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FILED

August 11, 2020

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA
IN SUPREME COURT

A20-0768

In re Christopher Gary Baylor,

In re the Marriage of:

Ayano Eto, f.k.a. Ayano Eto Baylor,

Respondent,

vs.

Christopher Gary Baylor,

Petitioner.

O R D E R

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the motion of Christopher Gary Baylor for leave to proceed in forma pauperis for purposes of waiving the filing fee for the petition for accelerated review be, and the same is, granted.

IT IS FURTHER ORDERED that the petition of Christopher Gary Baylor for accelerated review be, and the same is, denied.

Dated: August 11, 2020

BY THE COURT:



Lorie S. Gildea
Chief Justice

STATE OF MINNESOTA
IN COURT OF APPEALS

August 11, 2020

OFFICE OF
APPELLATE COURTS

In re Christopher Gary Baylor,

ORDER

In re the Marriage of: Ayano Eto, f.k.a.
Ayano Eto Baylor,

#A20-0768

Respondent,

vs.

Christopher Gary Baylor,

Petitioner.

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:

1. On May 26, 2020, petitioner filed this petition for a writ. Petitioner also moved this court for various relief, including expedited consideration of his petition.
2. Petitioner did not pay the filing fee for his petition required by Minn. R. Civ. App. P. 120.04. Nor did petitioner provide this court with a copy of an order of the district court waiving that filing fee pursuant to Minn. R. Civ. App. P. 109.01, .02.
3. By notice of case filing dated May 28, 2020, the clerk of the appellate courts directed petitioner, within ten days, to pay the filing fee for his petition or provide this court with a copy of an order of the district court waiving that fee.
4. On June 3, 2020, this court ruled that it would not address the petition and associated motions until petitioner paid the filing fee or provided a copy of an order of the district court waiving that fee.

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5. On June 8, 2020, the district court found the petition frivolous under Minn. R. Civ. App. P. 109.02. Accordingly, the district court declined to waive the filing fee.

6. By order filed June 22, 2020, this court rejected petitioner's challenges to the district court's order filed on June 8, 2020. That order directs petitioner to pay the filing fee by June 29, 2020, and states that failure to pay the filing fee would result in dismissal of the petition without further notice.

7. On June 29, 2020, instead of paying the filing fee, petitioner filed a petition for accelerated review with the supreme court, and moved this court to "STAY ENTRY OF JUDGMENT."

8. This court received no response to petitioner's motion to "STAY ENTRY OF JUDGMENT."

9. By order filed August 11, 2020, the supreme court denied the petition for accelerated review filed in that court.

10. Because petitioner still has not paid the filing fee for this petition, the petition and associated motions are not properly before this court, and dismissal is warranted.

IT IS HEREBY ORDERED: This petition is dismissed.

Dated: August 11, 2020

BY THE COURT

Susan L. Segal
Chief Judge

1c

FILED

October 20, 2020

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA
IN SUPREME COURT

A20-0768

In re Christopher Gary Baylor,

In re the Marriage of:

Ayano Eto, f.k.a. Ayano Eto Baylor,

Respondent,

vs.

Christopher Gary Baylor,

Petitioner.

O R D E R

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the motion of Christopher Gary Baylor for leave to proceed in forma pauperis for purposes of waiving the filing fee for the petition for further review be, and the same is, granted.

IT IS FURTHER ORDERED that the petition of Christopher Gary Baylor for further review be, and the same is, denied.

Dated: October 20, 2020

BY THE COURT:



Lorie S. Gildea
Chief Justice

1d

FILED

August 11, 2020

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA
IN SUPREME COURT

A20-0909

In re Christopher Gary Baylor, Petitioner,

Christopher Gary Baylor as Baylor,
Petitioner,

vs.

Ayano Eto a.k.a. Ayano Eto Baylor;
Ayance; MilkTea111, Ice Cream Princess,

Respondent.

O R D E R

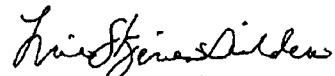
Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the motion of Christopher Gary Baylor for leave to proceed in forma pauperis for purposes of waiving the filing fee for the petition for accelerated review be, and the same is, granted.

IT IS FURTHER ORDERED that the petition of Christopher Gary Baylor for accelerated review be, and the same is, denied.

Dated: August 11, 2020

BY THE COURT:



Lorie S. Gildea
Chief Justice

APPENDIX

August 25, 2020

STATE OF MINNESOTA
IN COURT OF APPEALS**OFFICE OF
APPELLATE COURTS**

In re Christopher Gary Baylor,

ORDER

Christopher Gary Baylor as Baylor,

#A20-0909

Plaintiff,

vs.

Ayano Eto a.k.a. Ayano Eto Baylor;
Ayance; MilkTea111, Ice Cream Princess,

Defendant.

Considered and decided by Segal, Chief Judge; Hooten, Judge; and Florey, Judge.

**BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND FOR THE
FOLLOWING REASONS:**

Petitioner brought a civil action under Minn. Stat. § 548.14 (2018), seeking relief from rulings for respondent in other cases. The district court ruled that petitioner's claims were not properly before that court and entered judgment dismissing the action, without prejudice to petitioner's ability to bring his claims in an appropriate forum. Petitioner challenges the dismissal by petitioning this court for a writ of mandamus. While his petition was pending in this court, he sought accelerated review by the supreme court. While petitioner's petition for accelerated review was pending in the supreme court, he moved this court to stay proceedings pending the supreme court's resolution of his petition to that court. By order filed August 11, 2020, the supreme court denied the petition for

accelerated review. This court received no response to the petition for mandamus, and no response to the motion for a stay.

A writ of mandamus is an extraordinary legal remedy, *Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162, 171 (Minn. 2006), which “may be issued” to compel a judicial officer to perform “an act which the law specially enjoins as a duty” or to “discharge any of [the court’s] functions” but mandamus “cannot control judicial discretion.” Minn. Stat. § 586.01 (2018); *see Latourell v. Dempsey*, 518 N.W.2d 564, 565 (Minn. 1994). A writ of mandamus “shall not issue in any case where there is a plain, speedy, and adequate remedy in the ordinary course of law.” Minn. Stat. § 586.02 (2018). Whether to issue a writ of mandamus “is discretionary.” *State v. Hart*, 723 N.W.2d 254, 260 (Minn. 2006). The burden is on the petitioner to show that the standard for obtaining the writ is satisfied. *In re Stuart*, 646 N.W.2d 520, 523 (Minn. 2002).

“An action brought under [Minn. Stat. § 548.14] is equitable in its nature and governed by equitable principles.” *Berkman v. Weckerling*, 77 N.W.2d 291, 297 (Minn. 1956). Whether to grant equitable relief is discretionary with the district court. *Melrose Gates, LLC v. Chor Moua*, 875 N.W.2d 814, 819 (Minn. 2016); *City of N. Oaks v. Sarpal*, 797 N.W.2d 18, 23-24 (Minn. 2011). Because mandamus “cannot control judicial discretion,” Minn. Stat. § 586.01, mandamus is not an appropriate vehicle for relief here.

Additionally, petitioner had remedies in the ordinary course of the law. This court has already affirmed the 2017 order for protection (OFP) that petitioner now challenges. *Baylor v. Baylor*, No. A19-0077, 2018 WL 2187189 (Minn. App. May 14, 2018), *review*

denied (Minn. July 17, 2018). And the OFP court's order extending that OFP stated that petitioner could seek a hearing on respondent's request for the extension. As the district court noted, however, petitioner did not do so. Regarding the assertion of personal jurisdiction over petitioner by the court that dissolved the parties' marriage, this court previously affirmed the dissolution court's determination that petitioner failed to properly raise the question of personal jurisdiction when he had the opportunity to do so. *See Baylor v. Baylor*, No. A19-1751, 2517629 WL, at *1-*2 (Minn. App. May 18, 2020).

Petitioner has not shown that the standard for obtaining a writ of mandamus is satisfied, and we decline to exercise our discretion to grant that extraordinary remedy regarding the OFP, the extension of the OFP, or the dissolution court's assertion of jurisdiction over petitioner.

Because this court did not act while the petition for accelerated review was pending, petitioner's motion for a stay is unnecessary.

IT IS HEREBY ORDERED:

1. The petition for mandamus is denied.
2. The motion for a stay is denied as unnecessary.

Dated: August 25, 2020

BY THE COURT



Segal, Susan
Aug 25 2020 12:46 PM

Susan L. Segal
Chief Judge

1f

FILED

October 20, 2020

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA
IN SUPREME COURT

A20-0909

In re Christopher Gary Baylor, Petitioner,

Christopher Gary Baylor as Baylor,

Petitioner,

vs.

Ayano Eto a.k.a. Ayano Eto Baylor;
Ayance; MilkTea111, Ice Cream Princess,

Respondent.

O R D E R

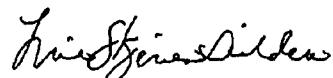
Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the motion of Christopher Gary Baylor for leave to proceed in forma pauperis for purposes of waiving the filing fee for the petition for further review be, and the same is, granted.

IT IS FURTHER ORDERED that the petition of Christopher Gary Baylor for further review be, and the same is, denied.

Dated: October 20, 2020

BY THE COURT:



Lorie S. Gildea
Chief Justice

State of Minnesota**District Court**

County of: Hennepin	Judicial District: <u>Fourth</u> Court File Number: <u>27-FA-18-3158</u> Case Type: <u>Dissolution with Child</u>
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Ayano Eto f.k.a. Ayano Eto Baylor

Plaintiff/Petitioner (first, middle, last)

vs.

Christopher Gary Baylor

Respondent (first, middle, last)

ORDER **DENYING** **GRANTING****In Forma Pauperis in the
Court of Appeals**

(Minn. Stat. §563.01 & (Minn. R. App. P. 109)

Order Denying In Forma Pauperis ApplicationBased on the motion and affidavit of the applicant Christopher Gary Baylor

and the authority of Minn. Stat. §563.01, the court FINDS:

 The application is frivolous. On May 18, 2020, the Court of Appeals ruled on the issues of: jurisdiction, validity of the marriage,

and validity of the Judgment and Decree. Respondent is requesting review of these same matters in his current pleading.

 The applicant is not found to be indigent and is not entitled to proceed in forma pauperis. The applicant has not provided the court with enough information to make a finding of indigency.

The record shall be kept open until _____ to allow the applicant to submit

additional evidence to the court for consideration of the application. If no additional evidence is submitted by this date, the case will be closed.

IT IS ORDERED THAT: The applicant's request to proceed in forma pauperis is **DENIED**.

BY THE COURT

Order Granting In Forma Pauperis ApplicationBased on the motion and affidavit of the applicant Christopher Gary Baylor

and the authority of Minn. Stat. §563.01, the court FINDS:

1. The applicant's claims are:

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not frivolous and the applicant is financially unable to pay any fees and entitled to proceed in forma pauperis.

OR

not frivolous and the applicant does not meet the eligibility criteria under Minn. Stat. § 563.01, subd. 3(b), but is able to pay a portion of the appellate filing fee and cost bond.

IT IS ORDERED THAT:

1. The applicant may proceed in forma pauperis without further application in the Court of Appeals.
2. The applicant shall not be required to pay any portion of appellate filing fees or posting cost bond.

OR

The applicant shall pay \$ _____ towards the appellate filing fee and \$ _____ towards the cost bond or deposit and shall be due immediately.

3. The following costs to be paid by the proper governing body:
 Transcript preparation costs for the following hearing dates:

Other: _____

Not to exceed: \$ _____

4. If, following commencement of the action, the applicant no longer meets the eligibility criteria under Minn. Stat. § 563.01, subd. 3(b) or becomes able to pay a higher amount than previously ordered, the district court may order reimbursement of all or a portion of the appellate expenses.
5. If funds are recovered by either settlement or judgment in this action, the costs deferred and expenses directed by the district court to be paid in this order shall be included in such settlement or judgment and shall be paid directly to the Court Administrator by the opposing party.

Dated: _____

Judge of District Court

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STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Christopher Gary Baylor as Baylor,

Plaintiff,

vs.

ORDER

Ayano Eto a.k.a. Ayano Eto Baylor;
Ayance; MilkTea111, Ice Cream Princess,

Defendant.

Court File No. 27-CV-20-4202

This matter came on for a hearing before the Honorable Laurie J. Miller on April 28, 2020.

Plaintiff Christopher Gary Baylor (“Baylor”) appeared *pro se*.

No appearance was made by or on behalf of Defendant Ayano Eto (“Eto”).

Because the Court’s ability to conduct in-person hearings in civil cases has been suspended due to the COVID-19 pandemic, the hearing was conducted by telephone.

Based upon the argument of Baylor, and all the files, records, and proceedings herein, the Court makes the following:

FINDINGS OF FACT

1. Plaintiff Christopher Gary Baylor (“Baylor”) has been a party to a number of different matters involving Defendant Ayano Eto (“Eto”), in Minnesota and other states in recent years.

The OFP Proceeding

2. On October 5, 2017, Eto filed a Petition for Order for Protection against Baylor on behalf of both herself and the minor child that Eto and Baylor have in common, in the

Family Court division of Hennepin County District Court. *See* Court File No. 27-DA-FA-17-6539 (“the OFP proceeding”). The Family Court issued an Ex Parte Order for Protection on October 5, 2017, giving Baylor an opportunity to appear at an evidentiary hearing to be held on the merits of the petition on October 10, 2017. Thereafter, a Guardian ad Litem was appointed to represent the best interests of the parties’ minor child, and the evidentiary hearing was continued to November 16, 2017, to allow time for the Guardian ad Litem to investigate. After a contested evidentiary hearing, the Family Court granted the Order for Protection on November 16, 2017, followed by an Amended Order for Protection on November 17, 2017, which was amended to include a review hearing date and the requirement that Baylor attend domestic violence programming.

3. On December 6, 2017 and January 2, 2018, Baylor brought motions to modify the Order for Protection. In those motions, Baylor asserted that Eto did not testify credibly at the evidentiary hearing, and that the Order for Protection should be “terminated on the grounds of moral misconduct.” (Affidavit and Motion to Modify the Order for Protection, filed on January 2, 2018 in the OFP proceeding, at p. 1.)

4. After another hearing, on January 11, 2018, the Family Court filed a Second Amended Order for Protection, keeping the Order for Protection in place for two years from the date of the original Ex Parte Order for Protection, until October 5, 2019.

5. On January 12, 2018, Baylor filed a Notice of Appeal of the Second Amended Order for Protection issued on January 11, 2018.

6. Thereafter, on March 7, 2018, Baylor filed a Motion to Dismiss the Order for Protection, arguing in part that Eto’s allegations supporting the Order for Protection against Baylor were not made in good faith and constitute perjury. Baylor also asserted that the findings of child abuse were erroneous.

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7. The Family Court denied Baylor's Motion to Dismiss on March 16, 2018, finding that it did not have jurisdiction to consider the issues raised in Baylor's motion, as they were pending before the Court of Appeals.

8. On May 14, 2018, the Court of Appeals affirmed the 2017 Order for Protection. *Baylor v. Baylor*, No. A18-0077, 2018 WL 2187189 (Minn. Ct. App. May 14, 2018) *review denied* (July 17, 2018).

9. As the two-year period of the 2017 Order for Protection neared its October 5, 2019 endpoint, Eto filed an application to extend the Order for Protection for another two years. The Family Court granted an Ex Parte Order for Protection on September 30, 2019, extending the expiration date until September 30, 2021 ("the 2019 Ex Parte extension order"). The 2019 Ex Parte extension order allowed Baylor to request a hearing on the merits of the extension, by sending a request to the Family Court. The Ex Parte extension order was sent out for service upon Baylor at his address in Pennsylvania.

10. Thereafter, on October 9, 2019, Eto filed an Affidavit and Proposed Order for Alternate Service, asserting that the attempt to serve the 2019 Ex Parte extension order upon Baylor personally at his address in Pennsylvania was unsuccessful, because the address was a post office box. Eto further asserted that her last contact with Baylor occurred the previous week in Family Court in connection with their divorce proceeding. Eto also stated that she does not know the names or locations of Baylor's employer or close relatives.

11. On October 9, 2019, the Court issued an Order for Alternate Service, permitting service of the 2019 Ex Parte extension order upon Baylor by first class mail.

12. Baylor demonstrably received the 2019 Ex Parte extension order, as he promptly sought to appeal it. While Baylor filed an additional motion seeking relief in the Family Court from the underlying Order for Protection as issued on November 16, 2017, the

Court file in the OFP proceeding reflects no request by Baylor for the hearing made available to him by the 2019 Ex Parte extension order. Instead, on November 18, 2019, Baylor filed an appeal seeking review of both the 2017 Order for Protection and the 2019 Ex Parte extension order. The Court of Appeals dismissed that appeal on November 20, 2019, based upon its prior affirmance of the 2017 Order for Protection and upon Baylor's failure to request a hearing in Family Court on the 2019 Ex Parte extension order. *Baylor v. Baylor*, No. A19-1848 (Minn. Ct. App. Nov. 20, 2019).

13. Thereafter, Baylor filed a motion for relief from judgment in the OFP proceeding on December 5, 2019. The Family Court denied that motion on December 6, 2019, and Baylor's appeal of that denial was dismissed on December 31, 2019. *Baylor v. Baylor*, No. A19-1957 (Minn. Ct. App. Dec. 31, 2019).

14. Multiple attempts by Baylor to seek Minnesota Supreme Court review of various rulings in the OFP proceeding have not succeeded.

The Divorce Proceeding

15. On May 14, 2018, Eto filed a Petition for Dissolution of Marriage in the Family Court division of Hennepin County District Court, seeking to end her marriage with Baylor and establish custody arrangements for their joint child. *See* Court File No. 27-FA-18-3158 ("the divorce proceeding").

16. On June 12, 2018, Eto filed an Affidavit of Service in which Joel D. Van Nurden swore that on May 30, 2018, he personally served Eto's dissolution pleadings, including the Summons and the Petition for Dissolution of Marriage as well as other documents, upon Baylor at the Hennepin County Family Justice Center.

17. Baylor filed his Answer in the divorce proceeding on June 29, 2018. In his Answer, Baylor did not challenge the June 12, 2018 affidavit of service.

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18. On August 21, 2019, more than a year after the divorce proceeding began, and after he had filed multiple prior motions and attempted appeals, Baylor filed a document entitled, “My Rule 60 Motion and Memorandum.” In this document, Baylor alleged for the first time that contrary to the assertions in the Affidavit of Service, he actually received the Summons by first class mail on June 26, 2018. According to this document, Baylor now maintained that the Summons had not accompanied the Petition for Dissolution of Marriage, which he received by personal service on May 30, 2018. Baylor argued that Eto failed to comply with Rules 3.01 and 4.03 of the Minnesota Rules of Civil Procedure. Rule 3.01 states that “a civil action is commenced against each defendant . . . when the summons is served upon that defendant. . . .” Minn. R. Civ. P. 3.01(a). Rule 4.03 states, in relevant part, that service of the summons upon an individual may be effectuated “by delivering a copy to the individual personally or by leaving a copy at the individual's usual place of abode with some person of suitable age and discretion then residing therein.” Minn. R. Civ. P. 4.03(a).

19. On August 30, 2019, the Family Court denied Baylor's Rule 60 motion.

20. Baylor subsequently appealed the August 30, 2019 denial of his Rule 60 motion. The Minnesota Court of Appeals dismissed that appeal as taken from a nonappealable order. *See Baylor v. Baylor*, No. A19-1565 (Minn. Ct. App. Oct. 1, 2019).

21. On October 24, 2019, the Family Court issued a final order in the divorce proceeding, its Findings of Fact, Conclusions of Law, Order for Judgment and Judgment and Decree, establishing the terms of the parties' divorce.

22. Baylor appealed the October 24, 2019 Judgment and Decree. That appeal has proceeded on the merits, and it is presently pending before the Court of Appeals. In Baylor's appeal, he argues, among other things, that the Family Court lacked personal jurisdiction over him based upon his assertion that the service of the Summons was made by mail and

therefore was ineffective. At the April 28, 2020 hearing before this Court, Baylor stated that he is awaiting a decision on the merits of his appeal from the Court of Appeals.

The present action

23. On March 11, 2020, Baylor filed with this Court's Civil Division a Complaint and Jury Trial Demand naming Eto as the defendant. On March 30, 2020, Baylor filed what the Court believes to be an amended version of his Complaint, although it lacks any title on the first page, aside from the phrase "Jury Trial Demanded." The Court views the March 30, 2020 as Baylor's operative initial pleading, and will refer to it as the "Complaint."

24. Under the "Summary" heading of the Complaint, Baylor states, "[Eto]'s petition filed October 4, 2017 initiated case 27-DA-FA-17-6539 under false pretense, unsupported by the absence of any findings from district court that abuse actually occurred to [Eto] or [Baylor]'s two year old daughter." (Complaint, at p. 1.)

25. Baylor further asserts that Eto's Affidavit for Alternate Service or Publication filed on October 9, 2019 in the OFP proceeding contains fraudulent statements. Specifically, Baylor disputes Eto's assertions regarding her last contact with Baylor and her efforts to locate him. (*Id.* ¶¶ 33-37.)

26. Baylor also argues that with regard to the divorce proceeding, Eto improperly delivered the summons by mail, separate from the actual complaint, which failed to properly notify Baylor of that action. (*Id.* ¶ 26.)

27. Baylor states, "Plaintiff must bring an independent action seeking relief from orders, judgments and decrees obtained by the Defendant's unbridled acts of fraud against him and the court itself." (*Id.*, at p. 3.) The Complaint's requested remedies include \$1,000,000 in general damages, \$568,760.01 in punitive damages, and "vacatur of all judgments obtained by fraud. . . ." (*Id.*, at p. 17.)

28. On April 6, 2020, Baylor filed a Motion for Default Judgment. Baylor argues he is entitled to default judgment pursuant to Minn. R. Civ. P. 12.01, because Eto failed to serve an Answer or any responsive pleading to his Complaint.

29. Baylor's Affidavit of Service for the Summons and Complaint in this action states that Eto was personally served with the Summons and Complaint on March 12, 2020, at the address of 630 Cedar Avenue, Minneapolis, Minnesota, by an individual who resides in Rockford, Illinois. The Court cannot tell whether the document referenced in this Affidavit of Service was the original Complaint filed with this Court on March 11, 2020, which Baylor signed on March 6, 2020, or the amended Complaint filed with this Court on March 30, 2020, which Baylor signed on March 11, 2020. As noted above, the Court's analysis in this order presumes that Baylor's later-filed Complaint is his operative pleading.

30. Court records in both the OFP and the divorce proceedings reflect that Eto has a confidential address and does not wish Baylor to know where she lives. Eto's mailing address for purposes of the OFP and divorce proceedings is a post office box obtained through Minnesota's Safe At Home program, which allows a party's home address to be kept confidential while providing an address at which the party can receive mailings. The Court does not know where Baylor obtained the 630 Cedar Avenue address for Eto.

31. On April 20, 2020, this Court issued an Order to Show Cause, directing Baylor to show cause why this present action is not an impermissible collateral attack on orders previously entered in the Fourth Judicial District's Family Court Division though the OFP proceeding and the divorce proceeding.

32. At the April 28, 2020 hearing, Baylor agreed that he seeks to mount a collateral attack on the judgments entered in the OFP and divorce proceedings, and claimed that he is permitted to do so under Minn. Stat. § 548.14, based upon his general allegations of fraud.

CONCLUSIONS OF LAW***Baylor's Challenge to the Family Court's Findings in the OFP Proceeding***

1. Baylor challenges the 2017 Order for Protection issued by the Family Court, and argues that the Family Court failed to make proper domestic abuse findings. Baylor has identified no fraud allegedly affecting the 2017 Order for Protection, but bases his collateral attack on his disagreement with the Family Court's findings of abuse, and his proffer of additional evidence to support his assertion that no abuse occurred.

2. The Minnesota Court of Appeals' May 14, 2018 opinion affirming the Family Court's issuance of the Order for Protection in 2017 addressed the findings made by the Family Court and found them adequate. The Court of Appeals stated:

Because the district court's finding of domestic abuse was not clearly erroneous and the relevant circumstances, viewed in the light most favorable to the district court's findings, support the district court's finding of a likelihood of continued domestic abuse, the district court did not abuse its discretion by issuing the OFP with respect to wife.

Wife also testified that husband repeatedly struck A.B. with a spatula. Although husband denied striking A.B. with a spatula, we defer to the district court's determination that husband's testimony was less credible than wife's.

Baylor, 2018 WL 2187189 at *5.

3. As the domestic abuse findings were made by the Family Court judge who heard the testimony at the OFP hearing, and those findings have been reviewed and affirmed by the Court of Appeals, this Court lacks authority to review the evidence presented at the OFP hearing or to make different factual findings based upon that evidence or upon additional evidence Baylor now seeks to offer. The doctrine of res judicata generally precludes relitigation of claims that have already been fully presented and litigated to conclusion. That doctrine "reflects courts' disfavor with multiple lawsuits for the same cause

of action and wasteful litigation.” *Wilson v. Comm'r of Revenue*, 619 N.W.2d 194, 198 (Minn. 2000) (claim is barred by res judicata when (1) litigation on a prior claim involved the same cause of action, (2) there was a judgment on the merits, (3) the claim involved the same parties or their privies, and (4) the party against whom res judicata is applied has had a full and fair opportunity to litigate the matter in the prior proceeding).

4. Baylor has had a full and fair opportunity to litigate the factual issues that resulted in the findings of the Family Court in the OFP proceeding, and those findings have been affirmed on appeal. Accordingly, this Court finds Baylor’s attempt to relitigate the issues underlying the 2017 Order for Protection to be an impermissible collateral attack on the rulings of the Family Court and of the Court of Appeals in the OFP proceeding.

Baylor’s Challenge to Eto’s Affidavit for Alternate Service in the OFP Proceeding

5. Baylor seeks to challenge the order granting service by alternate means of the 2019 Ex Parte extension order in the OFP proceeding under Minn. Stat. § 548.14, which provides, in relevant part:

Any judgment obtained in a court of record by means of perjury, subornation of perjury, or any fraudulent act, practice, or representation of the prevailing party, may be set aside in an action brought for that purpose by the aggrieved party in the same judicial district within three years after the discovery by the aggrieved party of such perjury or fraud.

Minn. Stat. § 548.14.

6. An attack on a judgment pursuant to Minn. Stat. § 548.14 requires the initiation of an independent equitable action. *Johnson v. Johnson*, 68 N.W.2d 398 (1955).

7. Baylor initiated this independent action, in part, to challenge the Order for Alternate Service, which permitted service of the 2019 Ex Parte extension order upon Baylor by first class mail. But Baylor has not challenged that the 2019 Ex Parte extension order itself was based upon any alleged fraud. Instead, he complains that the 2019 Ex Parte extension

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order should not have been permitted to be served by alternate means. Court records establish that Baylor must have received the 2019 Ex Parte extension order in the fall of 2019, because he appealed it to the Court of Appeals. *See Baylor v. Baylor*, No. A19-1848 (Minn. Ct. App. Nov. 20, 2019). That appeal was dismissed, based upon the Court of Appeals' holding that: "Ex parte orders are nonappealable because the district court has not had the opportunity to correct any error by having its attention directed thereto by adversary proceedings." *Id.* at 1, ¶ 3 (citation omitted). The Court of Appeals went on to note that the "September 30, 2019 order states that appellant has the right to request a hearing on respondent's application to extend the OFP." *Id.* at 2, ¶ 4. Baylor never requested the hearing in Family Court on the merits of the 2019 Ex Parte extension order that was expressly authorized by that order. *See September 30, 2019 Ex Parte Extension of Order for Protection in Court File No. 27-DA-FA-17-6539*, at p. 2, ¶ 3 ("Respondent has the right to request a hearing . . .").

8. Given that Baylor has not sought a hearing from the Family Court on the 2019 Ex Parte extension order, and given that, as the Court of Appeals observed, the Family Court has not had the opportunity to correct any alleged error in that order by having its attention directed thereto by adversary proceedings, the Court finds that this is not a proper case to invoke Minn. Stat. § 548.14 as a means of collateral attack on the 2019 Ex Parte extension order. The statute allows for an action to set aside a "judgment obtained" by means of fraud. The order in question is not a judgment, but rather an ex parte procedural order, as to which Baylor was afforded an opportunity to request a hearing on the merits. Baylor may not choose to forego that hearing, and then later bring an action in a separate division of the court to challenge an ex parte ruling that was never subjected to an adversarial proceeding in the Family Court.

9. The Court concludes that Baylor's collateral attack on the 2019 Ex Parte extension order is impermissible under Minn. Stat. § 548.14. This cause of action to challenge in a separate action the 2017 Order for Protection, as extended in 2019, may not proceed.

Baylor's Challenge to the Service of the Summons in the Divorce Proceeding

10. “[T]he filing of a timely and proper appeal suspends the trial court's authority to make any order that affects the order or judgment appealed from, although the trial court retains jurisdiction as to matters independent of, supplemental to, or collateral to the order or judgment appealed from.” Minn. R. Civ. App. P. 108.01, subd. 2.

11. “[T]he district court's jurisdiction is suspended when the district court must consider the merits of an issue on appeal.” *Bakdash v. State*, No. A16-1575, 2017 WL 1316155, at *2 (Minn. Ct. App. Apr. 10, 2017) (citing *State v. Friberg*, 435 N.W.2d 509, 512 n.1 (Minn. 1989)). “The purpose of this rule is to avoid the confusion and waste of time potentially arising from having the same issue before two courts at the same time.” *State v. Dwire*, 409 N.W.2d 498, 502 (Minn. 1987).

12. Through this lawsuit, Baylor makes the same argument regarding Eto's allegedly defective service of the Summons that he has made previously in his appeal from the Judgment and Decree entered by the Family Court.

13. This argument is not appropriate in this forum, as this Court does not have authority to consider the merits of an issue presently pending before the Court of Appeals. See *Little v. Arrowhead Regional Corrections*, 773 N.W.2d 344, 346 (Minn. Ct. App. 2009) (holding that the filing of a proper and timely appeal suspended the authority of the trial court to make any order necessarily affecting the order or judgment appealed from).

14. The Court therefore finds this lawsuit to represent an impermissible collateral attack on the divorce proceeding, presently under the jurisdiction of the Court of Appeals.

12h

ORDER

1. Each of Baylor's claims in his present lawsuit is barred as an impermissible collateral attack on rulings in other proceedings, including cases brought before the Family Court and the Court of Appeals. Baylor's attack on the findings made in the November 16, 2017 Order for Protection is barred by the Court of Appeals' May 14, 2018 affirmance of the findings in that order. Baylor's attack on the October 9, 2019 Order for Alternate Service is barred as an impermissible attack on an ex parte order, which is a procedural order, and not a judgment, and which the Family Court has had no opportunity to consider in an adversarial proceeding, due to Baylor's failure to request the hearing offered to him by the 2019 Ex Parte extension order. Baylor's attack on the October 24, 2019 divorce decree is barred by the pending appeal, in which he has presented to the Court of Appeals the same issue raised in his argument here.

2. Baylor's present lawsuit is dismissed, without prejudice to his pursuit of the underlying issues in the appropriate forum(s).

3. Notice of this order shall be provided to both parties. Notice to Eto shall include notice to her counsel of record in each of the proceedings which Baylor sought, through this action, to collaterally attack.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

Dated: May 14, 2020

Laurie J. Miller
District Court Judge

1i

Filed in Fourth Judicial District Court

9:30 am, Oct 05, 2017

Hennepin County Family, MN

State of Minnesota
Hennepin County

District Court

Fourth Judicial District

Court File Number: 27-DA-FA-17-6539

Case Type: Domestic Abuse

In the Matter of:

Ayano Eto Baylor

Petitioner

On Behalf of:

Aaliyah Bee Baylor

 and for her/himself

Emergency (Ex Parte)

Order for Protection

Minn. Stat. §518B.01

vs.

Christopher Gary Baylor

Respondent

TO: Christopher Gary Baylor DOB 04/16/1978, the Respondent named above:

Based on the Affidavit and Petition for an Order for Protection in this matter, the Court FINDS:

1. The Petition alleges an immediate danger of domestic abuse.
2. The following parties need an Order for Protection and are referred to in this Order as "Protected Person(s)":

Ayano Eto Baylor
Aaliyah Bee Baylor, DOB 8/22/2015

3. A hearing is required to address the relief requested in the Petition.

Based upon these findings, IT IS ORDERED:

1. A hearing will be held at Family Justice Center, 110 South 4th Street, Minneapolis MN 55401. Petitioner shall report to Room No 157. Respondent shall report to Room No 160 on October 10, 2017 at 9:45 AM. The Court will decide at that time whether to grant the relief requested in the Petition for an Order for Protection. IF RESPONDENT FAILS TO APPEAR FOR THE HEARING, THE ORDER REQUESTED BY PETITIONER MAY BE GRANTED. IF RESPONDENT FAILS TO APPEAR AT THE HEARING, THE RESPONDENT MUST STILL OBEY THIS ORDER OR ANY OTHER ORDER FOR PROTECTION ISSUED BY THE COURT IN THIS CASE. IF PETITIONER FAILS TO APPEAR FOR THE HEARING, THIS CASE MAY BE DISMISSED.
2. Respondent shall appear personally and respond to the petition. IF YOU FAIL TO APPEAR YOU MAY BE HELD IN CONTEMPT OF COURT.

Filed in Fourth Judicial District Court

9:30 am, Oct 05, 2017

Hennepin County Family, MN

2i

State of Minnesota
Hennepin County

District Court

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2. Respondent shall appear personally and respond to the petition. IF YOU FAIL TO APPEAR YOU MAY BE HELD IN CONTEMPT OF COURT.

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3. Respondent must not commit acts of domestic abuse against the Protected Person(s). This means that Respondent may not harm or cause fear of harm to the Protected Person(s), and that Respondent may not use, attempt to use, or threaten to use physical force that would reasonably be expected to cause bodily injury to the Protected Person(s).
4. Respondent must not have any contact with the Protected Person(s) whether in person, with or through other persons, by telephone, mail, e-mail, through electronic devices, social media, or by any other means except as follows: No exceptions.
5. Respondent must not go to or enter the residence(s) of the Protected Person(s) located at the address(es) listed below. Respondent must stay a reasonable distance away from the residence(s) of the Protected Person(s) specifically as follows: 2 city blocks or 1/4 mile, whichever is greater. Respondent must stay a reasonable distance away from ANY FUTURE RESIDENCES of the Protected Person(s). NOTICE: RESPONDENT MUST NOT ENTER OR STAY AT THE RESIDENCE OF THE PROTECTED PERSON(S) FOR ANY REASON, EVEN IF INVITED TO DO SO. IF RESPONDENT IS FOUND AT THE PROTECTED PERSON'S RESIDENCE, THE PROTECTED PERSON IS NOT IN VIOLATION OF THIS ORDER, AND THE ORDER REMAINS IN EFFECT.

Confidential Address

6. Address is confidential. Respondent must not go to or enter the residence(s) of the Protected Person(s). Respondent must stay a reasonable distance away from the residence(s) of the Protected Person(s) specifically as follows: 2 city blocks or 1/4 mile, whichever is greater. Respondent must stay a reasonable distance away from ANY FUTURE RESIDENCES of the Protected Person(s). NOTICE: RESPONDENT MUST NOT ENTER OR STAY AT THE RESIDENCE OF THE PROTECTED PERSON(S) FOR ANY REASON, EVEN IF INVITED TO DO SO. IF RESPONDENT IS FOUND AT THE PROTECTED PERSON'S RESIDENCE, THE PROTECTED PERSON IS NOT IN VIOLATION OF THIS ORDER, AND THE ORDER REMAINS IN EFFECT.
7. Protected Person(s) may remove necessary belongings from Respondent's address under the supervision of the Lonsdale Police Department or Sheriff.
8. Respondent must continue all existing insurance coverage without changing coverage or beneficiaries.
9. Temporary custody of the following child(ren) is granted to Petitioner:

Aaliyah Bee Baylor

10. Neither party shall sell, give away, damage, destroy, hide, or permit any other person to obtain legal rights in any property, whether real estate or personal property, owned or possessed by the parties together (or solely by the other party if the parties are married), except in the usual course of business or for the necessities of life.
11. Respondent and Petitioner are ordered to bring to the hearing a statement of earnings from their employer or pay stubs for the past six months, or the most current federal and state income tax returns.

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12. The Hennepin and Rice County Sheriff's department and the Lonsdale Police Department shall help the Petitioner execute and/or serve this Order, without charge. Peace officers licensed by the State of Minnesota and correction officers, including, but not limited to, probation officers, court services officers, parole officers and employees of jails or correctional facilities may serve an Order for Protection. If the application for relief is brought in a county in which the Respondent is not present, the sheriff shall forward the pleadings necessary for service upon the Respondent to the sheriff of the county in which the Respondent is present. This must be expedited to allow for timely service.
13. Under federal law, every Police Department and Sheriffs office in the United States, including Washington D.C. and tribal and territorial lands, is responsible for enforcing this order. Enforcement of this order may include, but is not limited to, assisting in obtaining physical custody of child(ren), removing Respondent from the residence, and getting property back from the Respondent. 18 U.S.C. 2265.
14. You are also restrained from harassing, stalking, or threatening the Protected Person(s), or engaging in other conduct that would place the Protected Person(s) in reasonable fear of bodily injury to that person; and you are prohibited from the use, attempted use, or threatened use of physical force against the Protected Person(s) that would reasonably be expected to cause bodily injury. 18 U.S.C. 922(g)(8)(B) and (C).
15. It is further ordered as follows: Directing the Hennepin County Sheriff and/or proper law enforcement agency to assist the Petitioner in retrieving the minor child Aaliyah Baylor from the respondent at his residence and returning the child, along with the child's medical insurance, car seat, crib and clothes to the care and control of her mother. That neither party shall remove the child from the State of Minnesota.
16. This Order will be effective for a period of seven days from the date of this order.

Notice to Respondent:

- You have a right to a hearing. You must request it by completing and returning the attached "Respondent's request for a hearing in an Order for Protection case".
- A police officer shall arrest you and take you to jail if the police officer believes you have violated this Order and shall hold you in jail for at least 36 hours excluding the day of arrest, Sundays, and holidays, unless you are released by a judge or judicial officer.
- Violation of this Order may be treated as a misdemeanor, gross misdemeanor, or felony. A misdemeanor violation may result in a sentence of up to 90 days in jail and/or a fine of up to \$1,000. Some repeat violations are gross misdemeanors that may result in a sentence of up to one year in jail and/or a fine up to \$3,000. Other violations are felonies and may result in a sentence of imprisonment for up to five years and/or a fine of up to \$10,000.
- This order is entitled to full faith and credit and shall be enforced anywhere in the U.S. including Tribal lands. 18 U.S.C. § 2265. Crossing state, territorial, or tribal boundaries to violate this order may result in federal imprisonment. 18 U.S.C. § 2262.

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- A violation of this Order for protection is a deportable offense. If you are not a United States citizen, a violation of this Order could result in your deportation.
- You must comply with the Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. § 922(g)(8), concerning the shipping, transporting, possession, or receiving of firearms and ammunition when a qualifying protective order is in place.

Notice to Petitioner

- If you move, notify the Court Administrator so that your address can be updated for notice and enforcement purposes.
- If you move to a different city, send or deliver a copy of the Order for Protection to law enforcement for your new city.
- Your Order for Protection will be enforced even if you fail to take the steps above.

Notice to Both Parties:

If a hearing is scheduled, be prepared on the scheduled date. You may be asked to testify at that time or depending on the Court's calendar the hearing may be rescheduled. You should bring any available documentation, such as police reports (certified copies), hospital and doctor reports, pictures, witnesses, or other items. You may not be able to use written reports, affidavits, or statements from persons who are not at the hearing as witnesses.

NOTE: If an Order for Protection is issued, the Court must consider the Order in making a decision in any parenting time (visitation) proceeding, if requested by Petitioner.

NOTE: When signed by a Referee, this temporary order is effective upon the Referee's signature (Minn. Stat. § 518B.01, subd. 7 (c)).

Dated: _____

Sheehy
Referee & District Court

Digitally signed by Sheehy,
Kathleen
DN: o=Minnesota Judicial,
email=Kathleen.Sheehy@courts.state.mn.us, cn=Sheehy, Kathleen
Date: 2017.10.05 09:06:18 -05'00'

Dated: _____

Judge of District Court

Distribution

<input type="checkbox"/> Certified copy or original - Return to Court Administrator with Affidavit of Personal Service attached	<input type="checkbox"/> Copy for Respondent(s)
<input type="checkbox"/> Copy for Petitioner(s)	<input type="checkbox"/> Copy for local police department
<input type="checkbox"/> Copy for file until original returned	<input type="checkbox"/> Other:
<input type="checkbox"/> Copy for Sheriff	
<input type="checkbox"/> Dissolution File	

STATE OF MINNESOTA

COUNTY OF HENNEPIN

1j

FILED
FAMILY COURT

DISTRICT COURT

2017 OCT 10 PM12:09

FOURTH JUDICIAL DISTRICT

Court File No. 27-DA-FA-17-6539

HENNEPIN COUNTY
COURT ADMINISTRATION

In Re the Matter of:

Ayano Eto Baylor for herself and on behalf of:

Aaliyah Bee Baylor
Petitioner,

and

**ORDER FOR CONTINUANCE AND
APPOINTMENT OF GUARDIAN AD LITEM**

Christopher Gary Baylor,
Respondent.

This matter came on for hearing before the Honorable Edward T. Wahl, Judge of District Court, on October 10, 2017.

Petitioner appeared and represented herself. She was also accompanied by an advocate.

Respondent appeared and represented himself.

Court-certified Japanese interpreter appeared to assist Petitioner.

Court-appointed guardian *ad litem*, Kelly Motzko, was also present.

Based on all the files, records and proceedings, the Court makes the following:

FINDINGS OF FACT

1. The procedures for service on respondent set forth in Minn. Stat. § 518B.01 were followed. Respondent had reasonable notice and opportunity to be heard, and the Court has jurisdiction over the parties and subject matter.
2. Petitioner's birth date is February 1, 1985. Petitioner's address is confidential.
3. Respondent's birth date is April 16, 1978. Respondent's address is 10036 Clearwater Court, Londale, MN 55046.
4. The parties are (check all that apply):

Spouses
 Former spouses
 Living together
 Lived together (from _____ to _____)
 Have a child(ren) together

____ fax MWR ____ fax Sheriff ____ fax PD
____ fax in-custody respondent
____ to Sheriff for personal service on respondent
____ mail petitioner ____ mail respondent ____ certified mail respondent

- Have an unborn child together
- Parent/child
- Related by blood
- Significant romantic or sexual relationship

5. The parties are married and are the parents of the following joint minor child:

Aaliyah Bee Baylor, born August 22, 2015.

6. On October 4, 2017, Petitioner filed a Petition for Order for Protection.

7. An Ex Parte Order for Protection was issued on October 5, 2017, for the benefit of Petitioner and the minor child. The order also granted Petitioner temporary custody.

8. Respondent was personally served with the Petition for Order for Protection and the Ex Parte Order for Protection on October 5, 2017.

9. The Court finds it appropriate to appoint a guardian *ad litem* to represent the best interests of the child involved.

10. The guardian requires additional time to gather information in order to make recommendations to the Court.

11. Petitioner's contact information is as follows:

Ayano Eto Baylor: 770-709-2900. Her address is confidential.

12. Respondent's contact information is as follows:

Christopher Gary Baylor: 909-740-4876

NOW, THEREFORE, based on the above Findings of Fact, the Court issues the following:

ORDER

1. In accordance with the requirements of Minn. Stat. § 518.165, subd. 2:

Kelly Motzko
 Guardian ad Litem Program
 Family Justice Center
 110 South 4th Street – MC L893
 Minneapolis, MN 55401-2279
 612-964-5686 - phone
 612-596-9317 - fax

is appointed Guardian ad Litem to represent the best interests of the above named child(ren).

2. The role of the guardian *ad litem* shall be to assess whether the child(ren) are safe in respondent's care; whether it is in the child(ren)'s best interest to have parenting time with respondent, and if so, under what conditions, if any; any safety issues related to parenting time exchanges; and to make any other recommendations that are in the child(ren)'s best interest.

3j

3. The guardian *ad litem* shall be notified of all proceedings. Sanctions may be available upon motion of the guardian should there be deliberate or negligent omission of notice to the guardian.
4. The guardian *ad litem* shall have the following authority:
 - a. The guardian *ad litem* may initiate and respond to motions, conduct discovery, call and cross-examine witnesses, make written arguments or reports, unless this requirement is waived by the court, and appeal on behalf of the children.
 - b. The guardian *ad litem* may request copies of all pleadings previously submitted by the parties.
 - c. If supervised parental access is required, the guardian *ad litem* may facilitate or assist the parties or Court Services with arranging or coordinating the supervision of parenting time between the non-custodial parent and the children. The guardian *ad litem* may select any other qualified person or agency to supervise parenting time as appropriate. The parents shall cooperate with the guardian *ad litem* and with any person or agency chosen by the guardian to supervise parenting time.
 - d. The guardian *ad litem* shall not be required to make home visits in this case, unless deemed to be appropriate and necessary in the performance of his/her duties.
 - e. The guardian *ad litem* shall have access to any Hennepin County Department of Court Services, Hennepin County Family Court guardian *ad litem* file or Child Protection/Child Welfare files or other agencies working with the parties in relation to this case such as Parenting Time Expeditors, parenting consultants or other professional services ordered by the Court without signed releases from the parties. Both agencies and the guardian *ad litem* may mutually and freely exchange any and all information regarding the parents and child(ren).
 - f. The Rules of Guardian Ad Litem Procedure, General Rules of Practice for the District Court, Rule 907.01, subd. 1(a) states: "The guardian *ad litem* shall have access to the child or incompetent adult including meeting with the child alone as deemed appropriate by the guardian *ad litem* . . ." This meeting may occur in a school setting and neither party shall interfere with the guardian *ad litem*'s individual meeting with the child(ren).
5. The parties shall respectfully engage and cooperate with the guardian *ad litem*. The guardian may inform the Court if the parties engage in inappropriate communication with the guardian or fail to cooperate with the guardian regarding scheduled appointments or home visits.
6. If a party decline to sign releases of information giving the guardian access to relevant information that is not in the possession of Hennepin County, the guardian may bring a motion for appropriate relief and sanctions.
7. No person shall prevent the guardian *ad litem* from reviewing and receiving copies of all information pertaining to the above named child(ren) and the parents or legal guardian of the child(ren) including medical, psychological and educational data pertinent to the matter before the court. Pursuant to 45 C.F.R. 164.512(e), the guardian appointed under this court order shall have access to protected health information as defined in that federal regulation, including but not limited to, psychological and chemical health assessments, which have been conducted by

service providers deemed "covered entities" under the regulation. Access to this protected health information is for the purpose of aiding the guardian in her or his investigation and development of recommendations regarding the child(ren) who is/are the subject of this court order and may include protected health information related to the child(ren) as well as the child(ren)'s parents or others designated by this court.

8. If the parties reach an agreement regarding substantive issues related to the child(ren), the guardian must review and sign the agreement before it is presented to the Court for approval.
9. This matter is continued for an evidentiary hearing on Thursday, November 16, 2017, at 2:00 p.m., at which time both parties shall appear before the Court in Courtroom 434 at the Hennepin County Family Justice Center, 110 South Fourth Street, Minneapolis, MN. Petitioner shall wait to be called for the hearing in Room 157 and respondent shall wait to be called for the hearing in Room 160.
10. The appointment of the guardian shall continue until the date of the next hearing. The appointment will automatically terminate at that time unless extended by other order of the Court.
11. ***Pending the above-referenced hearing, the ex parte Order for Protection dated October 5, 2017, shall remain in full force and effect.***

BY THE COURT:



Edward T. Wahl
Judge of District Court

Dated: October 10, 2017