

APPENDIX A

DATE FILED: September 30, 2021

20CA1962 Marriage of Hodyl 09-30-2021

COLORADO COURT OF APPEALS

Court of Appeals No. 20CA1962

Douglas County District Court No. 18DR30102

Honorable Andrew Baum, Judge

In re the Marriage of Christopher Hodyl,

Appellee,

and

Martine Bernard,

Appellant.

ORDERS AFFIRMED

Division III

Opinion by JUDGE LIPINSKY

Furman and Brown, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)

Announced September 30, 2021

No Appearance for Appellee

Martine Bernard, Pro Se

¶ 1 For the seventh time, a division of this court considers an appeal by Martine Bernard (mother) in this ongoing dissolution of marriage case. Mother now appeals two district court orders, one requiring her to participate in individual therapy and another requiring her to participate in family therapy.

¶ 2 We affirm both orders.

I. Relevant Facts and Procedural Background

A. Permanent Orders

¶ 3 One child was born of the marriage between mother and Christopher Hodyl (father), which ended in 2019. At that time, the court

- designated mother the child's primary residential parent;
- found, consistent with expert testimony, there was insufficient evidence to support mother's claim that father had sexually abused the child;
- determined it was in the child's best interests to require father to follow a phased-in parenting time schedule with the goal of equal parenting time;
- granted mother and father joint decision-making responsibility,

except that it provided father sole decision-making responsibility over the child's mental health;

- emphasized the importance of therapy to the child's mental health and observed that the child had "express[ed] [an] interest in going to family therapy" with father "to tell him how she feels";
- pointed out that the parental responsibilities evaluator (PRE) recommended that the child and father begin family therapy with a "focus on repairing the aspects of [their] relationship";
- noted that the PRE was "concerned that [mother] may have difficulty supporting [the child's] autonomy or forging a safe and autonomous relationship with

[f]ather and pull her away from

individual or family therapy”;

- ordered that the child start family therapy and continue in individual therapy; and
- also ordered that “[f]amily therapy . . . include therapy with [m]other to support a normalized relationship between [the child] and [f]ather.”

¶ 4 Mother appealed the permanent orders

judgment, which a division of this court affirmed. *See*

In re Marriage of Hodyl, (Colo. App. Nos. 19CA1553

& 19CA1982, Dec. 3, 2020) (not published pursuant

to C.A.R. 35(e)) (*cert. denied June 7, 2021*).

¶ 5 Since that time, including during the pendency

of this appeal mother appealed:

- a post-decree order requiring her to sign a supervision contract, *see In re*

Marriage of Hodyl, (Colo. App. No. 19CA2380, Dec. 3, 2020) (not published pursuant to C.A.R. 35(e)) (cert. denied June 7, 2021);

- a post-decree order denying mother's motion to stay future judicial review hearings and an order involving section 13-17-102, C.R.S. 2020, attorney fees, *see In re Marriage of Hodyl*, (Colo. App. Nos. 20CA0333 & 20CA0522, Feb. 4, 2021) (not published pursuant to C.A.R. 35(e)) (cert. denied June 21, 2021);
- the district court's ruling that mother sign another supervision contract, *see In re Marriage of Hodyl*, (Colo. App. No. 20CA1154);
- an order enforcing father's

parenting time and an order
declining to reduce to writing one of
the district court's prior oral rulings,
see In re Marriage of Hodyl, (Colo.
App. No. 20CA1468, June 24, 2021)
(not published pursuant to C.A.R.
35(e)); and

- the district court's January 8, 2021,
order awarding father attorney fees, the
court's January 29, 2021, order
regarding family therapy, and the
court's March 25, 2021, order imposing a
\$4,600 sanction against mother for
failing to complete the required
paperwork in order for father to exercise
his parenting time, *see In re Marriage of*
Hodyl, (Colo. App. No. 21CA0177).

B. December 13, 2019, Status

Conference

¶ 6 At a December 13, 2019, status conference, father expressed his concerns that family therapy had not yet begun. He argued that family therapy was important to rebuild his relationship with the child and improve the parents' communications. The district court allowed father and the child to begin family therapy immediately.

The court noted that, despite its finding in the permanent orders, mother persisted in her belief that father sexually abused the child and, as a result, she was impeding his ability to develop a relationship with the child. (We note that mother may not disobey the court's orders based on her belief, which the record does not support, that father sexually abused the child. Mother may be subject to punitive sanctions if she willfully refuses to comply with a lawful court order with which she has the

ability to comply. *See In re Marriage of Nussbeck*, 974 P.2d 493, 497 (Colo. 1999).)

C. Father's Motion to Enforce His Parenting Time

¶ 7 On April 15, 2020, father moved to enforce his parenting time with the child under section 14-10-129.5, C.R.S. 2020. In the motion, he described mother's continued efforts to thwart his parenting time.

¶ 8 On September 1, 2020, after a three-day evidentiary hearing, the district court granted father's motion to enforce, finding that mother violated the parenting time provisions of the permanent orders. The court then imposed the following remedies under the statute: (1) the parents must complete a high-conflict parenting class; (2) although the court will not order family therapy

involving mother, the court reserved the right to order it in the future; and (3) mother is to engage in individual therapy.

¶ 9 Mother appealed this decision, which a division of this court affirmed. *See In re Marriage of Hodyl*, (Colo. App. No. 20CA1468, June 24, 2021) (not published pursuant to C.A.R. 35(e)).

D. October 21, 2020, Order

¶ 10 On October 21, 2020, the district court issued an order addressing mother's contention that she was unable to find an individual therapist willing to work with her. The court reaffirmed its prior order that mother must engage in individual therapy.

¶ 11 On November 4, 2020, mother filed a C.R.C.P. 59(a) motion, asking the district court to reconsider, vacate, or amend its October 21 order. But before the court ruled on the motion, she filed a notice of

appeal, seeking review of the October 21 order.

E. November 19, 2020, Order

¶ 12 On November 19, 2020, the district court decided mother's C.R.C.P. 59(a) motion. The court vacated the portion of the September 1 order requiring mother to participate in individual therapy. The court reasoned that she was "highly resistant to individual therapy as well as to the implementation of the phased[-in] parenting plan in the . . . permanent orders." The court indicated that its order requiring mother to engage in individual therapy was closely tied to family therapy — the court "hoped individual therapy would help [her] address both her own concerns she ha[d] voiced throughout this case and the concerns noted by the PRE prior to beginning family therapy so that she could fully assist and

participate in family therapy." Given mother's resistance, the court exercised its jurisdiction over the reserved issue of family therapy. The court then found that the child's best interests would be served by ordering mother to participate in family therapy.

¶ 13 Mother filed a notice of appeal in this case that listed five issues, all of which related to the October 21 order. Mother later filed an amended notice of appeal, however, that listed five issues relating to the November 19 order and no issues relating to the October 21 order. We consider separately mother's appeal from the October 21 order and appeal from the November 19 order. (A motions division of this court denied mother's request to complete or supplement the record, and she does not ask us to revisit its ruling. Nevertheless, in resolving this appeal, we have

not relied on the "missing" information.)

II. Appeal from the October 21 Order

¶ 14 Mother's opening brief did not address any issue relating to the October 21 order. For this reason, we consider those issues abandoned. *See In re Marriage of Marson*, 929 P.2d 51, 54 (Colo. App. 1996) (holding that, where an issue raised in a notice of appeal is not briefed, the issue is abandoned and a reviewing court will not consider it); *see also Leef v. Burlington N. & Santa Fe Ry. Co.*, 49 P.3d 1196, 1197 (Colo. App. 2002).

III. Appeal from the November 19 Order

A. Standard of Review

¶ 15 Next, we turn to mother's appeal from the November 19 order. We review a district court's ruling on a C.R.C.P. 59 motion for an abuse of

discretion. *Top Rail Ranch Ests., LLC v. Walker*, 2014 COA 9, ¶ 74, 327 P.3d 321, 334. A court abuses its discretion when its ruling is manifestly arbitrary, unreasonable, or unfair, or when it misapplies the law. *Rains v. Barber*, 2018 CO 61, ¶ 8, 420 P.3d 969, 972.

B. Section 14-10-129.5(2)(h)

¶ 16 Mother contends that, by ordering her to begin family therapy, the district court misapplied and misinterpreted section 14-10-129.5(2)(h). Specifically, she argues that family therapy is not in the child's best interests because two of the child's former therapists opined that such therapy would not benefit the child and the child opposes it. Contrary to mother's contention, however, the court did not apply section 14-10-129.5(2)(h); rather, it applied C.R.C.P. 59(a). In any event, we conclude that the record supports the court's

determination concerning the child's best interests.

¶ 17 When a district court finds that a parent has not complied with a parenting time order, it may require the parents to attend a parental education program and participate in family counseling, as well as enter any other order that promotes the child's best interests. See § 14-10-129.5(2)(b.3), (b.7), (h).

¶ 18 On September 1, 2020, the district court found that mother had not complied with the parenting time order under section 14-10-129.5(2). As part of its ruling, the court stressed the high level of conflict between the parents, declined to order family therapy but reserved the issue for future reconsideration, and found that individual therapy for mother would encourage a better relationship between father and the child and

would help mother address certain issues once family therapy was ordered again. *See* § 14-10-129.5(2)(b.3), (b.7), (h).

¶ 19 On November 19, 2020, the district court revisited the issue of family therapy pursuant to C.R.C.P. 59(a). After noting mother's resistance to individual therapy and father's parenting time, the court determined that it was in the child's best interests for the parents and the child to engage in family therapy:

[F]amily therapy should focus on repairing the aspects of the child's relationship with [f]ather that is troublesome for her with a goal of establishing safe, unsupervised parenting time. The family therapy should also assist the child to support a normalized relationship with [f]ather.

The therapy should address, with [m]other, that the child is now more mature and has more resources to be safe in her relationship with [f]ather and for [m]other to develop an ability to allow the child to embrace the world as a safe enough place to privilege opportunities.

¶ 20 The record supports the district court's determination. Our review of the lengthy record shows that

- at the time of the permanent orders, the court specifically ordered that the child immediately begin family therapy with a focus on repairing aspects of the child's relationship with father;
- mother's distrust of father stems from her belief — which the court noted was

unconfirmed "despite investigations" —

that he sexually abused the child;

- mother was resistant to individual therapy, which the court had ordered to help her "learn appropriate ways to support the relationship between [f]ather and the child" and which would help mother "fully assist and participate in family therapy" when the court ordered it again;
- mother was equally resistant to the implementation of the phased-in parenting time schedule set forth in the permanent orders;
- mother had interfered with father's parenting time;
- the parents were incapable of effectively communicating regarding

the child; and

- the level of acrimony between mother and father was having a negative effect on the child.

¶ 21 We acknowledge that, some months previously at the enforcement hearing, the child's former therapists testified that family therapy would not be beneficial because the child was unwilling to take part in it. But the court was free to disregard the former therapists' opinions if the court found that engaging in family therapy was in the child's best interests. *See In re Marriage of Hatton*, 160 P.3d 326, 330 (Colo. App. 2007) (holding that the district court's discretion over parenting matters is broad, and an appellate court exercises every presumption in favor of upholding its decisions); *cf. In re Marriage of McNamara*, 962 P.2d 330, 333-34 (Colo. App. 1998) (noting that the district

court is not required to follow a child and family expert's recommendations on parenting time, but may disregard them and reach its own conclusions based on the evidence); *In re Parental Responsibilities Concerning B.J.*, 242 P.3d 1128, 1133 (Colo. 2010) (only the district court, and not an expert, has authority to allocate parental responsibilities according to the child's best interests).

¶ 22 Next, mother insists that section "14-10-129.5(2)(h) does not give the [district] court the authority to violate" its December 13, 2019, order, "which made . . . clear that [the court] could not force [her] to attend family therapy against her will." But, as noted above, the court did not apply section 14-10-129.5(2)(h). In any event, our review of the transcript of the December 13 status conference reveals that the district court did not

excuse mother from participating in family therapy. The court merely said that, while it could order her participation, it could not make her attend absent a contempt finding.

¶ 23 For these reasons, we cannot say that the district court abused its discretion by exercising its jurisdiction over the reserved issue of family therapy. *See Top Rail Ranch Ests., LLC*, ¶74, 327 P.3d at 334.

C. Dual Roles

¶ 24 Mother also contends that the district court's goals for family therapy are contrary to the inherent role of a treating family therapist. In other words, she asserts that a family therapist cannot serve the role of evaluator in a parental responsibilities dispute and, at the same time, the professional role of treating psychologist. She cites to the code of conduct (the APA code of conduct) of the American

Psychological Association, which provides that psychologists must refrain from entering into "multiple relationships" that could reasonably be expected to impair their "objectivity, competence or effectiveness in performing their functions" or "otherwise risk[] exploitation or harm to the person with whom the professional relationship exists." We disagree with mother's contention for two reasons.

¶ 25 First, mother relies on a letter from an individual therapist who declined to offer her treatment. But she makes no attempt to explain how the statement of the individual therapist relates to the APA code of conduct provisions applicable to family therapists, and we will not do so on her behalf. Moreover, the letter articulates the alleged ethical dilemmas of one specific individual therapy practitioner and does not concern the field of family therapy generally.

¶ 26 Second, because the district court's order does not require mother to violate any professional and ethical obligations, she lacks standing to assert an alleged violation of the APA code of conduct on behalf of all family therapists. *See Meyer v. Haskett*, 251 P.3d 1287, 1292 (Colo. App. 2010) ("Courts routinely deny defendants the standing to assert a third party's right . . .") (quoting *People v. Palomo*, 31 P.3d 879, 885 (Colo. 2001)).

¶ 27 Thus, the district court did not abuse its discretion by denying mother's motion for reconsideration. *See Top Rail Ranch Ests., LLC*, ¶74, 327 P.3d at 334.

D. The Child's Individual Therapy

¶ 28 As we understand it, mother contends that the district court erred by resuming the child's individual therapy against the advice of the child's individual therapist. According to mother, an

individual therapist violates section 12-245-224(1)(h), C.R.S. 2020, when the therapist fails to terminate a relationship with a client when it is reasonably clear that the client is not benefiting from the relationship and is not likely to gain such benefit in the future. But mother fails to develop this argument. For example, mother does not provide us with any authority suggesting that a dissolution of marriage case is the appropriate forum to adjudicate alleged violations of provisions of Title 12. So we will not consider it. *See In re Marriage of Zander*, 2019 COA 149, ¶ 27, 486 P.3d 352, 357 (holding that an appellate court will not consider an argument not supported by legal authority or any meaningful legal analysis); *see also Barnett v. Elite Props. of Am., Inc.*, 252 P.3d 14, 19 (Colo. App. 2010) ("We will not consider a bald legal proposition presented without argument or development.").

¶ 29 Additionally, we observe that this issue may be moot. *See In re Marriage of Balanson*, 25 P.3d 28, 38 (Colo. 2001) (if a judgment, when rendered on an issue, would not have any effect on an existing controversy, the issue is moot); *see also In re Marriage of Tibbetts*, 2018 COA 117, ¶ 7, 428 P.3d 686, 688 (if an issue becomes moot, appellate court will not render an opinion on merits of that issue). The district court's register of actions, of which we may take judicial notice, indicates that the child was excused from participating in individual therapy as of January 29, 2021. *See People v. Sena*, 2016 COA 161, ¶ 23, 395 P.3d 1148, 1152 ("The occurrence of legal proceedings or other court actions are proper facts for judicial notice.").

IV. Conclusion

¶ 30 The October 21, 2020, and November 19, 2020,

orders are affirmed.

JUDGE FURMAN and JUDGE BROWN concur

APPENDIX B

DATE FILED: February 28, 2022

Colorado Court of Appeals
2 East 14th Avenue
Denver, CO 80203

Douglas County
2018DR30102

Court of Appeals Case Number:
2020CA1962

In re the Marriage of
Appellee:
Christopher Hodyl,

And

Appellant:

Martine Bernard.

MANDATE

This proceeding was presented to this Court
on the record on appeal. In accordance with its
announced opinion, the Court of Appeals hereby
ORDERS: ORDERS AFFIRMED

POLLY BROCK

CLERK OF THE COURT OF APPEALS

DATE: FEBRUARY 28, 2022

APPENDIX C

DATE FILED: FEBRUARY 28, 2022.

Colorado Supreme Court
2 East 14th Avenue
Denver, CO 80203

Certiorari to the Court of Appeals, 2020CA1962
District Court, Douglas County, 2018DR30102

Supreme Court Case No:
2021SC850

In re the Marriage of
Petitioner:

Martine Bernard,

And

Respondent:

Christopher Hodyl.

ORDER OF COURT

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals and after review of the record, briefs, and the judgment of said Court of Appeals,

IT IS ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is,
DENIED.

BY THE COURT, EN BANC, FEBRUARY 28, 2022.

APPENDIX D

DATE FILED: October 21, 2020 at 5:00 PM

District Court Douglas County, Colorado

Court Address:

4000 Justice Way, Castle Rock, CO 80109-7546

Case Number: 2018DR30102

Division: 2 Courtroom:

Petitioner (s): Christopher Hodyl

and

Respondent(s): Martine Bernard

**Order Clarifying Court's Prior Orders for
Respondent to Engage in Individual Therapy**

On September 1, 2020, the Court issued written summary orders from its oral ruling on August 10, 2020. Included in the orders was that Respondent ("Mother") "engage in individual therapy to assist her to support a normalized relationship between Father and the child. This was recommended by the PRE on page 34 of his report as part of family therapy, but the Court does not find that family therapy should be implemented yet."

On September 15, 2020, the Court issued an order clarifying the September 1, 2020 order. The Court stated "The overall goal of Respondent's individual therapy is for Respondent to assist her to support a normalized relationship between Father and the child. This includes Respondent accepting and

supporting the relationship between the child and Petitioner, including but not limited to, increases in Petitioner's parenting time and contact with the child. The Court reads this as the goal in the original PRE's report and it is the goal of the Court's September 1, 2020 written summary order." The Court modified, in part, its September 1, 2020 order removing the requirement that Mother's individual therapy address how the child's symptoms could have alternate explanations. The did order that the therapist should be made aware of this issue through disclosure of the PRE report and the transcript of the Court's permanent orders from June 11, 2019.

Mother has repeatedly, in filings and at a status conference, stated she has been unable to find a therapist who is willing to provide individual therapy. As the Court had never seen a therapist decline treatment simply because it was court

ordered and because of concerns Mother was delaying implementation of the Court's orders, the Court ordered Mother at a September 28, 2020 status conference to begin submitting, every Friday, 3 letters from therapist she had contacted detailing why they declined to treat Mother. Mother submitted responses and documentation on October 2, 9, and 16, in compliance with this order.

Mother argues she is unable to obtain individual therapy in part due to research she conducted on the matter showing "that there is an ethical dilemma to therapists providing court-ordered therapy and is not an acceptable practice in the field of psychology."

(See Mother's October 9, 2020 Response). She cites a form she received from the Denver Family Institute stating that testimony by therapists in domestic dispute cases damages the clinical relationship between the therapist and client. Mother has not

provided her research, nor is the Court aware of any ethical conflicts for therapists simply because a court has ordered a party to engage in individual therapy.

(In fact, the PRE, a Licensed Clinical Social Worker and therapy provider, originally recommended court-ordered family therapy).

The Court clarifies that it will not require Mother's individual therapist to testify or otherwise violate privilege or other Colorado law. The therapy is ultimately for the benefit of Mother and the child and to promote a healthy relationship between the child and Petitioner ("Father"), which the Court has found to be in the best interests of the child. The only information the Court anticipates receiving from the therapist is confirmation from the therapist that Mother is actively participating and engaged in therapy and general comments about her progress (e.g. she is making progress or not making progress).

The Court has ordered this in many other cases and many therapists have provided court ordered individual therapy and given such limited updates to the Court.

The Court orders that in Mother's future requests seeking individual therapy, she refrain from using the general language in the exhibits to her October 2, 9, and 16 responses that she is seeking court ordered individual therapy relating to a custody case.⁹ The Court fears this overly general language is prohibiting her ability to obtain a therapist.

Instead, Mother should notify the therapist of the specific issues for which the Court ordered her to seek individual therapy and attach copies of the Court's Orders from September 1, 2020; September 15, 2020 and this order. Upon retaining a therapist, Mother shall provide her therapist with a copy of the PRE's report and the June 11, 2019 transcript no

later than the first appointment.

Mother shall continue to provide updates every Friday until she has retained a therapist.

Issue Date: 10/21/2020


ANDREW BAUM

District Court Judge

APPENDIX E

DATE FILED: November 18, 2020 at 4:04 PM

DISTRICT COURT, DOUGLAS COUNTY,
COLORADO

COURT ADDRESS:

4000 JUSTICE WAY, CASTLE ROCK, CO 80109-

7546

Case Number: 2018DR30102

Division: 2

Courtroom:

Petitioner (s): CHRIS HODYL

and

Respondent (s): MARTINE BERNARD

**Order: RESPONSE AND UPDATE TO THE
OCTOBER 21, 2020 COURT ORDER FOR
WEEKLY UPDATE ON SEARCH FOR
INDIVIDUAL THERAPY**

The motion/proposed order attached hereto: ACTION
TAKEN.

The Court appreciates Respondent's submissions, including the letter and explanation from Dr. Seidel. The Court understands his concerns, but fears Respondent's initial emails and the way she communicates the issues have led to difficulties in her obtaining therapy.

First, the Court does not see therapy as tool of the Court, nor does the Court seek a specific outcome from Respondent's therapy. The Court's orders were to address Petitioner's request for enforcement of

parenting time orders. The Court's overall goal in this, and all other post-decree cases on its docket, is the best interests of the child and reduction of conflict between the parents as continued high conflict between post-decree co-parents carries a high risk for physical, mental, and emotional harm of children caught in the middle of such conflict. The Court noted concerns in its findings and issued orders to address those concerns.

Second, the Court's request for updates from Respondent's therapist are not imposed for the Court to determine what "progress" means. That is for the therapist alone to decide. However, given prior difficulties with professionals involved in this case as noted by the Court in its findings, the Court's requests for updates from the therapist are designed to ensure Respondent is actively engaged in therapy, is working on the issues noted in the PRE report and

Court findings, and has not terminated therapy simply because she does not like what the therapist is telling her.

The Court orders Respondent to stop filing weekly status updates. However, Respondent has 14 days to contact the following mental health professionals to see if any are available to provide therapy or provide a referral for Respondent for a therapist who may provide the therapy ordered. Respondent shall file a status report regarding her contact with the below professionals within 14 days.

1. Barbara Shindell. (303) 779-9797. Ms. Shindell was the PRE, so she may not provide therapy to Respondent, but she may provide referrals.

2. Dr. Richard Spiegle. (303) 558-7056.
<https://psychologistsdenvercolorado.com/>

3. Dr. Angelina Cordova. (720) 488-0878.

1daatc@gmail.com

4. Dr. Lon Kopit. (303) 770-1700 drlonkopit@aol.com

5. Armand Lebovits. (303) 759-1616

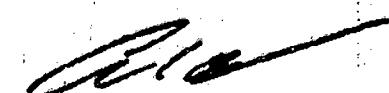
armandlebovitslcsw@gmail.com

6. Jane Irvine. (303) 478-4600.

Dr. Robert Pelc. (303) 388-6761.

Respondent shall provide full copies of all Court orders listed in the Court's October 21, 2020 order and this order, not just select quotes. Respondent shall also provide a copy of the PRE report without summarizing what she believes to be key Points; that is for the therapist to determine.

Issue Date: 11/18/2020



ANDREW BAUM

District Court Judge

APPENDIX F

DATE FILED: November 19, 2020 at 2:55 PM

DISTRICT COURT, DOUGLAS COUNTY

STATE OF COLORADO

4000 Justice Way

Castle Rock, CO 80109

DouglasDR@judicialstate.co.us

(720)437-6200

Case Number: 2018DR30102

Division: 2

In re the Marriage of:

Petitioner: Christopher Hodyl

and

Respondent: Martine Bernard

**ORDER ON RESPONDENT'S NOVEMBER 4,
2020 C.R.C.P. 59 REQUEST TO RECONSIDER
OCTOBER 21, 2020 ORDER REGARDING
INDIVIDUAL THERAPY**

Respondent ("Mother") asks the Court, in summary, to reconsider its order for individual therapy for her and its order for her to report every Friday her attempts to engage therapists.

A. Mother's Claims for Relief. Mother seeks the following specific relief

1. Vacate the Court's oral ruling so that

Respondent is not required to provide weekly updates on individual therapy search.

2. Vacate the Court's oral ruling for

Respondent to be engaged in individual

therapy, as this is not in line with the June 11, 2019 Permanent Orders and is not in line with the PRE evaluator's recommendation or with the therapists' ethical code.

Mother alternately, requests that the Court:

3. Amend its Order wherein the individual therapist is not being told what to focus on during therapy sessions.
4. Amend its Order wherein the individual therapist is not required to update the Court about the therapy.
5. Amend its Order wherein the individual therapist is not involved with the Court, having to read court orders or PRE reports.
6. Amend its Order wherein the individual therapist is not involved in supporting Respondent to accept something of which they cannot be sure, violating Respondent's Freedom

of Thought.

B. Rule 59

1. Rule 59(a) provides:

Within 14 days of entry of judgment as provided in C.R.C.P. 58 or such greater time as the court may allow, a party may move for post-trial relief including:

- (1) A new trial of all or part of the issues;
- (2) Judgment notwithstanding the verdict;
- (3) Amendment of findings; or
- (4) Amendment of judgment.

2. "The primary purpose of a [Rule 59] motion to amend judgment or for new trial is to give the court an opportunity to correct any errors that it may have made." *People in Interest of K.L- P.*, 148 P.3d 402, 403 (Colo. App. 2006) (quoting *In re Marriage*

of Jones, 668 P.2d 980, 981 (Colo. App. 1983).

C. Findings and analysis

1. Mother's 1st claim for relief. Yesterday, November 18, 2020, the Court issued a written order vacating the October 21, 2020 order that Mother file a report every Friday with her attempts to secure individual therapy. The Court ordered Mother to contact several mental health professionals that provide treatment to parents, children and families in high conflict cases such as the instant case. Therefore, the Court has already vacated the part of the October 21, 2020 order for which Mother seeks relief.
2. Mother's 2nd claim for relief. The reason the Court ordered individual therapy stems from the Court's findings concerning conduct

Mother has exhibited throughout the proceedings. Mother continues to insist, despite vast evidence to the contrary, that Petitioner (“Father”) sexually assaulted the minor child. At the initial hearing on July 10, 2020, Mother attempted to re-raise this issue with the Court, and the Court addressed all of the sources on the record that rebut Mother’s assertion. This includes the PRE’s findings that “[t]here is no credible evidence by Colorado law that Father has sexually abused [the child],” the child’s therapist Jennifer Ferrell who agreed there is no evidence of sexual abuse, and the Court’s finding it was left without sufficient information to conclude a sexual assault occurred. The Court incorporates the record made at the July 10, 2020 hearing and at the June 11, 2019 entry

of permanent orders.

- a. The Court ordered individual therapy per C.R.S. 14-10-129.5(2)(h), which allows the Court to enter any other order that promotes the best interests of the child. The Court reserved jurisdiction to order family therapy. Specifically, the Court found individual therapy would promote the best interest of the child and would help family therapy more quickly progress once the Court orders it. The Court's intent was to allow Mother a space to voice her concerns with the Court's implementation of the phased increase in parenting time from the original June 11, 2019 permanent orders and to have a professional help Mother learn appropriate ways to support the relationship between Father and the

child. The Court's main concern in ordering individual therapy for Mother was that Mother's demonstrated resistance to implementation of the phased in parenting time for Father per the June 11, 2019 permanent orders would operate as a significant barrier to any progress that could be made in family therapy. The Court hoped individual therapy would help Mother address both her own concerns she has voiced throughout this case and the concerns noted by the PRE prior to beginning family therapy so that she could fully assist and participate in family therapy. However, it appears Mother is resistant even to engaging in individual therapy.

b. The Court does not find that it erred in

ordering individual therapy for Mother (except for the correction noted in the September 15, 2020 order about alternate explanations for the child's symptoms). However, it is apparent that Mother is highly resistant to individual therapy as well as to the implementation of the phased in parenting plan in the June 11, 2019 permanent orders. Given Mother's resistance, the Court finds individual therapy will not be productive at this point. The Court thus vacates its prior orders for individual therapy for Mother.

- c. However, the Court does find it is in the best interests of the child to begin family therapy as recommended by the PRE. Therefore, the Court orders both parties and the child to engage in family therapy

as recommended by the PRE as soon as possible. This family therapy should focus on repairing the aspects of the child's relationship with Father that is troublesome for her with a goal of establishing safe, unsupervised parenting time. The family therapy should also assist the child to support a normalized relationship with Father. The therapy should address, with Mother, that the child is now more mature and has more resources to be safe in her relationship with Father and for Mother to develop an ability to allow the child to embrace the world as a safe enough place to privilege opportunities. This family therapy should include in-office or telehealth appointments at the discretion of the

therapist and community-based activities between the child and Father with the therapist providing a transition for Father and the child to have safe community-based experiences.

d. The Court also modifies the order issued yesterday, November 18, 2020 regarding individual therapy. Mother and Father have 21 days to both contact the mental health professionals listed in that order, which the Court will re-state below. With the exception of Ms. Shindell, parties shall confirm whether or not the below professionals are available to conduct family therapy as stated above, or if they can refer the parties to an appropriate therapist.

i. Barbara Shindell. (303) 779-9797.

Ms. Shindell was the PRE, so she

may not provide therapy, but she may provide referrals. She recommended Dominique Travenier and Marilyn Sachs-Rabin. Parties shall contact Ms. Shindell to see if she has any other recommendations.

- ii. Dr. Richard Spiegle. (303) 558-7056.
[https://psychologistsdenvercolorado.co](https://psychologistsdenvercolorado.com/)
m/
- iii. Dr. Angelina Cordova. (720) 488-0878. idaatc@gmail.com
- iv. Dr. Lon Kopit. (303) 770-1700
drlonkopit@aol.com
- v. Armand Lebovits. (303) 759-1616
armandlebovitslcsw@gmail.com
- vi. Jane Irvine. (303) 478-4600.
- vii. Dr. Robert Pelc. (303) 388-6761.

- e. Mother and Father shall file a joint status

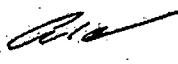
report within 21 days of the date of this order with either an agreed upon family therapist or one proposed therapist each, from the which the Court will choose the family therapist. The family therapist appointed shall receive a copy of the PRE report, the June 11, 2019 permanent orders and all orders of the Court since the September 1, 2020 order on the motion to enforce parenting time.

3. Mother's 3rd through 6th claims. As the Court has vacated the order for Mother to engage in individual therapy, Mother's remaining claims are moot. However, the Court encourages Mother to seek individual therapy if she feels it necessary to support her during the transition of parenting time per the June 11, 2019 permanent orders.

All prior orders of the Court not addressed herein
remain in effect.

Dated: November 19, 2020

BY THE COURT:



Andrew Baum
District Court Judge

APPENDIX G

DATE FILED: January 29, 2021 3:05 PM

DISTRICT COURT, DOUGLAS COUNTY

STATE OF COLORADO

4000 Justice Way

Castle Rock, CO 80109

DouglasDR@judicialstate.co.us

(720) 437-6200

Case Number: 2018DR30102

Division: 2

Courtroom:

In re the Marriage of:

Petitioner: Christopher Hodyl

and

Respondent: Martine Bernard

**ORDER RE: PETITIONER'S PARENTING
TIME, INDIVIDUAL THERAPY FOR THE
MINOR CHILD, FAMILY THERAPY, AND
FINES FOR NONCOMPLIANCE**

The Court held a status conference on January 28, 2021 and heard from Dr. Shelly Bresnick and both parties. The Court made certain findings and issued oral orders. The following summarizes the Court's oral orders.

1. Regarding the child's individual therapy, Dr. Bresnick indicated she is terminating therapy with the child and provided her reasons to the Court. Given Dr. Bresnick's recommendation to stop any individual therapy for the child,

the Court will lift the requirement for the child to engage in individual therapy at this time. However, the Court reserves the ability to order individual therapy in the future if it is in the child's best interests. The Court ordered Dr. Bresnick to provide a referral list of other therapists to the parties so that if therapy for the child is needed in the future, there will be less delay in finding a therapist.

2. Regarding payment for Dr. Bresnick's therapy, her appearance on January 28, 2021 and her letter filed by Respondent ("Mother") on January 25, 2021, the Court orders the parties equally split any outstanding costs or fees owed to Dr. Bresnick. Parties have 30 days to pay their respective shares to Dr. Bresnick in full.

3. Regarding increases in Petitioner's

(“Father’s”) parenting time, the Court declines to increase his parenting for now. The Court sets another status conference in 60 days to check the progress of Father implementing breaks and downtown for the child during his parenting time and the decoration of her room at his home. The Court reserves jurisdiction to order increases in Father’s parenting time at all future Court dates and will consider the best interests of the child standard in determining any increases.

4. Regarding family therapy, the Court orders only the parents (Father and Mother) to attend family therapy. The child will not need to attend for now. The purpose of the parents attending is for them to improve their co-parenting, reduce conflict, to support the child and Father’s relationship and to support the

increases in Father's unsupervised parenting time. The Court finds these goals are consistent with those in paragraph C.2.c. of the Court's November 19, 2020 order regarding Mother's request to reconsider the Court's order for her to attend individual therapy. At the January 28, 2021 conference the Court heard from Mother new allegations of Father's disparagement of her to the child, and thus there is ongoing conflict in addition to the longstanding parental conflict present in this case. The Court needs the flexibility to ensure family therapy properly addresses the changing needs and dynamics of this co-parenting relationship. This is not marital therapy as Mother stated at the status.

a. The parties will contact Dr. Spiegle within 7 days to ensure he is still available to

provide family therapy. If he is available, parties shall take all necessary action to immediately begin family therapy with Dr. Spiegle, including completing paperwork, paying any retainers or initial fees, setting initial appts, etc.

- b. If Dr. Spiegle is not available to immediately accept the parties for family therapy, then the parties shall contact Dr. Pelc within 7 days of receiving notice Dr. Spiegle is not available. If Dr. Pelc is available, parties shall take all necessary action to immediately begin family therapy with Dr. Pelc, including completing paperwork, paying any retainers or initial fees, setting initial appts, etc.
- c. If Dr. Pelc is not available, then parties

shall contact Dr. Kopit within 7 days of receiving notice Dr. Pelc is not available. If Dr. Kopit is available, parties shall take all necessary action to immediately begin family therapy with Dr. Kopit, including completing paperwork, paying any retainers or initial fees, setting initial appts, etc.

- d. If none of the 3 above providers are available or accepting new clients, then parties have 7 days from the date they confirm Dr. Kopit is unavailable to contact the remaining providers on the Court's list in paragraph C.2.d. of the November 19, 2020 order. Parties shall file a status report on who is available within 7 days of contacting the final remaining person on the list.

- e. Whomever provides family therapy shall draft a treatment summary prior to the status in 60 days and make himself or herself avail for the next status conference date.
5. Regarding Father's weekly dinner visit, the Court orders that on Thursdays of every week, Father shall pick up the child from school, allow her downtime at his home and then have a dinner visit with her. Father shall return the child to Mother's home no later than 7:00 pm that same night.
6. Regarding the formal complaint Mother filed against Dr. Bresnick, if Mother files a formal complaint against any professional acting in this case, Mother shall file a full copy of her complaint with the Court within 24 hours of her original complaint filing date. Given the

Court's September 1, 2020 Order under C.R.S. 14-10-129.5(2)(c), \$100 shall be taken from the \$5,000 the Court ordered Mother to post within 14 days of the resolution of Mother's request to the Court of Appeals to stay the order for her to post a \$5,000 bond to ensure future compliance. In other words, within 14 days of the Court of Appeals denying Mother's request for a stay, Mother shall post the \$5,000 bond to the Court registry and the Court orders a \$100 fine be paid from the bond to Father. While Mother has the right to file formal complaints against professionals if she believes they are acting contrary to professional and ethical requirements, Mother has no right to use the filing of complaints to obstruct or delay increases in Father's parenting time by causing professionals

already appointed to resign or by making new professionals reluctant to accept work in this case.

a. For future requests for similar noncompliance fines from Father, Father shall file a motion requesting issuance of a fine per the September 1, 2020 order and state the specific basis for his request. The Court will issue further orders as necessary.

7. The Court set a status conference via Webex on March 24, 2021 from 3:30 to 4:30 pm. The Court will address the parents' progress in family therapy. Parties shall file a treatment summary from the family therapist at least 72 hours in advance of the hearing and ensure the therapist is available to appear in court. The Court will also consider whether it is in

the best interests of the child to increase Father's parenting time. If the parties have other issues they would like to discuss at the March 24, 2021 status, they must file a status report with the Court detailing the issues they wish to discuss at least 7 days prior to the status conference so all sides may prepare.

8. The Court granted Petitioner's Counsel motion to withdraw and will issue a separate order.

Date: January 29, 2021

BY THE COURT:



Andrew Baum

District Court Judge

APPENDIX H

DATE FILED: February 22, 2021 12:47 PM

DISTRICT COURT, DOUGLAS COUNTY

STATE OF COLORADO

4000 Justice Way

Castle Rock, CO 80109

DouglasDR@judicialstate.co.us

(720) 437-6200

Case Number: 2018DR30102

Division: 2

Courtroom:

In re the Marriage of:

Petitioner: Christopher Hodyl

and

Respondent: Martine Bernard

**ORDER ON RESPONDENT'S FEBRUARY
12, 2021 MOTION FOR THE COURT TO
RECONSIDER AND ALTER, AMEND OR
VACATE THE JANUARY 29, 2021 ORDER
PURSUANT TO C.R.C.P. 59**

Respondent ("Mother") asks the Court, in summary, to alter, amend, or vacate the January 29, 2021 order.

A. Rule 59

1. Rule 59(a) provides:

Within 14 days of entry of judgment as provided in C.R.C.P. 58 or such greater time as the court may allow, a party may move for post-trial relief including:

- (1) A new trial of all or part of the issues;
- (2) Judgment notwithstanding the

verdict;

(3) Amendment of findings; or

(4) Amendment of judgment.

2. "The primary purpose of a [Rule 59] motion to amend judgment or for new trial is to give the court an opportunity to correct any errors that it may have made." *People in Interest of K.L. P.*, 148 P.3d 402, 403 (Colo. App. 2006) (quoting *In re Marriage of Jones*, 668 P.2d 980, 981 (Colo. App. 1983)).

B. Findings and analysis

1. Mother's first claim relates to the Court's January 29, 2021 order that the parties attend family therapy. Mother simply re-states the objections she raised at the January 28, 2021 and expands on those objections using arguments from prior court settings that the Court previously rejected. Mother also merely speculates that family

therapy will be used to levy false charges against her or that the therapist will misdiagnose her to achieve the Court's objectives. Mother claims, without any support, that family therapy will be used to strip her Constitutional rights. Mother fails to show how the Court erred and the Court denies this claim.

2. Mother's second claim is that family therapy is unnecessary. Mother again simply re-states argument made in prior Rule 59 motions and court appearances, including the hearings on Petitioner Father's Motion to Enforce Parenting Time. The Court rejected these claims and incorporates all prior orders related to the same claims Mother made in the past. Mother does not show how the Court erred and the Court denies this claim.

3. Mother's third claim argues the Court's order violates privilege and blends the role of treatment provider and evaluator. The Court has also

previously considered and rejected these arguments, notably in its prior order issued on January 4, 2021 related to Mother's Rule 59 Motion. The Court denies relief for this claim.

4. Mother's fourth claim alleges the Court is not acting in the child's best interest by reserving the ability for future therapy for the child. Mother alleges the Court is causing trauma with its insistence on putting the child back in therapy. First, the Court is not insisting on putting the child back in therapy; the Court is merely leaving the option open if needed in the future. In fact the language of the Court's January 29, 2021 written orders states "the Court will lift the requirement for the child to engage in individual therapy at this time. However, the Court reserves the ability to order individual therapy in the future if it is in the child's best interests." Thus the Court will apply the best interest standard

prior to any future decision to order therapy for the child. However, Mother's argument raises a related concern with the Court. If neither party is to share information from Court appearances and orders with the child, how would the child know about the Court's order related to therapy such that it would cause the child trauma? To the extent either party is sharing information from this case with the child, the Court expressly finds that it is not in the best interests of the child to do so and orders the parties to not share any information about the case with the child, including but not limited to Court orders, reports from the PRE, testimony of witnesses, arguments of either party, or any other statements of professionals that are of have been involved in the case. The Court denies this claim.

5. Mother's fifth claim is that the increase of unsupervised parenting time for Father modifies and

violates the permanent orders as the child is allegedly not comfortable being unsupervised with Petitioner. However, Mother's claim misstates the information the Court received on January 28, 2021. The Court considered a January 23, 2021 letter from Dr. Shelly Bresnick, the child's individual therapist. The only concern raised by the child in the letter related to unsupervised parenting time was that being at Father's house for six hours was draining, she gets bored and tired of doing thing with Father and that she needs downtime or time to herself to recharge. Father, via counsel, understood this concern and was receptive to allowing the child this downtime during his parenting time. Dr. Bresnick did not state that prior symptoms the child experienced returned or that the child was endangered by unsupervised parenting time with Father. The only evidence or notice of recurrence of

symptoms, was noted by Mother at the January 28, 2021 status conference, but Mother has been adamantly opposed to any unsupervised time between Father and the child, so this is not information from a neutral, third party source. Per the June 2019 permanent orders, in the event the child has any credible memories of sexual assault by Father, the Court will order any unsupervised visits be stopped and will evaluate the credibility of the allegations (Tr. Transcript June 11, 2019 pg. 46). That has not occurred. Also, the permanent orders provide for increases to unsupervised parenting time to four hours after four weeks, six hours after eight weeks, and eight hours after 12 weeks. *Id.* The express goal of the permanent orders is to get to 50/50 parenting time, which the Court believed was in the best interests of the child. *Id.* at pg. 45. The Court denies relief for this claim.

6. Mother's sixth claim states that Father picking up the child from school for his weekday visit is a modification of the permanent orders and is not in the child's best interests. While this is a modification in the strict sense of the term, C.R.S. 14-10-129(1)(a)(I) allows a court to modify parenting when it would serve the best interests of the child. The Court considered the best interests factors in making this ruling even though it did not expressly reference them. Mother merely re-states her argument in opposition from January 28, 2021 and does not state how the Court erred. The Court denies relief for this claim.

7. Mother's seventh claim is that the Court continually holding status conferences to modify permanent orders instead of enforcing it goes against the case management order. Exhibit M contains one page from the order and highlights the sentence the

Court will strive to promote the efficient management of the case in order to achieve the "earliest possible resolution of all disputed issues with the least expense to the parties." Rule 16.2(b) states:

The court shall provide active case management from filing to resolution or hearing on all pending issues. The parties, counsel and the court shall evaluate each case at all stages to determine the scheduling of that individual case, as well as the resources, disclosures/discovery, and experts necessary to prepare the case for resolution or hearing. The intent of this Rule is to provide the parties with a just, timely and cost effective process.

The court shall consider the needs of each case and may modify its Standard Case Management Order accordingly. *Id.*

As noted by the Court in prior orders and at prior court appearances, had the parties cooperated and fully complied with the June 2019 permanent orders, Father would have began exercising unsupervised parenting time and the parties would have achieved equal parenting time much sooner. At the first 90-day status conference in September 2019, no progress had been made towards the permanent orders' increases in parenting time. This Court finds that given the lack of progress in implementing the permanent orders parenting plan, regular status conferences are the best way to ensure both parties are complying with those orders. Regular status conferences also allow the parties and any professionals involved to alert the Court to any safety issues present so the Court can adjust the

progress of the parenting plan as needed. The Court denies relief for this claim.

8. Mother's eight claim argues the order she pay a portion of Dr. Bresnick's costs for her report and appearance on January 28, 2021 are unjust. Mother first claims Dr. Bresnick's request for payment is against public policy and is fraud, but she provides no supporting evidence of this claim and no authority to support this statement. She also does not state how the Court erred. Mother Cites American Psychological Association (APA) 3.05, which states:

3.05 Multiple Relationships

(a) A multiple relationship occurs when a psychologist is in a professional role with a person and (1) at the same time is in another role with the same person, (2) at the same time is in a relationship with a person closely associated with or related to the person with whom the psychologist has the

professional relationship, or (3) promises to enter into another relationship in the future with the person or a person closely associated with or related to the person.

A psychologist refrains from entering into a multiple relationship if the multiple relationship could reasonably be expected to impair the psychologist's objectivity, competence, or effectiveness in performing his or her functions as a psychologist, or otherwise risks exploitation or harm to the person with whom the professional relationship exists.

Multiple relationships that would not reasonably be expected to cause impairment or risk exploitation or harm are not unethical.

(b) If a psychologist finds that, due to unforeseen factors, a potentially harmful multiple relationship has arisen, the psychologist takes reasonable steps to resolve it with due regard for the best interests of the

affected person and maximal compliance with the Ethics Code.

(c) When psychologists are required by law, institutional policy, or extraordinary circumstances to serve in more than one role in judicial or administrative proceedings, at the outset they clarify role expectations and the extent of confidentiality and thereafter as changes occur. (See also Standards 3.04, Avoiding Harm, and 3.07, Third-Party Requests for Services.)

Mother does not state exactly how Dr. Bresnick's report and appearance violated this standard, particularly in light of the fact Dr. Bresnick is no longer treating or seeing the child. Mother was the one who issued a subpoena to Dr. Bresnick on December 29, 2020 for a report on what she would "testify" to on January 28, 2021 and Mother filed Dr. Bresnick's report on January 25, 2021 prior to

hearing. Mother cites no authority supporting her claim the Court erred in ordering her to pay a portion of Dr. Bresnick's fees for appearing on January 28, 2021.

9. Mother's ninth claim is that the Court has no jurisdiction over "the Board" and cannot order Mother to provide the Court with a copy of formal complaints filed against therapists. 4 Colo. Code Regs. § 736-1:1.3 provides "[i]nquiries, complaints, investigations, hearings, meetings, or any other proceedings of the Board relating to disciplinary proceedings shall not be open to public inspection until the Board meets for its initial consideration of the inquiry that gave rise to the proceedings. The initial consideration of the inquiry and all further proceedings shall be open and the records available for inspection unless subsection (B) of this Rule, or the Public Records Act or an exception to the Open

Meetings Act applies or section 12-245-226(4), C.R.S., prohibits disclosure." This regulation applies to family therapists, but identical regulations exists regarding complaints filed against psychologists, licensed professional counselors and licensed clinical social workers. While the Court does not have jurisdiction over the Board, it does have jurisdiction over Mother. Given prior delays in implementing the permanent orders parenting plan and Mother's responsibility for the delays as found in prior Court orders (including the August 10, 2020 oral ruling and January 30, 2020 written order), the Court's concern is Mother will attempt to use the complaint process to force the resignation of therapists and other professionals involved in the case. This would significantly delay implementation of the parenting plan as the Court

would have to appoint a new therapist or professional and may need to discuss the new appointment at a status conference. Waiting until a copy of any complaint is available and filed with the Court would be a part of the delay. The Court's intent is not to involve itself in the complain process, but rather to have a copy of the complaint readily available in case it becomes an issue or there is an allegation Mother improperly made the complaint to delay the implementation of the permanent orders parenting plan. The Court is attempting to strike a balance between Mother's ability to file formal complaints for true unethical conduct by therapists or professionals and ensuring the compliant process is not abused to further delay implementation of the permanent orders. In accordance with the regulations cited above, the Court will slightly modify its order to state that Mother shall file a copy

of any complaints she makes once the Board meets for its initial consideration and the record becomes public. The Court denies any other relief sought by Mother under this claim.

10. In Summary, the Court thus denies Mother's December 3, 2020 Motion to Reconsider and Alter, Amend or Vacate the January 29, 2021 order pursuant to Rule 59.

All prior orders of the Court not addressed herein remain in effect.

Date: February 22, 2021

BY THE COURT:



Andrew Baum

District Court Judge

APPENDIX I

DATE FILED: March 25, 2021 1:08 PM

DISTRICT COURT, DOUGLAS COUNTY

STATE OF COLORADO

4000 Justice Way

Castle Rock, CO 80109

DouglasDR@judicialstate.co.us

(720) 437-6200

Case Number: 2018DR30102

Division: 2

Courtroom:

In re the Marriage of:

Petitioner: Christopher Hodyl

and

Respondent: Martine Bernard

**ORDER INCREASING FATHER'S
PARENTING TIME TO PERMANENT
ORDERS GOAL OF EQUAL PARENTING
TIME**

The Court held a status conference on March 24, 2021 with both parties present pro se. Both parties presented information on how Father's current parenting time is progressing and what increases the Court should implement moving forward. The Court also discussed the possible appointment of a Child Legal Representative and Respondent's (Mother's) failure to contact Dr. Spiegler per the January 29, 2021 Court order to begin family therapy with Petitioner ("Father"). This order

summarizes the oral orders the Court issued at the status conference.

A. Mother's failure to contact Dr. Spiegle

1. In the January 29, 2021 Court order following a January 28, 2021 status conference, the Court ordered the parties to contact Dr. Spiegle within seven (7) days to determine if he is available to provide family therapy and if so, to "take all necessary action to immediately begin family therapy with Dr. Spiegle, including completing paperwork, paying any retainers or initial fees, setting initial appts, etc."
2. Father filed a letter from Dr. Spiegle dated March 16, 2021 in which Dr. Spiegle states Mother has not contacted him. Mother admitted she did not contact Dr. Spiegle and explained that she did not contact him because she believed

it was an unconstitutional infringement on her right to psychotherapist-patient privilege and the Court has no authority to order a party to engage in therapy.

3. The Court disagrees that it lacks authority to order a party to engage in therapy or that such an order unconstitutionally infringes on Mother's privilege. The Court stated its findings on the record and in prior orders and incorporates those findings and rulings.
4. In the September 1, 2020 order regarding parenting time disputes, the Court ordered Mother to post a \$5,000 bond under C.R.S. 14-10-129.5(2)(c). The Court further ordered "For every instance of Father's missed parenting time due in part or whole to the actions of Mother, including but not limited to Mother's court filings that delay implementation of the above parenting

time phases; Mother or her sister being late to drop off the child; Mother refusing to sign contracts, complete intake or other required paperwork; Mother not bringing the child to parenting time; Mother issuing a formal complaint against any professional involved in the instant case; or Mother going to the supervisor's home or office unannounced, then a \$100 fine shall be taken from the \$5,000 bond. That fine shall be paid to Father, who will use it either for an activity with the minor child during his parenting time, for the child's education or extracurricular activities, or for a gift to the child."

5. The Court finds Mother's failure to contact Dr. Spiegle is a violation of the September 1, 2020 Court order, specifically Mother refusing to complete intake or other required paperwork. Per

the January 29, 2021 order, the purpose of family therapy with Dr. Spiegle is "to improve their co-parenting, reduce conflict, to support the child and Father's relationship and to support the increases in Father's unsupervised parenting time." Family therapy is overall intended to facilitate increases in Father's parenting time. Mother's refusal to contact Dr. Spiegle is the latest in a continuum of actions to frustrate Father's efforts to increase parenting time per the permanent orders. As Mother initially opposed any further increases as to Father's parenting time for the near future at the March 24, 2021 status conference and Father cited an inability to communicate and co-parent with Mother to set up an increase in his parenting time and discuss what is in the child's best interests, the Court finds the following sanction

appropriate per C.R.S. 14-10-129.5(2)(c) and the September 1, 2021 order. The Court ordered Mother to contact Dr. Spiegle by February 5, 2021, but Mother did not do so. The Court finds every day that followed that Mother failed to contact Dr. Spiegle was a separate instance of Mother delaying progress in the case contrary to the September 1, 2021 Court order. Forty-six (46) days elapsed from February 6, 2021 to March 23, 2021. Thus the Court authorizes the release of \$4,600 to Father from the \$5,000 bond Mother posted.

6. The Court ordered Mother to contact Dr. Spiegle after court on March 24, 2021. For every day Mother does not contact Dr. Spiegle after March 24, 2021, the Court authorizes the release of \$100 to Father from the \$5,000 bond Mother posted.

7. As Mother's violation has consumed almost all of the original bond, the Court orders Mother to post another \$5,000 bond within 7 days of March 24, 2021 with the same conditions as in paragraph 13 of the September 1, 2020 Court order.

B. Orders Increasing Father's Parenting Time

1. After a robust discussion with the parties, the Court enters the following orders regarding increases in Father's parenting time.
2. The PRE and permanent orders from June 2019 both listed a goal of equal parenting time between the parents, but both were silent on the progression to equal parenting time after Father exercised eight (8) hours unsupervised parenting time on weekends and unsupervised dinners with the child for up to three (3) hours. Father is currently exercising this amount of parenting time. Thus, at this stage of the

case, this Court has to determine, under the best interests of the child factors, what parenting time Father should exercise up to and including equal parenting time. The Court is in the same position it would have been in had there been no delays and the timelines in the original permanent orders been followed.

3. The Court adopts the best interests of the child findings in the PRE report and June 2019 permanent orders. The Court also listed several general best interests of the children findings on the record on March 24, 2021. In summary, Father's parenting time has been going well, the physical symptoms Mother reported at the January 28, 2021 status conference the child was experiencing have ceased, and the increases in parenting time have not negatively affected the child as Mother has argued at prior court appearances and in prior filings. Mother

did not state any endangerment to the child that would prevent the Court from implementing further increases.

4. Father updated the Court at the March 24, 2021 status as follows. He has worked with the child to decorate her room at his home and parenting time is going well. However, he is limited in what they can do together because of COVID-19 restrictions. As businesses open up more, he intends to take the child out more often. The afterschool visits are going very well. When the Court asked about him implementing downtime for the child, he said the child is able to go into her room whenever wants. She does utilize these opportunities and plays piano and texts her friends. Father asked for the following increases in parenting time.

- a. A second after school visit during the week for three (3) hours.

- b. One overnight per week starting in April, preferably on Sundays because he already has parenting time then.
- c. In May and June, increase to two (2) overnights per week from Sunday to Tuesday.
- d. Start exercising equal parenting time in July 2021 on a 5-2-2-5 schedule as recommended by the PRE.

5. Mother updated the Court as follows. She observed the child is anxious prior to visits with Father and appears relieved when she comes back. The concern about the child sleeping for thirteen (13) hours and manifesting physical discomfort symptoms have not occurred since the child last had contact with Dr. Bresnick. Mother expressed concern the child was not ready for overnights

with father and cited an incident during the last big snowstorm in Colorado (Sunday March 14) where the child was very anxious she might be stuck at Father's apartment and asked him not to exercise the visit. Mother further cited the child is not comfortable in the room Father has for her, particularly because she does not have a good pillow, but the child is not comfortable telling Father how she feels about this, even though the child presents as comfortable. Mother opined that it would create trauma for the child to tell her she has to spend overnights with Father.

6. Father replied and respectfully disagreed that the child is not comfortable sharing her feelings with him. He stated he has a great time talking with the child.

7. The Court asked each party what his or her ideal outcome in this case is. Father stated it was for him to have equal parenting time. Mother stated for the child to be allowed to feel comfortable with the process, e.g. the child was resistant to a weekday dinner visit, but Father went slowly, and it was explained to her, so she was able to accept it.
8. The Court questioned Mother that if this process is causing so much trauma to the child, why terminate therapy, which is a proven way to help a person process trauma. Mother's response was not particularly helpful, and she simply cited that therapy caused further trauma for the child and that the therapist was merely implementing Court orders and not following an independent treatment program.

9. The Court then shared its thoughts on appointing a Child Legal Representative (CLR) to represent the child's best interests given that the Court's only sources of information about the child's best interests at this point are the parents, who are providing contradictory information and are understandably biased in favor of their respective positions and outcomes. Mother adamantly objected to a CLR (even though the Court explained it could appoint a CLR without either party's agreement). The Court explained that a CLR would allow the child to have a voice, which is what Mother wished for the case. Mother still declined and stated that the Court will order what it will.

10. The Court then asked Mother what her proposal is for increasing Father's parenting

time as Father set forth a detailed and reasonable plan. Mother declined to give a specific plan and said the Court was putting her on the spot. The Court went through the June 2019 permanent orders and PRE recommendations and asked Mother if she thought the PRE recommendations were in the child's best interests. The Court noted that Father currently is exercising parenting time per the last detailed stage of the permanent orders and PRE recommendations and that any future increases would have to be determined by the Court in the best interests of the child and considering the PRE's recommendations. Mother stated she did not want to be on record agreeing to Father's plan being in the best interests of the child, but she would follow the orders of

the Court.

11. The Court then set forth the following orders on Father's increases of parenting time. The Court finds these to be in the best interests of the child and consistent with the permanent orders and PRE recommendations.
 - a. The Court removes Father's parenting time at Mother's home supervised by Mother and her sister and replaces this with Skype, Facetime, or telephone calls between Father and the child during the same days and times.
 - b. The Court increases Father's weekday dinner visits to two (2) times per week for three (3) hours after school on both Tuesdays and Thursday with pick-ups and drop offs at the same times Father currently exercises on Thursdays.
 - c. Father will continue to have parenting time

every Sunday for eight (8) hours.

d. Father shall also have parenting time every other Saturday for eight (8) hours during the same times as his Sunday parenting time.

Father's first Saturday shall be April 3. (The Court originally ordered this begin the upcoming Saturday, March 27, but Father stated that it would be best to allow time for the child to adjust and Mother agreed).

e. Starting May 1, 2021 Father will continue the Tuesday and Thursday after school three (3) hours of parenting time. He will continue to exercise eight (8) hours every other Saturday. Father shall exercise overnight parenting time from the current Sunday pick up time to Monday morning drop off at school or 8:50 am if the child does not have school on that Monday (holidays included). Thus, Father's

first Sunday overnight shall be on Sunday

May 2, 2021.

f. Starting June 1, 2021 Father will continue the Thursday after school parenting time. He will continue to exercise 8 hours every other Saturday. Father shall exercise overnight parenting time from the current Sunday pick up time through Tuesday evening when his current weekday parenting time ends. (The Court is effectively merging the Tuesday weekday visit with overnight parenting time Monday night into Tuesday). Father's first Sunday through Tuesday overnights shall be on Sunday June 6, 2021 through Tuesday June 8, 2021.

g. Starting July 1, 2021, the parties will exercise equal parenting time on a 5-2-2-5 schedule as follows. Mother will exercise the first weekend

of Friday July 2, 2021 through Sunday July 4, 2021, thus "Week 1" below, will be June 28, 2021 through July 4, 2021. "Week 2" below shall start Monday, July 5, 2021. Father's first weekend under "Week 2" below will be Friday July 9, 2021 through Sunday July 11, 2021.

Week 1: **Mon** (Father), **Tues** (Father), **Wed** (Mother), **Thur** (Mother), **Fri** (Mother), **Sat** (Mother), **Sun** (Mother).

Week 2: **Mon** (Father), **Tues** (Father), **Wed** (Mother), **Thur** (Mother), **Fri** (Father), **Sat** (Father), **Sun** (Father).

Week 3: **Mon** (Father), **Tues** (Father), **Wed** (Mother), **Thur** (Mother), **Fri** (Mother), **Sat** (Mother), **Sun** (Mother).

Week 4: Mon (Father), Tues (Father), Wed (Mother), Thur (Mother), Fri (Father) , Sat (Father), Sun (Father).

12. Starting July 1, 2021, the parties shall exercise the holiday and vacation parenting time schedules set forth in the June 2019 permanent orders (this starts on page 48 of the transcript). Holiday parenting time shall supersede vacation and regular parenting time. Vacation parenting time shall supersede regular parenting time.

13. If the parties wish the Court to consider a week on, week off schedule, they may either submit a written stipulation or may ask in writing for a status conference for the Court to consider this request. Per Mother's request,

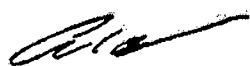
the Court does not set any future court dates
for now.

14. All prior orders not specifically modified by
this order remain in effect.

SO ORDERED

March 25, 2021

BY THE COURT



Andrew Baum
District Court Judge

APPENDIX J

DATE FILED: September 1, 2020 1:27 PM

DISTRICT COURT, DOUGLAS COUNTY

STATE OF COLORADO

4000 Justice Way

Castle Rock, CO 80109

DouglasDR@judicialstate.co.us

(720) 437-6200

Case Number: 2018DR30102

Division: 2

Courtroom:

In re the Marriage of:

Petitioner: Christopher Hodyl

and

Respondent: Martine Bernard

WRITTEN ORDERS ON PETITIONER'S MOTION
TO ENFORCE PARENTING TIME

Petitioner (hereinafter "Father") sought enforcement of parenting time. The Court held hearing on Father's motion on July 10, July 21, and August 10, 2020. The Court heard and considered the testimony of Father, Respondent ("Mother"), Dr. Shelly Bresnick (lay witness portion only), and Mary Morgan. The Court issued oral findings and orders on the record on August 10, 2020 and stated it would issue written summary orders by August 24, 2020. Due to other matters on the Court's docket and other written orders due before the orders in this case, the

Court was not able to issue written orders in the instant case by August 24, 2020. This order summarizes substantive portion of the Court's August 10, 2020 oral orders. For the Court's full findings and ruling, please see the FTR transcript of the Court's August 10, 2020 oral ruling.

A. Court's findings

1. The Court found under C.R.S. 14-10-129.5(2), that while Mother was not responsible for all of the delays in the progression of Father's parenting time plan, Mother did cause enough delay via the specific instances cited by the Court in its oral ruling such that there was substantial or continuing noncompliance by Mother.
2. After hearing the Court found Mother did not comply with the parenting time order in the parties' June 11, 2019 permanent orders.

B. The Court orders as follows under C.R.S.

§14-10-129.5(2) regarding Father's parenting time with the minor child.

1. The Court implements the following supervised parenting time for Father per page 45 of the transcript constituting permanent orders. Father shall have supervised parenting time for 4 hours twice per week (8 hours total). Either Ms. Veith or Father's brother shall supervise parenting time. Any parenting time supervised by Mother or her sister (the child's aunt), whether offered or actually occurring, shall not count towards these 8 hours per week and shall be in addition to these 8 hours per week.
 - a. This parenting time schedule for Father shall continue for the next 50 days from August 10, 2020. The Court set a status conference on September 28, 2020 at 8:45 am via WebEx to

remind the parties of these orders.

2. Starting October 1, 2020, the Court will implement the unsupervised parenting time for Father as stated on page 45 of the permanent orders transcript. Father shall have unsupervised parenting time for 2 hours per week on every weekend. Ms. Veith shall continue to supervise the start (drop off by Mother) and end (pick up by Mother). Ms. Veith may debrief with only the minor child at the end of each parenting time session regarding any safety concerns. She may also debrief with either or both parents separate from her debrief with the child.
 - a. No later than October 1, 2020, the minor child shall re-start individual therapy with Dr. Bresnick as a safety net. The frequency and duration of the sessions shall be determined

solely per Dr. Bresnick's recommendations.

- b. Father shall not exercise his unsupervised parenting time at his residence.
- c. If Ms. Veith or Dr. Bresnick become aware of any imminent endangerment issues regarding the minor child they shall alert the Court directly and as soon as possible via email to douglasDR@judicial.state.co.us and third party filing with the Court. For any email, they shall copy the parties and any counsel representing a party. By imminent endangerment issues, the Court means an issue that would justify a hearing under C.R.S. 14-10-129(4).

3. Starting November 1, 2020, Father's unsupervised parenting shall increase per page 46 of the permanent orders transcript. Father shall have unsupervised parenting time for 4

hours per week on the weekend (Father may exercise these 4 hours on a weekday if Ms. Veith is not available on any given weekend). Father shall also have an unsupervised dinner each week for up to 3 hours with Ms. Veith handling exchanges. The same conditions in paragraph 2.a. through c. above will apply.

4. Starting December 1, 2020, Father's unsupervised parenting shall increase per page 46 of the permanent orders transcript. Father shall have unsupervised parenting time for 6 hours per week on the weekend (Father may exercise these 6 hours on a weekday if Ms. Veith is not available on any given weekend). Father may break these 6 hours up into separate segments based only on Ms. Veith's availability. Father may exercise this parenting time at his residence. Father shall also have an

unsupervised dinner each week for up to 3 hours with Ms. Veith handling exchanges. The same conditions in paragraph 2.a. through c. above shall apply.

5. Starting January 1, 2021, Father's unsupervised parenting shall increase per page 46 of the permanent orders transcript. Father shall have unsupervised parenting time for 8 hours per week on the weekend (Father may exercise these 8 hours on a weekday if Ms. Veith is not available on any given weekend). Father may break these 8 hours up into separate segments based only on Ms. Veith's availability. Father may exercise this parenting time at his residence. Father shall also have an unsupervised dinner each week for up to 3 hours with Ms. Veith handling exchanges. The same conditions in paragraph 2.a. through c. above shall apply.

6. The Court has set a status conference on January 28, 2021 at 9:00 am. At that conference the Court will hear updates from Dr. Bresnick and Ms. Veith in person (or via WebEx if the Court is still under COVID-19 restrictions). Parties shall issue subpoenas to ensure both Ms. Veith and Dr. Bresnick attend. Based upon the updates provided by Ms. Veith and Dr. Bresnick, the Court will decide whether or not to move to equal parenting time.
7. If at the January 28, 2020 status the Court determines equal parenting time is in the best interests of the child, then equal parenting time shall begin February 1, 2021. Equal parenting time shall be on a week on/week off schedule with the parties exchanging the child at 7:00 pm each Sunday.
8. The parenting time phases in paragraphs 1

through 5 above shall progress and be implemented regardless of any updates, unless Dr. Bresnick or Ms. Veith notify the Court directly of any imminent danger issues.

9. Both Mother and Father shall complete a high conflict parenting class (separately) within 45 days of August 10, 2020. Each shall pay for their own class. Also within 45 days of August 10, 2020 each party shall file a report with the Court informing the Court of 3 things they learned from their class and how they will apply these to their co-parenting.

10. Pursuant to C.R.S. 14-10-129.5(2)(h) Mother shall engage in individual therapy to assist her to support a normalized relationship between Father and the child. This was recommended by the PRE on page 34 of his report as part of family therapy, but the Court

does not find that family therapy should be implemented yet. Mother's therapy should also address with her that the child's symptoms could have alternate explanations and assist Mother with communicating that to the child. The Court finds this therapy will promote the best interests of the minor child and will help family therapy to more quickly progress once the Court orders it to begin.

Within 21 days of August 10, 2020, Mother shall file proof with the Court that she has engaged and is seeing a therapist. Mother shall also ensure her therapist receives a copy of the October 1, 2018 PRE report (report was filed on October 4, 2018) no later than Mother's first session with her therapist.

11. The Court reserves jurisdiction to order family therapy at a later time.

12. Neither party shall engage in any *ex parte* conversation with the parenting time supervisor (currently Ms. Veith) except pleasantries and/or feedback from the supervisor at exchanges.

13. Mother shall post a \$5,000 cash bond with the Court to ensure her future compliance per C.R.S. 14-10-129.5(2)(c). For every instance of Father's missed parenting time due in part or whole to the actions of Mother, including but not limited to Mother's court filings that delay implementation of the above parenting time phases; Mother or her sister being late to drop off the child; Mother refusing to sign contracts, complete intake or other required paperwork; Mother not bringing the child to parenting time; Mother issuing a formal complaint against any professional involved in

the instant case; or Mother going to the supervisor's home or office unannounced, then a \$100 fine shall be taken from the \$5,000 bond. That fine shall be paid to Father, who will use it either for an activity with the minor child during his parenting time, for the child's education or extracurricular activities, or for a gift to the child.

All prior orders of the Court not addressed herein or in the oral orders on August 20, 2020 remain in effect.

Dated: September 1, 2020

BY THE COURT:



Andrew Baum
District Court Judge

APPENDIX K

DATE FILED: September 15, 2020 at 2:21 PM

District Court Douglas County, Colorado

Court Address:

4000 Justice Way, Suite 2009.

Castle Rock, CO 80109-7546

Case Number: 2018DR30102

Division: 2

In re the Marriage of:

Petitioner(s): CHRISTOPHER HODYL

and

Respondent (s): MARTINE BERNARD

**Order: RESPONSE AND UPDATE TO THE
SEPTEMBER 1, 2020 COURT ORDERED
INDIVIDUAL THERAPY**

The motion/proposed order attached hereto: ACTION TAKEN.

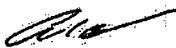
The overall goal of Respondent's individual therapy is for Respondent to assist her to support a normalized relationship between Father and the child. This includes Respondent accepting and supporting the relationship between the child and Petitioner, including but not limited to, increases in Petitioner's parenting time and contact with the child. The Court reads this as the goal in the original PRE's report and it is the goal of the Court's September 1, 2020 written summary order.

Respondent has 7 days from the date of this order to

provide proof she is engaged in therapy.

The Court will not require the therapy address how the child's symptoms could have alternate explanations; however, the therapist should be made aware of this issue through disclosure of the PRE report and the transcript of the Court's permanent orders from June 11, 2019.

Issue Date: 9/15/2020



Andrew Baum

District Court Judge

APPENDIX L

DATE FILED: October 28, 2021

Colorado Court of Appeals

2 East 14th Avenue

Denver, CO 80203

Court of Appeals Case Number:

2020CA1962

Douglas County

2018DR30102

In re the Marriage of

Appellee:

Christopher Hodyl,

And

Appellant:

Martine Bernard.

ORDER DENYING PETITION FOR REHEARING

The **PETITION FOR REHEARING** filed in this appeal by:

Martine Bernard, Appellant, DENIED.

Issuance of the Mandate is stayed until November 26, 2021.

If a Petition for Certiorari is timely filed with the Supreme Court of Colorado, the stay shall remain in effect until disposition of the cause by that Court.

DATE: October 28, 2021

BY THE
COURT:
Furman, J.
Lipinsky, J.
Brown, J.

APPENDIX M

Colo. Rev. Stat. § 14-10-129.5

Section 14-10-129.5 - Disputes concerning parenting time

(1) Within thirty-five days after the filing of a verified motion by either parent or upon the court's own motion alleging that a parent is not complying with a parenting time order or schedule and setting forth the possible sanctions that may be imposed by the court, the court shall determine from the verified motion, and response to the motion, if any, whether there has been or is likely to be substantial or continuing noncompliance with the parenting time order or schedule and either:

(a) Deny the motion, if there is an inadequate allegation; or

(b) Set the matter for hearing with notice to the parents of the time and place of the hearing as expeditiously as possible; or

(c) Require the parties to seek mediation and report back to the court on the results of the mediation within sixty-three days. Mediation services shall be provided in accordance with section 13-22-305, C.R.S. At the end of the mediation period, the court may approve an agreement reached by the parents or shall set the matter for hearing.

(2) After the hearing, if a court finds that a parent has not complied with the parenting time order or schedule and has violated the court order, the court, in the best interests of the child, shall issue an order that may include but not be limited to one or more of

the following orders:

- (a) An order imposing additional terms and conditions that are consistent with the court's previous order; except that the court shall separate the issues of child support and parenting time and shall not condition child support upon parenting time;
- (b) An order modifying the previous order to meet the best interests of the child;
- (b.3) An order requiring either parent or both parents to attend a parental education program as described in section 14-10-123.7, at the expense of the noncomplying parent;
- (b.7) An order requiring the parties to participate in family counseling pursuant to section 13-22-313, C.R.S., at the expense of the noncomplying parent;
- (c) An order requiring the violator to post bond or security to insure future compliance;

(d) An order requiring that makeup parenting time be provided for the aggrieved parent or child under the following conditions:

(I) That such parenting time is of the same type and duration of parenting time as that which was denied, including but not limited to parenting time during weekends, on holidays, and on weekdays and during the summer;

(II) That such parenting time is made up within six months after the noncompliance occurs, unless the period of time or holiday can not be made up within six months in which case the parenting time shall be made up within one year after the noncompliance occurs;

(III) That such parenting time takes place at the time and in the manner chosen by the aggrieved parent if it is in the best interests of the child;

(e) An order finding the parent who did not comply

with the parenting time schedule in contempt of court and imposing a fine or jail sentence;

(e.5) An order imposing on the noncomplying parent a civil fine not to exceed one hundred dollars per incident of denied parenting time;

(f) An order scheduling a hearing for modification of the existing order concerning custody or the allocation of parental responsibilities with respect to a motion filed pursuant to section 14-10-131;

(g) (Deleted by amendment, L. 97, p. 970, § 1, effective August 6, 1997.)

(h) Any other order that may promote the best interests of the child or children involved.

(3) Any civil fines collected as a result of an order entered pursuant to paragraph (e.5) of subsection (2) of this section shall be transmitted to the state treasurer, who shall credit the same to the dispute

resolution fund created in section 13-22-310, C.R.S.

(4) In addition to any other order entered pursuant to subsection (2) of this section, the court shall order a parent who has failed to provide court-ordered parenting time or to exercise court-ordered parenting time to pay to the aggrieved party, attorney's fees, court costs, and expenses that are associated with an action brought pursuant to this section. In the event the parent responding to an action brought pursuant to this section is found not to be in violation of the parenting time order or schedule, the court may order the petitioning parent to pay the court costs, attorney fees, and expenses incurred by such responding parent. Nothing in this section shall preclude a party's right to a separate and independent legal action in tort.

C.R.S. § 14-10-129.5

L. 87: Entire section added, p. 578, § 1, effective July 1. L. 93: IP(1) and (2) amended, p. 579, § 12, effective July 1. L. 97: Entire section amended, p. 970, § 1, effective August 6. L. 98: IP(2) and (2)(f) amended, p. 1388, § 16, effective February 1, 1999. L. 2012: IP(1) and (1)(c) amended, (SB 12-175), ch. 208, p. 833, § 34, effective July 1.

For the legislative declaration contained in the 1993 act amending the introductory portion to subsection (1) and subsection (2), see section 1 of chapter 165, Session Laws of Colorado 1993.

APPENDIX N

American Psychological Association (APA)

Codes of Ethics: 3.05 Multiple Relationships:

(a) A multiple relationship occurs when a psychologist is in a professional role with a person and (1) at the same time is in another role with the same person, (2) at the same time is in a relationship with a person closely associated with or related to the person with whom the psychologist has the professional relationship, or (3) promises to enter into another relationship in the future with the person or a person closely associated with or related to the person.

A psychologist refrains from entering into a multiple relationship if the multiple relationship could reasonably be expected to impair the psychologist's objectivity, competence, or

effectiveness in performing his or her functions as a psychologist, or otherwise risks exploitation or harm to the person with whom the professional relationship exists.

Multiple relationships that would not reasonably be expected to cause impairment or risk exploitation or harm are not unethical.

(b) If a psychologist finds that, due to unforeseen factors, a potentially harmful multiple relationship has arisen, the psychologist takes reasonable steps to resolve it with due regard for the best interests of the affected person and maximal compliance with the Ethics Code.

(c) When psychologists are required by law, institutional policy, or extraordinary circumstances to serve in more than one role in judicial or administrative proceedings, at the outset they clarify role expectations and the extent of confidentiality

and thereafter as changes occur. (See also Standards 3.04, Avoiding Harm, and 3.07, Third-Party Requests for Services.)

APPENDIX O

DATE FILED: October 9, 2020 9:32 PM

District Court, Douglas County, Colorado

4000 Justice Way

Castle Rock, CO 80109

Case Number: 2018DR30102

Division: 2

Court of Appeals case numbers:

2019CA1553 & 2019CA1982,

2019CA2380, 2020CA333 & 2020CA522.

2020CA1468

In re the Marriage of:

Petitioner: **CHRISTOPHER HODYL**

and

Respondent: **MARTINE BERNARD**

Party without Attorney (Respondent):

Martine Bernard

8119 S. Humboldt circle

Centennial, CO 80122

720-616-1027

martinebrnrd@yahoo.com

**RESPONSE AND UPDATE TO THE SEPTEMBER 28,
2020 ORAL RULING FOR WEEKLY RESPONSES ON
LETTERHEADS FROM THREE (3) NEW INDIVIDUAL
THERAPISTS; REQUEST FOR THE COURT TO
REDUCE THE SEPTEMBER 28, 2020 RULING TO
WRITING.**

FILE ATTACHED AS EXHIBIT D



Therapy and Trainings for Stronger Relationships

CLIENT COPY

MANDATORY DISCLOSURE/INFORMED CONSENT

FOR DFI CLIENTS

The Denver Family Therapy Clinic is a COAMFTE accredited training program in relationship and family therapy. We work from strength-based, systemic or relational focus generally. The approach may be adjusted on a case-by-case basis. Graduate and post-graduate students who are unlicensed therapists and

trainees at DFI provide these services. Supervision is provided by faculty members who are licensed, experienced clinicians. Your therapist will share information about you and your case with their supervisor(s) at DFI and other trainees in supervision or peer consultation.

Your therapist receives **supervision** from one or more of the faculty at Denver Family Institute. By signing this document, you give permission for your therapist to discuss your case information with supervisors and colleagues at Denver Family Institute for professional and educational purposes only.

REGULATION OF PSYCHOTHERAPISTS:

The practice of licensed or registered persons in the field of psychotherapy is regulated by the Mental Health Licensing Section of the Division of Registrations. The regulatory boards can be reached at 1560 Broadway,

Suite 1350, Denver, Colorado 80202, (303) 894-7800.

The regulatory requirements for mental health professionals provide that a Licensed Clinical Social Worker, a Licensed Marriage and Family therapist and a Licensed Professional Counselor must hold a Master's degree in their profession and have two years of post-masters supervision. A Licensed Psychologist must hold a Doctorate degree in psychology and have one year of post-doctoral supervision. A Licensed Social Worker must hold a Master's degree in social work. A Psychologist Candidate, a Marriage and Family Therapist Candidate and a Licensed Professional Counselor Candidate must hold the necessary licensing degree and be in the process of completing the required supervision for licensure.

A Certified Addictions Counselor I (CAC I) must be a high school graduate and complete required training hours and 1,000 hours of supervised experience. A CAC II must complete additional required training hours and

2,000 hours of supervised experience. A CAC III must have a Bachelor's degree in behavioral health and complete additional required training hours and 2,000 hours of supervised experience. A Licensed Addiction Counselor must have a clinical Master's degree and meet the CAC III requirements. A Registered Psychotherapist is listed in the State's Database and is authorized by law to practice psychotherapy in Colorado, but is not licensed by the state and is not required to satisfy any standardized educational or testing requirements to obtain registration from the state.

CLIENT RIGHTS AND IMPORTANT INFORMATION:

- a. You are entitled to receive information from me about my methods of therapy, the techniques I use, the duration of your therapy (if I can determine it), and my fee structure. Please ask if you would like to receive this information.

- b. You can seek a second opinion from another therapist or terminate therapy at any time.
- c. In a professional relationship (such as ours), sexual intimacy between a therapist and a client is never appropriate. If sexual intimacy occurs, it should be reported to the Department of Regulatory Agencies, Mental Health Section.
- d. Generally speaking, information provided by and to a client in a professional relationship with a psychotherapist is legally confidential and the therapist cannot disclose the information without the client's consent. There are several exceptions to confidentiality which include: (1)

I am required to report any suspected incident of child abuse or neglect to law enforcement; (2) I am required to report any threat of imminent physical harm by a client to law enforcement and to the person(s) threatened; (3) I am required to initiate a mental health evaluation of a

client who is imminently dangerous to self or to others, or who is gravely disabled as a result of a mental disorder; (4) I am required to report any suspected threat to national security to federal officials; (5) I may be required by Court Order to disclose treatment information; and (6) I am required to report any suspected incident of elderly abuse or neglect to law enforcement.

e. Under Colorado law, C.R.S. §14-10-123.8, parents have the right to access mental health treatment information concerning their minor children, unless the court has restricted access to such information. If you request treatment information from me, I may provide you with a treatment summary, in compliance with Colorado law and HIPPA Standards.

f. Records regarding the treatment of adults will be kept for seven (7) years after treatment ends or

following last session, but records may not be kept after seven years. Records for treatment of minors will be kept for seven (7) years, commencing on the last date of treatment or when the minor reaches 18 years of age, whichever comes later, but in no event am I required to keep these records for longer than 12 years.

NOTICE FOR MEDICAID MEMBERS: Health First Colorado (Medicaid) members cannot be billed for services covered by Health First Colorado. At the state level, Colorado law (C.R.S. 25.5-4-301(II)), provides that no Health First Colorado member shall be liable for the cost, or the cost remaining after payment by Health First Colorado, Medicare, or a private insurer, of medical benefits authorized under Title XIX of the Social Security Act. This law applies whether or not Health First Colorado has reimbursed the provider,

whether claims are rejected or denied by Health First Colorado due to provider error, and whether or not the provider is enrolled in the Colorado Medical Assistance Program. This law applies even if a Health First Colorado member agrees to pay for part or all of a covered service. Couples therapy is not currently a service that is covered by Health First Colorado (Medicaid), and therefore, services rendered for couples therapy at Denver Family Institute will be charged according to DFI's sliding scale fee based on household income.

FOR MEDICAID MEMBERS RECEIVING

COUPLES COUNSELING: My/our signature(s) below serves as my/our acknowledgement and understanding that couples counseling is not currently a benefit provided by Health First Colorado (Medicaid) and that I am responsible for payment for couples counseling services rendered at Denver Family Institute, based on

my/our agreed upon fee (sliding scale based on household income).

(Initial if applicable)

(Initial if applicable)

LIMIT OF SERVICES AVAILABLE: DFI does not provide emergency and after-hours services. If you find yourself in a life-threatening situation and are unable to contact your DFI therapist, you agree to take the necessary steps to keep yourself safe, up to and including calling 911 or going to the emergency room (at your cost) if necessary.

We do not provide medications, psychiatric services, or psychological testing.

If you are involved in a divorce or custody litigation, you need to understand that my role as a therapist is not to make recommendations for the court concerning custody or parenting issues or to testify in court concerning

opinions on issues involved in the litigation. By signing this disclosure statement, you agree not to call me as a witness in any such litigation. Experience has shown that testimony by therapists in domestic dispute cases causes damage to the clinical relationship between a therapist and client. Only court-appointed experts, investigators, or evaluators can make recommendations to the court on disputed issues concerning parental responsibilities and parenting plans.

PLEASE NOTE: Child abuse refers to any child abuse you discuss in therapy or that is observed. This includes illegal sexual contact between two minors, or abuse of children outside your family. We are mandated to report suspected child abuse.

I have read the preceding information and it has been presented to me verbally. I understand the disclosures that have been made to me. I acknowledge that I have received a copy of this Disclosure Statement.

Therapist Name and Credentials

Supervisor Name and Credentials

Print Client's Name

Client Signature or Responsible Party Date

Print Client's Name

Client Signature or Responsible Party Date

Therapist Signature Date

APPENDIX P

DATE FILED: November 13, 2020 11:51 PM

District Court, Douglas County, Colorado
4000 Justice Way
Castle Rock, CO 80109

Case Number: 2018DR30102

Division: 2

Courtroom:

In re the Marriage of:

Petitioner: **CHRISTOPHER HODYL**

and

Respondent: **MARTINE BERNARD**

Party without Attorney (Respondent):

Martine Bernard

8119 S. Humboldt circle

Centennial, CO

80122

**RESPONSE AND UPDATE TO THE OCTOBER
21, 2020 COURT ORDER FOR WEEKLY
UPDATE ON SEARCH FOR INDIVIDUAL
THERAPY**

ATTACHED AS EXHIBIT C

**COLORADO CENTER of CLINICAL
EXCELLENCE**

Martine Bernard

720-616-1027

martinebrnrd@yahoo.com

November 11, 2020

Dear Martine:

Thank you for your inquiry about therapy with one of our providers. We received your phone calls and an email asking about our availability for conducting "individual therapy per Court order." You attached three orders from Douglas County District Court to your email pertaining to your case. Unfortunately, the therapists at the Colorado Center for Clinical Excellence are not available to work with you. However, as you are required by the Court to furnish it with any reasons we might give you, we are pleased to have an opportunity to inform the Court about some of the reasons we cannot conduct therapy in the manner requested. I should note here that we have no relationship in any way to any of the parties named, and I have no knowledge of any particulars of your case except from your brief email

and the three Court Orders you attached. My comments below pertain to these excerpts from the Orders:

The Court stated in the Order filed September 1, 2020:

"Mother shall engage in individual therapy to assist her to support a normalized relationship between Father and the child....

Mother's therapy should also address with her that the child's symptoms could have alternate explanations and assist Mother with communicating that to the child. The Court finds this therapy will promote the best interests of the minor child and will help family therapy to more quickly progress once the Court orders it to begin."

The Court reiterated in its Order on September 15, 2020:

"The overall goal of Respondent's individual therapy is for Respondent to assist her to support a normalized relationship between Father and the child. This includes Respondent accepting and supporting the relationship between the child and Petitioner, including but not limited to, increases in Petitioner's parenting time and contact with the child."

And clarified:

The Court will not require the therapy address how the child's symptoms could have alternate explanations; however, the therapist should be made aware of this issue through disclosure of the PRE report and the transcript of the Court's permanent orders from June 11, 2019."

Finally, on October 21, 2020, the Court commented in its Order:

"The Court had never seen a therapist decline treatment simply because it was court ordered," and "Mother has not provided her research [claiming that therapists face an ethical dilemma in such cases], nor is the Court aware of any ethical conflicts for therapists simply because a court has ordered a party to engage in individual therapy. (In fact, the PRE, a Licensed Clinical Social Worker and therapy provider, originally recommended court- ordered family therapy)."

Our therapists have engaged in court-ordered therapy in the past (with the understanding that it can be done ethically under certain circumstances),

and I have trained many therapists on the practice of feedback-informed therapy to improve the clinical outcomes of court-ordered or mandated therapy. So, that perse is not a problem for us.

Nevertheless, the terms of the Court Order would be considered by many licensed therapists (including us) to be completely inappropriate and unethical to adhere to. First though, having no knowledge of the facts or circumstances of this case, I can assure the Court that many therapists "decline treatment simply because it was court ordered" as a matter of policy. It is exceedingly common in our field, and I can only wonder how the Court could "never have seen it." Several of our therapists do perform court-ordered therapy under certain circumstances but we are quite familiar with and are sympathetic to this refusal among our colleagues.

We also are concerned that the Court is not

"aware of any ethical conflicts for therapists simply because a court has ordered a party to engage in individual therapy." While we note that care appears to be taken by the Court not to ask for any violation of the party's confidentiality or for any formal reporting back to the Court, the ethical concerns go well beyond that kind of breach. There is a great deal of published research on this topic, readily available online both in terms of the ethical concerns and also the poor outcomes often associated with ordered, mandated, or coerced therapy (with or without reporting of specific clinical details). Some of this research has been conducted through randomized controlled trials, while other research has been done through open trials, or through discussion of ethical principles and risks, but the literature is quite extensive (e.g., Coviello et al., 2013; Feder & Dugan, 2004; Russ & John, 2013). I encourage the Court to

become aware of these issues to help inform it of how to optimize the clinical outcomes and reduce the risks to the public from such orders.

Some of the concerns for psychologists (as just one of the mental health professions) involve the ethical standard against potentially harmful multiple relationships (APA Standard 3.05). A clinical relationship requires a balance of power and autonomy between client and provider. A forensic psychology relationship has a clear power differential in that the client is aware that they are being evaluated and their behavior will be reported to the Court or other party who exerts control over the client. This Court's order appears to blend these roles together by requiring the client to pursue the therapy with a provider and to make "progress" toward the goals that the Court has prioritized. These goals are *prima facie* unethical terms under

which to conduct psychotherapy: No therapist should encourage "a normalized relationship between" two parties who are unknown to the therapist, especially when there have been allegations made of sexual abuse between those two parties. Regardless of any facts (or lack of facts) pertaining to the matter, on its face this is simply unacceptable. Any therapist who would follow such a directive would likely be acting in profound violation of their guild's ethical standards and find themselves on the wrong side of a civil action.

Psychotherapy outcomes research has consistently found that successful therapy requires the client's perceived safety and trust in the therapeutic relationship, as well as their intrinsic motivation toward treatment goals. Mandated therapy is extrinsically motivated. Sometimes the first stage of court-ordered therapy requires

addressing this extrinsic/intrinsic difference and finding whether the court-ordered or mandated client has their own intrinsic motivation and goals, notwithstanding (but perhaps in some manner aligned with) the court order. Moreover, the ethical standards regarding non-exploitative multiple relationships warn that a psychologist (for example) must avoid multiple relationships that could impair their objectivity, judgment, or effectiveness. A client being poorly treated by a therapist, or even harmed by a therapist, but who is reliant on that therapist's positive report to the Court about their progress or cooperation (even in vague terms) lacks autonomy due to the power differential in the multiple, simultaneous roles held by that therapist. Mandated clients are well aware of this complicating factor that pervades the consulting room, even if the therapist is not. The therapist is likely to have their judgment

and behavior influenced by the coercive "frame" around the relationship, whether the therapist is conscious of this power or not. For the same reason, psychology professors do not conduct therapy with their students. The students' behaviors, thoughts, and attitudes in therapy (or merely their wish to work with a more effective therapist) could have a negative impact on their academic career.

Therapists, like judges, are human and as such must guard against such risks of exploitation or harm. A forensic psychologist or other mental health professional who has the Court as their client must make this relationship known to the person being evaluated who may think they are the client. However, in court-ordered psychotherapy where the person is the client, these potentially conflicting demands and goals must be carefully considered, and

the conflicts and external influences must be minimized.

Finally, the Court's determination of the treatment goals or what constitutes "progress" (even if derived from an independent evaluator's professional opinion) must be subordinated to a mental health licensee's own responsibility for—and clinical judgment of—the case. Frankly, any licensed mental health who would be willing to work under the circumstances laid out in the Order would be someone I would not hire to work in our practice. Perhaps a medical analogy will be helpful here: If a surgeon-expert opines that a procedure is likely to produce a desired result with the least risk of harm for a patient, the Court may try to order the patient to have another surgeon perform a similar procedure to achieve this result. But the second surgeon is

required by their own professional standards to (1) make their own examination, (2) perform their own diagnostic tests based on the best science and (3) their professional training, as well as (4) the preferences of their patient before deciding on what procedure is most appropriate, or even whether the presumed "desired result" is indeed desirable or might lead to a worsening of the patient's health or even death. A surgeon who disregarded any of these factors prior to performing this procedure would risk a disciplinary proceeding, civil action, or even the loss of their medical license for unprofessional conduct if they followed that Court Order.

In other words, whatever the particular situation may be that has led to the seeking of therapy by the Court or by the affected party, I would have a poor opinion of any therapist who would say "yes" to such terms. The Court may wish

for a particular outcome, but without knowledge of the particular situation at hand, there is no way for a competent, ethical, and effective psychotherapist to work toward outcomes that are insisted upon by a third party and which are irrespective of their patient's own goals and perspective. Psychotherapy does not mold thinking and behavior or relationships in a certain requested direction (especially when not voiced as an actual desire by our own patients). A forensic mental health clinician may have the Court as its client, but a licensed practitioner acting in a treatment role cannot allow a court to act as a clinical supervisor.

I sincerely hope that this explanation helps the Court understand the problematic nature of its request, at least in the opinion of our practice. High-conflict divorces and other complex family difficulties involving the courts

cause most therapists to pause before considering therapy with any of the involved parties. Currently, none of our therapists have an opening for this kind of case (though at other times we do). Regardless, therapy should not be considered a tool of the Court, but rather a tool designed to be used by patients or clients for their own ends, keeping in mind the factors that may be impinging on their happiness, effectiveness in the world, or ability to overcome interpersonal obstacles or traumas. The Court may have behavioral outcomes it requires (e.g., sobriety, nonviolence, school attendance), and may have good reason to think certain activities may lead to or enhance these outcomes (e.g., psychotherapy), but therapists along with their clients must make their own

determination of the methods, aims, and goals of therapy, once the client walks through the door. I invite the Court to call or email me at any time if further discussion may be of service.

Regards,

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