IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

VICTORIA L. FRAWLEY,)
Respondent,)
)
v.) WD82442
)
MATTHEW J. FRAWLEY,) FILED:
February 11, 2020
Appellant.)

Appeal from the Circuit Court of Platte County
The Honorable W. Ann Hansbrough, Judge

Before Division Three:
Alok Ahuja, P.J., and Anthony Rex Gabbert and Thomas N. Chapman, JJ.

In 2013, the Circuit Court of Platte County entered a judgment dissolving the marriage of Matthew J. Frawley ("Father") and Victoria L. Frawley ("Mother"). The dissolution decree awarded Mother sole legal and sole physical custody of the couple's two children, and ordered Father to pay $505 per month in child support.

Father filed a motion to modify the child custody and child support provisions of the decree. Mother filed a counter-motion seeking to increase Father's child support obligation, and a motion to hold Father in contempt for failing to satisfy his existing support obligations. After a bench trial the circuit court declined to modify the existing custody arrangement, but altered the visitation provisions of the original decree. The circuit court increased Father's child support obligation to $554 per month. The circuit court held Father in contempt for failing to pay his share of the children's previously incurred extracurricular and unreimbursed medical expenses. It also awarded Mother $10,000 in attorney's fees, and ordered

Father to pay two-thirds of the fees of the Guardian *ad Litem*.

Father appeals, asserting nine Points. We reject eight of his claims. We find, however, that the circuit court erred in calculating Father's modified child support obligation, by failing to give him credit for another child over whom he has primary physical custody. We accordingly reverse the child support provisions of the modification judgment, and remand for further proceedings concerning Mother's motion to modify child support. In all other respects, the judgment is affirmed.

Background

Father and Mother were married in 2008. They have two children together, both boys, who are currently 8 and 10 years old.

On March 7, 2013, the Circuit Court of Platte County entered a judgment dissolving the parties' marriage. The dissolution decree awarded Mother sole legal and sole physical custody of the couple's two sons. The court did so in consideration of Father's "psychological problems and [his] refusal to address said problems properly through therapy and/or

medication." The decree granted Mother discretion to allow Father "either unsupervised or supervised visitation" "in light of Father's psychological difficulties," at "all reasonable times and places" as Mother determined.[1] The circuit court also ordered Father to pay $505 per month in child support, and ordered that the parties equally share health care costs for the children that were not otherwise covered by Mother's medical insurance, and the costs of the children's extracurricular activities.

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[1] We question the validity of the parenting plan in the circuit court's original dissolution judgment, given its vagueness concerning Father's visitation rights, and the virtually unfettered discretion given to Mother to grant or withhold visitation. *See, e.g., Clark v. Clark*, 568 S.W.3d 920, 923 (Mo. App. S.D. 2019) (reversing provisions of dissolution decree which delegated authority to a third party to determine when and how mother could exercise visitation); *Kamler v. Kamler*, 213 S.W.3d 185, 188–89 (Mo. App. E.D. 2007) (reversing dissolution decree which granted father supervised visitation only "at such times approved by the mother," on the grounds that it was "vague and unenforceable," and in violation of § 452.400.1(1), RSMo, which required "an order specifically detailing the visitation rights of the parent without physical custody rights"). Father did not appeal the original dissolution decree, however, and the validity of its visitation provisions is not presently before us.

On June 10, 2016, Father filed a motion to modify the child custody and child support provisions of the original decree. He argued that, in light of a substantial and continuing change of circumstances since entry of the original decree, the court should order that Mother and Father exercise joint legal and joint physical custody of their children. He also argued that, as a result of this changed custody arrangement, his child support obligation should be modified and reduced.

On July 1, 2016, Mother filed a counter-motion to modify Father's child support obligation, arguing that his support obligation should be increased because Father has "obtained a full-time job and is making significantly more money" than at the time of the original decree. On the same day, Mother also filed a motion asking the court to order that Father undergo a psychological and physical examination.

At Mother's request, the circuit court appointed a Guardian *ad Litem* to represent the interests of the children. The circuit court also ordered that Father undergo a psychological and parenting examination with Dr. Aileen P. Utley.

On December 29, 2016, Mother filed an amended motion to modify, which added an allegation that Father had "not fulfilled his child support obligation" under the existing dissolution decree. Mother filed a motion to hold Father in contempt based on the same contentions in January 2017.

On August 3, 2017, the court granted Father's second attorney's motion to withdraw, over Father's objection. From that point forward, Father (who is himself a lawyer) proceeded *pro se*. Father has also represented himself in this appeal.

The circuit court heard evidence on the parties' respective motions to modify and for contempt on six days between December 2017 and November 2018. The court entered its final modification judgment on January 3, 2019. The modification judgment found that:

> Since the date of the Judgment and Decree for Dissolution of Marriage, there have been changed circumstances so substantial and continuing as to make the terms of said Judgment and Decree for Dissolution of Marriage unreasonable in regard to child support, custody and

Parenting Time. The continuing and substantial changed circumstances included but are not limited to the following:

a. [Father] has relocated his residence from the Kansas City Metropolitan Area to Jefferson City, Missouri;

b. [Father] has engaged in a course of behavior which would endanger the children's physical health or impair their emotional development if [Father] engages in unsupervised contact with the children, to wit:

i. [Father] uses a medication which two qualified medical professionals have stated causes increased psychosis in [Father];

ii. [Father] fails to have insight on his own mental health condition and fails to follow proper treatment protocol; and

iii. [Father] fails to share his prior medical records with his current treating medical professional resulting in his symptoms not being properly managed.

c. [Father] has engaged in [a] course of behavior during this litigation that shows a lack of stability in his mental health including but not limited to erratic filing of motions during the course of trial, [and] threats both direct and indirect against this Court, Counsel for [Mother], and the Guardian ad Litem.

d. [Father] has obtained new employment and as a result

that the application of the Missouri Child Support Guidelines and criteria set forth in Supreme Court Rule 88.01 would result in a change of the existing child support in an amount of 20 percent or more. The modification judgment continued to give Mother sole legal and sole physical custody of the children. As opposed to the original decree which gave Mother sole discretion over Father's visitation rights, however, the modification judgment specified that Father would have solely supervised visitation, based on the court's conclusion that "Unsupervised Parenting Time with [Father] would endanger the

children's physical health or impair their emotional development." The parenting plan incorporated into the modification judgment detailed when and where Father was entitled to exercise his parenting time, including weekly visitation and a holiday schedule.

The circuit court also modified Father's child support obligation, increasing it to $554 per month. The court found Father in contempt for failing to pay $6,352.03 as his share of the children's past extracurricular and uninsured medical expenses, and ordered him to purge this contempt by paying an additional $200 per month until the arrearage was satisfied. The circuit court awarded the Guardian *ad Litem*

$10,959.62 in fees, and ordered Father to pay two-thirds of those fees, or $7,306.34.

The court also awarded Mother $10,000 in attorney's fees.

Father appeals, raising nine claims of error.[2]

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[2] Mother filed a motion to dismiss Father's appeal based on his failure to comply with the procedural requirements of Rule 84.04 in his amended appellant's brief. *Pro se* parties are subject to the same procedural rules as represented litigants. *Johnson v.*

Standard of Review

On review of a modification judgment, as with any other court-tried case, we must "affirm the circuit court's judgment unless it is unsupported by substantial evidence, it is against the weight of the evidence, or it erroneously declares or applies the law." *Querry v. Querry*, 382 S.W.3d 922, 925–26 (Mo. App. W.D. 2012) (citing *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. 1976)). "We accept all reasonable inferences and evidence favorable to the [modification] order and disregard all contrary inferences." *Kunce v. Kunce*, 459 S.W.3d 443, 446 (Mo. App. W.D. 2015) (citation and internal quotation marks omitted). We also defer to the circuit court's credibility judgments, since "[t]he trial court may believe

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Mo. Dep't of Corrs., 534 S.W.3d 869, 871 (Mo. App. W.D. 2017). While compliance with Rule 84.04 is mandatory, *Franklin v. Ventura*, 32 S.W.3d 801, 803 (Mo. App. W.D. 2000), dismissing an appeal for failing to comply with Rule 84.04 is within this Court's discretion. *State v.* McDaniel, 236 S.W.3d 127, 132 (Mo. App. S.D. 2007). We prefer wherever possible to dispose of a case on the merits. *Morris v. Wallach*, 440 S.W.3d 571, 575 n.4 (Mo. App.
E.D. 2014). Although Father's brief is procedurally deficient in some respects, we are able to discern his arguments, and will address those arguments on the merits. Mother's motion to dismiss is denied.

or disbelieve all, part, or none of the testimony of any witnesses." *Id.* (citation and internal quotation marks omitted).

Discussion

I.

Father's first Point challenges the admission into evidence of exhibits offered by Mother pertaining to his mental health status and treatment. Specifically, Father challenges the admission of Exhibits 2 and 113, which are a business records affidavit, and the associated psychological evaluation report prepared by Dr. Aileen Utley.[3]

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[3] Father also asserts error as to the admission of Exhibits 110 and 112, which are a compilation of Father's mental health records from Tri-County Mental Health Services, Inc., under the care of Dr. Parimal Purohit; and ten pages of handwritten notes by Dr. Samuelson, who also provided Father with mental health services. At trial, Father stated he did not "have any objection with the Purowit [*sic*] records," and he therefore failed to preserve any claim of error as to Exhibit 110. At trial, Father's only objections to Exhibit 112 were that it was not complete, and that it was inadmissible in this modification proceeding because it concerned Father's mental health prior to entry of the original dissolution decree. Father did not preserve in the circuit court his current claim: that Exhibits 110 and 112 were "not served on Father until the third day of trial." The argument concerning belated disclosure of these exhibits

Dr. Utley was appointed by the court to conduct a psychological and parenting assessment of Father. Father argues that Exhibits 2 and 113 were improperly admitted for multiple reasons. Among other things, he argues: that Mother failed to comply with the business records affidavit statute, § 490.692,

RSMo, because Dr. Utley's report was not attached to the business records affidavit Mother served on him; that Dr. Utley's report does not qualify as a business record subject to the statute; that Dr. Utley was not qualified to render the opinions described in the report; and that Dr. Utley's report constitutes impermissible expert testimony concerning Father's credibility.

What is notably absent from Father's briefing, however, is any developed argument that he was prejudiced by the admission of Dr. Utley's report. We do not reverse circuit court judgments based merely on the existence of an erroneous ruling; instead, Rule 84.13(b)

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was also not included in Father's Point Relied On, and is therefore not properly before us for that reason as well. *Curl v. BNSF Ry. Co.*, 526 S.W.3d 215, 228 n.1 (Mo. App. W.D. 2017).

specifies that "[n]o appellate court shall reverse any judgment unless it finds that error was committed by the trial court against the appellant *materially affecting the merits of the action*." (Emphasis added.) Consistent with this general principle, caselaw holds that "the erroneous admission of evidence in a court-tried case is not grounds for reversal as long as there is substantial admissible evidence in the record to support the judgment." *C.S. v. Mo. Dep't of Soc. Servs.*, 491 S.W.3d 636, 646 (Mo. App. W.D. 2016) (citation and internal quotation marks omitted). "Missouri Courts have described this standard as being 'practically impossible' to meet." *S.M.S. v. J.B.S.*, 588 S.W.3d 473, 509

(Mo. App. E.D. 2019) (citations omitted).[4]

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[4] *See also, e.g., Andrews v. Andrews*, 452 S.W.3d 150, 154 (Mo. App. W.D. 2015) (finding no basis for reversal of circuit court judgment refusing to authorize mother's relocation with children, even assuming guardian *ad litem*'s report was erroneously admitted, where "the record is replete with sufficient competent evidence to support the court's judgment"); *Rathbun v. CATO Corp.*, 93 S.W.3d 771, 785 (Mo. App. S.D. 2002) ("[T]he erroneous admission of evidence is 'scarcely ever' grounds for reversal in a courttried case," "except where it appears from the record that the court relied on the evidence and that no other competent evidence supports the judgment."); *Love v. Love*, 72 S.W.3d 167, 173–74 (Mo.

Father does not argue that the circuit court's modification judgment is unsupported by substantial evidence if Dr. Utley's report is disregarded. Nor could he plausibly make such an argument. The circuit court may order supervised visitation where it finds that unsupervised visitation "would endanger the child's physical health or impair his or her emotional development." § 452.400.1, RSMo; *see also, e.g.*, *Baker v. Gonzalez*, 315 S.W.3d 427, 433 (Mo. App. S.D. 2010) (holding that "[t]his 'endangerment-impairment standard' applies to an order for supervised visitation." (citing *Buschardt v. Jones*, 998 S.W.2d 791, 799 (Mo. App. W.D. 1999)). Under § 452.400.2, this standard must be satisfied in a modification judgment, where a modified parenting plan "restrict[s] or limit[s] one party's visitation rights compared to their visitation rights under the original [judgment]." *Turley v. Turley*, 5 S.W.3d 162, 165 (Mo. 1999). In this case, although the original dissolution decree authorized Mother to require Father's

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App. S.D. 2002) (finding no basis for reversal of child custody provisions of dissolution decree, even assuming that admission of guardian *ad litem*'s report was erroneous, because "the custody provision of the decree is [otherwise] supported by substantial evidence").

visitation to be supervised, the circuit court only *mandated* supervised visitation in the modification judgment. We therefore assume for purposes of this opinion that the evidence was required to satisfy the endangerment-impairment standard.

Substantial evidence – separate and apart from Dr. Utley's report – supports the circuit court's finding that unsupervised visitation with Father would endanger the children's physical health, or impair their emotional development. In justifying supervised visitation in this case, the modification judgment refers to the circuit court's own observation of Father's behavior in the course of this litigation. The judgment finds that Father's "erratic filing of motions" and direct and indirect threats against the court, opposing counsel, and the Guardian *ad Litem* "shows a lack of stability in his mental health." The judgment also refers to Father's "hostile and disagreeable attitudes" while being questioned during trial.

The modification judgment also cites Father's erratic, aggressive or troubling behavior in his interactions with Mother, her fiancé, and the children, including: sporadic exercise of

visitation; refusing to return the children to Mother after his visitation time had ended; unilaterally enrolling the children in a parochial school, even though Mother had been awarded sole legal custody; conflict and expressions of anger towards Mother's fiancé as he interacted with the children, including "one occasion [when Father] went into a rage and insisted that the fiancé move when one of the boys was on his lap"; a "road rage" incident with the children in Father's car; and Father "demeaning [Mother], bullying her and name-calling" during Father and Mother's communications.

Finally, the circuit court had substantial evidence concerning Father's mental health condition and treatment, separate and apart from Dr. Utley's report. This evidence included medical records of Father's treatment by multiple other mental health professionals, and Father's and Mother's testimony. Father in his testimony acknowledged that he was taking a medication for Attention Deficit Hyperactivity Disorder ("ADHD") which two of his previous physicians had advised him not to take because it increased his psychotic symptoms (although Father contended that he was now taking a

delayed- rather than immediate-release form of the medication). Father also admitted in his testimony that his current treating psychiatrist had not had access to all of the treatment records from his care by an earlier psychiatrist.

The record here contains substantial other evidence – separate and apart from Dr. Utley's report – that supports the trial court's judgment that unsupervised visitation would endanger the children's physical health or emotional development. Therefore, the admission of Dr. Utley's report – even if erroneous – would not justify reversal. Point I is denied.

II.

In his second and third Points, Father argues that the trial court erred in excluding an audio recording he made of one of the children's baseball games, and in refusing to permit Father to make an offer of proof as to the content of the recording.

On the second day of trial, Father offered the audio recording into evidence. He testified that he made the recording "specifically because [Mother] at this time has been saying lie after lie after lie which my testimony already

establishes. So I wanted proof, if she makes any allegations whatsoever, that I did not do anything inappropriate." In offering the audio recording, Father initially testified that he started the audio recording on his iPhone 5 smartphone when he arrived at the baseball field; that he stopped the recording when the game ended; that he transferred the recording (by e-mail) from his smartphone to his desktop computer; and that he transferred copies of the recording from his computer onto three compact discs (which he had provided to opposing counsel, the Guardian *ad Litem*, and to the court). Father contended that the recording was probative to establish that Mother had belittled him at the game, had withheld visitation with the children from him, and had alienated the children's affections. He also contended that the recording would disprove Mother's claims that he had upset the children at the game, and had acted aggressively toward Mother's fiancé.

Mother's counsel objected on the basis that "there's no way to tell the veracity of this recording[,] . . . [or] if certain things were removed or added," and that the recording was over an hour long and would occupy

considerable trial time to play. Father then repeated that he started the recording when he arrived at the game and stopped it when he was leaving, and that "[t]his document has not been edited whatsoever." When the circuit court informed Father that it did not believe an adequate foundation had been laid for the recording, he added to his prior testimony that his smartphone, computer and compact discs were continuously in his custody and control at all relevant times, and that "[t]he video [*sic*] recording has not been altered in any form." Again, the court expressed concern that "there is an element of the foundation that [Father] ha[s] not established," and sustained Mother's foundation objection.

After a short recess, the circuit court permitted Father an additional opportunity to lay a proper foundation for the recording. Father "renew[ed] everything" he had said previously, and added that "the phone was working in all aspects prior to the time in which I made the recording," that the "speakers on the audio" were Mother, Father, and the two minor children, and finally that "the device was properly working." Mother's counsel again

objected, and the trial court sustained the objection and excluded the recording.

On the next day of trial, after hearing several preliminary motions, Father sought permission from the court to make an offer of proof concerning the contents of the audio recording. After hearing objections from Mother's counsel and the Guardian *ad Litem*, the circuit court ruled that it would not accept as an offer of proof anything beyond what Father had previously stated when attempting to introduce the audio recording into evidence.

We review the trial court's decision to exclude the audio recording for an abuse of discretion. *NorthStar Educ. Fin., Inc. v. Scroggie*, 581 S.W.3d 641, 644 (Mo. App. W.D. 2019). "An evidentiary ruling is an abuse of discretion only if it is clearly against the logic of the circumstances then before the court and is so unreasonable and arbitrary that it shocks the sense of justice and indicates a lack of careful, deliberate consideration." *Menschik v. Heartland Reg'l Med. Ctr.*, 531 S.W.3d 551, 557 (Mo. App. W.D. 2017) (citation and internal quotation marks omitted).

In *State v. McFadden*, 369 S.W.3d 727 (Mo. 2012), the Missouri Supreme Court explained that, to

> [e]stablish[ ] a proper foundation for the admission of a tape-recorded conversation, one must demonstrate:
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> > (1) the device was capable of recording accurately; (2) the operator of the recording device was competent to operate it; (3) the recording is authentic and correct; (4) changes, additions and deletions have not been made to the recording; (5) the recording has been preserved in an acceptable manner; (6) the speakers are identified; and (7) the conversation was voluntary and without inducement.

Id. at 752 (quoting *State v. Fletcher*, 948 S.W.2d 436, 439 (Mo. App. W.D. 1997)

(citing *State v. Wahby*, 775 S.W.2d 147, 153 (Mo. banc 1989))).

Although Father's testimony may have established several of the required foundational elements for admission of an audio recording,

he never offered testimony as to one critical, and central, issue: whether "the recording [was] authentic and correct." Father testified to *the manner* in which the recording was made, and to the chain of custody of the recording from his smartphone to the compact discs on which the recording was now housed. He never testified, however, that he had listened to the recording, or that the recording in fact fairly and accurately depicted the events at his children's baseball game. Father's failure to explicitly testify that the recording was accurate is particularly glaring given the objection from Mother's counsel as to "the veracity of this recording." While the circuit court gave Father multiple opportunities to supply the missing foundational element, he failed to do so. In these circumstances, we cannot find that the circuit court abused its discretion in excluding the recording. Given this fundamental, foundational defect in Father's proffer, we need not address his separate claim that the circuit court erred by refusing to permit him to make an offer of proof concerning the recording's contents.[5]

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[5] While we need not decide the offer of proof issue, we emphasize that even if the circuit court is firmly

Points II and III are denied.

III.

In his fourth Point, Father argues – on multiple grounds – that the circuit court erred in finding him to be in contempt of the dissolution decree, for failing to satisfy his obligation to reimburse Mother for 50% of the children's extracurricular and unreimbursed medical expenses.

The modification judgment states:

> [Father] is found to be in contempt of the Judgment and Decree of Dissolution of Marriage for willfully and maliciously failing to reimburse [Mother] for uninsured medical expenses and extracurricular expenses in the amount of $6,352.03. [Father] shall purge himself of this contempt by mailing a payment of $200.00 per month, post-marked on or before on the 15th day of each month, beginning January 15, 2019, to [Mother] until the amount in full has been paid.

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persuaded that proffered evidence is inadmissible, it should permit an offer of proof except in unusual circumstances "to preserve for the appellate courts' review a record of what evidence was offered but rejected." *State ex rel. Praxair, Inc. v. Mo. Pub. Serv. Comm'n*, 344 S.W.3d 178, 185–86 (Mo. 2011).

> Failure by [Father] to make said payments to [Mother] could result in incarceration in the Platte County Detention Center until such time as he purges himself of this contempt.

Thus, the modification judgment finds that Father failed to satisfy his support obligations under the original dissolution decree, and threatens him with potential future incarceration if he fails to purge his contempt in the manner specified. The judgment does not, however, actually order Father's incarceration. For this reason, his appeal of the contempt finding is premature.

Civil contempt orders are appealable only when they become final. *In re Marriage of Crow & Gilmore*, 103 S.W.3d 778, 780 (Mo. 2003). "For purposes of appeal, a civil contempt order is not final until [it is] enforced." *Id.* at 781 (citations and internal quotation marks omitted; collecting cases). Civil contempt orders are enforced in two ways. If the remedy is by a fine, a civil contempt order is enforced "when the moving party executes on the fine." *Id.* Alternatively, if the remedy for contempt is imprisonment, the contempt order is enforced at the time a court issues an order of

commitment based on the contempt, or when the contemnor is actually imprisoned. *Id.* at 781–82; *see also Carothers v. Carothers*, 337 S.W.3d 21, 25 (Mo. 2011). In *Crow*, the Supreme Court held that "the contempt order was not enforced" and was therefore not appealable, where – as here – "[b]y the words of the 'judgment,' incarceration was conditioned on Husband's failure to purge the contempt within 60 days. If he failed, the court could impose incarceration by issuing an order of commitment." 103 S.W.3d at 782; *accord In re Marriage of Kimball*, 583 S.W.3d 450, 454–55 (Mo. App. S.D. 2019); *Navarro v. Navarro*, 504 S.W.3d 167, 174 (Mo. App. W.D. 2016); *Davis v. Davis*, 475 S.W.3d 177, 183 (Mo.

App. W.D. 2015) (dismissing appeal of contempt ruling where "although the contempt judgment contained a *threat* of incarceration, no warrant of commitment to jail was ever entered").

At the time this appeal was filed, the circuit court had found Father in contempt, but had not enforced the contempt order by issuing an order of commitment or actually incarcerating Father. Father's arguments in this appeal

concerning the validity of the contempt finding are premature, and we do not consider them.

IV.

In his fifth Point, Father argues that the circuit court erred in calculating his modified child support obligation. Specifically, Father argues that, in calculating the presumed child support amount which Father was then ordered to pay, the court failed to provide Father with credits (against his gross income): (1) for a child born to Father and his current wife after the original dissolution decree, whom he supports, and who primarily resides with him; (2) for health insurance which Father purchased on behalf of the children; and (3) for overnight visitation Father has exercised with the children.

At trial, both parties submitted their own Form 14s for the circuit court to review. The trial court rejected the parties' Form 14s, and instead prepared its own. Using its Form 14, the circuit court calculated a presumed child support amount of $554 per month. The court used this calculated amount to increase Father's child support obligation from $505 per month (as specified in the original dissolution decree) to $554 per month.

"When determining the amount of child support to be paid, the application of Rule 88.01 and Form 14 is mandatory." *Monnig v. Monnig*, 53 S.W.3d 241, 248 (Mo. App. W.D. 2001) (citation and internal quotation marks omitted). "Courts are permitted to either adopt a Form 14 of the parties or create their own." *M.L.R. v. Jones*, 437 S.W.3d 404, 406 (Mo. App. S.D. 2014) (citation omitted). In either case, the Form 14 "amount must be calculated in conformity with the Supreme Court's directions for its use." *Monnig*, 53 S.W.3d at 248 (citation omitted). On appeal, we review "the correctness of the presumed child support amount . . . to ensure that not only is it done accurately from a mathematical standpoint, but that the various items and their amounts were properly included in the calculation and supported by substantial evidence." *Rackers v. Rackers*, 500 S.W.3d 328, 334–35 (Mo. App. W.D. 2016) (citation and internal quotation marks omitted).

A.

Father first argues that the circuit court erred by failing to give him a credit under Line 2(c) of Form 14 for another child he supports. Father argues he is entitled to a credit for a daughter born to Father and his current wife in July 2018, after the initial dissolution decree. Mother responds that, because Father is "the moving party" in this modification proceeding, he is not entitled to a Line 2(c) adjustment. We agree with Father that the circuit court erred in failing to award him a credit on Line 2(c) for his new child.

Line 2(c) provides an adjustment to a parent's monthly gross income, by reducing the parent's gross income on account of the parent's "[m]onthly support obligation for other children." "In Line 2(c), Form 14 'provides for an adjustment to the gross income for other children who are not part of the current proceeding for which a party has primary physical custody.'" *M.L.R.*, 437 S.W.3d at 407 (citations omitted).

The comment for Line 2(c) explains when a credit for support for other children is warranted. It states:

> (1) *In any action to <u>decrease</u> child support*, a parent obligated to pay support shall not be entitled to a line 2(c) credit for children born to or adopted by the parent obligated to pay support after the entry of the current order. However, the parent obligated to pay support will be allowed a line 2(c) credit for children that have remained primarily residing with the parent obligated to pay support from prior to the existing order.
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> (2) *In any action to <u>increase</u> child support*, a parent obligated to pay support shall be entitled to a line 2(c) credit for children born to or adopted by the parent obligated to pay support after the entry of the current order. However, the use of the credit alone cannot act to reduce the current support amount in the action in question.

(Emphasis added.)[6]

Thus, under the official comments to Line 2(c) of Form 14, Father would be entitled to a credit against his gross monthly income for his support obligation for children born or adopted after the initial dissolution decree, "[i]n any action to *increase* child support." Such a credit would <u>not</u> be available, however, "[i]n any

action to *decrease* child support." Mother argues that, because "Father was a moving party in this action [he is] not entitled to credit for his after-born child." We disagree.

There is no question that Father initiated these proceedings by filing a motion to modify "Child Custody and Custody Time." In his motion, Father asked for a "review of child support," and a reduction in his support obligation, as a result of the altered custody arrangement he proposed. In addition to opposing Father's motion, Mother filed her own motion to modify child support, seeking an *increase* in Father's child support obligation due to changed circumstances, including Father's new employment.

[6] The current comment to Line 2(c), which has been in effect since January 1,
2014, is worded differently than the earlier comment. The earlier comment denied a Line 2(c) credit for later-born and later-adopted children to "the moving party," "in an action to increase *or decrease* the support payable under an existing order." Cases decided under the earlier comment held that a paying parent who had moved to modify his or her child support was not entitled to a Line 2(c) credit for later-born children, even if the circuit court denied the paying parent's motion to modify, and instead granted the recipient parent's cross-

motion. *See, e.g.*, *Cross v. Cross*, 318 S.W.3d 187, 195–96 (Mo. App. W.D. 2010). Because the current comment does not deny credit to any parent who is a "moving party," and allows the credit in "any action to increase child support," cases decided under the earlier version of this comment are no longer relevant to the issue we address.

The comment to Line 2(c) does not define the phrase "any action to increase [or to decrease] child support." We conclude, however, that the phrase must be read to refer to each separate motion to modify child support which a circuit court addresses. The intent of the comment to Line 2(c), and the limitation it places on the availability of a credit, seems clear: a parent may not seek to *reduce* their child support obligation for existing children, by invoking their newly incurred obligation to support later-born or later-adopted children; on the other hand, a parent's preexisting child support obligation cannot be *increased* without taking account of any additional support obligations the parent has since incurred.

It is a common occurrence that parents file cross-motions to modify child support, with the paying parent seeking a *reduction* in their support obligation, while the recipient parent seeks an *increase*. We do not believe the availability of the Line 2(c) credit should

depend on which motion was filed first. Instead, the comment to Line 2(c) makes clear that a paying parent cannot rely on a new child to seek to reduce their pre-existing support obligations, but that the recipient parent cannot seek an increase in child support while ignoring the fact that the paying parent now has additional support obligations. Where a parent files a motion to increase the other parent's child support obligation – whether as an original motion or as a counter-motion – the paying parent is entitled to a Line 2(c) credit for children born or adopted after the original child support order.

Here, the circuit court denied Father's motion to modify the child custody arrangement, and his associated motion to reduce his child support accordingly. Based on Father's new employment, the circuit court instead granted *Mother's* motion to modify, which sought to *increase* Father's support obligation. Because Mother's motion was an "action to increase child support," the circuit court was required to give Father a Line 2(c) credit for his support obligation to his new child.

Accordingly, we reverse the trial court's upward modification of Father's child support obligation, and remand with instructions that the court recalculate Father's presumed child support including a Line 2(c) adjustment for Father's other child, and such further proceedings as may be required on Mother's motion to modify.

B.

Father next argues the trial court erred in its calculation of his presumed child support amount, because it "refus[ed] to give Father a credit [on Line 6(c) of Form 14] . . . for the pro rata cost of purchasing health insurance on behalf of the minor children."

Line 6(c) provides a credit for "[h]ealth insurance costs for the children who are subjects of this proceeding." In *Harris v. Parman*, 54 S.W.3d 679 (Mo. App. S.D. 2001), the Southern District held that it was error for a circuit court to allow a parent a credit on Line 6(c) for the cost of health insurance, when the other parent had been ordered by the court to provide health insurance for the parties' children. *Id.* at 690.

In this case, the original dissolution decree provided that "Mother shall carry medical insurance for the minor children." Similarly, the modification judgment specified that "Mother shall continue to provide medical insurance for the minor children," "either through her employer or that of her fiancé." The circuit court noted that Father "may provide additional health insurance coverage for the minor children at issue in this case, but he is not ordered by this Court to do so and as such, will not receive a credit on the Form 14 for any health insurance expense."

Because Father had no obligation under the original dissolution decree or under the modification judgment to provide health insurance coverage for the children, the circuit court did not abuse its discretion in refusing to give him a credit on Line 6(c) for the cost of any health insurance coverage he chose to purchase.

C.

Finally, Father asserts the circuit court erroneously failed to give him credit for overnight stays that the children had with him.

Line 11 on Form 14 provides an "[a]djustment for a portion of amounts expended by the parent obligated to pay support during periods of overnight visitation or custody." "This adjustment is based on the number of periods of overnight visitation or custody per year awarded to and exercised by the parent obligated to pay support under any order or judgment." Form 14, Comment to Line 11; *see also Conrad v. Conrad*, 76 S.W.3d 305, 310 (Mo. App. W.D. 2002) (the overnight visitation adjustment is "limited to 'court-ordered' [overnight] visitation"). Here, the circuit court did not grant Father any period of overnight visitation or custody, either in the original dissolution decree, or in the modification judgment.

Father is accordingly not entitled to any credit on Line 11 for overnight visitation.

V.

Next, Father argues the circuit court erred in ordering Father to pay a portion of the Guardian *ad Litem*'s fees because, according to Father, the Guardian *ad Litem* should have been removed for failure to perform her duties. Under § 452.423.5, RSMo, "[t]he guardian ad litem shall be awarded a

reasonable fee for such services to be set by the court." § 452.423.5. The circuit court has the discretion to fix reasonable compensation for a guardian *ad litem*'s representation, and we review a judgment ordering the payment of guardian *ad litem* fees only for an abuse of that discretion. *S.I.E. v. J.M.*, 199 S.W.3d 808, 822 (Mo. App. S.D. 2006).

> The circuit court found that the Guardian *ad Litem* "has performed good and valuable legal services to protect the best interests of the minor children," and awarded $10,959.62 in fees as "fair and reasonable" compensation. The court ordered Father to pay 2/3 of the Guardian ad Litem's fees ($7,306.34) and Mother to pay the remaining 1/3 (or $3,653.28).

Father does not challenge the <u>*amount*</u> of fees the circuit court awarded to the Guardian *ad Litem*. Instead, he argues that the Guardian *ad Litem* should not have been awarded <u>*any*</u> fee, because the Guardian *ad Litem* should have been removed for deficient performance.

Under § 452.423.4, RSMo, the circuit court <u>*must*</u> remove a guardian ad litem that fails to "faithfully discharge such guardian ad litem's duties." Ultimately, "[r]emoval of a guardian ad litem is a matter vested in the sound discretion

of the appointing court." *Guier v. Guier*, 918 S.W.2d 940, 950 (Mo. App. W.D. 1996) (citation omitted).

The circuit court did not abuse its discretion in refusing to remove the Guardian *ad Litem* in this case. The record shows that the Guardian *ad Litem* conducted a thorough and independent review of all the records and evidence in this case, communicated with both Mother and Father in person and through e-mail, and visited the minor children on multiple occasions. While Father suggests additional actions the Guardian *ad Litem* could have taken, the Guardian *ad Litem*'s failure to take these additional actions does not rise to the level of dereliction of duty that would justify this Court in finding that the circuit court abused its considerable discretion in leaving the Guardian *ad Litem* in place. Further, while Father may disagree with the opinions and recommendations expressed by the Guardian *ad Litem*,

> [t]he guardian's principal allegiance is to the court and h[er] function is to advocate what [s]he believes to be the best interests of the children. Obviously, this will likely be contrary to the position

> taken by one of the parents, in this case the Father. Father's complaints boil down to the fact that he was upset because the guardian did not necessarily agree with Father's positions. The trial court did not err in refusing to remove the guardian based on Father's allegations of bias and prejudice.

Guier, 918 S.W.2d at 950 (citation omitted).

VI.

In his seventh Point, Father argues the trial court abused its discretion in awarding Mother $10,000 in attorney's fees. Father argues the trial court abused its discretion in awarding Mother these attorney's fees because the court "failed to consider and/or properly weigh[ ] the statutory factors (i.e., [Mother]'s financial ability to pay, Father's attempt to avoid litigation, and Mother's misconduct [at trial])."

Generally, "parties to a domestic relations case are responsible for paying their own attorney's fees." *Alberswerth v. Alberswerth*, 184 S.W.3d 81, 93 (Mo. App. W.D. 2006) (citation omitted). However, trial courts have "considerable discretion" to award attorney's fees under §

452.355, RSMo, but if the court chooses to do so, it "must comply with section 452.355." *Id.* (citations omitted). In other words, the trial court must consider "all relevant factors, including the financial resources of both parties." *Id.* (citation omitted); *see Barancik v. Meade*, 106 S.W.3d 582, 594 (Mo. App. W.D. 2003) ("A court is always required to consider the financial resources of both parties before deciding a request for attorney fees." (citation omitted)). In addition to the parties' financial resources, the trial court should consider "the merits of the case and the actions of the parties during the pendency of the action." § 452.355.1. "When all relevant factors are considered . . . the trial court's decision is within its discretion." *Cohen v. Cohen*, 178 S.W.3d 656, 674 (Mo. App. W.D. 2005). Finally, there is no one-size-fits-all analysis under the relevant factors: "The relevant factors will balance differently in each case." *Alberswerth*,

184 S.W.3d at 94.[6]

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[6] The circuit court also found that Father had failed to pay his court-ordered child support "in bad faith." Under § 452.355.2,

In the modification judgment, the circuit court found that:

> [Father], through his actions to prolong and complicate this matter along with his actions taken in bad faith including his failure to pay the ordered child support amount, caused [Mother] to incur attorney fees in the amount of $20,250.00, an amount in excess of that which would be reasonably incurred by [Mother] in this matter.

The court ordered Father to pay $10,000 of Mother's fees, slightly less than half of the fees it found she had incurred. Elsewhere in the court's judgment, it discussed the parties' relative salaries in connection with the modification of child support, and Father makes no argument that he is financially unable to pay the attorney's fees the circuit court ordered. Additionally, the court considered Father's actions throughout the course of these proceedings which the court personally observed to have prolonged and complicated these proceedings – findings

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> [i]n any proceeding in which the failure to pay child support pursuant to a . . . final judgment is an issue, if the court finds that the obligor has failed,

Father does not challenge on appeal. In his brief, Father merely asserts additional facts that would potentially militate in his favor (such as his attempt to mediate before trial; and the alleged misconduct of Mother's counsel during the litigation). However, our function on appeal is not to reweigh the relative merit or culpability of each party's conduct during the litigation. There plainly were circumstances in this case which would justify the circuit court in concluding that an award of $10,000 in attorney's fees to Mother was warranted.

VII.

Father argues in his eighth Point that the judge erred in failing to recuse herself.

Under § 508.090.1(1), a judge "may be disqualified in any civil suit" if "the judge is interested or prejudiced." The Code of Judicial Conduct requires recusal:

> without good cause, to comply with such order or decree to pay the child support, the court shall order the obligor, if requested and for good cause shown, to pay a reasonable amount for the cost of the suit to the obligee, including reasonable sums for legal services.

in any proceeding in which the judge's impartiality might reasonably be questioned, [including] where the judge has a personal bias or prejudice concerning a party or knowledge of facts that are in dispute. *Anderson v. State*, 402 S.W.3d 86, 91 (Mo. 2013) (quoting Rule 2-2.11(A)(1)). "[A] disqualifying bias or prejudice is one that has an extrajudicial source and results in an opinion on the merits on some basis other than what the judge learned from the judge's participation in a case." *Id.* (quoting *Smulls v. State*, 10 S.W.3d 497, 499

(Mo. 2000)); *see Martin v. State*, 526 S.W.3d 169, 184 (Mo. App. W.D. 2017) ("'Prejudice' pursuant to section 508.090.1(1) aligns with the duty to recuse pursuant to Rule 2-2.11(A)."). Because disqualifying bias must arise from an extrajudicial source, "the mere fact that a ruling is made against a party does not show bias or prejudice on the part of the judge." *Gordon on Behalf of G.J.E.*, 504 S.W.3d 836, 847 (Mo. App. W.D. 2016) (citation and internal quotation marks omitted). We "presume[] that a judge acts with honesty and integrity and will not preside over a hearing in which the judge

cannot be impartial." *Anderson*, 402 S.W.3d at 92 (citation omitted).

Father's arguments for recusal are based on adverse rulings made by the court during trial. Thus, Father argues that the circuit court exhibited bias: by denying his motions to exclude Dr. Utley's report; by excluding "an exhibit email

(which Mother objected to)"; by excluding "Father's material evidence (Exhibits BB [the audio recording], JJ)"; and by "sustaining Mother's objection to Father's testimony that Mother's fiancé[] stated, 'you're not the boss of me' in the presence of the children, which materially contradicted Mother's hearsay testimony." Even if these rulings were erroneous, they do not establish a disqualifying bias or prejudice from an extrajudicial source which would require the court's recusal.

We also reject Father's argument that the circuit court exhibited a disqualifying bias or prejudice by "frequently threatening Father with attorney fees if Father sought mediation, sought to secure visitation, sought to prepare for trial, and/or create a record for appeal." The record reflects that, on the occasions cited by

Father, the court merely reminded him that Mother was incurring attorney's fees as a result of his various litigation tactics, and that the court had the authority to award attorney's fees in its final judgment. Based on the record before us, we find no abuse of discretion in the court's refusal to recuse itself.

VIII.

Father's ninth and final Point argues that the circuit court erred in finding that its modified visitation schedule was in the best interests of the children.[7]

Under § 452.400, a court may modify an order granting visitation rights (1) "whenever

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[7] In the same Point Relied On, Father argues the trial court "errored [*sic*] in finding a substantial and continuing change that makes a change in custody necessary . . . ." But the court did not order a modification of the existing custody arrangement based on a substantial and continuing change of circumstances. The court instead only modified the existing visitation schedule. Such a modification does not require the court to find a "substantial and continuing change of circumstances." *Russell v. Russell*, 210 S.W.3d 191, 196 (Mo. 2007); *Welcome v. Welcome*, 497 S.W.3d 842, 846 (Mo. App. W.D. 2016).

modification would serve the best interests of the child[ren]," and, where the court is restricting a parent's visitation, (2) "it finds that the visitation would endanger the child[ren]'s physical health or impair [their] emotional development." § 452.400.2(1).

To the extent Father challenges the circuit court's endangerment/impairment finding necessary to impose supervised visitation, we discussed the substantial support in the record for this finding in § I above. We do not repeat that discussion here.

"In matters pertaining to visitation rights, we defer to the circuit court's assessment of the children's best interests." *Stirling v. Maxwell*, 45 S.W.3d 914, 915 (Mo. App. W.D. 2001) (citation omitted). On appellate review, "[w]e will affirm the judgment unless it is not supported by substantial evidence, is against the weight of the evidence, or the circuit court misstates or misapplies the law." *Id.* (citation omitted). We will not reweigh the evidence before the circuit court, or decide the best

interests issue anew. *Librach v. Librach*, 575 S.W.3d 300, 312 (Mo. App. E.D.

2019).

In its judgment modifying Father's visitation rights, the trial court made explicit and detailed factual findings on each of the eight "relevant factors" to determine the best interests of the children under § 452.375.2, RSMo. On appeal, Father challenges the court's factual findings under only four of the eight statutory factors. Even as to the factors Father challenges, he takes issue only with certain of the circuit court's specific factual findings, or cites to additional evidence which – he contends – mitigates or counter-balances the circumstances on which the circuit court relied.

Father's ninth Point essentially invites this Court to retry the "best interests" issue, and reweigh the evidence the circuit court has already carefully considered. We decline Father's invitation. We find no abuse of discretion in the circuit court's conclusion that the parenting plan it ordered was in the best interest of the parties' children.

Conclusion

We reverse the circuit court's imposition of a modified child support obligation of $554 per month on Father. We remand to the circuit court for further proceedings on Mother's motion to modify the child support award, consistent with this opinion. In particular, in calculating Father's presumed child support amount in connection with Mother's motion to modify, the circuit court must give Father a credit on Line 2(c) of Form 14, to reflect Father's support obligation for his new daughter. In all other respects, the circuit court's judgment is affirmed.[8]

Alok ,

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[8]Father filed a Motion for Criminal Contempt and Stay of Execution of
Judgment, in which he asked this Court to "Cite and Punish Jennifer Fain, Guardian Ad Litem, and Stephanie Schutt, Respondent's counsel for Criminal Contempt of Court, and stay the execution of the underlying judgments on the basis of criminal contempt." The

basis of Father's motion is his contention that the Guardian *ad Litem* and Mother's counsel "knowingly suborned perjured statements [from Mother's testimony] and knowingly offered false evidence" in submitting Dr. Utley's report because Mother lied to Dr. Utley. Despite Father's conclusory allegations, he has presented no evidence that the Guardian *ad Litem* or Mother's counsel knowingly permitted false testimony to be introduced. Father's motion to hold the Guardian *ad Litem* and Mother's counsel in criminal contempt is denied.

IN THE CIRCUIT COURT OF PLATTE COUNTY, MISSOURI

IN RE THE MATTER OF: VICTORIA L. FRAWLEY

Case No.: 12AE-CV01718-01

Petitioner,

Division: 4 vs.

MATTHEW J. FRAWLEY

JAN 0 3 2019

Respondent.KIMBERLY K JOHNSON

Clerk of the Circuit Court Platte County, MO

MODIFICATION JUDGMENT

NOW on this day of January, 2019, Petitioner, Victoria L. Frawley appears in person and by counsel, Stephanie L. Schutt, Respondent, Matthew J. Frawley appears in person,

pro se, and Guardian Ad Litem, Jennifer Fain, appears on behalf of the minor children.

WHEREUPON, this cause comes on regularly to be heard and being called, the cause is submitted to the Court upon the pleadings and upon the testimony of the parties and witnesses

and recommendation of the Guardian ad Litem, and the Court, after hearing evidence, enters the following findings and orders:

FINDINGS OF FACT

1. This Court has jurisdiction over the parties and the subject matter of this action.

2. Petitioner had been a resident of the State of Missouri for more than ninety (90) days

immediately preceding the filing of the Motion to Modify Judgment as to Child Support.

At the time of filing the Motion to Modify Judgment as to Child Support, Petitioner resided at

9322 N. Evanston Avenue, Kansas City, Clay County, Missouri 64157.

3.

Petitioner is currently employed at Cerner, and her Social Security Number is

XXX-XX-0767. Petitioner's current annual income is $101,400.00.

4.

Respondent has been a resident of the State of Missouri, for more than ninety (90) days immediately preceding the filing of the Motion to Modify Judgment of Dissolution as to Child Custody and Custody Time. Respondent was residing at 440 N. Main Street, Apartment H,

Liberty, Missouri 64068 and now resides at 2423 Beasley Court, E, Jefferson City, Missouri

5.

Respondent is currently employed at Wakefield &

Associates, and his Social Security Number is XXX-XX-1513. Respondent's current annual income is $60,000.00.

6. Heretofore, on March 7, 2013, this Court entered a Judgment and Decree for Dissolution of Marriage in this matter.

7. Pursuant to said Judgment, the Petitioner was granted sole legal and sole physical custody of the minor children, Collin Matthew Frawley, now age 9, and Jacob Alexander Frawley, now age 7, with Petitioner's address for mailing and education purposes, and Respondent was to pay $505.00 per month for child support.

8. Respondent filed his Motion to Motion to Modify Judgment of Dissolution as to Child Custody and Custody Time on June 10, 2016. Petitioner filed her Motion to Modify Judgment as to Child Support on July 1, 2016.

9. More than thirty (30) days have elapsed since the filing of and the service upon Petitioner of the Motion to

Motion to Modify Judgment of Dissolution as to Child Custody and

Custody Time.

10.

Petition

er was personally served on June 21, 2016.

l l . The minor children currently reside with Petitioner in the state of Missouri and have so resided for more than six (6) months immediately preceding the filing of the Motion to

Motion to Modify Judgment of Dissolution as to Child Custody and Custody Time.

12. In

making the findings set forth herein, the Court made judgments regarding the

credibility of each witness. The Court accepted some testimony as credible and rejected some as not credible. The findings and conclusions made by the Court in this Modification Judgment are consistent with the Court's determination of the appropriate weight of the evidence and the credibility of each witness.

13. In order

to determine the appropriate legal and physical custodian for this case, and to determine the

appropriate Parenting Plan, the Court considered the factors set forth in

Missouri Revised Statute 5452.375.2. Each of those factors and the Court's factual assessment regarding the same are set forth below:

(1) The wishes ofthe children 's parents as to custody and the proposed Parenting Plan submitted by both parties.

(a) The Movant, Respondent Matthew Frawley, requests that the parties be designated joint legal and joint physical custodians and that he enjoy unsupervised alternating weekend visitation.

(b) Petitioner Victoria Frawley and the Guardian ad Litem both request that the Court grant Petitioner sole legal and sole physical custody of the minor children with Respondent's visitation with the children to be supervised.

(2) The needs of the children for a frequent, continuing and meaningful relationship with both parents and the ability and willingness ofparents to actively

perform the functions as mother andfather for the needs of the children.

(a)

Petitioner has demonstrated the ability to maintain functions as the mother for the children. Since the date of the dissolution, she has been the sole party responsible for maintaining the children's health, dental health and academic performance, all of which appear to be exceptional.

(b)

Petitioner provided updates and information to the Respondent regarding the children's activities and events, often receiving no response from the Respondent.

(c)

Respondent served for a time as a coach for one of the children's sports teams and also was a religious educator at his church. However, in crossexamination, it was disclosed that these were volunteer positions, not positions for which he was selected.

(d)

Respondent is consistently late with regard to obligations for

the children and his pickup and delivery of the children to Petitioner. On the occasions when Respondent was late, he would not call to advise that he was going to be late. To confirm his intent to arrive, Petitioner had to contact him.

(e) Despite Respondent's assertion that he travels throughout Missouri for his job, for a considerable period of time, he did not schedule time with the children when in the Kansas City area for work.

(f) Respondent demonstrated anger that Petitioner's fiancé provided insurance coverage for the boys; rather than expressing appreciation for that assistance.

(g) Respondent did not pay child support for a considerable period of time, and Petitioner had to utilize income withholding to enforce support provisions.

(h) Respondent went into Petitioner's home and read emails on her computer without Petitioner's advance knowledge and consent.

(i)

Respondent had an irrational reaction to seeing Petitioner's fiancé with the one of the boys on his lap.

The paternal grandmother suggested that Petitioner had a road rage incident while the boys were in her car. However, on the cross-examination of the Guardian ad Litem, it was established that the children were not bothered nor upset by the alleged incident.

(k) While in the sole care of Petitioner, both boys are doing so well in school that they have been considered for the gifted program.

In October of 2016, Respondent was invited by Petitioner to attend Trunk of Treat with the children. Respondent did not show nor call to explain why he would not be there.

(m) In May of 2016, the paternal grandmother sent an email to Petitioner advising that she was "suspicious he's (Respondent) going off". However, in June of 2016, she criticized the Petitioner and her fiancé for not being more supportive. It is this comment in June of 2016 that causes the Court to be concerned about the paternal grandparents serving as supervisors.

(n) Petitioner advised that any communication between her and the Respondent often led to the Respondent demeaning her, bullying her and namecalling if he did not receive what he was requesting in the conversation.

(3) The interaction and interrelationship ofthe children with parents, siblings and any other person who may significantly affect the children 's best interests.

(a) Respondent's parents live in Bentonville, Arkansas, and do not have frequent contact with the boys. The evidence established that they had not seen the children since December of 2017.

(b) Respondent's brother has not seen the children for six to seven months at the time of his testimony.

(c) Respondent's wife told the boys that "you should have more time with your dad". The Court views such comments as inappropriate.

(d) At the time of the final evidence in this matter, Respondent was seeing the children one time a week but didn't call the children during the week.

(e) The evidence established that Respondent had not attended any of the children's events since April of 2016 although the Petitioner had provided him with schedules of all those events.

(f) From the evidence, it appears that the boys have a good relationship with Petitioner's fiancé.

(4) Which parent is more likely to allow the childfrequent, continuing and meaningful contact with the other parent.

(a) Althoug h the Judgment Decree of Dissolution of Marriage did not provide any specified visitation for the Respondent, Petitioner was generous in allowing the Respondent to have extended time with the children until she became concerned again regarding his mental capacity and conduct.

(b) On occasion, Respondent would refuse to return the

children after his weekend to the Petitioner, instead advising that he intended to keep the children continuously for his Tuesday visitation.

(c) Petitioner prohibited the children from going to a Branson holiday lighting in 2016 to spend time with their grandparents.

(d) Petitioner refused any visitation after April 14, 2017, except as supervised. However, this was within her rights as a sole legal and sole physical custodian for the children and was based upon her concern regarding the apparent resurgence of conduct that Respondent had previously exhibited prior to his incapacity.

(e) On some occasions when the paternal grandparents were in town, the Petitioner permitted the Respondent more time with the children to spend with their grandparents.

(f) Although Petitioner is the sole legal and sole physical custodian,

Respondent enrolled the children in St. James School against her request and consent.

(g)

Although Respondent's Parenting Time was only that which the Petitioner had permitted, he seemed to assert that he was "entitled" to such visitation. On April 8 and 9, 2016, during such period of time, he refused to allow Petitioner to have the children to spend time with her dad (maternal grandfather) while in town. In response, he belittled her and told her that was an absurd request to make.

(h)

Although the Dissolution Decree did not provide any specified visitation for the Respondent, Respondent seemed to believe he had "judicially determined" visitation time, rather than just consented time that Petitioner allowed him to have when his demeanor seemed stable. During one of those times, he refused to permit Petitioner to take the children to baseball practice.

(i)

Respondent reacts poorly to being in the presence of Petitioner's fiancé and often has conflict with him; on one occasion he went into a rage and insisted

that the fiancé move when one of the boys was on his lap.

(j) Another time when Respondent was returning the children to Petitioner's home, Petitioner was not home at the time and Respondent refused to leave the children with her fiancé. He forced Petitioner to meet him at Wal-Mart to pick up the children.

(k) Respondent refused to reimburse Petitioner for medical expenses because, in his perception, Petitioner was withholding visitation from him.

The Respondent demonstrated hostile and disagreeable attitudes in the courtroom in that he would not admit that his interrogatory answers were in fact his answers.

(m) Following the Good Friday incident with the boys, that evening in the dugout at the baseball game, Respondent was whispering in the boys' ears and they began to cry.

(n) From the Decree of Dissolution of Marriage, Petitioner was sole legal and sole physical custodian and had

all authority to establish a parenting schedule. She did provide Respondent with some Parenting Time when he appeared to be mentally stable.

(o) On one occasion, Respondent took the boys out of town to see his parents and did not disclose to Petitioner.

(p) Despite Petitioner having sole legal and sole physical custody, Respondent signed the children up for a Catholic school education and told the Petitioner that "you do not get to make that decision".

(5) The child's adjustment to the child's home, school and community.

(a) The children seem adjusted to their home with Petitioner and her fiancé.

From there they attend schools in which they are comfortable.

(b) Respondent has moved to Jefferson City and the children have spent no time in that environment. Accordingly, there is no adjustment there to home, school or community.

(c) The minor children have substantial contacts in their community, the community in which Petitioner resides, through school and extracurricular activities.

(d) Respondent chose to move out of the Kansas City Metropolitan Area thereby removing himself from the minor children's community.

(6) The mental and physical health ofall individuals involved, including any history ofabuse ofany individuals involved. If the Court finds that a pattern ofdomestic violence as defined in 5455.010 has occurred, and, ifthe Court also finds that awarding custody to the abusive parent is in the best interest ofthe children, then the Court shall enter written findings of fact and conclusions of law. Custody and visitation rights shall be ordered in a manner that best protects the children and any other child or children for whom the parent has custodial or visitation rights and the parent or other family household member who is the victim ofdomestic violence from any further harm.

(a) In 2013 a guardianship was established for the Respondent, filed by his parents, due to mental incapacity.

(b) Respondent was in treatment until 2016 for concerns about his mental capacity. On March 3, 2013, he attempted a suicide and on March 5, 2013, was adjudicated incompetent. Respondent would not go voluntarily for treatment.

(c) Exhibit 101 included a reference that in 2006, Respondent had a psychotic break, prior to the 2013 incompetency adjudication. Respondent remained in assisted living until July of 2014.

(d) A mental evaluation was completed by Dr. Aileen Utley which expressed concerns over the Respondent's mental capacity and ability to care for the children unsupervised.

(e) At Respondent's request, an exhibit was received into evidence which was a series of questions prepared by Respondent in which Dr. Shirley Eyman provided her responses in handwritten notes. Respondent referred to said exhibit as a "mental evaluation" by Dr. Eyman. It was established in cross-examination that Dr. Eyman provided her

evaluation without seeing the records of Respondent's prior care provider, Dr. Samuelson. It was also established that Dr. Eyman had spent very little time with the Respondent prior to providing her handwritten responses.

(f)

Respondent uses a medication which two of his treating, qualified medical professionals have stated cause increased psychosis in Respondent.

(g)

Respondent fails to share his prior medical records with his current treating medical professional resulting in his symptoms not being properly managed.

(h)

According to Dr. Utley, Respondent fails to have insight on his own mental health condition and fails to follow proper treatment protocol.

The Guardian ad Litem is concerned about the mental capacity of the Respondent and his ability to take care of the children, and accordingly, requests supervised visitation. She bases this determination based on the concerns expressed by physicians (two of his three physicians say that Adderall makes him

more manic and he should not be taking it). Dr. Utley's evaluation further states: "Mr. Frawley's symptoms are at level of severity that compromise the physical and emotional safety of his children when they are in his care without supervision. As he is very limited in his ability to accurately evaluate and report his symptoms and problematic behaviors, the children remain at risk for the foreseeable future if left in his care unsupervised.'

(7) The intention ofeither parent to relocate the principal residence ofthe children.

(a) The Petitioner advised that she does not intend to relocate her home or the children.

(b) The Respondent has already relocated to Jefferson City, Missouri.

(8) The wishes of the children as to the children 's custodian.

(a) Accordi ng to the Petitioner, she chose to utilize supervised visits because of the boys' reaction to spending time

with their dad. Jacob became very withdrawn and Collin would not get out of the car.

(b) The children voiced concerns to the Guardian ad Litem about spending time with the Respondent.

14. Since the date of the Judgment and Decree for Dissolution of Marriage, there have

been changed circumstances so substantial and continuing as to make the terms of said Judgment

and Decree for Dissolution of Marriage unreasonable in regard to child support, custody and Parenting Time. The continuing and substantial changed circumstances include but are not limited to the following:

a. Respondent has relocated his residence from the Kansas City Metropolitan

Area to Jefferson City, Missouri;

b. Respondent has engaged in a course of behavior which would endanger the children's physical health or impair

their emotional development if Respondent engages in unsupervised contact with the children, to wit:

i. Respondent uses a medication which two qualified medical professionals have stated cause increased psychosis in Respondent; ii. Respondent fails to have insight on his own mental health condition and fails to follow proper treatment protocol; and iii. Respondent fails to share his prior medical records with his current treating medical professional resulting in his symptoms not being properly managed.

(c)

Respondent has engaged in course of behavior during this litigation that shows a lack of stability in his mental health including but not limited to erratic filing of motions during the course of trial, threats both direct and indirect against this Court,

Counsel for Petitioner, and the Guardian ad Litem.

(d)

Respondent has obtained new employment and as a result that the application of the Missouri Child Support Guidelines and criteria set forth in Supreme Court Rule 88.01 would result in a change of the existing child support in an amount of 20 percent or more.

15. As a result of such changed circumstances, a modification of child support, custodial arrangements and Parenting Time is necessary to serve the best interest of the minor children.

16. Petitioner and Respondent lack a commonality of beliefs concerning parental decisions, and they have not demonstrated a willingness or an ability to function as a unit in

making parental decisions; therefore, after consideration of all relevant factors, including those set forth in Mo. Rev. Stat. 452.375, it is in the best interest of the minor children that they be placed in the sole legal custody of Petitioner

17. Unsupervised Parenting Time with Respondent would endanger the children's physical health or impair their emotional development for the reasons set forth above and below; therefore, after consideration of all relevant factors including those in Mo. Rev. Stat. 452.400 and 452.375, it is in the best interest of the minor children that they be placed in the sole physical custody of Petitioner and that Respondent be limited to Supervised Parenting Time with the minor children through the

Transitions Program or another agreed-upon supervising agency or person until further order of this Court.

18. The Court finds that Parenting Plan set forth below is in the best interest of the minor children and offers a sufficient amount of Parenting Time with Respondent to ensure that he is able to maintain a frequent, continuing, and meaningful relationship with the children, should he choose to do so, while protecting the children.

PARENTING PLAN

A. Designation ofLegal Custody of the Children:

PETITIONER shall have sole legal custody of the minor children namely: COLLIN FRAWLEY and JACOB FRAWLEY, with PETITIONER 'S address designated as that of the minor children 'sfor mailing and educational purposes. PETITIONER shall have sole physical custody of the minor children subject to RESPONDENT'S Parenting Time as is set forth herein below. It is in the best interests of the children that the PETITIONER be solely responsible for the care of the children. The term "sole legal custody" means that PETITIONER has the sole rights and responsibilities to the

children. In accordance with PETITONER'S responsibilities, the PETITIONER shall make all major decisions affecting the children solely. Such major decisions shall include the children's education, religious training, health, medical decisions (except in an emergency), arrangements for transfers from one parent to another, and other important matters affecting the children.

B.

Parenti

ng Time Arrangement:

Pursuant to the Court's prior Judgment and Decree of Dissolution of Marriage dated

March 7, 2013 Father 's Parenting Time rights with the minor children were restricted in

that Father was awarded "Parenting Time with the minor children at all reasonable times and places to be determined by the Mother in light of Father's psychological difficulties. " Pursuant to RSMo. 452.400.2(3), when a court restricts a parent's Parenting Time rights, a showing ofproof of treatment and rehabilitation shall be made to the Court before unsupervised Parenting Time may be ordered. Based upon the Court's review of the evidence including the testimony of the parties and documents presented, it is the Court's position that the Respondent has not been rehabilitated to such

an extent to allow unsupervised Parenting Time with the minor children. Therefore, it is the position of the Court that all Parenting Time between the Respondent and the children shall be supervised, as set forth more fully in this Parenting Plan.

VICTORIA FRAWLEY, Petitioner, described herein as Mother, and MATTHEW FRA WLEY, Respondent, described herein as Father, shall exercise time with the minor children pursuant to the following schedule:

(a). Parties ' Parenting Time During the Week:

i. Mother shall be the primary residential custodian of the minor children except for the following times and places wherein the children shall visit with the Father:

1.

Supervi

sed Parenting Time: Father shall have Supervised Parenting Time with the minor children every Sunday from 8 am to 8 pm. Father's Sunday Supervised Parenting Time may be exercised in the Kansas City area or at or near Father 's residence in Jefferson City, Missouri. Because the children often have extracurricular activities on Sundays during Father's Parenting Time, it is suggested that he not permit either child to miss two consecutive Sunday events for any particular activity. Mother

shall limit the activities scheduled to take place during Father 's Parenting Time to the extent possible. In addition to Father 's Sunday Supervised Parenting Time, Father may have additional Supervised Parenting Time with the children in the Kansas City area for at least 6 hours per week. Said additional Supervised Parenting Time shall be arranged between Mother and Father and

Father shall give Mother and the supervising party seventy-two (72) hours' notice of his intended dates and time of Supervised Parenting Time. Father shall attempt to schedule his additional Supervised Parenting Time around the children 's extracurricular activities schedule, and medical appointment schedule. Father shall be responsible for picking up the minor children from Mother 's residence at the beginning of his Supervised Parenting Time and returning the minor children to Mother 's residence at the conclusion of his Supervised Parenting Time. The approved supervisor shall be present during transportation and exchanges of the children.

2. Father's Parenting Time shall be supervised by a professional offering Supervised Parenting Time services, or any other supervisor approved in writing by Mother.

3. General Provisions:

a. Father shall remain compliant in his psychiatric treatment including but not limited to medication compliance and therapy compliance.

b. Father shall be solely liable for the costs of the Supervised Parenting Time services.

c. Father's Parenting Time shall not interfere with the children 's school schedule.

d. If Father should not be able to exercise his scheduled Parenting Time as set forth above, then Father shall give advance notice of at least forty-eight (48) hours ifpossible, and otherwise, as early as possible.

e. Father shall sign releases, when requested by Mother, so that counselors and treatment providers working with him can convey pertinent information to Mother. (b). Holidays:

i. General Holiday Provisions.

1. In even-numbered years Father shall have the following

supervised Holiday Parenting Time which may be exercised in the Kansas City area or at or near Father 's residence in Jefferson City, Missouri:

a. New Year 's Day from 8 am to 8 pm;

b. Preside nt 's Day from 8 am to 8 pm;

c. Memori al Day from 8 am to 8 pm;

d. Labor Day from 8 am to 8 pm;

e. Hallowe en from the release of school to 9 pm (notwithstanding anything herein to the contrary, said

Parenting Time shall be exercised in the Kansas City area);

Christmas Eve from 8 am to 8 pm;

g. Father's Day from 8 am to 8 pm.

2. In odd-numbered years Father shall have the following supervised Holiday Parenting Time which may be exercised in the Kansas City area or at or near Father 's residence in Jefferson City, Missouri:

a. Martin Luther King Day from 8 am to 8 pm;

b. Easter from 8 am to 8 pm;

c. July 4th from 8 am to 8 pm; d, Columbus Day from 8 am to 8 pm; e. Thanksgivingfrom 8 am to 8 pm;

Christmas Day from 8 am to 8 pm;

g. Father 's Day from 8 am to 8 pm.

3. In even-numbered years Mother shall have the following Holiday Parenting Time:

a, Martin Luther King Day from 8 am to 8 pm;

b. Easter from 8 am to 8 pm;

c. July 4th from 8 am to 8 pm;

d. Columbus Day from 8 am to 8 pm;

e. Thanksgivingfrom 8 am to 8 pm;

f. Christmas Day from 8 am to 8 pm;

g. Mother's Day from 8 am to 8 pm.

4. In odd-numbered years Mother shall have the following Holiday Parenting Time:

a. New Year's Day from 8 am to 8 pm;

b. President's Day from 8 am to 8 pm;

c. Memorial Day from 8 am to 8 pm;

d. Labor Day from 8 am to 8 pm;

e.

Hallowe
en from the release ofschool to 9 pm; Christmas Eve from 8 am to 8 pm;

g. Mother 's Day from 8 am to 8 pm.

5. Holiday Parenting Time and Parenting Time shall supersede the parties Parenting Time during the week.

C. Rights And Responsibilities Regarding Health, Education, And Welfare

(a). Routine and Minor Decisions: Mother shall decide all routine and minor matters concerning the child's welfare occurring while in that parent's custody.

(b). Residence Address and Phone Number: Each of the parties shall supply the other with his/her current residential address and current home, work, and cell phone numbers and shall advise the other of any changes that may occur. Such notice should be made promptly, but in any event, it shall be made in writing thirty (30) days before the change. It is also advisable for each parent to give the other parent a telephone number to be reached ifan emergency situation should arise. (c). Change in Children 's Residence.

i. Current Missouri law provides that absent exigent circumstances as determined by a court with jurisdiction, the parties to this action are ordered to notify the other, in writing by certified mail, return receipt requested, and at least sixty days prior to the proposed relocation of any proposed relocation of the principal residence of the children including the following information:

1. The intended new residence, including the specific address and mailing address, ifknown, and ifnot known, the city.

2. The home telephone number of the new residence, ifknown.

3. The date ofthe intended move or proposed relocation.

4. A brief statement of the specific reasons for the proposed relocation ofthe children; and

5. A proposal for a revised schedule of custody or Parenting Time with the children.

ii. This obligation to provide this information to the other continues as long as any party, by virtue of this order, is entitled to custody of a child covered by this order. The parties understand that any failure to obey the order of this court regarding the proposed relocation may result in further litigation to enforce such order, including contempt of court. In addition, any failure to notify a party of a relocation of the children may be considered in a proceeding to modify custody or Parenting Time with the children.

Reasonable costs and attorney fees may be assessed against any party who fails to give this required notice.

(d). Extracurricular Activities: Mother shall encourage the minor children to participate in extracurricular athletic and social activities. Mother shall be solely responsible for all decisions relating to the athletic and social activities of the minor children. At her discretion, Mother shall provide all transportation to and from any such activity. Father shall be allowed to attend any extra-curricular or school sponsored event for the minor children; however, in no event shall father attempt to visit with the children at such event. Mother shall provide to Father, as soon as practical,

information regarding the children 's extracurricular activity schedule and school event schedule. The payment of expenses associated with extracurricular athletic or social activities for the children shall be equally shared between the parties. The parties shall provide each other with a statement for all extracurricular activities fees due, or other documentation of the expense within thirty (30) days of receipt of a statement of such expense, or payment ofsaid expense, whichever occurs first, and then the other party shall then reimburse the party who paid for his or her share of said expense, within thirty (30) days of receipt of documentation. This reimbursement shall not include Respondent's transportation expense and supervision costs as he was given a partial credit for those on the Form 14 child support calculations.

(e). Access to Medical Records: Mother shall have complete access to the children's medical and dental records. Mother shall provide Father with copies of the children's medical and dental records upon request ofFather.

C). Medical Care - Routine: Mother shall provide proper routine health and dental care to the children as needed. Mother shall continue to provide medical insurance for the minor children.

i. Non-Covered Costs: The health benefit plan coverage

described above may not pay all the children's medical, dental, orthodontic, optical, and other health care expenses. Mother and Father have the financial resources to pay the costs of health care for the child not covered by the health benefit plan. The cost, expense, or charges for all medical, dental, orthodontic, endodontic, prescription, optical, psychiatric, psychological, nursing, counseling, and other health care expenses incurred by or on behalf of the children to the extent that the "medical costs " are actually incurred and are not fully covered, not fully paid, or not reimbursed by the health benefit plan shall be equally shared between Mother and Father. Each parent will be ordered to comply with the health benefit plan in using health care providers and to timely submit claim information to the health benefit plan. If a parent fails to comply with the policy requirements and this results in an additional unpaid cost, that parent will be required to pay all of the additional costs attributable to the failure to comply.

ii. Mechanism for Paying Non-Covered Costs

1. A parent obtaining the non-covered care will provide a copy of each bill to the other parent and submit covered expenses to the insurer for payment. If a co-

payment is required al the time of service, the parent will keep the receipt for the co-pay amount.

2. That parent should also send the other parent a copy of the insurer's Explanation of Benefits showing the amount paid or denied. Within 30 days of receipt of the Explanation of Benefits, each parent must pay his or her shares of the amount owed to the medical provider and reimburse the other parent the appropriate portion of the amount advanced by that parent. If the amount owed to the medical provider cannot be paid in full within 30 days, each parent should arrange payment for his or her share of the expenses.

(g), Major Medical Decisions: Mother shall solely make the decision for any proposed medical, dental, or health care for the children.

(h). Medical Providers: The current treating doctors and dentists shall continue to treat the children unless the Mother deems a change is necessary or insurance requires a change.

(i). School Records: Mother shall have complete access to the children's school records. Mother shall provide Father with copies of the children's school achievement, progress reports, grade cards, attendance records and other communication from

the school such as newsletters, notices offield trips and special events.

(j). Attendance at School: The children shall attend school where Mother resides. (k). School and Organized Activities: Mother shall be responsible for deciding and enrolling the children in activities such as sports teams or lessons. (l). General Provisions:

i. Each party shall use their best efforts to foster a continuous relationship of respect, love and affection between the minor children and the other party, cooperating fully with the other in implementing a relationship with the minor children that will give the minor children a maximum feeling of security.

ii. Each party shall set aside any issues and feelings of mutual antipathy and discord toward the other for the sake of cooperating in the raising of the minor children.

iii. Father and Mother shall not do anything which may demean the other or estrange the other from the minor children's love and affection or injure the minor children's opinion of the other, or which may hamper the free and natural development of the

minor children's love of the other party interfere in any way with the reasonable and proper companionship between the minor children and the other party.

iv. The primary consideration for the custody arrangement shall be the minor children's welfare rather than the desires or conveniences ofPetitioner and Respondent.

D. Parenting Rules:

(a). Telephone Rules. Father and Mother may have reasonable telephone contact with the children while the children are with the other parent. Telephone calls may take place at any time between the hours of 10:00 a.m. and 8:00 p.m. The parent seeking telephone contact with the children will first text the other parent, and inform him or her that he or she would like to talk to the children. The other parent shall have the children return the parent's call at the children's soonest availability. Neither parent shall block the other parent's number from their cell phone. Mother may supervise Father 's telephone contact with the minor children.

(b). Contact between Parents. The parents shall communicate with each other directly and shall not use the children as messengers. The parents shall

communicate via e-mail only. Mother's preferred e-mail is and Father 's preferred e-mail is frawleylawfirmllc@gmail.com. If either parent changes his or her e-mail address, that parent shall notify the other within 24 hours of said change. If there is a failure to provide said notice, e-mails sent to the above e-mail addresses shall be deemed delivered successfully. The parties may only communicate through telephone in the case of an emergency. The parents shall limit their communication to topics related to the children, such as exchanges, the children 's health, and travel with the children. The parents agree to communicate with each other in a polite and respectful manner. The parents agree that neither party shall threaten, stalk, molest, or disturb the peace of the other.

(c). Cut Down Rule. Parents shall avoid degrading language about the other parent in the presence of the children. Neither parent shall by verbal or non-verbal communication say or do anything which might tend to derogate from the love and respect which the children would otherwise naturally have for the other parent. (d). Safety Rule. Parents shall not allow their children to be in the presence of known child abusers or persons accused of child abuse during the process of such an investigation by the police, Prosecuting Attorney's Office, or agency designated by law to investigate the same. Parents shall not allow their children to use or operate

dangerous machinery, equipment, guns, or to place their children in physical or emotional danger. This also includes using drugs or alcohol while driving, using illegal drugs in the presence of their children or alcohol to excess in the presence of their children. The parents shall not smoke in the presence of their children if the children suffer from asthma or other respiratory illness.

(e). School Rule. The children should not be taken out of school by any individual without the knowledge and written permission of Mother. Father shall not have Parenting Time with the children while they are in school as school staff is not an approved supervisor. Mother shall provide Father with information sent home or supplied by the school such as the calendar of school events, grade cards, notice of parent teacher conferences, etc.

(D. Children's Personal Property. When parents give a safe and age appropriate toy or gift to their children, the children should be allowed to keep/use/enjoy and take that toy or gift to either parent's home.

(g). Third Parties. The parents understand that they are responsible for parenting their children. Significant others, step-parents and grandparents shall not interfere with or attempt to control the parenting rights of either parent.

END PARENTING PLAN

19. Neither Petitioner nor Respondent has participated in any capacity in any other litigation concerning the custody of the minor children in this or any other state; they have no information of any other custody proceeding now pending in this or any other state; and they know of no person not a party to these proceedings who has physical custody of the minor children or claims to have custody or Parenting Time rights with respect to said children.

20. Petitioner and Respondent are over the age of eighteen years.

21. Neither Petitioner nor Respondent is a member of the Armed Forces of the United States or its allies on active duty.

22. Neither Petitioner nor Respondent have been found guilty of, nor plead guilty to, any offense which would prevent the Court from awarding custody or unsupervised Parenting Time to either party pursuant to Mo. Rev. Stat. 452.375.3. Further,

there is no person residing with either Petitioner or Respondent who has been found guilty of, or plead guilty to, any offense which would prevent the Court from awarding custody or unsupervised Parenting Time to either party pursuant to Mo. Rev. Stat. 452.375.3.

23. This Court finds, after consideration of all relevant factors, including those set forth in Mo. Rev. Stat. 452.375, it is in the best interest of the minor children that they be placed in the sole physical custody of Petitioner, subject to Respondent's reasonable Supervised Parenting Time rights, with Petitioner's address designated as the address of the children for mailing and educational purposes.

24. The Court rejects the Form 14s presented by Petitioner and Respondent and prepares its own Form 14. The presumed child support amount pursuant to Mo. Rev. Stat. 452.340.8, Supreme Court Rule 88.01 and as calculated by Form 14 is $554.00. This amount is not found to be unjust and inappropriate. Respondent shall pay to Petitioner via income withholding order, to the Family Support Payment Center as Trustee for Petitioner, the sum of $554.00 per month beginning January 1, 2019.

25. Petition

er and Respondent both have medical coverage available for the minor children through their employment, although Respondent was not required by the Dissolution Judgment to provide health insurance coverage for the minor children. Petitioner shall provide medical coverage for the minor children either through her employer or that of her fiancé, if available to him. Respondent may provide additional health insurance coverage for the minor children at issue in this case, but he is not ordered by this Court to do so and as such, will not receive a credit on the Form 14 for any health insurance expense. Further, the unpaid and/or uncovered portion of the medical, dental, optical, orthodontic, endodontic, psychiatric, psychological, prescription and all other healthcare expenses will be equally shared between the parties, as detailed in the Parenting Plan set forth in this Modification Judgment.

26. The parties shall equally share the extracurricular activity expenses of the minor children as detailed in the Parenting Plan set forth in this Modification Judgment. Petitioner shall decide which activities the children participate in and shall promptly provide that information to Respondent.

27. This Court finds that the Guardian ad Litem, Jennifer Fain, has performed good and valuable legal

services to protect the best interests of the minor children and a fair and reasonable amount for said services is $10, 959.62.

28.

Pursuant to the Judgment and Decree for Dissolution of Marriage, Respondent was to pay to Petitioner the sum of $505.00 per month as and for child support.

29.

Pursuant to the Judgment and Decree for Dissolution of Marriage, Respondent was ordered to pay one-half (h) of the uninsured medical expenses and extracurricular activity expenses uncured on behalf of the minor children.

30.

Petitioner submitted documents to request reimbursement from Respondent for uninsured medical expenses and extracurricular expenses incurred on behalf of the minor children in the following amounts, $3,745.24 for uninsured medical expenses and $2,606.79 for extracurricular activity expenses.

31.

Respondent had the ability to pay these expenses and has

willfully and maliciously refused to pay these expenses.

32.

Pursuant to MO .Rev. Stat. "52.355, Respondent, through his actions to prolong and complicate this matter along with his actions taken in bad faith including his failure to pay the ordered child support amount, caused Petitioner to incur attorney fees in the amount of $20,250.00, an amount in excess of that which would be reasonably incurred by Petitioner in this matter.

33.

Respondent shall pay to Petitioner and/or her attorney, Stephanie L. Schutt the sum of $10,000.00 as and for attorney fees in this matter.

CONCLUSIONS OF LAW

IT IS ORDERED, ADJUDGED AND DECREED by the Court that Petitioner is awarded sole legal custody and sole physical custody of the parties' minor children, Collin Matthew Frawley, now age 9, and Jacob Alexander Frawley, now age 7. The children's address for mailing and educational purposes is the same as that of Petitioner.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that

Petitioner and Respondent, shall abide by the following Parenting Plan incorporated herein:

PARENTING PLAN

A.

Designation of Legal Custody of the Children:

PETITIONER shall have sole legal custody of the minor children namely: COLLIN FRAWLEY and JACOB FRAWLEY, with PETITIONER 'S address designated as that of the minor children 'sfor mailing and educational purposes. PETITIONER shall have sole physical custody of the minor children subject to RESPONDENT'S Parenting Time as is set forth herein below. It is in the best interests of the children that the PETITIONER be solely responsible for the care of the children. The term "sole legal custody" means that PETITIONER has the sole rights and responsibilities to the children. In accordance with PETITONER'S responsibilities, the PETITIONER shall make all major decisions affecting the children solely. Such major decisions shall include the children's education, religious training, health, medical

decisions (except in an emergency), arrangements for transfers from one parent to another, and other important matters affecting the children.

B. Parenting Time Arrangement:

Pursuant to the Court's prior Judgment and Decree of Dissolution of Marriage dated March 7, 2013 Father 's Parenting Time rights with the minor children were restricted in that Father was awarded "Parenting Time with the minor children at all reasonable times and places to be determined by the Mother in light of Father's psychological difficulties. " Pursuant to RSMo. 452.400.2(3), when a court restricts a parent's Parenting Time rights, a showing ofproof of treatment and rehabilitation shall be made to the Court before unsupervised Parenting Time may be ordered. Based upon the Court's review of the evidence including the testimony of the parties and documents presented, it is the Court's position that the Respondent has not been rehabilitated to such an extent to allow unsupervised Parenting Time with the minor children. Therefore, it is the position of the Court that all Parenting Time between the Respondent and the children shall be supervised, as set forth more fully in this Parenting Plan.

VICTORIA FRAWLEY, Petitioner, described herein as Mother, and MATTHEW FRAWLEY, Respondent, described herein as Father, shall exercise time with the minor children pursuant to the following schedule:

(a). Parties' Parenting Time During the Week:

i. Mother shall be the primary residential custodian of the minor children except for the following times and places wherein the children shall visit with the Father:

6. Supervised Parenting Time: Father shall have Supervised Parenting Time with the minor children every Sunday from 8 am to 8 pm. Father's Sunday Supervised Parenting Time may be exercised in the Kansas City area or at or near Father 's residence in Jefferson City, Missouri. Because the children often have extracurricular activities on Sundays during Father's Parenting Time, it is suggested that he not permit either child to miss two consecutive Sunday events for any particular activity. Mother shall limit the activities scheduled to take place during Father 's Parenting Time to the extent possible. In addition to Father 's

Sunday Supervised Parenting Time, Father may have additional Supervised Parenting Time with the children in the Kansas City area for at least 6 hours per week. Said additional Supervised

Parenting Time shall be arranged between Mother and Father and Father shall give Mother and the supervising party seventy-two (72) hours ' notice of his intended dates and time of Supervised Parenting Time. Father shall attempt to schedule his additional Supervised Parenting Time around the children 's extracurricular activities schedule, and medical appointment schedule. Father shall be responsible for picking up the minor children from Mother 's residence at the beginning of his Supervised Parenting Time and returning the minor children to Mother 's residence at the conclusion of his Supervised Parenting Time. The approved supervisor shall be present during transportation and exchanges of the children.

7. Father's Parenting Time shall be supervised by a professional offering Supervised Parenting Time services, or any other supervisor approved in writing by Mother.

8. General Provisions:

a. Father shall remain compliant in his psychiatric treatment including but not limited to medication compliance and therapy compliance.

b. Father shall be solely liable for the costs of the Supervised Parenting Time services.

c. Father's Parenting Time shall not interfere with the children 's school schedule.

d. If Father should not be able to exercise his scheduled Parenting Time as set forth above, then Father shall give advance notice of at least forty-eight (48) hours ifpossible, and otherwise, as early as possible.

e. Father shall sign releases, when requested by Mother, so that counselors and treatment providers working with him can convey pertinent information to Mother. Holidays:

i. General Holiday Provisions.

1. In even-numbered years Father shall have the following supervised Holiday Parenting Time which may be exercised in the Kansas City area or at or near Father 's residence in Jefferson City, Missouri:

a. New Year 's Day from 8 am to 8 pm;

b. Preside nt's Day from 8 am to 8 pm;

c. Memori al Day from 8 am to 8 pm;

d. Labor Day from 8 am to 8 pm;

e. Hallowe en from the release of school to 9 pm (notwithstanding anything herein to the contrary, said

Parenting Time shall be exercised in the Kansas City area); Christmas Eve from 8 am to 8 pm;

g. Father 's Day from 8 am to 8 pm.

2. In odd-numbered years Father shall have the following supervised Holiday Parenting Time which may be exercised in the Kansas City area or at or near Father 's residence in Jefferson City, Missouri:

a. Martin Luther King Day from 8 am to 8 pm;

b. Easter from 8 am to 8 pm;

c. July 4th from 8 am to 8 pm;

d. Columbus Dayfrom 8 am to 8 pm; e. Thanksgivingfrom 8 am to 8 pm;

Christmas Day from 8 am to 8 pm;

g. Father 's Day from 8 am to 8 pm.

3. In even-numbered years Mother shall have the following Holiday Parenting Time:

a. Martin Luther King Day from 8 am to 8 pm;

b. Easter from 8 am to 8 pm;

c. July 4th from 8 am to 8 pm;

d. Columbus Dayfrom 8 am to 8 pm;

e.

Thanks
givingfrom 8 am to 8 pm; j: Christmas Day from 8 am to 8 pm;

g. Mother 's Day from 8 am to 8 pm.

9, In odd-numbered years Mother shall have the following Holiday Parenting Time:

a. New
Year 's Day from 8 am to 8 pm;

b.

Preside
nt 's Day from 8 am to 8 pm;

c.

Memori
al Day from 8 am to 8 pm;

d. Labor
Day from 8 am to 8 pm;

e.

Hallowe
en from the release ofschool to 9 pm; j: Christmas Eve from 8 am to 8 pm;

g. Mother 's Day from 8 am to 8 pm.

10. Holiday Parenting Time and Parenting Time shall supersede the parties Parenting Time during the week.

C Rights And Responsibilities Regarding Health, Education, And Welfare

(a). Routine and Minor Decisions: Mother shall decide all routine and minor matters concerning the child's welfare occurring while in that parent's custody.

(b). Residence Address and Phone Number: Each of the parties shall supply the other with his/her current residential address and current home, work, and cell phone numbers and shall advise the other of any changes that may occur. Such notice should be made promptly, but in any event, it shall be made in writing thirty (30) days before the change. It is also advisable for each parent to give the other parent a telephone number to be reached if an emergency situation should arise. (c). Change in Children 's Residence.

i. Current Missouri law provides that absent exigent circumstances as determined by a court with jurisdiction, the parties to this action are ordered to notify the other, in writing by certified mail, return receipt requested, and at least sixty days prior to the proposed relocation of any

proposed relocation of the principal residence of the children including the following information:

1. The intended new residence, including the specific address and mailing address, if known, and ifnot known, the city.

2. The home telephone number of the new residence, ifknown.

3. The date ofthe intended move or proposed relocation.

4. A brief statement of the specific reasons for the proposed relocation ofthe children; and

5. A proposal for a revised schedule of custody or Parenting Time with the children.

ii. This obligation to provide this information to the other continues as long as any party, by virtue of this order, is entitled to custody of a child covered by this order. The parties understand that any failure to obey the order of this court regarding the proposed relocation may result in further litigation to enforce such order, including contempt of court. In addition, any failure to notify a party of a

relocation of the children may be considered in a proceeding to modify custody or Parenting Time with the children. Reasonable costs and attorney fees may be assessed against any party who fails to give this required notice.

(d). Extracurricular Activities: Mother shall encourage the minor children to participate in extracurricular athletic and social activities. Mother shall be solely responsible for all decisions relating to the athletic and social activities of the minor children. At her discretion, Mother shall provide all transportation to and from any such activity. Father shall be allowed to attend any extra-curricular or school sponsored event for the minor children; however, in no event shall father attempt to visit with the children at such event. Mother shall provide to Father, as soon as practical, information regarding the children 's extracurricular activity schedule and school event schedule. The payment of expenses associated with extracurricular athletic or social activities for the children shall be equally shared between the parties. The parties shall provide each other with a statement for all extracurricular activities fees due, or other documentation of the expense within thirty (30) days of receipt of a statement of such expense, or payment of said expense, whichever occurs first, and then the other party shall then reimburse the party who paid for his or her share of said expense, within thirty (30) days of receipt of documentation.

This reimbursement shall not include Respondent's transportation expense and supervision costs as he was given a partial credit for those on the Form 14 child support calculations.

(e). Access to Medical Records: Mother shall have complete access to the children's medical and dental records. Mother shall provide Father with copies of the children's medical and dental records upon request ofFather.

(f). Medical Care - Routine: Mother shall provide proper routine health and dental care to the children as' needed. Mother shall continue to provide medical insurance for the minor children.

i. Non-Covered Costs: The health benefit plan coverage described above may not pay all the children's medical, dental, orthodontic, optical, and other health care expenses. Mother and Father have the financial resources

to pay the costs Q/ health care for the child not covered by the health benefit plan. The cost, expense, or charges for all medical, dental, orthodontic, endodontic, prescription, optical, psychiatric, psychological, nursing, counseling, and other health care expenses incurred by or on behalf of the children to the extent that the "medical costs " are actually incurred and are not fully covered, not

fully paid, or not reimbursed by the health benefit plan shall be equally shared between Mother and Father. Each parent will be ordered to comply with the health benefit plan in using health care providers and to timely submit claim information to the health benefit plan. If a parent fails to comply with the policy requirements and this results in an additional unpaid cost, that parent will be required to pay all of the additional costs attributable to the failure to comply.

ii. Mechanism for Paying Non-Covered Costs

1. A parent obtaining the non-covered care will provide a copy of each bill to the other parent and submit covered expenses to the insurer for payment. If a co-payment is required at the time of service, the parent will keep the receipt for the co-pay amount.

2. That parent should also send the other parent a copy of the insurer's Explanation of Benefits showing the amount paid or denied. Within 30 days of receipt of the Explanation of Benefits, each parent must pay his or her shares of the amount owed to the medical provider and reimburse the other parent the appropriate portion of the amount advanced by that parent. If the amount owed to the medical provider

cannot be paid in full within 30 days, each parent should arrange payment for his or her share of the expenses.

(g). Major Medical Decisions: Mother shall solely make the decision for any proposed medical, dental, or health care for the children.

(h). Medical Providers: The current treating doctors and dentists shall continue to treat the children unless the Mother deems a change is necessary or insurance requires a change.

(i). School Records: Mother shall have complete access to the children's school records. Mother shall provide Father with copies of the children's school achievement, progress reports, grade cards, attendance records and other communication from the school such as newsletters, notices offield trips and special events.

(j). Attendance at School: The children shall attend school where Mother resides. (k). School and Organized Activities: Mother shall be responsible for deciding and enrolling the children in activities such as sports teams or lessons. (l). General Provisions:

i. Each party shall use their best efforts to foster a continuous relationship of respect, love and

affection between the minor children and the other party, cooperating fully with the other in implementing a relationship with the minor children that will give the minor children a maximum feeling of security.

ii. Each party shall set aside any issues and feelings of mutual antipathy and discord toward the other for the sake of cooperating in the raising of the minor children.

iii. Father and Mother shall not do anything which may demean the other or estrange the other from the minor children's love and affection or injure the minor children's opinion of the other, or which may hamper the free and natural development of the minor children's love of the other party interfere in any way with the reasonable and proper companionship between the minor children and the other party.

iv. The primary consideration for the custody arrangement shall be the minor children's welfare rather than the desires or conveniences ofPetitioner and Respondent.

D. Parenting Rules:

(a). Telephone Rules. Father and Mother may have reasonable telephone contact with the children while the children are with the other parent. Telephone calls may take place at any time between the hours of 10:00 a.m. and 8:00 p.m. The parent seeking telephone contact with the children will first text the other parent, and inform him or her that he or she would like to talk to the children. The other parent shall have the children return the parent's call at the children's soonest availability. Neither parent shall block the other parent's number from their cell phone. Mother may supervise Father 's telephone contact with the minor children.

(b). Contact between Parents. The parents shall communicate with each other directly and shall not use the children as messengers. The parents shall communicate via e-mail only. Mother's preferred e-mail is and Father 's preferred e-mail is frawleylawfirmllc@gmail.com. If either parent changes his or her e-mail address, that parent shall notify the other within 24 hours of said change. If there is a failure to provide said notice, e-mails sent to the above e-mail addresses shall be deemed delivered successfully. The parties may only communicate through telephone in the case of an emergency. The parents shall limit their communication to topics related to the children,

such as exchanges, the children 's health, and travel with the children. The parents agree to communicate with each other in a polite and respectful manner. The parents agree that neither party shall threaten, stalk, molest, or disturb the peace of the other.

(c). Cut Down Rule. Parents shall avoid degrading language about the other parent in the presence of the children. Neither parent shall by verbal or non-verbal communication say or do anything which might tend to derogate from the love and respect which the children would otherwise naturally have for the other parent. (d). Safety Rule. Parents shall not allow their children to be in the presence of known child abusers or persons accused of child abuse during the process of such an investigation by the police, Prosecuting Attorney's Office, or agency designated by law to investigate the same. Parents shall not allow their children to use or operate dangerous machinery, equipment, guns, or to place their children in physical or emotional danger. This also includes using drugs or alcohol while driving, using illegal drugs in the presence of their children or alcohol to excess in the presence of

their children. The parents shall not smoke in the presence of their children if the children suffer from asthma or other respiratory illness.

(e). School Rule. The children should not be taken out of school by any individual without the knowledge and written permission of Mother. Father shall not have Parenting Time with the children while they are in school as school staff is not an approved supervisor. Mother shall provide Father with information sent home or supplied by the school such as the calendar of school events, grade cards, notice of parent teacher conferences, etc.

C). Children 's Personal Property. When parents give a safe and age appropriate toy or gift to their children, the children should be allowed to keep/use/enjoy and take that toy or gift to either parent's home.

(g). Third Parties. The parents understand that they are responsible for parenting their children. Significant others, step-parents and grandparents shall not interfere with or attempt to control the parenting rights ofeither parent.

END PARENTING PLAN

IT IS FURTHER ORDERED, ADJUDGED AND DECREED in the event either party

relocates their principal residence, then you are advised pursuant to Mo. Rev. Stat. 452.377.1 1. as follows:

Absent exigent circumstances as determined by a court with jurisdiction, the parties to

this action are ordered to notify in writing by certified mail, return receipt requested, and at least

sixty (60) days prior to the proposed relocation, each party to this action of any proposed relocation of the principal residence of the children, including the following information:

a) The intended new residence, including the specific address and mailing address, if known, and if not known, the city;

b) The home telephone number of the new residence, if known;

c) The date of the intended move or proposed relocation;

d) A brief statement of the specific reasons for the proposed relocation of the children; and

e) A proposal for a revised schedule of custody or Parenting Time with the children.

The obligation to provide this information to each party continues as long as either party by virtue of this order is entitled to custody of the children covered by this order. The failure to obey the order of the court regarding the proposed relocation may result in further litigation to enforce such order, including contempt of court. In addition, the failure to notify a party of a relocation of the children may be considered in a proceeding to modify custody or Parenting Time with the children. Reasonable costs and attorney fees may be assessed against the party for failure to give the required notice.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the Sheriff or any other law enforcement officer shall enforce the rights of custody and Parenting Time ordered herein. Such Sheriff or law enforcement officer shall not remove a child from a person who has actual physical custody of the child unless such sheriff or officer is shown a court order or judgment which clearly and convincingly verifies that such person is not entitled to the actual physical custody of the child, and there are not other exigent circumstances that would give the sheriff or officer reasonable suspicion to believe that the child would be harmed or that the court order presented to the sheriff or officer may not be valid.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED in the event of

noncompliance with this order, the aggrieved party may file a verified motion for contempt. If custody, Parenting Time, or third-party custody is denied or interfered with by a parent or third party without good cause, the aggrieved person may file a family access motion with the court stating the specific facts that constitute a violation of the custody provisions of the judgment of dissolution, legal separation, or judgment of paternity. The circuit clerk will provide the aggrieved party with an explanation of the procedures for filing a family access motion and a simple form for use in filing the family access motion. A family access motion does not require the assistance of legal counsel to prepare and file.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED the presumed child support amount pursuant to Mo. Rev. Stat. 452.340.8, Supreme Court Rule 88.01 and as calculated by Form 14 is $554.00. This amount is not found to be unjust and inappropriate. Respondent shall pay to Petitioner via income withholding order, to the Family Support Payment Center as Trustee for Petitioner, the sum of $554.00 per month beginning January 1, 2019, and continuing on the first day of each month until further order of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED Petitioner shall provide medical coverage for the minor children either through her

employer or that of her fiancé, if available to him. Respondent may provide additional health insurance coverage for the minor children at issue in this case, but he is not ordered by this Court to do so and as such, will not receive a credit on the Form 14 for any health insurance expense. Further, the unpaid and/or uncovered portion of the medical, dental, optical, orthodontic, endodontic, psychiatric, psychological, prescription and all other healthcare expenses will be equally shared between the parties, as detailed in the Parenting Plan set forth in this Modification Judgment.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the shall

equally share the extracurricular activity expenses of the minor children as detailed in the Parenting Plan set forth in this Modification Judgment. Petitioner shall decide which activities the children participate in and shall promptly provide that information to Respondent.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED Respondent is found to be in contempt of the Judgment and Decree of Dissolution of Marriage for willfully and maliciously failing to reimburse Petitioner for uninsured medical expenses and extracurricular expenses in the amount of $6,352.03. Respondent shall purge himself of this contempt by mailing a payment of

$200.00 per month, post-marked on or before on the 1 5 th day of each month, beginning January 15, 2019, to Petitioner until the amount in full has been paid. Failure by Respondent to make said payments to Petitioner could result in incarceration in the Platte County Detention Center until such time as he purges himself of this contempt.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Guardian ad Litem shall be compensated for her services in the total amount of $10,959.62. Respondent shall pay 2/3 of said amount ($7,306.34) directly to the Guardian ad Litem and Petitioner shall pay 1/3 of said amount directly to the Guardian ad Litem, which after giving credit for the $1,250.00 Petitioner has already deposited with the Court, results in a remaining payment amount of $2,403.28. Despite the division of responsibility set forth above on said obligation, the Guardian ad Litem is given a Judgment in the amount of $10,959.62 jointly and severally against both parties for the full amount and each party may pursue contribution from the other party for amounts paid above their percentage obligation amount set forth above.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that the Court

Administrator's Office release all funds held on deposit for the Guardian ad Litem's fee ($1 ,250.00) directly to Guardian ad Litem Jennifer Fain.

IT IS FURTHER ORDERED ADJUDGED AND DECREED this Judgment for Guardian Ad Litem fees is in the nature of support of a minor child under Section 523 (a)(5) &

(15) of the Bankruptcy Code as amended, and under Mo. Rev. Stat. 314.430 and Mo. Rev. Stat. 513.440 and shall not be dischargeable. The Guardian Ad Litem is authorized to pay out to herself all sums held on deposit for said fees.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that if

either party brings an action for failure to perform any of the obligations imposed by this Judgment, or for the enforcement or clarification of this Judgment, the prevailing party in such action may recover that party's attorney fees and litigation costs reasonably expended in prosecuting or defending the action. However, no attorney fees shall be recovered by a party filing an action unless that party seeking to recover said attorney fees and costs shall have mailed to the breaching party written notice of the alleged failure to perform and

said alleged failure was not cured within ten (10) days after the date of mailing said notice by certified mail to the alleged breaching party's business or residence address. But no such notice is necessary for enforcement purposes for failure to pay periodic child support as set forth herein directly or in any parenting plan incorporated herein. No fees or costs authorized by this paragraph shall be recovered except as determined and awarded by the court in an action brought for enforcement, breach, or clarification of this Agreement.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the

costs of this action be assessed against Petitioner.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that

Petitioner and her attorney, Stephanie L. Schutt, is granted a judgment against Respondent in the amount of $10,000.00.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that Respondent shall pay his own attorney fees and costs.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED all other motions not directly addressed herein are deemed denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED provisions of the

parties' Judgment Decree of Dissolution of Marriage, entered by this Court on March 7, 2013, not modified herein, shall remain the order of this Court.

DATE

HONORABLE W. ANN HANSBROUGH

Supreme Court of Missouri en banc

SC98398
WD82442

January Session, 2020

Victoria L. Frawley,
Respondent,

vs. (TRANSFER)

Matthew J. Frawley,

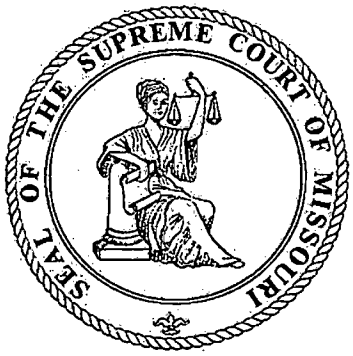
Appellant.

Now at this day, on consideration of the Appellant's application to transfer the aboveentitled cause from the Missouri Court of Appeals, Western District, it is ordered that the said application be, and the same is hereby denied.

STATE OF MISSOURI-Sct.

I, Betsy AuBuchon, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete transcript of the judgment of said Supreme Court, entered of record at the January Session, 2020, and on the 28th day of April, 2020, in the above-entitled cause.

IN TESTIMONY WHEREOF, I have hereunto set my hand and the seal of said Court, at my office in the City of Jefferson, this 28th day of April, 2020.



Deputy Clerk