflected by the fact the Parties have agreed to a 50/50 visitation order, and in essence stipulated to the PRR-PCC order details except who will hold PRR, holiday and vacation scheduling, and certain visitation pickup/drop off details. *See* "Partial Proposed Order" Agreement on PRR-PCC, submitted on 7/23/18.

103. Certain issues recur in the Parties' efforts to co-parent to date that may impact the PRR decision. The court notes that the entire time period during which the Parties have attempted separate/ parallel parenting, they have operated under the RFA Order and the pendency of the domestic assault charge and associated conditions of release. While the pre 5/12/17 martial relations were strained and the marriage might not have survived, it was catapulted onto the divorce action path in a sudden and precipitous way with no pre-planning by the Parties how they might co-parent Tenley following their separation.

104. A reoccurring theme is Ms. Dasler's fear of Mr. Dasler's anger and/or violence (or edge-of-violence) outbursts and Mr. Dasler's fear that Ms. Dasler unreasonably viewing him in such terms and seeking to use each encounter to "gather the goods" on him to

accumulate data for more favorable PRR-PCC treatment. These themes and factors are shown, and explained in part, in several ways:

a. Interim Temporary PCC Order Proceedings

105. Between July 2017 and 2/28/18, Ms. Dasler filed five sets of motions (seven in all) (MPR's 5, 7, 8, 9, 11, 15 and 16 as listed on the court docket), seeking to suspend and modify Mr. Dasler's visitation. *See* 7/20/17 Order to Suspend Visitation; 12/6/16 motion and emergency motion to modify visitation; 12/12/17 motion to reconsider decision on motion to modify PCC; 1/2/18 renewed motion to modify PCC; 2/28/18 regular and emergency motions to correct and reconsider order on motion to modify PCC).

106. The court held proceedings on these matters and is not utilizing its fact findings from those hearings.¹ The topics of concern in those proceedings included issues as to a Montshire Museum fall by a museum display area; use of the Aquatic Center stairway; outside clothing choices in winter; Facetime use and alleged comments by Mr. Dasler; video recording of Ms. Dasler, and other concerns.

107. During this time period, Mr. Dasler contested both Ms. Dasler's descriptions of the 5/12/17 incidents (that led to the RFA and domestic assault charges),

¹ In *In re T C.*, the Vermont Supreme Court stated that "[t]he existence of a prior order is an appropriate subject of judicial notice." 2007 VT 115, ¶ 16, 182 Vt. 467. However, the findings of fact underlying the order's findings are not appropriate subjects of judicial notice. *Id.* ¶ 17 (noting that the trial court "did not err in declining to rely on the findings contained therein.").

and the legitimacy of her professed fear of further misbehavior by him.

108. Mr. Dasler started to record (video and audio) the PCC transfers on his phone. This allowed him to document aspects of the exchanges (while the recorder was on), and thus avoid any false charges of improper behavior by him (if false accusations were ever to be made).

109. His recording had an immediate negative impact on Ms. Dasler. The taping reflected active distrust of her and a need to record and monitor her behavior. The practice exacerbated the Parties' challenges in improving their co-parenting relationship, which was already fraught with distrust and fear.

110. As part of the interim PCC motions and orders, on 2/23/18 both Parties were ordered to stop taping each other. Mr. Dasler has taped Ms. Dasler a few times since that order was entered.

b. Mr. Dasler anger management, counselling and mental-emotional state

111. Mr. Dasler at one point expressed his desire to have any assessment of his mental-emotional condition to be a forensic assessment for wider use in these proceedings. That did not happen and by 8/1/17 an order was entered that he complete anger management screening within 30 days and engage in recommended treatment.

112. It turned out the HCRS entity recited in the Order did not do anger management screening assessments. Persons at the Clara Martin Center did perform such services, including screenings and assessments over the phone.

113. Mr. Dasler completed such an assessment in late July, 2017. Records of that assessment (to the extent they exist) were not submitted at the hearing. It appears they may exist but were not subpoenaed or sought before the hearing by discovery.

114. The assessment/screen noted that if Mr. Dasler is convicted of domestic assault, he will need to complete a batterers' intervention report. The screening recommended counseling for depression and stress relating to the divorce and separation and related matters.

115. Mr. Dasler then started to see Judith Bush for such counselling. He has seen her with reasonable regularity, although the frequency of their visits has reduced and scheduling is more complicated (perhaps because of Mr. Dasler's employment and Tenley care commitments).

c. Ms. Dasler's mental-emotional condition

116. Ms. Dasler has had some prior significant mental-emotional condition episodes. In 2005 she consumed an excess of sleeping pills, as the Parties were discussing a hiatus in their relationship and Mr. Dasler was getting ready to vacate or leave the apartment and the Parties were in a stressful period.

117. In 2013, Ms. Dasler had a conflict with her parents and made ambiguous comments of self harm and abruptly exited a car in traffic while upset. She was treated at the hospital.

118. Ms. Dasler's mental-emotional condition has been stable and there is no indication that she requires treatment at this time. She has maintained full time employment, cared for Tenley. Mr. Dasler never raised

an issue as to her present mental-emotional fitness to parent her daughter during the temporary PRR-PCC proceedings in this case

119. The court accepts Mr. Dasler's testimony that Ms. Dasler can get upset and insistent at times when she is mad at him. However she is able to stay on task to resolve and discuss issues.

120. The prior few incidents requiring medical assessment or care have left Mr. Dasler apprehensive that Ms. Dasler might react strongly during stressful interactions.

d. The Dalene Washburn counselling and Spring 2018 email communications

121. Since the separation Ms. Dasler started to take Tenley to Dalene Washburn for counselling services. Ms. Washburn is an experienced child and family therapist.

122. Ms. Washburn has provided counselling services for Tenley and eventually had alternating weekly sessions where each parent attends the counselling session with Tenley.

123. Starting 2/23/18, the court imposed a revised temporary PCC order that allows for 50/50 unsupervised PCC by the parents. It has default visitation scheduling and drop off/pick up details but has necessitated a new level of PCC-related communications among the Parties while this action is pending. After this order was issued, Mr. Dasler started to bring Tenley in for Washburn sessions on his visitation weeks.

124. The abrupt initiation of the revised interim order's PCC schedule created sleep disruption for Tenley. Both parents noted it as of a concern to Ms. Washburn.

125. Starting in or around February 2018 Ms. Washburn suggested the Parties keep a paper format parenting journal to improve communication. Ms. Dasler preferred and suggested an electronic "journal", Mr. Dasler did not want to use an electronic format. Mr. Dasler did not feel he had a sufficient level of "trust", according to Ms. Washburn, to use an electronic journal. Yet such a communication mode, like e-mail or written communications, is "transparent" in that it records the communications that are exchanged. Eventually a journal was not used, but the Parties had frequent e-mail communications.

126. Starting in February 2018 Mr. Dasler started to blind copy Ms. Washburn on Mr. Dasler's communications with Ms. Dasler. He did not discuss that with Ms. Washburn and she did not request the blind copies.

127. In the course of these proceedings Ms. Dasler learned of this blind copying and a trial exhibit of such email and Mr. Dasler's side emails to Ms. Washburn was admitted. (Tr. Ex. 1).

128. The discovery of these private, "non-transparent" blind copy and third party (as to Ms. Dasler) communications by Mr. Dasler has been of concern to Ms. Dasler. On one hand, the practice reflects an ongoing lack of trust of Mr. Dasler in Ms. Dasler. It creates an impression that Mr. Dasler may be seeking to use Ms. Washburn's assistance to figure out how to react to Ms. Dasler (using the neutral family therapist providing

care to Tenley) without Ms. Dasler's knowledge or consent.

129. The private emails to Ms. Washburn also reflect Mr. Dasler's overly self-protective caution in his willingness to start to discuss parenting matters with Ms. Dasler in an open way. The use of email to make these direct communications allows the party-to-party communications to be "transparent" (that is captured and reproducible).

130. Ms. Washburn responded if and when necessary and kept neutral. Mr. Dasler expressed concerns over the wanting to talk to the pediatrician or the pediatrician not understanding or receiving his perspective². She told him he might contact the doctor and set up an appointment if he wished.

131. Mr. Dasler at one point (April 2018), after receiving Ms. Dasler's 2.5 year Tenley well care doctor visit report, forwarded the email to Ms. Washburn with a side email. Mr. Dasler expressed privately to Ms. Washburn that he was not adequately consulted about certain doctor visits and his view that changes in the rate of Tenley's growth/weight percentiles since the separation were attributable to his limited post-separation care giving of Tenley. Ms. Washburn was not concerned as children's normal weight gain trends can vary and the child was receiving pediatric care.

132. In another April 2018 exchange, Mr. Dasler expressed frustrations in Ms. Dasler's requests and

² In a 2/26/18 letter to the court, the pediatrician group expressed visitation views stating that in view of Mr. Dasler's past failure to ensure a safe environment for Tenley his home should be reviewed by a GAL for a childproofing safety check. Tr. Ex. 30, page 41)

exchanges as the Parties discussed a possible PCC modification to accommodate Ms. Dasler's request to have Tenley on her birthday and Mr. Dasler's summer vacation plans. There was no testimony as to whether Ms. Washburn responded to the e-mail verbally. She has tried to stay out of details as to the merits of Parties' disagreements and focus on being flexible and use more communication.

133. In a May, 2018 email, Mr. Dasler informed Ms. Washburn of post-visit statements by Tenley about play conduct (locking dolls in closets; and alleged negative statements by the paternal grandfather that Mr. Dasler is "bad" and needs to "go away in the woods"). He asked Ms. Washburn to take the issues up with Ms. Dasler.

134. Another May 2018 exchange had to do with signing Tenley up for preschool. Ms. Dasler sent Mr. Dasler considerable information and asked for input as to any "questions, concerns or additions" (Tr. Ex. 1, page 17). Mr. Dasler responded that the half or full day attendance issue needed discussion, and that he wanted to get more information about some details as to the program. Mr. Dasler then sent Ms. Washburn's private emails, critiquing the application as filed. In this email he recognized "it would be better if Jen and I could have this sort of communication". He referred implicitly to his past mistrust of Ms. Dasler and stated he did not want to "make waves" by trying to discuss the issues with Ms. Dasler directly.

135. Ms. Washburn told Mr. Dasler she would not respond to the long emails. Ms. Washburn did not notice that the long emails were not copied to Ms. Dasler. The print outs of these emails (party-to-party and side ones to Ms. Dasler, for an approximately three month

period (2/27/18 to 6/3/18), is a 52 page single space, small font document. (Tr. Ex. 1). As Ms. Washburn states she does not have the time to do "therapy by email". Nor is it the manner in which she provides services.

136. The court finds as to these side Washburn emails, and underlying party-to-party contacts while the practice was ill advised, the content of the side communications is more benign.

137. As to the party-to-party PCC-related communications, the emails generally show cordial and improving communications. Mr. Dasler confirmed to Ms. Washburn that since February 2018 the tone nature of the communications has improved.

138. The Parties' other emails (Tr. Ex. 9) generally show the same.

139. The court finds although Mr. Dasler's decisions in how to communicate with Ms. Washburn was detrimental to fostering improved parental communications, at heart he was trying to find ways to better co-parent with Ms. Dasler, rather than create court documentation to enhance his litigation position. He did not call Ms. Washburn as a witness nor seek to introduce the emails at hearing. His emails to Ms. Washburn reflect some frustration, not with Ms. Dasler's positions per se, but the inability to reach more effective communications about parenting matters.

140. The emails (Tr. Exs. 1 and 9) show, at least in that communication mode, respectful and on point communications by Ms. Dasler. She testified that after the 2/23/18 opinion and change of counsel she has tried to focus on the long term and improve her

communications with Mr. Dasler. Rather than fearing the worse she states she is trying to focus on doing parallel parenting with Mr. Dasler. This statement of her intentions appears genuine.

Current PCC Status

141. Both parents are appropriate and loving when they spend time with Tenley. She is receiving age-appropriate therapy from Ms. Washburn as to any past domestic violence and parental conflict she experienced and each parent is committed and supportive to her receiving such treatment.

142. Ms. Washburn does not recommend that PCC be other than on a 50/50 basis and as the court noted the Parties proposes a 50/50 PCC order.

143. Both parents have an appropriate safe home for Tenley and can meet her reasonable needs. Ms. Dasler continues to reside in the Marital Home. Mr. Dasler has a two bedroom apartment. One bedroom serves as his luthier shop. The second bedroom is his bedroom, but when Tenley stays with him, he can sleep in a bed in the living room. He has maintained stable housing, since the separation.

Finances & Property/Debt Post-Tenley's Birth (August 2015) Through Present

144. After Tenley was born, the Parties continued the same individual and joint account family finances approach discussed above. The shared household expenses were paid 50/50 using the joint account described above. The Parties also maintained their own individual accounts.

145. As the couple started to incur day care expenses for Tenley, Ms. Dasler paid those expenses from sums in her personal account.

146. As Tenley was born, Mr. Dasler was working for Ellis Music Mondays, Tuesdays and Wednesdays (10 hour shifts), with Thursdays and Fridays off when he worked in his home shop. As Ms. Dasler returned to work in November 2015, she wanted Mr. Dasler to either work full time at Ellis Music (as was offered to him) OR care for Tenley on Thursdays and Fridays. This would allow more household income to pay for 5 day/week child care or limit that expense to three days a week if Mr. Dasler was bringing in limited income.

147. Mr. Dasler had an outstanding offer for full time employment in essence throughout his employment with the company (Testimony of David Ellis).

148. Mr. Dasler declined to do either, and Ms. Dasler arranged day care and paid for the day care expense.

149. When Ms. Dasler made her requests for Mr. Dasler to either return to full time work or provide child care on Thursdays and Fridays, she estimated the expense was costing them at least \$300 per month. Including the Thursday and Friday care, in 2016 the Parties spent \$11,500 on child care. (Tr. Ex. 4, 2016 Tax Return, Schedule 2441).

150. During the five year period from 2012 through 2016, Mr. Dasler reported no Schedule C or other income from any self employment activities as a luthier or instrument designer/ builder/repairs. Although he may have improved his skills in that period, the court

finds Mr. Dasler earned no income from self employment over his costs of materials, supplies or equipment devoted to such activities.

151. During that period Mr. Dasler was employed by Ellis Music 30 hours a week the Parties had earned income (Ibex earnings for Ms. Dasler) as follows:

	2013	2014	2015	2016
Ms. Dasler	\$52,442	\$62,072	\$68,419	\$71,078
Mr. Dasler	\$35,233 ³	\$35,409	\$31,504	\$34,966
Total Wages	\$87,675	\$97,482	\$99,924	\$102,878

152. Since the separation Ms. Dasler has paid all expenses associated with the Marital Home. She has also had occupancy and use of the home

153. As to debt and personal property for Ms. Dasler, she has (besides the Marital Home Mortgage debt described below), and a \$25,460 loan to her parents on which she pays \$250 per month, and \$2471 in credit card debt she is paying off at the rate of \$240/month. (Tr. Ex. 31, 813B Affidavit) She has no other long term debt other than a car loan. She has a Fidelity IRS in the amount of \$14,478 and an Ibex Fidelity 401(k) account of \$14,817. (Tr. Ex. 31. 813B Affidavit at page 7 of 7).

154. Ms. Dasler as of 6/9/18 had four bank accounts with a balance totaling about \$5,209. (*Id.*)

³ Inferred from 20013 1040 Form wages minus Ms. Dasler's Ibex W-s earnings. Tr. Ex. 4

155. As to personal property and debt for Mr. Dasler has [1] \$11,062 in general debts (\$1662 medical and \$9400 to family) that he is not currently making payments on; [2] \$14,382 in credit card debt (on which he is paying \$407/month); and [3] a \$15,230 USAA loan and a \$10,000 Prosper loan for which he is making monthly payments totaling \$511 (Tr. Ex. 21).

156. Mr. Dasler has a \$6,640 Johnson String Instrument 401(k) account (Tr. Ex. 16) and a Wells Fargo IRA account of \$13,985 (Tr. Ex. 17). *See also* Tr. Ex. 21, 813B affidavit at its page 7 of 7. Mr. Dasler has minimal bank accounts.

157. Mr. Dasler's \$15,230 USAA loan is a loan advance he obtained on or about 8/14/17 (*See* Tr. Ex. 24, at page 34; 6/122/18 Mr. Dasler Testimony), and the Prosper Loan (early 2018) was acquired during the divorce (6/12/18 Mr. Dasler testimony). He used those loan proceeds in large part to cover legal fees, moving expenses and other living expenses.

158. Mr. Dasler liquidated a \$13,076 pension account (obtained via an inheritance) in or around 6/24/17, not shown on his later 813B Affidavits, and used the funds after paying tax withholding and any early withdrawal penalties. (*See* Tr. Ex. 24, page 38, 6/26/17 entry and Tr. Ex. 18, Form 1040 line 16a; Tr. Ex. 21, 813B Affidavit at page 2 of 7, bottom of page.

159. According to the Parties' 813B Affidavits as to motor vehicles, Ms. Dasler has a 2010 Subaru Legacy with an estimated \$5,471 value and \$3,568 debt⁴. Mr.

⁴ Mr. Dasler assigns a \$10,000 fair market value to this vehicle and lists it as having no debt. As noted during the marriage each party paid his or her own car expenses from their individual bank accounts and the court accepts Ms. Dasler assertion there is a

Dasler has Subaru Impreza with an estimated value of \$4,000 in debt against it (Mr. Dasler 6/12/18 testimony). Ms. Dasler had a RAV4 vehicle which the court finds has minimal value to the extent it has not yet been junked or sold for any residual value. It appears it was traded in as Mr. Dasler obtained the current vehicle he is using.

160. A considerable bit of evidence was directed to the valuation of Mr. Dasler's physical business assets—the specialized wood, tools, and instruments and accessories he maintains. These collectively have significant value.

161. The court accepts the \$876 value for the wood (Tr. Ex. 32) that Mr. Dasler assigned to the wood. Admittedly some of it will be hard to use properly as the wood storage/inventory system Mr. Dasler used to store and catalog it was disturbed when the wood was assembled and moved.

162. Mr. Dasler just before trial valued his tools at \$4,350 (Tr. Ex. 23). The court uses that figure.

163. As to the instruments, Mr. Dasler also assigned values—Tr. Ex.22, which the court totals as \$43,660. Included in this figure were three prized handmade violins, constituting \$20,000 of that value.

loan against the car. The court also accepts her valuation of the vehicle, and notes the difference(s) in the court valuation of that vehicle has no appreciable weight in the property division and maintenance awards. The court is simply letting each party keep the vehicle in their possession that they are using, and to pay all debt associated with it. The court is not scrutinizing the Parties car choice decisions (which appear reasonable) and suggesting either one should be forced to sell their vehicle and buy a cheap used car to minimize their monthly expenses.

See Tr. Exs. 22 and 28 (last page) (Timothy Dasler Violins)⁵.

164. As Mr. Dasler testified the \$20,000 custom violin values are the full retail sale value for the custom instruments, and difficult to obtain at any point in time. Indeed his musical instrument inventory is not an asset that is readily liquidated for its full (potential) retail market price. In reality, many custom instruments sell at a considerable discount from their highest "full" fair market value. The fact Mr. Dasler is an aspiring luthier (as to reputation, not necessarily skills), and he has not been able to regularly sell his custom violins during the marriage, the court adjusts the musical instrument figure from \$43,660 to \$33,660 for personal property valuation purposes.

165. In making a personal property award, the Parties essentially agree what personal property each one will get⁶, but they have different valuations as to some of the items, that they ask the court to consider in making its award. The differing valuations of Mr.

⁵ As Mr. Dasler described in his testimony, many or all of the violins depicted in pages 1 and 2 of Tr. Ex. 28 are in essence consignment instruments available to him. The court accepts his Tr. Ex. 22 list of instruments as accurate as to its contents identifying the instruments he owns and which would be part of the marital estate.

⁶ At least three rounds of personal property drop offs to Mr. Dasler have occurred since the RFA Order was issued and the Parties have a good understanding of just what personal property items each has in their possession or are possessed by the other Party.

Dasler's wood, tools and accessories and musical instruments are discussed above.

166. In making its personal property award the court is considering the fact Ms. Dasler will be awarded other personal property whose collective value significantly exceeds the value of Mr. Dasler's luthier-related property.

167. The court accepts the figures of \$3,600 in jewelry to be awarded to Mr. Dasler and \$5,800 for Ms. Dasler (to include the engagement and wedding ring). Besides the tools Mr. Dasler will retain, Ms. Dasler is receiving tools with a value of about \$1,925 (Tr.Ex.31. 813B affidavit at page 4). The Parties may dispute the value of electronics and computers Ms. Dasler will retain, but she values them at \$1017 (*Id.*)

168. Ms. Dasler will have ownership of the Marital Home appliances, which Mr. Dasler values at \$2,200 as they are in good condition and purchased relatively recently. The court uses a \$1,500 value for the major appliances. Ms. Dasler will get the bulk of the home furnishings, which Mr. Dasler values at \$6,300 and Ms. Dasler at \$2,000, and which the court believes has a value in between the two figures, but closer to Mr. Dasler's figure.

169. Ms. Dasler introduced an exhibit with a lengthy list of personal property that is part of the marital estate, that the Parties ask to award them, showing agreed to and contested items (Tr. Ex. 32). Mr. Dasler also prepared a list as to personal property items and values. The court has reviewed and considered these exhibits.

170. Personal property division is not an exact science, and the court notes that as Mr. Dasler was

required to precipitously vacate the Marital Home—he was left with extra expenses in outfitting his apartment for his occupancy, while Ms. Dasler retained many of the tangible household property associated with living in the Marital Home (furniture; lawn equipment; home-related tools, etc.).

171. The court finds that Mr. Dasler's need to pay his relocation-related expenses, required him to take on some of the loan and/or liquidate his inheritance IRA during the separation while this matter was pending.

172. Mr. Dasler's reasonable and needed legal expenses since separation have included not only counsel for this matter, but for the pending criminal domestic assault charge.

Marital Home

173. The Marital Home, as of May 2017, had a mortgage loan balance of \$146,361. (Tr. Ex. 13). Property is valued for property division purposes as of the date of the final order, not separation.

174. The mortgage statement (Tr. Ex. 13), shows principal is being paid down on the loan at the monthly rate of \$297/month as of May 2017. Adjusting the loan balance after the June 2017—July 2018 payments were made (14 payments), the court finds the current loan balance to be about \$142,220. Ms. Dasler lists a 6/9/18 loan balance of \$143,031 in her 813B Affidavit of such date (Tr. Ex. 31), page 3 of 7, and the court accepts that value.

175. The Marital Home was appraised as of 5/31/18 with a fair market value of \$224,000. (Tr. Ex. G). The court accepts that figure as the home's present fair

market value. This provides a figure of \$80,968 in equity in the home.

176. Although Ms. Dasler testified that the Note used to purchase the Marital Home was issued solely in her name, the 2012 Warranty Deed lists both Parties on the record title. (See exhibits to Tr. Ex. G).

Parties' Current Income and Living Expenses

177. Ms. Dasler works for Cabot Hosiery with a salary of \$80,000 per year. She receives health insurance and is now eligible for dental insurance. The company has a 401K plan, which will allow for a 50% employer match (to an unstated percentage of salary) against an employee's voluntary contributions. She is not currently enrolled in the plan. The company does award discretionary bonuses, which are not considered in her 813 Affidavits.

178. Ms. Dasler at present grosses \$6661/month and has average tax and FICA withholdings (not included in her expense discussion below), totaling \$2035/mo (Tr. Ex. 31), leaving her net monthly income of \$5,626/month (before the discretionary bonuses she may receive from Cabot Hosiery).

179. Based on Ms. Dasler's discussions with her employer as she was hired, it is likely that Ms. Dasler will soon be earning \$90,000 a year (\$7,500/mo.) in salary and discretionary bonuses.

180. If and as Ms. Dasler is earning an extra \$10,000 per year, she will lose about 30% of that gross to taxes and withholdings, and would have an additional net monthly net increase in income of \$583/month. This would bring her net-monthly income to \$6,209/mo.

181. Ms. Dasler's claimed monthly living expenses are described in detail on Tr. Ex. 31, her 6/6/18 813A Affidavit pages 7-11, and are not fully recited here in detail. The expenses are accepted except as noted here.

182. Ms. Dasler's claimed vet and pet bills of \$230/mo (\$2,760/year) were not explained or supported and appear excessive. The court uses a \$100/month figure. Although Ms. Dasler claims \$100/month of expenses for savings, she has over \$5000 in her bank accounts, and the court does not use the \$100/month for savings as part of her reasonable expenses for maintenance purposes.

183. Ms. Dasler claims \$801 as personal expenses, in addition to claimed expenses for uninsured medical expenses, clothing/ meals/snacks eaten out, hair care, magazines/newspapers, entertainment, gifts, charitable deductions, vacations, and her loan to parents. The court adjusts this to \$250/mo. for maintenance determination purposes.

184. Ms. Dasler claims \$125/month for diapers, which expense should not be needed but for a short time, going forward, as Tenley is now almost three years old. Ms. Dasler claims \$1,300/month in child care expenses, and no longer receives the child care reimbursement that she received while employed by Ibex. However, with the Parties splitting PCC 50/50, Ms. Dasler's child care expenses will significantly drop and the court uses \$650/month for maintenance purposes.

185. With these adjustments, for maintenance purposes Ms. Dasler's monthly expense would total \$5,803/month.

186. Mr. Dasler works as a carpenter for the construction company Home Partners. He makes \$18/hour and still pursues his side luthier business as he can.

187. Using Mr. Dasler's recent 813A affidavit (Tr. Ex. 21 at page 2), he makes \$33,564 per year and averages 36 hours per week.

188. He estimates he will make \$840/year (\$70/month) from self employment. (*Id.*)

189. In 2017 Mr. Dasler was not employed for about four months between quitting at Ellis Music in March and starting at Home Partners in August 2017. During 2017 he bought and resold some violins, and perhaps earned limited other luthier work income, and did some instrument repairs. He reported \$8,876 in 2017 gross income (\$740/mo) from the sale, and reported \$2,869 (\$240/month) in 2017 net taxable income after expenses that included \$2,435 in deductible car and truck expenses and \$840 in home office expense deductions (Tr. Ex. 18 Schedule C).

190. Mr. Dasler thus has average monthly income of \$ 2,867/month if his conservative Section 813 Affidavit self employment earning figure is used (\$70/month), and \$3,036/month is his 2017 taxable tax-reported self earnings (\$240/mo) are used. Mr. Dasler in his new apartment maintains a luthier shop, and can serve as a distributor for music program bulk instrument sales as he did in 2017. He still keeps a bedroom devoted to his side business. The court uses the midpoint for his inferred self employment earnings, leaving \$2,951/month as his estimated gross annual earnings.

191. Mr. Dasler's 813A Affidavit (Tr. Ex. 21, at page 9), as supported by his Home Partners pay stubs (Tr. Ex. N), show that he pays about \$388/month in state and federal wage withholdings. This leaves about \$2,613/month in net earnings.

192. As to the school musical instruments sold in a bulk purchase and sale during the divorce, the Parties disputed if the instruments were part of the marital estate that in effect was liquidated. The court accepts Mr. Dasler's testimony that he used funds to acquire them as inventory after the separation and then sold them. His 2017 Schedule C shows \$12,998 in costs of goods sold. His 2017 credit card statements (Tr. Ex. 25, at page 4, show a nearly identical sum in payments to Howard Core Company in Fall 2017.

193. Mr. Dasler's claimed monthly living expenses are described in detail on Tr. Ex. 21, his 6/6/18 813A Affidavit pages 7-11, and are not fully recited here in detail. The expenses are accepted except as noted here.

194. Defendant's Orford, NH apartment rent is \$650/month, and he has \$1285 in household expenses (including groceries); vehicle expenses of \$565/month.

195. The court accepts Mr. Dasler's combined USAA/Prosper loan and credit card debt totaling \$853/month and allows him another \$250/month in personal expenses (Page 8 of 11 of Tr. Ex. 21)—leading to monthly expenses of \$2,953/month.

196. Mr. Dasler struggles to meet his monthly expenses from his earnings income.

Legal Analysis and Orders

The Parties have a young child, Tenley, who is almost three years old. Legal residence, notice of the proceedings, separation, and a showing that marital relations are unlikely to resume, have been shown. Both Parties waive the nisi period and this order shall be final as it is docketed by the clerk. At issue are PRR and certain PCC details, property division and Mr. Dasler's request for spousal maintenance.

Analysis of Factors relating to Parental Rights and Responsibilities and Parent Child Contact

Courts apply the best interests of the child considerations in child custody and visitation matters. It is the best interests of the child, not the parents, that governs the determination. *Cloutier v. Blowers*, 172 Vt. 450, 455 (2001). In this matter the Parties have not agreed to sharing parental rights and responsibilities ("PRR"). As to parent child contact ("PCC") the Parties have agreed to a 50/50 PCC schedule which they ask the court to finalize as to certain visitation details they have not been able to resolve despite good faith negotiations.

Nine statutory factors are to be considered at a minimum under 15 V.S.A. § 655 on PRR and PCC matters:

- (1) The relationship of the child with each parent and the ability and disposition of each parent to provide the child with love, affection, and guidance;**

Each parent loves Tenley, has cared for her and engaged in appropriate activities with her. The parents

each described with affection the things they like to do with Tenley and understand their role in providing input as she grows and matures.

- (2) The ability and disposition of each parent to assure that the child receives adequate food, clothing, medical care, other material needs, and a safe environment;**

Each parent can meet the Tenley's basic material needs when the child is in their care—a safe home setting, food and clothing. Both parents have stable employment and employable skills, although Ms. Dasler has a higher income earning capacity.

Tenley was under the primary custody of Ms. Dasler after the May 2017 RFA incident, and Mr. Dasler only resumed equal visitation time in February 2018. Both parents have been attentive to Tenley's needs as her schedule was disrupted as she transitioned to equal time in both households. Both parents have fully engaged in the Washburn counselling services for Tenley. Although Mr. Dasler has exchanged private emails with Ms. Washburn concerning parenting matters with Ms. Dasler (*see* factual findings above), these deal with ongoing tensions and distrust between the Parties as to each other. Mr. Dasler has not sought to interfere with Ms. Washburn's relationship with Tenley and her provision of services to the girl. Both parents regularly bring Tenley to those sessions during their visitation periods.

As noted in the findings, Ms. Dasler's prior treatment for any mental—emotional condition(s) or episodes, do not pose any current reason for concern over her ability to safely parent Tenley.

(3) The ability and disposition of each parent to meet the child's present and future developmental needs;

Given Tenley's young age, the Parties have not fully explored schools and her formal future educational needs. Both parents engage in age appropriate developmental activities for Tenley like reading and spending time with her in play. This factor is in equipoise and does not weigh in favor for either parent.

(4) The quality of the child's adjustment to the child's present housing, school, and community and the potential effect of any change;

Tenley is just turning three years of age, and has not started school programs or any significant community programs. Tenley will soon have to transition from her day care to preschool and eventually kindergarten programs. Under the interim PRR-PCC order that was in effect until February 2018, she went from living with both parents in the Marital Home to a nine month period with very limited visitation with her father. While the sudden transition from two weekly short afternoon public place visits with her father, to a 2-2-3 repeating pattern 50/50 PCC schedule, caused some sleep disruption for Tenley. However, there is no indication that she will not be able to acclimate to spending equal times in both parents' homes. The Parties have agreed to use a 50/50 PCC schedule with alternating 2 to 3 day time periods spent in each home.

This factor plays no significant role in determining which parent will hold PRR rights.

- (5) The ability and disposition of each parent to foster a positive relationship and frequent and continuing contact with the other parent, including physical contact, except where contact will result in harm to the child or to a parent;**

The parents have been mistrustful of each other as noted elsewhere in this opinion. Ms. Dasler sought and obtained a final relief from abuse order in her favor, pursued rounds of motions, through February 2018, to seek to limit Mr. Dasler to supervised visits of Tenley, citing claimed safety concerns. While the court ultimately determined there was insufficient evidence to require supervised visitation, the court does not find that Ms. Dasler pursued her motions, knowing or believing them to make false claims, or to restrict Mr. Dasler's visitation for reasons other than what Ms. Dasler (who was represented by counsel) subjectively believed to be safety concerns for Tenley. As noted, since February, 2018, Ms. Dasler has moderated her approach and tried to co-parent with Mr. Dasler, as noted in the emails since February 2018.

As noted elsewhere, Mr. Dasler's fear of being accused of unsafe parenting with Tenley caused him to be very hesitant to communicate with Ms. Dasler over parenting/visitation issues, and led to him recording their exchanges.

Despite the parents' strained communications with each other, the court does not find that one or the other have interacted with Tenley in ways to undercut her relationship with the other parent. The Parties do not badmouth the other parent or try to enlist Tenley to say or do things to alienate her from the other parent. While communication of parenting issues for the parents has been personally difficult between the

parents), the emails show improvements in many regards.

(6) The quality of the child's relationship with the primary care provider, if appropriate given the child's age and development;

The term "primary care provider" as used in this factor, is not defined in the statute. The Vermont Supreme Court has not enunciated a definitive standard to identify the primary care provider under this factor. *Payrits v. Payrits*, 171 Vt. 50, 53 (2000); *Nickerson v. Nickerson*, 158 Vt. 85, 89 (1992). As the court understands the term, the primary care provider is the person who primarily provides for the child's daily care needs—morning and bedtime routines; grooming and dental care; meal preparation; monitoring the child's need for breaks or rests (naps or quiet time); providing or arranging transportation to events or school; washing clothes; helping with dressing and appropriate clothing selection; and daily readiness for child care or school. Besides the mechanical provision-of-services aspect of performing these tasks, a primary care provider does these things in the context of providing a nurturing environment. (See *Nickerson, supra*).

The Vermont Supreme Court has recognized that determination of who serves as the child's primary care giver is not a binary either/or proposition, or one that remains temporally fixed. First, a court need not select one parent or the other as the primary care giver in any period. "There can be periods of time in which both parents are primary caregivers or in which neither is the primary caregiver." *Hanson-Metayer v. Hasnson-Metayer*, 2013 VT 29 at para. 20. Second, all periods of the child's life should be considered.

Nickerson v. Nickerson, 158 Vt. 85, 89 (1992). Third, pre and post separation periods should be considered and there is no per se presumption to be afforded that the parent who has physical custody of the child at the time of the family court hearing determining PRR issues is the primary care provider. *Nickerson, supra*.

The Daslers each played a significant care giving role for Tenley prior to the separation. Ms. Dasler took a 12 week maternity leave when Tenley was first born. Ms. Dasler spent considerable time attending to child rearing activities despite her work hours, and as between the two Parties, was more active in setting up child care and in transporting Tenley to and from the child care facility. Mr. Dasler was home working in his luthier shop two weekdays per week. He helped out with many household chores and also provided some care of Tenley

Although the Parties contested the extent to which they, or the other parent, provided care and transportation for Tenley, or household services, as the findings of fact show, the court has largely credited Ms. Dasler's testimony over Mr. Dasler's testimony in the areas of conflicting descriptions. Ms. Dasler also did more of the child rearing tasks during the May 2017—February 2018 period.

In PRR-PCC matters, the primary care provider factor is given some enhanced, but not controlling, weight compared to the other factors:

[T]his factor should be entitled to great weight unless the primary custodian is unfit. The exact weight cannot be determined unless there is evidence of the likely effect of the change of custodian on the child. In the

absence of such evidence, the court should ordinarily find that the child should remain with the primary custodian if that parent is fit.

Harris v. Harris, 149 Vt. 410 (1988), cited with approval, *Allstyen v. Martin*, 2016 WL 1824435; *MacCormack v. MacCormack*, 2015 VT 64 at Para. 13; *Rogers v. Parrish*, 2007 VT 35 Para. 19; *deBeaumont v. Goodrich*, 162 Vt. 91, 101 (1994).

Here, if one looks over the lifetime of Tenley, the court concludes Ms. Dalser has been the primary care giver for Tenley.

(7) The relationship of the child with any other person who may significantly affect the child;

Limited information was provided about Ms. Dasler's family. Her mother (Tenley's grandmother) has provided some back up child care, even before the separation, when Mr. and Ms. Dasler were not available, and during some of Ms. Dasler's business trips.

Mr. Dasler's family is in Wisconsin and he lacks family members in the area.

An important person in Tenley's life at this point is Dalene Washburn, who is providing counselling. Both parents appear supportive of the counselling, which will help Tenley's emotionally and developmentally progress after any domestic violence and parental strife and conflict she experienced.

It does not appear that the court's choice of which parent holds PRR will significantly impact the maintenance of Tenley's relationship with any extended family member, or person who may significantly affect

her. Tenley will spend equal time in both homes under the 50/50 PCC to be ordered.

- (8) The ability and disposition of the parents to communicate, cooperate with each other; and make joint decisions concerning the children where parental rights and responsibilities are to be shared or divided; and**

Strictly speaking, where the parents do not agree to share PRR the court must order PRR for one parent or the other, this factor does not apply. However, Section 665(a) lets the court consider “at least” the nine statutory factors, and the court does not view the topic expressed by this factor 8 as irrelevant when PRR is granted to one parent. The ability for divorced or separated parents to parent and provide for their child (and for the parent who lacks formal PRR rights to feel valued and provide some independent perspective) is enhanced, when the parents show the ability and disposition to consult with the other parent and consider their impact when making child rearing decisions. After all, despite the loss of the former intimate and close relationship between divorced or separated parents—each of them knows (or as visitation increases, will come to know) the child well and has valuable insight to provide when important decisions are made.

Each of the parents have made some progress under this factor, but improvements are needed. Apart from the early stages of this divorce, many of the Parties’ emails relating to Tenley are facially on point and respectful in tone, and exchange legitimate parenting information about Tenley (her schedule, medical care, etc.)

Ms. Dasler has lessened her anxiety and concerns arising out of the May 2017 incidents, and is less distrustful of Mr. Dasler. Ms. Dasler is less inclined to scrutinize each interaction to look for some parenting lapse by Mr. Dasler as she had done before (Compare prior temporary PRR-PCC motions to modify and reconsider to the more recent parent-to-parent emails).

Mr. Dasler continues to be distrustful and defensive, to the extent that he still gingerly avoids openly discuss parenting issues with Ms. Dasler directly (*See* D. Washburn emails).

The court finds this factor slightly favors Ms. Dasler.

(9) Evidence of abuse, as defined in section 1101 of this title, and the impact of the abuse on the child and on the relationship between the child and the abusing parent.

Mr. Dasler is the subject of a RFA in favor of Ms. Dasler, issued after findings of “abuse” under Section 1101 after a contested hearing. The child witnessed this incident at the kitchen table and the assault at the park⁷. The May 2017 incidents had their own secondary impacts on the relationship between Mr. Dasler and Tenley. The events resulted in the interim temporary PCC orders that limited his contact with Tenley for about a nine month period, and resulted in Tenley receiving services from Ms. Washburn. The limits of visitation under the separate RFA order also

⁷ While the criminal domestic assault charge has not gone to trial or a final resolution, for purposes of this divorce order the court has made findings by a preponderance of evidence standard and credits Ms. Dasler’s version of the May 2017 incidents.

led to Ms. Dasler serving as Tenley's primary care provider during that nine month period.

However the court does not believe that the May 2017 incident(s) will have long lasting impact on Tenley—if the parents can communicate respectfully and maintain calm around the child.

[* * *]

Based on the foregoing, the court awards Jennifer Dasler primary legal and physical parental rights and responsibilities for Tenley. This decision is primarily based upon the court's conclusion that she has served as Tenley's primary care provider, which the cases cited above afford considerable weight. Many of the other factors are in equipoise, but factors 8 and 9 slightly favor Ms. Dasler.

As noted above the court will issue a separate final PRR-PCC order, using the proposed form the Parties provided—with the primary legal and physical PRR holder shown to be Plaintiff (Ms. Dasler), and cross hatching cross outs to show where the court has rejected one party or the other's proposed provisions on certain PCC schedule and related matters in the draft order. The court has labelled that order as "Exhibit A" and it is incorporated into this order as part of the final divorce order in this case.

Property Division

On the issues of the division of property and allocation of the parties' debt, in a divorce the court has wide powers. All property the parties owned, however and whenever acquired, is subject to the court's equitable distribution powers. *See* 15 V.S.A. section 751(a). The

Parties have distributed all moveable personal property, including the vehicles. They contest some of the values for some of the personal property items—especially those involved with Mr. Dasler's luthier business. The court has found that (apart from the Parties' retirement accounts and Ms. Dasler's current bank accounts), the main asset is the Martial Home, which has equity of \$80,968. Mr. Dasler seeks a cash award on property distribution. Ms. Dasler contests that he should be given a cash award.

While the Parties' may make arguments, based on certain assumptions, that look for precision in the distribution of property, the law does not use an exact mathematical accounting of credits and debits to achieve a property distribution award. It has aptly been said that marital property division is not an exact science. *Plante v. Plante*, 148 Vt. 234 (1987). Moreover, a division of property and debt in a marriage must be equitable, but need not be equal. *See Myott v. Myott*, 149 Vt. 5763 (1988). The "equitable, but not necessarily equal" proposition results in part from the factors the legislature has adopted for trial courts to use in making property division awards.

The Vermont statutes, at 15 V.S.A. § 751(b), set forth factors for the court to apply to make property division awards in a divorce. Those and other factors are considered below.

(1) The length of the civil marriage.

The formal marriage was of relatively short duration. It lasted just under five years from the time of the marriage to the separation. (August 2012 to May 2017). The court recognizes the Parties had periods of cohabitation before the marriage. The

superior court has broad discretion in considering how to calculate the length of the marriage under the circumstances of the case. *Wall v. Moore*, 167 Vt. 580, 581 (1997) (mem.); *MacKenzie v. MacKenzie*, 2017 VT 111, Para. 13. However here, the Parties separated for a time after their initial co-habitation and there was no indication at the time they were going to resume their relationship. The Parties' lives became intertwined as a couple when they got married and purchased a home. They kept separate bank accounts until they purchased the home and married and started to use the joint account (in addition to their individual accounts) to meet household expenses. The court uses the marriage date as the start date to determine the length of the marriage.

(2) The age and health of the parties.

Ms. Dasler is 35 is and Mr. Dasler is 37. Both are in good health and able to work in their professions.

(3) The occupation, source, and amount of income of each of the parties.

Ms. Dasler has maintained steady work in the clothing industry for over 11 years. She has a stable job earning \$80,000 per year, with discretionary employer bonuses, and good prospects to have her salary raised. Her education, training and work experience give her specialized skills that she can continue to use.

Mr. Dasler has specialized luthier skills, which first off give him the ability to work for instrument sellers/repairs (like Johnson String Instruments; Vermont Violins; and Ellis Music). His ability to easily re-gain entry into that work for another company may be

compromised by the fact he has brought post-separation claims against two of the former employers, who are likely less inclined to serve as employment references for Mr. Dasler.

Mr. Dalser has the skills and abilities to run his own luthier business-repairing and building string instruments, with some work as a "middleman" in acquiring bulk musical instrument purchases for schools, etc. So far, he has not been able to earn more than a very modest income at these endeavors.

However, Mr. Dasler has carpentry skills that he can use to earn income. His current earning level is about \$33,500 per year. These carpentry skills are in regular demand in the workplace and give him the ability to work for companies in the construction business.

(4) Vocational skills and employability.

See above for a discussion of this factor.

(5) The contribution by one spouse to the education, training, or increased earning power of the other.

During the marriage, the Parties' maintained a separate bedroom for Mr. Dasler to use as a workshop to further his luthier skills. By the time of the 2012 marriage, Mr. Dasler had worked full time for Johnson String Instruments and the Vermont Violin Shop, and wanted to use the skills he learned from Ms. Wallin, to run his own luthier business and make and sell custom instruments.

During the marriage, Mr. Dasler voluntarily worked 30, rather than the offered 40, hours per week

for Ellis Music, and used two days a week to work in his luthier business. This had the impact of his earning less income for the household than if he had worked a 40 hour-a-week job. Finances were tight for the couple, and the luthier business earned no appreciable income from 2012-2017. Ms. Dasler tolerated (but did not like), Mr. Dasler's spending two days/week in developing his avocation while it made no money for the household. Her forbearance in that regard allowed Mr. Dasler to seek to further his luthier training skills while his wife brought in the bulk of the household income. After Tenley was born, Mr. Dasler less available for child rearing tasks than if he had limited his focus on days when he did not work at Ellis Music to providing child care for Tenley, and the couple had child care costs on the workshop days.

(6) The value of all property interests, liabilities, and needs of each party.

As described above, the home has a present equity value of \$81,000 or so. The Parties have about \$50,000 collectively in retirement accounts, and while each has some individual debt they have the ability to make payment on the debt they have at present.

In deciding what to do as to the home equity, in considering this factor (6), the court has considered that Ms. Dasler has retirement accounts of about \$29,300, while Mr. Dasler's accounts total \$20,625, but the court also considers that Mr. Dasler cashed in the inherited IRA during the separation. In weighing Factor (6), the court also has considered that as to the personal property the Parties each are awarded, and the court's downward adjustment as to the value of Mr. Dasler's instruments' value (over their highest

retail price). When the values the court assigns to the luthier-related wood, tools, instruments and accessories, plus jewelry in Mr. Dasler's possession, are compared against the combined values the court assigned above to Ms. Dasler's piano, jewelry, tools, appliance, electronics, furniture, lawn equipment, computer and bank accounts—Mr. Dasler is receiving tangible personal property under the award with a fair market value of approximately \$22,000 more in value than the items awarded to Ms. Dasler.

(7) Whether the property settlement is in lieu of or in addition to maintenance.

See the section on maintenance. While this was a relatively short marriage, some maintenance is being ordered and this has been taken into consideration in the property division award.

(8) The opportunity of each for future acquisition of capital assets and income.

The Parties are of a similar age and each have marketable employment skills. Ms. Dasler's income earning ability is over twice that of Mr. Dasler's due to her more specialized, yet marketable, skills.

This means that Ms. Dasler is more likely of the two Parties to accumulate capital assets and income in the future.

(9) The desirability of awarding the family home or the right to live there for reasonable periods to the spouse having custody of the children.

The Parties have been separated for over a year now, and Tenley and Ms. Dasler are residing in the Marital Home. While it may be generally desirable to

be able to award one of the spouses the home so Tenley can continue to live there, Tenley is young, and has not started school. If the home had to be sold to make a property division award, Ms. Dasler and Tenley could readily find another suitable home to live in.

(10) The party through whom the property was acquired.

The main asset of significance in the marital estate is the Marital Home. The court does note that Ms. Dasler contributed about \$6,000 to its purchase (excluding the "cash back form sellers"), and considers that in making its award about the home equity.

(11) The contribution of each spouse in the acquisition, preservation, and depreciation or appreciation in value of the respective estates, including the nonmonetary contribution of a spouse as a homemaker.

During the length of the marriage, and the time they owned the Marital Home, the Parties contributed the income they earned to help pay the marital household expenses. While Ms. Dasler earned more income than Mr. Dasler, unequal earning power is common in marriages. As to the work performed on the Marital Home, the court finds Mr. Dalser performed more "sweat equity" (labor) than Ms. Dasler. Yet one cannot track the impact of such labor on the home's fair market value in any reasonably accurate manner. Neither spouse made significant nonmonetary homemaker contributions to the household that exceeded the similar contributions of the other spouse.

(12) The respective merits of the parties.

The court previously found that Ms. Dasler was entitled to a final relief from abuse order against Mr. Dasler. This factor is described in the PRR-PCC analysis, but is not given any significant weight in the property division. The love between the Parties faded before the separation and May 2017 incidents. Mutual interpersonal strife over finances and other disagreements became more common. This is not a case where a long history of prior domestic abuse, or one party made no monetary or nonmonetary contributions to running the household, or had significant substance or alcohol abuse issues that unduly placed the burden on the other spouse to be responsible to earn household income and run the household.

[* * *]

Applying these factors, each of the Parties is awarded the personal property in their possession and their banking and retirement accounts. Mr. Dasler is awarded the "Santa and reindeer painting made with Tenley's foot" and Ms. Dasler is awarded "Tenley's hand imprint in plaster", from her early childhood. (See Tr. Ex. K, at page 2; Trial Record, 6/12/18 at 3:18 pm). To the extent these artwork items are amendable to being copied or depicted in digital media without damage to the original artwork⁸, the parent who is not receiving the artwork, may at his or her own expense, obtain a copy of the artwork being awarded to the other parent.

⁸ Digital copies of a painting may be straightforward, and with developing three dimensional digital copying technology it is possible that "3-D" copying of the hand print artwork, assuming it is a three dimensional depiction, will be feasible.

Each Party is awarded the motor vehicle in their possession but are required to pay all debts and expenses associated with that vehicle. Each Party will be ordered responsible for the personal debt, including credit card debt in his or her name, as well as medical bills, as listed in their 813 Lists of assets in this case. Each Party is awarded his or her retirement accounts, and the bank accounts in their own name. Mr. Dasler is awarded the tools, parts, wood, instruments and accessories, and any work-in progress, or billing invoices, associated with his luthier business or violin selling business, but he is responsible for any debt associated with such business activities.

As to the Marital Home (74 North Road; Vershire, Vermont), it is awarded to Ms. Dasler. She is solely responsible to pay the mortgage, property taxes, and other expenses related to that property (both currently due and in the future).

In addition to the above property and debt distribution provisions, after considering the factors for property division awards, Mr. Dasler is awarded a marital property division cash payment of \$24,000. Payment of this sum will be due by February 28, 2019, and shall be secured by the Marital Home and linked to its refinance and/or sale as described below. The unpaid balance of the \$24,000 figure will bear interest, at the annual rate of 6% per year, commencing 1/1/19, if the figure is not fully paid by that date.

Mr. Dasler shall provide Ms. Dasler a quit claim deed to transfer his interest in the property to Ms. Dasler, but she shall have the responsibility to refinance the Marital Home property to release Mr. Dasler from liability under the current note secured by the mortgage against the home. Such quit claim deed may be held

in trust until the refinancing occurs. Such refinancing may be combined with Ms. Dasler taking out a larger note and mortgage to complete the \$24,000 cash award to Mr. Dasler ordered under this order. Ms. Dasler shall be given until February 29, 2019 to complete the refinancing and will indemnify Mr. Dasler for any expenses, including attorney fees, that he may incur if the mortgage and secured note are not kept current after the date of this order. At Mr. Dasler's sole discretion and expenses, to secure his priority of payment for the martial property lump sum payment due him under this order, he may have a mortgage prepared to secure his payment of the indicated sum, and Ms. Dasler will cooperate in signing such mortgage

If the home is not refinanced by the indicated date, Mr. Dasler may request in writing that the home be sold to discharge him from the note securing the mortgage, and or to provide funds to complete the \$24,000 payment due him. The court will issue a supplemental order to describe the terms of the sale of the home if the Parties cannot agree to the sale procedure.

B) Maintenance

The court considers Mr. Dasler's request for maintenance. The court first considers the 15 V.S.A. section 752(a) maintenance issues as to whether maintenance may be appropriate:

- (1) Whether Mr. Dasler lacks sufficient income, property, or both, including property apportioned in accordance with section 751 of this title, to provide for his or her reasonable needs;**

Mr. Dasler lacks sufficient income to pay his reasonable expenses, even while trying to maintain a

simple lifestyle, as described above in the findings. Although he is being awarded a cash property settlement, as Ms. Dasler lacks ready cash reserves she is being given time to refinance the home, to obtain the funds to pay that sum (with sale of the home in 2019 as the fallback method to secure the property division award). Mr. Dasler is unlikely to be able to significantly increase his earnings or decrease his expenses.

(2) Whether Mr. Dasler is unable to support himself through appropriate employment at the standard of living established during the civil marriage

The parties lived a modest lifestyle, but a more comfortable lifestyle than what Mr. Dasler faces as he has to pay his bills and run a separate household.

Thus under V.S.A. section 752(b) consideration of some maintenance is appropriate, in such amounts and for such periods of time as the court deems just, after considering all relevant factors including, but not limited to these statutory factors:

(1) The financial resources of the party seeking maintenance, the property apportioned to the party, the party's ability to meet his or her needs independently, and the extent to which a provision for support of a child living with the party contains a sum for that party as custodian;

Apart from the issue of the marital home equity addressed elsewhere in this opinion, Mr. Dasler received limited personal property, and his luthier business wood, tools, equipment and instruments, and his two

modest retirement accounts out of the divorce. His limited income, when compared to his modest necessary expenses, leaves gaps as discussed above. Mr. Dasler as a worst case might draw upon his retirement funds, but like Ms. Dasler, he should be able to try to conserve those funds for his future retirement. To the extent Mr. Dasler might receive any child support payments from Ms. Dasler for any increased time the children spend with him, that will be offset by the expenses of having Tenley with him half of the time. The court has not considered child-related expenses in trying to review his expenses and needs.

(2) The time and expense necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;

Mr. Dasler's formal education and work experience, which relate to a focused area (stringed instruments) are such that further education in those areas will not significantly increase his earning ability. Making a steady income as a luthier, making and selling high-end instruments, is a difficult course to chart. Income growth from his luthier-related self employment is likely to be gradual. Mr. Dasler can earn income from his carpentry skills, and perhaps focusing his efforts on the finer carpentry (cabinets, etc.) he might achieve a higher pay rate, but there are likely to be less job opportunities. At present there appear to be no identified new vocational areas, requiring more education or training, that Mr. Dasler will pursue to significantly increase his earning capacity.

(3) The standard of living established during the civil marriage;

By all apparent circumstances and from the testimony provided, the Daslers lived a simple lifestyle. They owned a basic home and each had a car, but did not buy fancy material goods, or take extravagant trips. Then and now, economically they are each just trying to get by and meet necessary bills.

(4) The duration of the civil marriage;

The marriage is of a just under five year duration, as noted above.

(5) The age and the physical and emotional condition of each spouse;

Ms. Dasler is 35 and in good health. She has not raised any significant physical or mental-emotional conditions that negatively affect her ability to move on from the divorce and earn a livelihood, especially as she has taken medication and received counselling if and as necessary for any mental-emotional condition.

Mr. Dasler is 37 years old and in good health. He has not raised any significant physical or mental-emotional conditions that negatively affect his ability to move on from the divorce and earn a livelihood.

(6) The ability of the spouse from whom maintenance is sought to meet his or her reasonable needs while meeting those of the spouse seeking maintenance;

Ms. Dasler has a good and steady job, that earns her over \$80,000 a year. However even as she lives conservatively, she has a tight budget to meet her

expenses. Her June 2018 813 Affidavit showed she was making \$240/month payments towards credit cards approximating \$2400. In about eight months she will have that debt paid off, or alternatively she can reduce her monthly payments on that debt. However, realistically Ms. Dasler lacks available income to make large maintenance payments, after meeting her reasonable expenses.

(7) Inflation with relation to the cost of living

Inflation in the past several years has been low and consumer prices have increased slowly in recent years. The court has considered this factor in fashioning the maintenance award in this case.

(8) The following guidelines:

Length of marriage award	% of the difference between parties' as gross incomes	Duration of alimony % length of marriage
0 to < 5 years	0-20%	No Alimony or short-term alimony up to one year
5 to < 10 years	15-35%	20-50% (1-5 yrs)
10 to < 15 years	20-40%	40-60% (3-9 yrs)
15 to < 20 years	24-45%	40-70% (6-14 yrs)
20 + years	30-50%	45% (9-20+yrs)

These alimony guidelines were recently added by the Vermont legislature in 2017 as a factor that may

be applied in making alimony determinations. They were adopted after a legislative study group reviewed maintenance practices under the other factors and family law practitioners' concerns over alleged broad discrepancies and unpredictability in the manner in which maintenance awards have been issued.

Using the 4 year, 9 month marriage length determination described elsewhere in this opinion, the parties' marriage falls under the first, possibly second, row of the above guidelines. The court finds the parties' incomes to be (including inferred income for Mr. Dasler, and the expected raise for Ms. Dasler that brings her income above the current salary, plus bonus, figure) \$6,209/month for Ms. Dasler, and \$2,951/month for Mr. Dasler. The difference between those figures is \$3,258 per month.

The first row of the guidelines recommend that maintenance fall within a "low" range, using 0% of the income difference (here, $0.00 \times \$3,258 = \$0/\text{month}$) to a "high" range, using 20% of the income difference (here, $0.20 \times \$3,258 = \$651/\text{month}$). The lower percentage of income used for the second row (5 to <10 year marriage) uses 15% of the income difference, which here would be $0.15 \times \$3,258 = \$488/\text{month}$.

The third column of the guidelines recommends a maintenance duration of 0 to 12 months for marriages of five years or less. The third column's duration of maintenance payments for marriages of 5 to < 10 years uses 20% to 50% of the length of the marriage, which for a 5 year marriage would be 1 to 2.5 years.

[* * *]

Based on the forgoing factors, pursuant to 15 V.S.A. section 752, the court orders Ms. Dasler to pay

Mr. Dasler spousal maintenance in the amount of \$300 per month for a two year period, commencing September 1, 2018 to August 1, 2020. This marriage lasted just under five years. The parties have significant earning capacity differences, and Mr. Dasler will have a more difficulty meeting his reasonably monthly expenses. The court is keeping the monthly payments lower than the guidelines and maintenance factors might otherwise suggest, but for the court using a longer payment period than might be typical for a five year mortgage. Ms. Dasler is more likely to be able to afford the moderate sums for a slightly longer period than higher monthly amounts for a short period. Monthly payments over a three year period, it would amount to thirty-six \$416 monthly payments.

Miscellaneous—In the future if the Parties are unable to work out a disagreement relating to the terms of this order on their own (other than motions for emergency relief, or by Mr. Dasler to require the sale of the Marital Home), they are to attempt to resolve the dispute through mediation before coming back to court. The Parties shall cooperate in executing any and all documents reasonably necessary to accomplish the terms of this agreement. Each party shall keep the other informed of any change of address, email, or phone number so long as there are any continuing obligations under this order, including the PRR-PCC order incorporated as Exhibit A. Other than as set forth in this Order, each party shall indemnify and hold the other harmless from any claim relating to an obligation for which he or she is responsible under this order.

A PERSON WHO FAILS TO COMPLY WITH ALL
TERMS OF THE CURRENT ORDER GOVERNING

PARENT CHILD CONTACT MAY BE SUBJECT TO CONTEMPT OF COURT CHARGES. THE COURT MAY IMPOSE ADDITIONAL REMEDIES INCLUDING A MODIFICATION OF THE CURRENT PARENT CHILD CONTACT ORDER IF FOUND TO BE IN THE BEST INTERESTS OF THE CHILD.

Electronically signed on August 17, 2018 at 12:08 PM pursuant to V.R.E.F. 7(d).

/s/ Michael J. Harris
Superior Court Judge

Electronically signed on August 17, 2018 at 12:08 PM pursuant to V.R.E.F. 7(d).

/s/ Hon. Joyce McKeeman
Assistant Judge

Electronically signed on August 17, 2018 at 12:08 PM pursuant to V.R.E.F. 7(d).

/s/ Victoria N. Weiss
Assistant Judge

**PARTIAL PROPOSED ORDER: AGREEMENT ON
PARENTAL RIGHTS AND RESPONSIBILITIES,
PARENT CHILD CONTACT AND PROVISIONS
RELATING TO CHILDREN
(AUGUST 17, 2018)**

STATE OF VERMONT SUPERIOR COURT
ORANGE FAMILY DIVISION

JENNIFER DASLER,

Plaintiff,

v.

TIMOTHY DASLER,

Defendant.

Docket No. 74-6-17 Oedm

Before: Michael J. HARRIS, Superior Court Judge.,
Joyce MCKEEMAN, Assistant Judge.,
Victoria N. WEISS, Assistant Judge.

This Partial Final Parenting Plan is proposed by
the parties and is for the following child:

- Tenley Elizabeth Dasler [DOB 8/27/2015].
- A relief from abuse order involving the parties
is in effect.
- The starting date of the plan is the date of the
Order.

1. Legal Responsibility:

a) Major Decisions: These include, but are not limited to, decisions about the child's education, non-emergency health and dental care, and religious training.

Shared Decision-Making: Plaintiff is awarded decision-making authority. Plaintiff shall consult with the Defendant before making major decisions. Plaintiff shall advise the Defendant in advance of the decision and the options she is considering. Plaintiff shall give Defendant meaningful opportunity to have input regarding the options prior to making a final decision.

b) Day-To-Day Decisions: Each parent shall make day-to-day decisions for the child during the time he/she is caring for the child. This includes any emergency decisions affecting the health or safety of the child. A parent who makes an emergency decision shall share the decision with the other parent as soon as reasonably possible.

2. Physical Responsibility & Parenting Schedule:

Physical Responsibility is the responsibility to provide the routine daily care of a child. Physical responsibility can be held solely by one (1) parent or may be shared by both parents. If physical responsibility is held primarily by one (1) parent, it is subject to the other parent's right to parent child contact.

Plaintiff shall have primary physical responsibility.

3. Parenting Schedule:

a) The routine weekly schedule shall be the following:

Monday	Plaintiff	Defendant
Tuesday	Plaintiff	Defendant
Wednesday	Defendant	Plaintiff
Thursday	Defendant	Plaintiff
Friday	Plaintiff	Defendant
Saturday	Plaintiff	Defendant
Sunday	Plaintiff	Defendant

Exchange Times:

- **PLAINTIFF'S PROPOSAL:**

Parenting Times: Parenting times will begin at the start of school/daycare. In the event Tenley does not attend daycare/school, for whatever reason, parenting time shall begin at 8:00 a.m. unless the parents agree otherwise.

b) Holiday and Birthday Planning: The holidays and birthday(s) listed below should be shared as described. Specify start and end times and days/dates as necessary. (For example, Thanksgiving: One parent - even years, other parent - odd years, starting on the Wednesday prior to Thanksgiving at 6:00 p.m., ending the Friday after Thanksgiving at 6:00 p.m.). Parenting time on holidays and birthdays which are not checked and described shall be according to the routine schedule set forth above.

- Mother's Day: With Plaintiff from 9:00 a.m. through 5:00 p.m.
- Father's Day: With Defendant from 9:00 a.m. through 5:00 p.m.
- Thanksgiving:

PLAINTIFF'S PROPOSAL: With Plaintiff in even years and with Defendant in odd years. The Thanksgiving holiday will begin Wednesday after school and conclude on the following Friday at 9:00 a.m. when the routine schedule will resume. If a party exercising Thanksgiving parenting time intends to travel out of Vt. for more than four (4) days (or if Tim's immediate family [father, siblings] travels to Vt. for Thanksgiving), then the parenting time will extend until the start of school on the following Monday. However, if traveling with the child causes the other parent to miss his/her regularly scheduled weekend after Thanksgiving, that parent shall have the following two (2) weekends.

- Christmas: With Plaintiff in odd years and with Defendant in even years. Christmas parenting time shall be from noon on the 24th through 12:00 p.m. on the 25th and with the other parent from 12:00 p.m. on the 25th through 12:00 p.m. on the 26th.
- Easter—Defendant shall have even numbered from Sunday at 9:00 a.m. through Sunday at 5:00 p.m. in even number years; Plaintiff at the same times in odd numbered years.
- Halloween—Defendant from after school [or 3:00 p.m. if no school] until 9:00 a.m. the next morning in even numbered years; Plaintiff at the same time in odd numbered year.
- July 4th—Defendant from 9:00 a.m. on July 4th through 9:00 a.m. on July 5th in even year; Plaintiff at the same time in odd numbered years.

c) Three-day weekends: The parent exercising parenting time on a weekend before a Monday Federal holiday shall have extended parenting time until the start of daycare/school (or 9:00 a.m. if there is no daycare/school) on Tuesday.

d) Vacation Schedule:

(i) December Vacation:

• **PLAINTIFF'S PROPOSAL:**

No December vacation schedule shall apply. However, after Tenley begins Kindergarten if a parent seeks to travel with Tenley out of Vt. for at least four (4) days [or if Tim's immediate family [father, siblings] travels to Vt. for Christmas for at least 4 days] he/she may request that Christmas school vacation be evenly distribution with each parent taking extended time. This request must be made by November 1st each year.

(ii) February, April, and Summer Vacations:

Once Tenley starts 1st grade, the parties will alternate February and April school vacation. Parenting time shall be from Friday starting at 9:00 a.m. and ending at 7:30 a.m. on the Monday after school break. Plaintiff shall have February break in odd years and Defendant shall have February break in even years. Plaintiff shall have April break in even years and Defendant shall have April break in odd years.

Summer 2018

Defendant shall have Tenley from 7/23/18 at 8:00 a.m. through 7/30/18 at 5:00 p.m. to travel to Wisconsin to visit with his family. Defendant shall assure that

Tenley has one FaceTime during the week with the Plaintiff.

Plaintiff has not designated a vacation period for the summer of 2018. However, she shall have a right to the same length of time as the Defendant.

- **PLAINTIFF'S PROPOSAL:**

During the summer each party shall have a right to two (2) non-consecutive seven (7) day periods (inclusive of regular parent time). The parties shall exchange summer vacation plans no later than April 15th each year. In the event of a conflict, Father's schedule will prevail in even numbered years and Mother's will prevail in odd numbered years.

4. Transportation and Exchange of Child:

In the event that the parenting exchanges do not occur at daycare/school, the parenting exchanges will take place at Wings Market in Fairlee, Vermont.

5. Parent-Child Telephone Contact:

While the child resides with one (1) parent, the other parent shall be permitted to speak by telephone with the child at reasonable times.

6. Parent-Child Written Communication:

Both parents and the child shall have the right to communicate in writing, phone texting or by e-mailing during reasonable hours without interference or monitoring by the other parent.

7. Information Sharing and Access, Including Telephone and Electronic Access:

Unless there is a Court Order stating otherwise:

Both parents have equal rights to inspect and receive the child's school records, and other parents are encouraged to consult with school staff concerning the child's welfare and education. Both parents are encouraged to participate in and attend the child's school events.

Both parents have equal rights to inspect and receive governmental agency and law enforcement records concerning the child.

Both parents have equal rights to consult with any person who may provide care or treatment for the child and to inspect and receive the child's medical, dental or psychological records, subject to other statutory restrictions.

Each parent has a continuing responsibility to provide a residential, mailing, or contact address and contact telephone number to the other parent.

Each parent has a continuing responsibility to notify the other parent of any emergency circumstances or substantial changes or decisions affecting the child, including the child's medical needs, as close in time to the emergency circumstances as possible.

8. Plans to Relocate a Parent's Residence:

If either parent plans to relocate to a residence that will impact the child's school enrollment or increase the distance between the parent's home by more than twenty (20) miles [driving distance], the

parent who relocates shall provide the other parent with sixty (60) days' notice.

9. Procedure for Review and Adjustment of Parenting Plan:

Meetings shall not be on a set schedule but shall be as often as necessary for the benefit of the child, but no less than once annually.

10. Procedure for Resolving Disputes:

In the future, if the parents have a disagreement about parenting issues, the parents shall try to work it out in the best interest of the child. If the parents are unable to work out the disagreement, they shall seek the help of a neutral third party to assist them. Only if the parents are unable to work out the disagreement after seeking third party assistance will they ask the Court to decide the issue.

11. Other Parenting Responsibilities:

Each parent shall promote a healthy, beneficial relationship between the child and the other parent and shall not demean or speak out negatively (or allow any third party to do so in the presence of the child) in any manner that would damage the relationship between either parent and the child.

Neither parent shall permit the child to be subjected to persons abusing alcohol or using illegal drugs. This includes the abuse of alcohol or the use of illegal drugs by the parent.

The parties agree to, or the Court establishes, the following additional expectations:

- a) A parent requesting a temporary change to the parenting schedule shall act in good faith and ask the other parent about such change as soon as possible. The parents are expected to fairly adjust parenting schedules when family situations, illnesses, or other commitments make modification reasonable.
- b) If a parent requires child care by some person who does not reside in his or her residence, for a period reasonably expected to last longer than one (1) overnight, then the other parent shall be offered the opportunity to parent the child. This section does not apply to regularly scheduled day care.
- c) Each parent shall supply the appropriate child's clothing for them for their scheduled time with the other parent. These clothes are to be considered the child's clothes and shall be returned with the child.
- d) Each parent shall be responsible for ensuring that the child attends regularly scheduled activities, including, but not limited to, sports and extra-curricular activities, while the child is with the parent.

12. Other Parenting Agreements:

- A. If either parent plans to travel with Tenley out of Vermont for more than one (1) overnight, that parent shall provide the other parent with an itinerary [location of travel] and her/her travel plans.

- DEFENDANT'S PROPOSAL:

Once Tenley is of an age where she can participate in FaceTime without assistance and in the event of extended parenting time [6 days] the parent exercising extended parenting time shall assure that Tenley is provided with the opportunity for at least one (1) FaceTime contact with the non-parenting parent during that period

SO ORDERED:

/s/ Michael J. Harris
Superior Court Judge

/s/ Joyce McKeeman
Assistant Judge

/s/ Victoria N. Weiss
Assistant Judge

MEMORANDUM IN SUPPORT OF
8:00 A.M. EXCHANGE TIME
(JULY 23, 2018)

STATE OF VERMONT, SUPERIOR COURT
ORANGE FAMILY DIVISION

JENNIFER DASLER,

Plaintiff,

v.

TIMOTHY DASLER,

Defendant.

Docket No. 74-6-17 Oedm

NOW COMES, Plaintiff, Jennifer Dasler, by and through her attorneys, Brannen and Loftus, PLLC, and hereby submits this *Memorandum in Support of 8:00 a.m. Exchange Time*, relative to the parties' Partial Proposed Order: Agreement on Parental Rights and Responsibilities. In further support, Plaintiff states as follows:

1. Plaintiff works in Northfield, Vermont, which is geographically in the opposite direction of the parties' exchange location in Fairlee, Vermont. If the parties' parenting exchanges occur at 9:00 a.m., Plaintiff will be late for work.

2. Plaintiff would like the default exchange time to be 8:00 a.m., not 9:00 a.m. as requested by the Defendant. This way there will never be any confusion causing the Plaintiff to be late for her employment.

Dated at Hanover, New Hampshire this 23rd day of July, 2018.

Respectfully submitted,

JENNIFER DASLER

By: /s/ John B. Loftus III, Esq.
VT Bar No. 4246
Brannen & Loftus, PLLC
1 Maple Street
Hanover, NH 03755
Phone: 603-277-2971
Fax: 603-277-2974

**TEMPORARY ORDER ON PARENTAL RIGHTS
AND PARENT-CHILD CONTACT
(AUGUST 1, 2017)**

STATE OF VERMONT
SUPERIOR COURT FAMILY DIVISION
ORANGE UNIT

JENNIFER DASLER,

Plaintiff,

v.

TIMOTHY DASLER,

Defendant.

Docket No.74-6-17 Oedm

Before: Timothy B. TOMASI, Superior Court Judge.,
Joyce MCKEEMAN, Assistant Judge.,
Vickie WEISS, Assistant Judge.

This matter came before the Court this day for hearing in a consolidated docket. The Court made findings of fact on the record and based on the best interests of the child, orders the following temporary relief:

1. Mother shall have primary legal and physical rights and responsibilities for the parties' minor child Tenley.

2. Father shall continue to have visits as provided in the June 12, 2017 Stipulation between the parties.

3. Father shall complete anger management screening within 30 days and engage in any recommended treatment.

4. Father may request review of this contact order after completion of such screening if no counselling is recommended or after beginning counselling if it is recommended.

Dated at Chelsea, Vermont, this 1st day of August, 2017.

/s/ Timothy B. Tomasi
Superior Court Judge

Joyce McKeeman
Assistant Judge

/s/ Vickie Weiss
Assistant Judge

**EXTENDED TEMPORARY ORDER:
RELIEF FROM ABUSE
(MAY 23, 2017)**

STATE OF VERMONT SUPERIOR COURT
ORANGE FAMILY DIVISION

JENNIFER DASLER,
DOB 05/06/1983

Plaintiff,

v.

TIMOTHY DASLER,
DOB 11/16/1980

Defendant.

Docket No. 35-5-17 Oefa

Before: Timothy B. TOMASI, Superior Court Judge.,
Joyce MCKEEMAN, Assistant Judge.,
Vickie WEISS, Assistant Judge.

Minor Child/ren who have been abused or require
protection:

Name(s) and Date(s) of Birth of Minor Child/ren:

Tenley Elizabeth Dasler 08/27/2015

Complaint filed on: 05/15/2017

Hearing was: Held on 5/23/17

The following persons were present:

Plaintiff with attorney
Defendant attorney

Findings of the Court:

- Defendant has abused Plaintiff in that Defendant has:
 - Caused physical harm.
 - Attempted to cause physical harm.
 - Stalked Plaintiff, as defined in 12 V.S.A. 5131(6).
- There is an immediate danger of further abuse.
- Plaintiff and Plaintiff's Child/ren has/have been or will be forced from the household and without shelter unless the Defendant is ordered to vacate the premises.
- There is immediate danger of physical or emotional harm to the minor child/ren.

Order of the Court:

- The application for an *ex parte* ORDER is GRANTED, as follows:
 1. Defendant shall not abuse Plaintiff and the minor child/ren named above, and Defendant shall not threaten, assault, molest, harass, or otherwise interfere with his/her/their personal liberty.
 2. Defendant shall refrain from stalking plaintiff the minor child/ren and refrain from interfering with his/her/their personal liberty.
-

3. Defendant shall vacate the residence immediately and plaintiff shall have the sole possession of the residence located at: 74 North Rd, Vershire, VT 05079.
4. Defendant shall not enter the residence except with Plaintiff's prior permission AND in the presence of a law enforcement officer.
5. Temporary parental rights and responsibilities (custody) of the minor child/ren named below is awarded to:

Plaintiff

Name(s) and Date(s) of Birth of Minor
Child/ren:

Tenley Dasler 08/27/2015

7. Defendant may not have face-to-face contact with Plaintiff or the minor child but may have contact with Plaintiff and the minor child by telephone, skype, email, text, or through a third party.
 8. Defendant shall stay 300 feet away from:
 - o Plaintiff
 - o Plaintiff's residence
 - o Plaintiff's place of employment
 - o Plaintiff's motor vehicle
 - o Child/ren named in #5 above
 - o Child's daycare.
 11. Other: Parent-child contact to be discussed at hearing.
-

VERMONT LAW ENFORCEMENT OFFICERS
ARE AUTHORIZED TO ARREST WITHOUT
WARRANT PERSONS WHO VIOLATE THE ABOVE
PROVISIONS OF THIS RELIEF FROM ABUSE
ORDER.

VIOLATION OF THIS ORDER IS A CRIME
SUBJECT TO A TERM OF IMPRISONMENT OR A
FINE, OR BOTH, AND MAY ALSO PROSECUTED AS
CRIMINAL CONTEMPT PUNISHABLE BY FINE
OR IMPRISONMENT, OR BOTH.

****This order may be served by any
law enforcement officer.****

A HEARING will be held on 6/6/2017 at 9:00 AM

Vt. Superior Court, Family Division
Orange Unit
5 Court Street
Chelsea, Vermont 05038
(802) 685-4610

The temporary order remains in effect until the
Court dismisses the case or, after a hearing, issues an
order or denies a final order, or at 5:00 PM on the date
of hearing, whichever is earlier.

So ordered. Click here to sign.

Dated at Chelsea, Vermont, this 23 day of May,
2017.

/s/ Timothy B. Tomasi
Superior Court Judge

/s/ Joyce McKeeman
Assistant Judge

App.95a

/s/ Vickie Weiss
Assistant Judge

**ORDER OF THE SUPREME COURT
DENYING MOTION FOR REARGUMENT
(JULY 8, 2019)**

SUPREME COURT OF VERMONT

JENNIFER DASLER

v.

TIMOTHY DASLER

Supreme Court Docket No. 2018-301

Appealed from: Superior Court, Orange Unit,
Family Division. Docket No. 74-6-17 Oedm

Before: Beth ROBINSON, Associate Justice.,
Harold E. EATON, Jr., Associate Justice.,
Karen R. CARROLL, Associate Justice.

In the above-entitled cause, the Clerk will enter:

Appellant's July 1, 2019 motion for reargument
fails to identify points of law or fact overlooked or
misapprehended in this Court's June 24, 2019 decision;
accordingly, the motion is denied.

BY THE COURT:

/s/ Beth Robinson
Associate Justice

App.97a

/s/ Harold E. Eaton, Jr.

Associate Justice

/s/ Karen R. Carroll

Associate Justice

**PLAINTIFF TRAIL EXHIBIT
(JUNE 6, 2018)**

**Modification and Make-up Parenting Time for
36 Weeks from June 9, 2017 [Temporary Stipulation]
through February 16, 2018 [Motion Hearing]**

June 9th stipulation—Two visits a week

First Visit—June 13, 2017

70 Visits

- 6/18/17—Tim requested to move Saturday visitation to Sunday for Father's Day. I agreed.
- 6/18/17—Tim requested to move Saturday visitation to Sunday. I agreed.
- 7/18/17—Visit cancelled. Tenley sick.
- 7/22/17—Visitation suspended
- 7/25/17—Visitation suspended
- 7/29/17—Visitation suspended
- 10/3/17—Visit cancelled. Tenley sick. Offered Facetime. Tim accepted.
- 10/7/17—Tenley spent an extra 1 hour with her father to make up time for being sick on 10/3.
- 10/17/17—Tenley spent an extra 1 hour with her father to make up time for being sick on 10/3.
- 11/25/17—Tim requested to move visitation on Saturday to Sunday. I agreed.
- 12/2/17—Visitation cancelled. Tenley sick. Offered Facetime. Tim refused.
- 12/5/17—Visit cancelled. Tenley sick and seen by Dr

- 12/12/17–Visit cancelled. Snowstorm. Offered Facetime. Tim accepted.
- 12/15/17–Tenley spent 1.15/hour with her father to make up time for cancellation on 12/12 due to snowstorm. I was late due to urgent vet appt.
- 12/16/17–Tenley spent extra half hour with her father to make up time for cancellation on 12/12 due to snowstorm.
- 1/13/18–Tim requested to move visitation from Saturday to Sunday. Tim notified Tenley is contagious with Hand, Foot, and Mouth. Visitation cancelled. Tenley sick.

- 1/16/18–Visitation cancelled. Tenley sick. Hand, Foot, and Mouth.

8 = Missed parenting time from sickness or weather

2 = Missed Parenting Time that was Made-up

7 = Accommodated Tim's request to modify parenting time or make up time for cancelled visit because of sickness or weather.

**STIPULATION RE: PARENT CHILD CONTACT
(JUNE 9, 2017)**

STATE OF VERMONT, SUPERIOR COURT
ORANGE UNIT FAMILY DIVISION

JENNIFER DASLER,

Plaintiff,

v.

~~TIMOTHY DASLER,~~

Defendant.

Docket No. 37-5-17 Oefa

The parties, with counsel, have engaged in mediation regarding parent child contact in connection with the above captioned matter. The parties agree to the following pending the hearing on June 20, 2017 or any postponement of that hearing:

1. Defendant Timothy Dasler will have parent child contact with Tenley Dasler, the minor child, on two days each week, for two hours each visit. Said contact will occur as follows:

- a. at either the Upper Valley Aquatic Center or the Montshire Museum,
 - b. Plaintiff Jennifer Dasler will provide transportation to and from the venue for Tenley;
-

- c. Timothy will not take Tenley to any other location during these visits, nor will he remove her from the state of Vermont;
- d. Timothy will not transfer supervision of Tenley to any third party during visits; and
- e. Timothy will obtain an anger management evaluation through HCRS and follow all recommendations made by the evaluator.

2. The parties agree and acknowledge that they do not expect or contemplate that contact between Timothy and Tenley will continue on the schedule currently agreed herein, and that they will work to normalize that contact as this matter or any related matter progresses. The parties agree that one of the visits in June 2017 will occur on Father's Day.

3. The parties will file an agreed upon Motion to Modify the Current Relief from Abuse Order to accommodate the contact agreed upon herein.

4. The parties agree that Timothy and Tenley may continue to utilize Face Time for additional contact as agreed by the parties.

Respectfully submitted this June 9, 2017.

/s/ Jennifer Dasler
Plaintiff

/s/ Timothy Dasler
Defendant

Approved as to Form:

/s/ Brian Marsicovetere, Esq.
Attorney for Plaintiff

/s/ Catherine Dux, Esq.
Attorney for Defendant