No. _____

In The Supreme Court of the United States

WILLIAM MUHR,

Petitioner,

v.

DAWNA BRASWELL
AND KRISTIN LEE (A.K.A. ELLIAS),

Respondents.

On Petition for a Writ of Certiorari to the Colorado Court of Appeals

APPENDIX

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INDEX TO APPENDICES

FILED: April 28, 2022

COLORADO COURT OF APPEALS

Court of Appeals No. 21CA0326
El Paso County District Court No. 12DR2531
Honorable Chad Miller, Judge

In re the Parental Responsibilities Concerning B.B.,
a Child,
and Concerning William Muhr,
Appellant,
and
Dawna Braswell,
Appellee.

ORDERS AFFIRMED IN PART, REVERSED IN PART, AND VACATED IN PART, APPEAL DISMISSED IN PART, AND CASE REMANDED WITH DIRECTIONS

Division VII
Opinion by JUDGE BERGER
Brown and Johnson, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced April 28, 2022

William Muhr, Pro Se
No Appearance for Appellee

¶ 1 In this post-decree allocation of parental responsibilities proceeding, William Muhr (father) appeals from twenty-nine district court orders dating back to 2013. Dawna Braswell (mother) did not participate in the appeal. We

- affirm the January 19 and 25, 2021, orders denying father's motion for recusal, and the April 12, 2021, order denying father's motion to reconsider an attorney fees award;
- reverse the April 2, 2021, order denying father's C.R.C.P. 60(a) motion, and remand for further proceedings;
- vacate the January 25, 2021, order modifying child support, and the April 2, 2021, order denying father's motion to reconsider that order; and
- dismiss the appeal as to all remaining orders for lack of jurisdiction.

I. Background

¶ 2 Father and mother are the unmarried parents of one child. When the child was ten years old, father sought an allocation of parental responsibilities and entry of a child support order.

¶ 3 The district court entered its permanent orders in 2013 which, as relevant here, required father to pay mother $1,905.50 in monthly child support.

¶ 4 In 2016, father moved to reduce his child support obligation because he lost his job and was living on $415 of weekly unemployment compensation (first motion). The parties appeared for a contested hearing in late 2017 and, on January

8, 2018, the court entered a written order denying father's first motion.

¶ 5 On January 17, 2018, mother requested a status conference with the court because she believed the court made a clerical error in resolving father's first motion and failed to address the costs for the child's extracurricular activities. That same day, the court entered a written order finding that the January 8 order "denying the motion to modify . . . was in error and has since been removed from the permanent record in this case."

¶ 6 At a February 2018 status conference, the court reiterated that it had erroneously denied father's first motion. The court found that it had improperly compared father's newly calculated support amount against his support obligation in another case and not against his existing support obligation in this case. The court found that a correct calculation would have resulted in it granting father's first motion and modifying his support obligation retroactive to October 1, 2016. However, the court found that a pending appeal divested it of jurisdiction to enter the corrected order. The court instructed that if mother's counsel created a new child support worksheet and filed it with a stipulation or motion, the court would enter an order once it regained jurisdiction. The parties never filed a stipulation or motion and the court never entered a new order.

¶ 7 In 2020, father again moved for a child support modification (second motion). At the start of the contested hearing on this motion, father pointed out

that the court never entered an order on his first motion. Mother's counsel responded that the court denied his first motion on January 8, 2018. The court seemingly agreed with mother, finding that the parties had failed to appeal the January 8 order and had abandoned any issues they had with it.

¶ 8 On January 25, 2021, the court entered a written order granting father's second motion and modifying his support obligation to $1,425 per month.

¶ 9 Father thereafter filed a motion to correct the January 8, 2018, order under C.R.C.P. 60(a) and 61. The court denied the motion on April 2, 2021, finding that the parties failed to appeal that order or attempt to correct it. Father's C.R.C.P. 60(a) and (b) motion to reconsider the January 25, 2021, order was denied on April 12, 2021.

II. April 2, 2021, Order Denying Father's C.R.C.P. 60(a) Request to Correct the January 8, 2018, Order

¶ 10 Because it is dispositive of other issues, we start by considering father's second appellate contention — that the court erred by denying his C.R.C.P. 60(a) motion to correct the January 8, 2018, order. Father contends, and we agree, that the court should have corrected the ministerial oversight from 2018 by entering the order resolving his first motion before considering his second motion. We therefore reverse the April 2 C.R.C.P. 60(a) denial and remand for the court to enter an order resolving father's first motion.

A. Applicable Law

¶ 11 C.R.C.P. 60(a) gives the court discretion to correct mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission. The purpose of a C.R.C.P. 60(a) motion is to make the judgment speak the truth as originally intended; it does not entail a relitigation of matters which have already been decided. *Diamond Back Servs., Inc. v. Willowbrook Water & Sanitation Dist.*, 961 P.2d 1134, 1137 (Colo. App. 1997). The rule functions as a safety valve by allowing the district court to correct, at any time, an honestly mistaken judgment that does not represent the understanding and expectations of the court and the parties. *Reisbeck, LLC v. Levis*, 2014 COA 167, ¶ 8.

¶ 12 We review a court's decision concerning the correction of clerical errors under C.R.C.P. 60(a) for an abuse of discretion. *Id.* at ¶ 7.

B. Analysis

¶ 13 The court denied father's first motion on January 8, 2018, but almost immediately rescinded that order by finding that it was entered in error. The court found that a mathematical mistake on its part led it to deny father's motion when it should have granted the motion and modified father's support obligation back to the date of the motion (October 1, 2016). Believing that it lacked jurisdiction, the court declined to enter an order at the time and told the parties to prepare a new child support worksheet which it would sign once it

regained jurisdiction. The court said that it would not make substantive changes to its findings and that all the parties had to do to prepare the worksheet was "plug[] the numbers into the child support software."

¶ 14 It is apparent from this discussion that the court did not intend for the January 8, 2018, order to act as the judgment on father's first motion. The court clearly expressed that it made a mistake by entering that order, that it should have granted the first motion, and that it would enter a new order once it regained jurisdiction. Because of oversight or mistake, an order never entered as expected by the court. This is the type of mistake that C.R.C.P. 60(a) is intended to remedy, because it allows the court to enter a corrective order that would "speak the truth as originally intended." *Diamond Back Servs., Inc.*, 961 P.2d at 1137.

¶ 15 We therefore conclude that the court erred by denying father's Rule 60(a) motion on the basis that the January 8, 2018, order resolved his first motion. When presented with father's Rule 60(a) motion, the court should have undertaken the ministerial task of "plugging the numbers" into a new child support worksheet and entering the order that the district court planned to enter in 2018.

¶ 16 We therefore reverse the April 2 order denying father's C.R.C.P. 60(a) motion, and remand the case for the court to grant the motion and enter the order resolving father's first motion as expressed by the court in February 2018. No additional evidence will be required, as the February 2018 transcript and

January 8 order contain the information required for the court to create a new child support worksheet and determine father's support obligation for the relevant time periods between October 2016 and February 2018.

III. January 25, 2021, and April 2, 2021, Orders Concerning Father's Second Motion to Modify Child Support

¶ 17 Because we are reversing the case and remanding for the court to enter an order resolving father's first motion, we cannot consider father's arguments concerning the court's orders addressing his second motion. Determining father's second motion required the court to consider his current support obligation which, at the time of the 2020 hearing, should have been the modified amount resulting from the ruling on his first motion, not the original amount ordered in 2013. *See* § 14-10-122(1)(a)-(b), C.R.S. 2021 (allowing child support modification on a showing of substantial and continuing change of circumstances, which will not occur if the new child support order results in less than a ten percent change in the amount of support due per month); *see also In re Parental Responsibilities Concerning M.G.C.-G.*, 228 P.3d 271, 272 (Colo. App. 2010) (sections 14-10-122(1)(a) and (b) refer to the amount of child support "currently in effect" at the time of the modification).

¶ 18 Therefore, the court on remand must reconsider father's second motion in light of the new order resolving his first motion.

¶ 19 Because child support is based on the parties' and child's current financial circumstances, the court should allow each party to present evidence on their financial positions at the time of remand. *See In re Marriage of Salby*, 126 P.3d 291, 301 (Colo. App. 2005) (parties on remand should be given a full opportunity to present all relevant evidence affecting child support and maintenance); *In re Marriage of Berry*, 660 P.2d 512, 513 (Colo. App. 1983) (directing court on remand to determine the needs of the children at the time of the hearing).

IV. January 19, 2021 and January 25, 2021, Orders Denying Father's Request to Recuse Judge Miller and Change Venue

¶ 20 Father contends that Judge Miller lacked jurisdiction to enter orders in this proceeding because he improperly accepted the case assignment from Judge Bain. Father also contends that Judge Miller erred by denying his motion to recuse. We disagree with both arguments. A. Additional Facts

¶ 21 In February 2020, father filed a verified motion and affidavit requesting that Judge Bain, who had been presiding over the case, disqualify himself. Judge Bain granted the motion and recused himself from the case. In his recusal order, Judge Bain wrote that "[t]he Clerk of Court will randomly re-assign this case . . . to new judges." The next day, Judge Bain entered an order transferring the case to Division 6. Judge Miller was assigned to Division 6 at the time of the transfer. There's no suggestion that the case was not reassigned randomly.

¶ 22 In January 2021, father filed a motion to disqualify Judge Miller and obtain a change of venue. Among others, father's motion alleged that Judge Miller improperly accepted an assignment that Judge Bain had no jurisdiction to convey and that Judge Miller would continue the "brotherhood of judicial abuse" started by Judge Bain if left on the case.

¶ 23 Judge Miller denied the motion on January 19, 2021, finding no basis to disqualify himself or change venue. Judge Miller amended the order on January 25, 2021, to correct the parties' designations.

B. Judge Bain's Assignment to Division 6

¶ 24 Father argues that Judge Miller lacked jurisdiction to issue orders in this case because he improperly accepted the assignment from Judge Bain after Judge Bain recused himself. Put another way, father argues that Judge Bain lacked jurisdiction to assign the case to Judge Miller once he had recused. We do not agree.

¶ 25 When a district court judge is recused, he or she loses jurisdiction over subsequent rulings requiring the exercise of judicial discretion. *People v. Arledge*, 938 P.2d 160, 167 (Colo. 1997). However, the power to assign judges is administrative and involves none of the substantive rights of the litigants. *People v. Rodriguez*, 799 P.2d 452, 453 (Colo. App. 1990).

¶ 26 Chief Justice Directive 95-01 delegates to the chief judge the authority to assign judges and issue orders of an administrative nature to assure that the

district court is able to reasonably perform its judicial functions. *See* Chief Justice Directive 95-01, Authority and Responsibility of Chief Judges (amended Sept. 2020); *People ex rel. Sullivan v. Swihart*, 897 P.2d 822, 826 (Colo. 1995); *see also In re Marriage of Glenn*, 60 P.3d 775, 777 (Colo. App. 2002) ("The chief judge is specifically authorized to assign a judge to a particular court, or to a division within a court, to try a specific case, or hear or decide all or any part of a case."). A Chief Justice Directive is binding upon the courts and judges when it deals with matters of court administration that fall within the chief justice's authority. *People v. Jachnik*, 116 P.3d 1276, 1277 (Colo. App. 2005).

¶ 27 Judge Bain served as chief judge of the judicial district when he recused himself from the case. Once he recused from the case, Judge Bain lost jurisdiction to enter rulings requiring the exercise of judicial discretion. But he could still exercise the administrative powers delegated to him by the Chief Justice Directive to assign the case to Division 6, and by extension, to Judge Miller. There is no evidence (or suggestion) in the record to indicate that Judge Bain, acting in his capacity as chief judge, engaged in improper procedures or went beyond the authority delegated to him by the Chief Justice Directive when he entered this administrative order. We therefore reject father's first argument.

C. Merits of the Recusal Motion

¶ 28 A judge must be disqualified if interested or prejudiced in an action. C.R.C.P. 97. Even if a trial judge is confident he or she is impartial, the judge's

duty is to "eliminate every semblance of *reasonable* doubt or suspicion that a trial by a fair and impartial tribunal may be denied." *Johnson v. Dist. Ct.*, 674 P.2d 952, 956 (Colo. 1984).

¶ 29 The test for disqualification under this rule is whether the motion and supporting affidavits allege sufficient facts from which it may reasonably be inferred that the judge is prejudiced or biased, or appears to be prejudiced or biased, against a party to the litigation. *Bruce v. City of Colorado Springs*, 252 P.3d 30, 36 (Colo. App. 2010). In passing on the sufficiency of the motion for disqualification, the judge must accept the factual statements in the motion and affidavits as true, even if he or she believes them to be false or erroneous. *Id.*

¶ 30 Whether a judge should be disqualified in a civil action is a matter within the discretion of the district court, whose decision we will not overturn absent a showing of an abuse of that discretion. *Zoline v. Telluride Lodge Ass'n,* 732 P.2d 635, 639 (Colo. 1987). However, the sufficiency of a motion for recusal is a legal determination we review independently. *Bruce*, 252 P.3d at 36.

¶ 31 We have read father's motion and affidavit and, taking as true the allegations made against Judge Miller (as opposed to those allegations made against Judge Bain and Magistrates Cord and Trujillo) in this case (as opposed to father's other case), we conclude that father did not allege facts from which it could reasonably be inferred that Judge Miller harbored bias or prejudice against him. Father's allegations of bias and prejudice stem from Judge

Miller's rulings, or lack thereof, and the way that Judge Miller managed his docket. However, "it is well established that adverse legal rulings, standing alone, do not constitute grounds for claiming prejudice or bias." *Bocian v. Owners Ins. Co.*, 2020 COA 98, ¶ 23.

¶ 32 Father also alleges that Judge Miller was biased and prejudiced because he had an agenda to advance Judge Bain's personal biases since Judge Bain could reward him with preferential case assignments and positive job performance reviews. Allegations that are based on "[s]uspicion, surmise, speculation, rationalization, conjecture, innuendo, and statements of mere conclusions of the pleader" may not form the basis of a legally sufficient motion to disqualify. *See Carr v. Barnes,* 196 Colo. 70, 73, 580 P.2d 803, 805 (1978) (quoting *Walker v. People*, 126 Colo. 135, 148, 248 P.2d 287, 295 (1952)); *see also Zoline*, 732 P.2d at 639 ("Facts are required; conclusory statements, conjecture, and inuendo do not suffice."); *Bocian*, ¶ 15 ("Where the motion and supporting affidavits merely allege opinions or conclusions, unsubstantiated by facts supporting a reasonable inference of actual or apparent bias or prejudice, they are not legally sufficient to require disqualification.").

¶ 33 We conclude that father's motion and affidavit failed to establish a basis to disqualify Judge Miller. Therefore, Judge Miller did not abuse his discretion in denying the recusal motion. *See Zoline*, 732 P.2d at 639. Since father has not addressed that part of the recusal order denying his request for a change of venue, we consider any such argument abandoned.

See In re Marriage of Marson, 929 P.2d 51, 54 (Colo. App. 1996) (issue not briefed is abandoned).

V. Remaining Orders

¶ 34 We affirm the April 12, 2021, denial of father's motion to reconsider an attorney fees award to mother. Father offers no argument why the court erred in denying that motion. *See Mauldin v. Lowery*, 127 Colo. 234, 236, 255 P.2d 976, 977 (1953) (failure to inform reviewing court of specific errors and the grounds and supporting facts and authorities therefor will result in affirmance).

¶ 35 We lack jurisdiction to consider all other orders not already discussed in this opinion. Father did not file a timely notice of appeal as to any order entered before December 14, 2020, and he did not amend his notice of appeal to include the district court's May 14, 2021, order adopting the magistrate's denial of father's motion for summary judgment. "Failure to file a notice of appeal within the prescribed time deprives the appellate court of jurisdiction and precludes a review of the merits." *Widener v. Dist. Ct.*, 200 Colo. 398, 400, 615 P.2d 33, 34 (1980). We therefore dismiss the appeal as to all remaining orders for lack of jurisdiction. *See id.*

VI. Conclusion

¶ 36 The April 12, 2021, order denying father's C.R.C.P. 60(a) motion is reversed, and the case is remanded with directions for the court to enter a corrective order resolving father's first motion.

¶ 37 The January 25, 2021, child support modification order, and the April 2, 2021, order denying father's motion to reconsider that order are vacated.

¶ 38 The January 19 and 25, 2021, orders denying father's recusal motion and the April 2, 2021, order denying father's motion to reconsider an attorney fees award are affirmed.

¶ 39 In all other respects, the appeal is dismissed.

¶ 40 The existing child support order will remain in place until the court has entered new orders on remand.

JUDGE BROWN and JUDGE JOHNSON concur.

FILED: June 7, 2022

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

On Petition for Rehearing to the Colorado Court of Appeals in Case Number 21 CA 0326

Opinion issued April 28, 2022 by Judge Berger with Judges Brown and Johnson, J.J., Concur

Appeal from El Paso County District Court, Hon. C. Miller, Judge, 2012 DR 12DR2531

In Re the Parental Responsibilities Concerning

Child: B.B., DOB 12-20-2002

Petitioner:
William Muhr

v.

Respondent:
Dawna Braswell

PETITION FOR REHEARING

ISSUE PRESENTED

I. When ruling on the request to disqualify the successor, the appeals court overlooked precedent by the Supreme Court when it ruled that is acceptable for a Chief Judge, who disqualified himself on two cases and was deemed prejudiced, to not comply with the mandate of C.R.C.P. 97; to thereafter remain with jurisdiction to issue two more orders using language transferring both cases to his one chosen successor judge to decide both cases who was recently the undersigned's lawyer on issues pertinent to both cases and who then acted in a manifestly unfair manner; repeatedly did not follow and misapplied the law in favor of Ms. Braswell; and was found by the appeals court to have issued orders abusing his discretion.

ARGUMENT

The court's decision brought irreversible and great harm to my children and family. It is the wrong decision. A trial court's ruling on a disqualification motion must consider the applicable statutes, rules, and Code of Judicial Conduct and is reviewed de novo. *People v. Roehrs*, 440 P.3d 1231,1234,¶8(Colo. App. 2019).

The appeals court misapprehended the law when it ruled, pages 10-11, that **a disqualified, prejudiced "Chief Judge," and only because he is a "Chief Judge," and unlike all other parties appearing before prejudiced District Court Judges, the "Chief Judge" has jurisdiction to pick his successor a day after he had**

disqualified himself, citing as its authority Chief Justice Directive 95-01 that "delegates to the Chief Judge the authority to assign cases."

However, Directive 95-01does not overrule the history of Supreme Court cases providing that a disqualified, prejudiced judge cannot thereafter issue orders with language that transfers his case(s), for which he disqualified himself, to his chosen successor. *Aaberg v. District Court*, 136 Colo. 525,527-28(Colo. 1957).

"A judge *shall* disqualify himself in any proceeding in which the *judge's impartiality might reasonably be questioned.*"CJC 2:11(A);C.R.C.P 97. Here, the Chief Judge GRANTED the motion to disqualify and admitted that he is "partial" and, therefore, prejudiced.(R.3,821).

> "(When Chief Judge Bain) GRANTED the motion (to disqualify), such action would be considered as an admission of bias and prejudice .... (T)he charge of bias and prejudice... remains as an accusation of unfitness to proceed with the case, and logically this charge of unfitness would extend to unfitness to pick his successor or assign the case to another judge. When a judge is charged with bias and prejudice and sustains a motion so charging, or steps aside without ruling on the motion, proper procedure requires that he not select his successor or assign the case to another judge, but that he proceed in accordance with Rule 97, R.C.P."

Aaberg at 527-28(Colo. 1957).

See also *Beckord v. District Court*, 698 P.2d 1323,1329 n.7(Colo. 1985)["Judge Dressel – a disqualified judge- was without authority (jurisdiction)... to reassign the claims... His attempt to reassign the matters also does not comport with the disqualification procedures outlined in C.R.C.P. 97.... It would be incongruous to permit a disqualified judge to pick his... successor to decide the case."; See *Beren v. Goodyear (In re Estate of Beren)*, 412 P.3d 487, 491(Colo. App. 2012)("Upon recusing, a judge loses jurisdiction to make any further rulings in the case...").

"Upon disqualifying himself, a (*district court*) judge shall notify forthwith the chief judge... who shall assign another judge... to hear the action...." If no other judge... is *qualified*(to pick a successor), the chief judge *shall* notify forthwith the court administrator who shall obtain from the Chief Justice the assignment of a replacement judge."C.R.C.P. 97.

Simply put, C.R.C.P. 97 also does not allow a *disqualified, prejudiced* Chief Judge(R.5,257-5286;R.5,287-5,319) to issue an order directing his subordinate Clerk of Court to reassign her supervisor's cases after disqualification(R.3,821) nor does it allow a *disqualified, prejudiced* Chief Judge to issue orders after disqualification with language transferring his cases to his subordinate District Court J.Miller and, in those orders, direct all future court filings to J.Miller(R.5,850,R.3,851).

The appeals court misunderstood the holding in *People v. Rodriguez*, 799 P.2d 452, 453 (Colo. App. 1990) to allow a prejudiced judge to pick his successor. J.Bain cannot act in those cases from which he disqualifies himself and is deemed

prejudiced. [CJC 2:11(A)(A)(1) and (5)(c)(d); Comment 1, Colo.Jud.Code 2.7; C.R.C.P.97; *Aaberg at* 527-28(Colo. 1957); *Beckord at* 1323, 1329 n. 7,1330(Colo.1985); *Beren (In re Estate of Beren)* at 487, 491(Colo. App. 2012); *People v. Torkelson*, 22 P.3d 560, 562 (Colo. App. 2001);*People v. Roehrs*, 440 P.3d 1231 (Colo. App. 2019)].

The Colorado Constitution, Article VI, §5, ¶4, provides: "Each chief judge shall... exercise administrative powers over judges...*as may be delegated.*" Directive 95-01,¶6(b) delegates to a Chief Judge (*not to a disqualified, prejudiced Chief Judge*) that: "The chief judge may assign and reassign cases to courts." However, this power does *not* overrule the above line of Colorado Supreme Court cases limiting his power to pick his successor when he is disqualified nor can it trample constitutional rights.(**Colorado Constitution**, "**Section 25. Due process** of law. "No person shall be deprived of life, liberty or property, without due process of law."C.R.C.P. 97 and CJC 2:11(A); *Weiss v. United States*, 510 U.S. 163,178 (1994)("A fair trial in a fair tribunal is a basic requirement of due process"). *City of Manassa v. Ruff*, 235 P.3d 1051,1057(Colo. 2010)(Due Process Clause establishes a "constitutional floor," for judicial disqualification "*guaranteeing* a fair trial in a fair tribunal.") **Section 6. "*Equality* of Justice"** under the law. That is, a party cannot be treated *unequally* because a disqualified Chief Judge *may pick* his successor when other parties are protected from prejudiced "District Court" judges who *cannot* pick a successor (Colorado Constitution, C.R.S. 2016; 14th Amendment, U.S. Constitution). *In re Estate of Stevenson*, 832 P.2d 718, 723(Colo. 1992) ("The right

to equal protection of the laws guaranteed by the due process clause of Article II, Section 25, of the Colorado Constitution assures that persons similarly situated will receive like treatment.")

The Chief Judge disqualified himself on **2/23/2020**.(2/13/2020 Motion to Disqualify,R.5258-5286; Affidavit,R5,287-5,319;Order,R5257):

> **"The motion/proposed order attached: GRANTED. The Clerk of Court will *randomly* re-assign this case(2016DR30155) and Respondent's other open DR case, 2012DR2531, to 'new judges.'**
> **... Respondent's allegations have met the standard of the court's impartiality..."**(R.3,821).

However, *the next day*, **2/24/2021**, though "impartial," J.Bain issued two Orders using language transferring both cases to J.Miller:

> **"...This case (Braswell 2012DR2531) is now (not previously) transferred to Division 6 in lieu of 20DR636. Any future filings should be directed to Division 6."(R.3851, 5820-5822, ¶33-34).**
> **"...This case (Lee 2016DR30155) is now (not previously) transferred to Division 6 in lieu of 20DR636. Any future filings should be directed to Division 6."(R.5,850; 5820-5822,¶33-43).**

For the following four reasons, the appeals court, page 9 Decision, also misunderstood facts to be that

"(t)here's *no suggestion* that the case was not reassigned randomly," as ordered.

ARGUMENT

1. The only evidence that exists is that the 2/23/2020 order was electronically filed in 2012DR2531(R.3,821). The words in the 2/23/2020 order that directed the clerk to randomly reassign both cases to "new judges" are clear and carry legal consequences for the clerk's actions.

The record is devoid of any information that the "Clerk of Court" *received* the 2/23/2020 order or *acted on* complying with the order. There is no documentation in the Registry of Actions or in J.Bain's 2/24/2020 orders, showing a random assignment of both cases to "new judges."(R5257). In fact, as further evidence that the clerk did *not* receive the order, the clerk, factually, *did not* "*randomly* re-assign this case(2016DR30155) and Respondent's other open DR case(2012DR2531) to 'new *judges*.'"(R.3,821); and neither the Chief Judge nor J.Miller made efforts to obtain the clerk's compliance with the 2/23/2020 order, because J.Bain Ordered the transfer to J.Miller on 2/24/2020. "Court.... employees have a *duty to comply with all directives*..."(CJD 95-01, §14, Enforcement, C.R.S.13-1-114),"Motion to Enforce... 2/23/2020 Order...(R.3,989-3,992;R.3934-3938). Further, J.Miller now has *"personal knowledge of the facts that are in dispute"* that only J.Bain (*and no one else*) appointed him, and he is a *material witness to this fact*, creating an appearance of bias, *mandating his disqualification*. CJC(A)and(A)(1)(2)(d); *Roehrs* @ 1236, ¶10-11(Colo. App. 2019). See also *Bank of*

Texas v. Mexia, 135 S.W.3d 356, 361(Tex. App. 2004)("Where doubt exists as to a judge's interest, that doubt should be resolved in favor of disqualification."); *Smallwood v. State*, 771 P.2d 798, 810(Wyo. 1989)("The protection of the integrity and dignity of the judicial process from any hint or appearance of bias is the palladium of our judicial system.").*Corbo v. Crutchlow*, 86 N.J. 68, 78(N.J. 1981)("Above all, we expect presiding judges to resolve doubts in favor of disqualification.") *In re Trusts Created by Hormel*, 282 Minn. 197, 204(Minn. 1968)("...All doubt concerning compliance with the rules should be resolved in favor of his disqualification.").*In re Estate of Elliott*, 993 P.2d 474, 481(Colo. 2000)("If an appearance of partiality exists, it is incumbent upon a judge to disqualify herself from the proceedings. C.R.C.P. 97; C.J.C. Canon 3."); C.J.C. 2:11(A)and(A)(1)and(5)(a) (Disqualification mandatory when judge's impartiality might reasonably be questioned).

2. The clerk is *not* the proper person to obtain the *random* transfer of *both* cases to "new *judges*," which explains, by reasonable inference, her non-compliance. C.R.C.P 97 mandates that the *disqualified* Chief Judge order that "The court administrator *shall* obtain from the Chief Justice the assignment of a replacement judge," as mandated by C.R.C.P. 97. *People v. Torkelson*, 22 P.3d 560, 562(Colo. App. 2001).

3. There was *no* need for the Chief Judge to issue orders on 2/24/2020 using language transferring both cases to one Judge *if* he believed that the clerk

had already complied with his order to *randomly* assign *both* cases to "new *judges*."

4. *Before* the transfer, J.Bain, by reasonable inference, had prohibited, secrete conversations with the Division 6 judge as evidenced by the 2/24/2020 order where he referenced that it was decided and agreed that 20DR636 would be transferred to J.Bain as an exchange for 2012DR2531, and J.Miller did *not* object to the existence of the secrete conversations when raised on 6/3/2020(R3995-3999); *Rohers* @ 1236,¶15(Disqualification motion without affidavit creates strong appearance of impropriety when judge is "aware of facts alleged and did not dispute them"). Further, J.Miller has personal knowledge of these disputed facts as well as to whether those conversations as alleged and referenced in the 2/24/2020 order took place(**R.3851)**, which mandates disqualification. *Roehrs*, @ 1236, ¶10(Colo. App. 2019)(A judge who has personal knowledge of disputed facts and is a material witness, creates an appearance of bias)." See Directive 95-01, ¶2 (*A prejudiced chief judge has options "to delegate appropriate work to the district administrator"); In re Marriage of Fifield*, 776 P.2d 1167,1168(Colo. App. 1989)(A disqualified judge *shall* proceed with C.R.C.P. 97, which was not done; *Aaberg at 525*(1957); *United States v. Will*, 449 U.S. 200, 212 (1980)(The disqualified judge must step aside and allow the normal administrative processes of the court to assign the case to another judge not disqualified).

Finally, after the cases were consolidated into a joint-status conference held on 3/5/2020, the appeals court overlooked that Petitioner filed on 2/28/2020 in

2016DR30155 a sworn "Verified Objection to Successor Assignment," and Reply therein showing facts and reasonable inferences of bias mandating disqualification in 2012DR2531, including under CJD.2:11(A)(A1)(5)(a) (**Former counsel**) (Pg.19-22. Opening Brief).*Roehrs* at 1235 ¶12.

On 6/3/2020, Petitioner filed a verified motion(R3995-3999), containing facts at R3996 that were overlooked, including that he was improperly appointed by J.Bain (not disputed), and which mandated disqualification.R.3,996,CJC 2.11(A)and (A)(1)and(5)(a)("After disqualified, J.Bain had non-recorded conversations with J.Miller about the case.")("J.Miller was my supervising lawyer in the PD's office...."**Former Counsel**)(Opening-Brief 19-22);*Roehrs* at 1235-1236,¶10-15.(R.3988,3994).

RESPECTFULLY SUBMITTED, this 7th Day of June 2022.

_____

/s/ By: William Muhr,
Petitioner-Father, *Pro Se*

FILED: June 16, 2022

Colorado Court of Appeals
2 East 14th Avenue
Denver, CO 80203
El Paso County
2012DR2531
Court of Appeals Case Number:
2021CA326

In re the Parental Responsibilities Concerning

Child: B B,
Appellant: William Muhr,
and Appellee: Dawna Braswell.

ORDER DENYING PETITION FOR REHEARING

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

William Muhr, Appellant,is DENIED.

Issuance of the Mandate is stayed until: July 15, 2022

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: June 16, 2022

BY THE COURT:
Berger, J.
Brown, J.
Johnson, J.

FILED: January 9, 2023

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

Certiorari to the Court of Appeals, 2021CA326
District Court, El Paso County, 2012DR2531
Supreme Court Case No: 2022SC517

In re the Parental Responsibilities Concerning B.B., a Child

Petitioner: William Muhr,
and
Respondent: Dawna Braswell.

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, JANUARY 9, 2023.

Appendix E1

FILED: January 17, 2023

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

El Paso County
2012DR2531

Court of Appeals Case Number: 2021CA326

In re the Parental Responsibilities Concerning

Child: B B,
Appellant: William Muhr,
and
Appellee: Dawna Braswell.

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 IN PART, REVERSED IN PART, AND VACATED IN PART, APPEAL DISMISSED IN PART, AND CASE REMANDED WITH DIRECTIONS

POLLY BROCK
CLERK OF THE COURT OF APPEALS

DATE: JANUARY 17, 2023

FILED: June 2, 2022

20CA2066, 21CA0504 & 21CA0793 Parental Resp Conc MM 06-02-2022

COLORADO COURT OF APPEALS

Court of Appeals Nos. 20CA2066, 21CA0504 & 21CA0793
El Paso County District Court No. 16DR30155
Honorable Chad Miller, Judge

In re the Parental Responsibilities Concerning M.M., a Child,
and Concerning Kristin Lee, Appellee,
and William Muhr, Appellant.

APPEAL DISMISSED IN PART, JUDGMENT AFFIRMED IN PART AND REVERSED IN PART, AND CASE REMANDED WITH DIRECTIONS

Division A
Opinion by CHIEF JUDGE ROMÁN
Casebolt* and Hawthorne*, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced June 2, 2022

No Appearance for Appellee

William Muhr, Pro Se

*Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24-51-1105, C.R.S. 2021.

¶ 1 William Muhr (father) appeals the temporary and permanent orders determining parental responsibilities and child support for M.M., who is his child with Kristin Lee (mother). We dismiss the appeal as to the temporary orders (both parental responsibilities and child support), affirm the portion of the judgment allocating parental responsibilities, reverse the portion determining child support, and remand the case for further proceedings.

I. Background

¶ 2 Shortly after M.M. was born in 2016, mother petitioned to allocate parental responsibilities and determine child support for her. After a hearing, a district court magistrate entered temporary orders allowing father daytime parenting time visits but no overnight visits and ordered him to pay mother $1,270 per month in temporary child support. Father petitioned for district court review of the temporary orders, and the court denied father's contentions of error and adopted the orders.

¶ 3 Father then appealed the temporary orders to this court. His appeal, docketed as 17CA0263, was dismissed as to parenting time but proceeded as to child support. A division of this court subsequently affirmed the temporary child support order. *See In re Parental Responsibilities Concerning M.M.*, (Colo. App. No. 17CA0263, Apr. 26, 2018) (not published pursuant to C.A.R. 35(e)). Father's petition for certiorari to the supreme court was denied.

¶ 4 In 2018, father moved to modify the temporary parenting time allocation to an equally shared plan

and asked the court to approve a purported settlement agreement between the parties regarding parenting time. Mother did not join father's motion, however. The court denied father's request, finding the agreement "incomprehensible."

¶ 5 After a November 18, 2019, permanent orders hearing to determine parental responsibilities, the court entered oral orders to increase father's parenting time to include overnight visits Friday through Saturday every weekend and Friday through Sunday every other weekend. Thereafter, father moved to recuse the trial court judge and to set aside the permanent orders. The court granted the motion and transferred the case to another division of the district court. Father immediately objected to the successor judge, arguing that the recused judge could not appoint his own successor and that he had appointed the same judge who was hearing father's case involving his other child with a different mother.

¶ 6 After an October 2020 hearing, the successor judge rejected father's objections and entered a parenting order allowing father to begin overnight visits in six months — because father had not yet exercised overnight visits with M.M. — and then step up to the one overnight visit every weekend and two every other weekend schedule. The court also granted father a three-hour Christmas visit, imposed a no contact order requiring the parties to communicate through Talking Parents or a similar application except in a medical emergency, allowed each parent a daily phone call with M.M. when she is with the other parent, and allocated sole decision-

making authority to mother. After the court denied father's motions to reconsider, he appealed.

¶ 7 The court set a separate hearing to determine child support. Before that hearing, father twice moved to recuse the district court judge, and the court denied his motions.

¶ 8 Also before the hearing, mother filed a verified entry of support judgment for $78,380 in unpaid temporary child support and interest.

¶ 9 After a February 19, 2021, child support hearing, the court entered an order requiring father to pay mother $1,385 in monthly child support. It also entered judgment in the amount mother requested for temporary child support arrearages. Father again appealed, and his appeals — 21CA0504 and 21CA0793, involving child support and 20CA2066, involving parental responsibilities — were consolidated under case number 20CA2066.

II. Subject Matter Jurisdiction

¶ 10 Father first contends that the district court lacked subject matter jurisdiction to enter the permanent orders because the successor judge was improperly appointed to the case after the first judge recused. We disagree.

¶ 11 We review de novo whether the district court had subject matter jurisdiction. *See In re Marriage of Roth*, 2017 COA 45, ¶ 13. A challenge to subject matter jurisdiction cannot be waived and may be raised at any stage of the proceedings. *Town of*

Carbondale v. GSS Props., LLC, 169 P.3d 675, 681 (Colo. 2007).

¶ 12 Father raised this same recusal/successor judge issue in his appeal involving his other child with a different mother, *In re Parental Responsibilities Concerning B.B.*, slip op. at ¶ 24 (Colo. App. No. 21CA0326, Apr. 28, 2022) (not published pursuant to C.A.R. 35(e)). We agree with that division's analysis and disposition of the issue and thus adopt it here.

¶ 13 Specifically, when a district court judge is recused, that judge loses jurisdiction to enter rulings requiring the exercise of judicial discretion, but not to execute administrative tasks. *Id.* at ¶¶ 25-27; *see People v. Arledge*, 938 P.2d 160, 167 (Colo. 1997). Therefore, like the *B.B.* division, we hold that the initial judge on the case, Judge Bain, who was also the chief judge of the judicial district, did not err in entering an administrative order reassigning the case to the successor judge, Judge Miller. *See* Chief Justice Directive, 95-01, Authority and Responsibility of Chief Judges (amended Sept. 2020); *In re Marriage of Glenn*, 60 P.3d 775, 777 (Colo. App. 2002); *see also People v. Rodriguez*, 799 P.2d 452, 453 (Colo. App. 1990) (describing assignment of judges as administrative in nature). Nor did Judge Miller err by accepting the assignment. Contrary to father's argument, the record does not indicate that the case was not randomly reassigned to Judge Miller's division, as he said it was and as Judge Bain's recusal order provides.

III. Recusal

¶ 14 We further reject father's argument that Judge Miller was biased and therefore should have recused himself from the case.

¶ 15 Whether to recuse in a civil case is a matter within the discretion of the district court, and its ruling will not be disturbed on appeal absent an abuse of discretion. *In re Marriage of Mann*, 655 P.2d 814, 818 (Colo. 1982).

¶ 16 A judge must recuse if the judge has a bias or prejudice that may prevent the judge from dealing fairly with a party or if the judge's involvement in the case creates an appearance of impropriety. *Bocian v. Owners Ins. Co.*, 2020 COA 98, ¶ 14; *see also Brewster v. Dist. Ct.*, 811 P.2d 812, 813-14 (Colo. 1991) ("Recusal is intended to prevent a party from being forced to litigate before a judge with a bent of mind."). A judge's "adverse legal rulings, standing alone, do not constitute grounds for claiming prejudice or bias." *Bocian*, ¶ 23; *see also In re Marriage of Hatton*, 160 P.3d 326, 330 (Colo. App. 2007). The test for disqualification is whether the moving party's motion and supporting affidavit allege sufficient facts from which it may reasonably be inferred that the judge is prejudiced or biased, or appears to be prejudiced or biased, against a party to the litigation. *Bocian*, ¶ 13; *see also* C.R.C.P. 97.

¶ 17 Father's lengthy recusal motions and supporting affidavits in the district court rely primarily on Judge Miller's rulings, which do not establish judicial bias. *See Bocian*, ¶ 23.

¶ 18 Additionally, father's affidavits contain primarily argument, opinions, and speculation that Judge Miller is biased. *See In re Marriage of McSoud*, 131 P.3d 1208, 1223 (Colo. App. 2006) (affidavits supporting recusal must not be based on mere suspicion, speculation, or conjecture and may not contain conclusory statements). For example, father alleges in the affidavit supporting his third motion to disqualify Judge Miller that there is a "judicial conspiracy" against him by Judges Bain and Miller. This is not a fact. Rather, it is speculation and conjecture, as is father's similar allegation that Judge Miller entered rulings in the case that were designed to please Judge Bain because Judge Bain was chief judge of the judicial district. *See id.* Father also surmises that Judge Bain and Judge Miller likely had conversations regarding the present case and father's case involving his other child when the cases were transferred to Judge Miller. However, contrary to father's assertions, Judge Bain's recusal order does not suggest that any such conversations occurred.

¶ 19 Accordingly, Judge Miller was not required to take these or the many other similar speculations, opinions, and conjectures in father's lengthy affidavits as true when ruling on father's motions to recuse. *See id.*; *see also Bruce v. City of Colorado Springs*, 252 P.3d 30, 36 (Colo. App. 2010) (motion that alleges merely opinions and conclusions is insufficient to require disqualification).

¶ 20 Father has also not established that recusal was required because Judge Miller was also appointed in *B.B.*, which involves father's child with

a different mother. Father cites no authority, and we are aware of none, requiring that a judge be disqualified in a civil case for this reason. *See* C.J.C. 2.11(A). Father instead relies on *People v. Perrott*, 769 P.2d 1075, 1075-76 (Colo. 1989), in which a judge was censured for failing to recuse from a *criminal* case when he had previously represented the defendant in his divorce from the victim). The present case does not involve a similar situation.

¶ 21 Last, father argues that Judge Miller was required to recuse himself because he was a supervising attorney at the public defender's office when it represented father in 2017 and 2018. However, Judge Miller stated in response to this allegation that he was only one of many supervisors in the public defender's office, he did not supervise the particular attorneys whom father named as the attorneys on his case, and he had no knowledge about the case. Therefore, he did not have a conflict and there was no basis to recuse. Judge Miller did not err by not recusing himself under these circumstances. *See* C.J.E.A.B. Advisory Op. 2019-04 (Dec. 20, 2019) (providing that a judge's previous employment with the district attorney's office does not mandate recusal, but a judge who "had *an active supervisory role over the attorneys that prosecuted the case* . . . must recuse") (emphasis added); *see also People v. Julien*, 47 P.3d 1194, 1199-1200 (Colo. 2002); *People v. Mentzer*, 2020 COA 91, ¶¶ 8, 10-14.

IV. Parental Responsibilities

¶ 22 Father contends that the district court erred in determining parental responsibilities for M.M.

because the magistrate entered restrictive temporary parenting orders on improper grounds, the district court refused to approve the parties' parenting time settlement agreement, and the court entered an unduly restrictive parenting plan at permanent orders. We disagree.

A. Standard of Review

¶ 23 The district court has discretion when allocating parental responsibilities, and we will not disturb its decision absent an abuse of discretion, meaning that the court acted in a manifestly arbitrary, unreasonable, or unfair manner. *See Hatton*, 160 P.3d at 330. The district court's discretion over parenting issues is very broad and we exercise every presumption in favor of upholding its decisions. *Id.*

B. Temporary Parenting Time Orders

¶ 24 We dismiss father's appeal insofar as it challenges the magistrate's temporary parenting orders because such orders are not appealable.

¶ 25 Temporary parenting orders do not grant parenting time rights but only provide for parenting time for the limited time pending the permanent orders. *In re Marriage of Fickling*, 100 P.3d 571, 574 (Colo. App. 2004); *see also Spahmer v. Gullette*, 113 P.3d 158, 161 (Colo. 2005). As such, temporary parenting time orders are not appealable. *In re Marriage of Adams*, 778 P.2d 294, 295 (Colo. App. 1989).

¶ 26 Further, the district court did not, as father argues, adopt the magistrate's temporary parenting time orders as the final orders. Rather, the court granted father increased parenting time from those temporary orders after six months including overnight visits. Thus, we do not address the temporary orders or the magistrate's findings related to those orders. *See id.*; *see also M.M.*, No. 17CA0263.

C. Purported Settlement Agreement

¶ 27 We reject father's argument that the district court erred by not approving the parties' parenting time settlement agreement.

¶ 28 Contrary to father's argument, agreements by parents to allocate parental responsibilities are *not* binding on the court. *See* § 14-10-112(2), C.R.S. 2021; *In re Marriage of Chalat*, 112 P.3d 47, 52 (Colo. 2005); *see also* § 14-2-310(3), C.R.S. 2021.

¶ 29 The court found that the parties' unnotarized agreement, which only father, and not mother, submitted, was "incomprehensible" and thus declined to approve it. The court's finding is supported by the record. The version of the agreement father submitted that purports to be signed by both parties contains multiple cross-outs and illegible handwritten additions. Further, some terms are potentially inconsistent. For example, the agreement provides on the one hand that father may see M.M. "whenever he wants" but also that only mother will have overnight visits until M.M. is in

fifth grade, and then parenting time will be shared 50/50.

¶ 30 Additionally, other provisions of the agreement — that the parties will not date other people, and if mother does, parenting time will revert to a 50/50 schedule, and that they will maintain location services on their phones, vacation together for three weeks with the child during the summer, and have a "date night" every ninety days — are patently unenforceable. *See Calvert v. Mayberry*, 2019 CO 23, ¶ 21 ("[A] contract is unenforceable by either party if it is against public policy."); *see also Griffin v. Griffin*, 699 P.2d 407, 410 (Colo. 1985) ("[C]hild custody arrangements that promote discord between the parents are not in the best interests of the child."); *In re Marriage of Sepmeier*, 782 P.2d 876, 878 (Colo. App. 1989) (holding that the child's well-being, and not punishment of a parent, must guide parenting time determinations).

¶ 31 Accordingly, the court did not err by rejecting the purported parenting time settlement agreement.

D. Permanent Orders Parenting Plan

¶ 32 Father contends that the permanent orders parenting plan must be reversed because it imposes undue restrictions on his contact with M.M. and his ability to parent her. We disagree.

¶ 33 Father first argues that the portion of the parenting orders allowing contact between him and mother only through Talking Parents or a similar application except in a medical emergency must be

set aside because mother did not want such orders. We are not persuaded.

¶ 34 The court found that the parties had "a very volatile relationship," noting father's testimony that "every day [they] are together with [M.M.], they have an argument" and this has "a very detrimental effect on [M.M.]." The court further found that neither party was asking for a no contact order, "but I really have to think about this child" because mother frequently ends up calling the police when the parties are together and this causes trauma for M.M.

¶ 35 These findings support that the court's no contact order is in M.M.'s best interests. Accordingly, we do not disturb the order. *See In re Marriage of Finer*, 920 P.2d 325, 332 (Colo. App. 1996) (a court may enter orders that are in a child's best interests); *see also Hatton*, 160 P.3d at 330-31.

¶ 36 Father next argues that the parenting time schedule, the provisions for one phone call a day with M.M. and a three-hour Christmas visit, and the allocation of decision-making responsibility to mother must be set aside because the court did not find that M.M. was endangered in his care. *See* § 14-10-124(1.5)(a), C.R.S. 2021. We are not persuaded.

¶ 37 Under section 14-10-124(1.5)(a), the court must make parenting time provisions that are in a child's best interests *unless* it finds that parenting time by either parent would endanger the child's physical health or significantly impair the child's emotional development. Under section 14-10-124(1.5)(b), the court must also allocate decision-making authority

between the parents according to the child's best interests. The court did that here, and its orders allocating parenting time between father and mother in the manner it did and allocating decision-making authority to mother as opposed to father do not infringe on father's fundamental rights as M.M.'s parent. *See Vanderborgh v. Krauth*, 2016 COA 27, ¶ 20; *In re Marriage of DePalma*, 176 P.3d 829, 832 (Colo. App. 2007); *cf. McSoud*, 131 P.3d at 1219 (By allocating sole religious decision-making responsibility to one parent, "the court expanded one parent's right to the care, custody, and control of a child at the expense of the other parent's similar right," which did not implicate constitutional rights.).

¶ 38 Accordingly, we discern no error by the court and do not disturb its parenting orders.

V. Father's Current Child Support Obligation

¶ 39 Father contends that the district court erred by ordering him to pay mother $1,385 in monthly child support for M.M. Because this current child support amount is based on the income finding from an order that was vacated and remanded for reconsideration in *B.B.*, No. 21CA0326, slip. op. at ¶¶ 17-19, the current child support obligation must also be reconsidered, and we remand the case for that purpose. Therefore, we do not address father's contentions regarding the current child support order.

¶ 40 On remand, the court should redetermine child support based on the parties' financial circumstances

at that time. *See id.* at ¶ 19. In doing so, the court may again rely on income findings for father in *B.B.* but only if a final child support order is entered on remand in that case before the proceedings on remand in the present case *and* the elements of issue preclusion are met. *See Jones v. Samora*, 2016 COA 191, ¶¶ 55-56.

¶ 41 The existing child support order shall remain in effect pending the entry of a new child support order on remand. *See B.B.*, No. 21CA0326, slip. op. at ¶ 40.

VI. Judgment for Temporary Child Support Arrearages

¶ 42 Father contends that the district court erred by entering judgment against him for $78,380 in unpaid temporary child support. We dismiss the appeal as to this contention.

¶ 43 As noted, father previously appealed the temporary child support order, a division of this court affirmed the order, *see M.M.*, No. 17CA0263, and the supreme court denied father's certiorari petition. Accordingly, that decision is the law of the case, and we do not revisit it. *See Cummings v. Arapahoe Cnty. Sheriff's Off.*, 2021 COA 122, ¶¶ 10-12.

¶ 44 Also, father's notice of appeal in the present case is not timely as to the temporary orders, which were finally entered in 2016. *See In re Marriage of Mockelmann*, 944 P.2d 670, 671 (Colo. App. 1997) (temporary child support orders are reviewable as a final judgment); *see also In re Marriage of Rose*, 134 P.3d 559, 561 (Colo. App. 2006). And father's timely

appeal from the order entering judgment for arrearages under those temporary orders does not bring those previously final orders up for review. *See In re Marriage of Tognoni*, 313 P.3d 655, 658 (Colo. App. 2011); *cf. In re Marriage of Warner*, 719 P.2d 363, 364-65 (Colo. App. 1986) (holding that an appeal from an order denying a motion to vacate a writ of garnishment was not effective to challenge the original judgment on which the garnishment was based, which was not appealed or timely challenged under C.R.C.P. 59 or C.R.C.P. 60).

VII. Conclusion

¶ 45 The appeal is dismissed insofar as it challenges the temporary parenting and child support orders. The portion of the judgment allocating parental responsibilities is affirmed. The portion of the judgment determining child support is reversed, and the case is remanded for reconsideration of that issue as instructed herein. The existing child support order shall remain in effect pending the entry of a new child support order on remand.

JUDGE CASEBOLT and JUDGE HAWTHORNE concur.

Appendix G1

FILED: June 30, 2022

Colorado Court of Appeals
2 East 14th Avenue
Denver, CO 80203
(720) 625-5150

COURT OF APPEALS'
Case Number:
2020 CA 2066
&2021CA793
&2021CA504

Appeal from:
District Court County: El Paso County
District Court Judge: The Hon. C Miller
District Court Case Number: 2016 DR 30155

In the Case of: Parental Responsibilities for M.M., DOB 1-16-2016

Plaintiff/Petitioner: KRISTIN LEE,
☐ Appellant or ☒ Appellee
&.
Defendant/Respondent: WILLIAM MUHR
☒ Appellant or ☐ Appellee

Filing Party Name: William Muhr, Appellant-Father
Address: 2775 East Highway 105, Monument, Co 80132
Phone: C: 719-648-6230
E-Mail: Muhr@pcisys.net

PETITION FOR REHEARING

THE COURT OF APPEALS(COA) HAS OVERLOOKED OR MISAPPREHENDED THE FOLLOWING LAW AND FACTS

1. **The COA overlooked that the unduly restrictive and unconstitutional Temporary Order Parenting Plan was adopted as the Permanent Order, which is appealable.(Decision.¶1-7).**

ARGUMENT. All trial courts found that Petitioner is "great dad,"(**Op.Br.Pgs.26-29**), yet M.M. has not had any overnights with his daughter for 6 ½ years per the 6/17/2016 discriminatory temporary parenting order, which was decided based on extrajudicial information.(**Op.Br.Pgs.26-37**).

Petitioner is rarely allowed by the said parenting order to visit or spend time at his home with M.M.(**Op.Br.Pg.33**), which subsequently has been adopted by J.Bain and J.Miller and made final.(T.**11/18/2019**,Ruling, Pg.9,L.6-8,**J.Bain**: "***I'm ordering that the current Temporary Order Parenting Plan become the Permanent Order;*** T.**10/19/2020**.Pg.,13, L11-15, **J.Miller: "I am going to adopt Judge Bain's final orders regarding the parenting time orders**," regardless that J.Bain had set aside his statements because he was prejudiced.(**T.10/19/2020. Pg.13,L.11-15;Op.Br. Pg.50).**

J.Miller then fully incorporated J.Bain's statements(11/18/2019 Order, Ruling,Pg.9,L.6-8;Op.Br.Pgs.50-51), and the Magistrate's 6/17/2016 Temporary Order, into his final 10/26/2020 order, **"The existing.... Parenting plan from June 2016 shall remain in place**...", which Petitioner and

M.M. have followed for 6 ½ years.(**R.3785, Para2.**). T.6/17/2016,Ruling.,Pg.9,L.18-25;Pg.10,L.1-5; **Pg.20, L.21-25,Pg.21,L.1,8-11)(Op.Br.Pgs.10,26-37**).

2. **The COA overlooked that Petitioner did *not* "appeal temporary orders;" and misapprehended the law when it allowed the trial court to adopt an unduly restrictive and unconstitutional parenting order, decided on extrajudicial information, as his final order.(Decision.¶s1,22-25,42-44).**

ARGUMENT. On 6/17/2016, J.Cord was the first of three judges who determined that Petitioner was a great dad, but J.Cord presumed that Ms. Lee was better able to serve the best interests of M.M. because of that person's sex; and she said that she was relying on extrajudicial information in forming her decisions. Though Petitioner was found to be a great dad, J.Cord refused to allow M.M. to have overnights with her dad during M.M.'s most critical bonding years of M.M.'s life and imposed an unduly restrictive parenting order that was so short that it prevented M.M. from spending time with her dad in his home and took away father's constitutional rights to spend time with his family and other children on the east coast without violating J.Cord's parenting order.(**Op.Br.Pgs.26-37**).

This appeal was *not* about appealing J.Cord's orders, but rather centered around the fact that J.Cord was actually prejudiced and disqualified *and had no power or jurisdiction to issue any orders*.(**OpBr.Pgs.10,13,26-37**).

"The Code of Judicial Conduct **requires disqualification** when a judge" has a personal bias or prejudice concerning a party."*People v. Jennings*, 498 P.3d 1164,1170-71(Colo. App. 2021);*Commission v. Case*, 151 Colo. 235,245(Colo. 1962)**("It is the solemn responsibility of the judiciary to "fashion a remedy" for the violation of a right which is truly "inalienable.").**

When the trial courts adopted the discriminatory temporary order, decided on extrajudicial information, and made that order the permanent order on 10/26/2020, that permanent order was appealable. "When judges ignore the law with no apparent justification, they undermine public confidence in the integrity of the judiciary." *In re Kwan*, 443 P.3d 1228, 1235¶42(Utah 2019).

3. **Petitioner did not appeal child support orders.**

ARGUMENT. On 11/9/2021 and 11/18/2021, father filed motions with the COA requesting that the clerk provide the record so that the issues of arrearages and present child support could be appealed in 2021CA504 and 2021CA793, which were *not* ruled on.(*Undisputedly*, there are three other minor children who were paid every month pursuant to valid court orders since 2015, which was never ducted from an income determination resulting in massive, accumulating arrearages in 2012DR2531 and 2016DR30155 that can never possibly be paid).

On 12/9/2021 the COA *merely consolidated case numbers* 2021CA504 (child support) and 2021CA793(arrearages) into 2020CA2066 (Parenting). (¶9.Decision). Thus, Petitioner-Father

appealed only the issue of Parenting as identified in the title of the Opening Brief and in its four issues.(Op.Br.Pgs.1,9).

4. **J.Bain did not "enter oral orders"** on 11/18/2019.**(Decison.¶5.)**

ARGUMENT. J.Bain made renditions on the record that he chose not to finalize into a signed, final order.(C.R.C.P.58). Instead, he chose to set aside his oral statements when he acknowledged that he was prejudiced and disqualified himself.[Motion.(**R.3391-3418**);Affidavit.(**R.3433-3465**);Order.(**R.3601**) (OpBr.Pg.12,16,32-33,42,50-51). In the WHEREFORE clause, J.Bain was requested to "set aside its permanent orders on 11/18/2018."(**R.3418;3468**). On 2/23/2020, J.Bain GRANTED the Motion.**R.3601-3630;R.3631;R.3673-3684;R.3768-3781**)(Op.Br.Pg.12,14,32-33,50-51). Thus, there were NO orders to adopt when J.Miller adopted J.Bain's statements, *without a hearing* (*Decision ¶6*), *to determine M.M*'s best interests, as his final parenting order.(**R.3785,Para2**).

5. **J.Bain did not "*enter* orders to increase father's parenting time"** to include overnight visits**(Decision.¶5)**.

ARGUMENT. Petitioner never had overnights.(Op.Br.Pgs.10-11,26,28,37,41,48,51-52.). J.Bain said, ***"I'm ordering that the current Temporary Order Parenting Plan become the Permanent Order***).T.11/18/2019,Ruling, Pg.9,L.6-8. J.Bain *later withdrew all of his statements because* he was prejudiced**(R.3418;R.3601,Op.Br.pg.50).**

J.Bain stated that M.M.'s dad (not her mom) had to *qualify* for overnights by attempting to satisfy three impossible conditions: **1)** Dad could never be late for or miss any visit under the 2016 parenting plan(M,W,F for 3-hours; with weekends alternating 11a-4p, and NO overnights), thereby prohibiting M.M.'s dad from leaving town for even a day with or without M.M.; traveling to visit Petitioner-Father's family on the east coast or vacationing with M.M. or his other children, or with anyone[T.11/18/2020 (Ruling).Pg.9,L.21]; **2)** "Everything must go well."[T.11/18/2020,Pg.9, L.21.; and **3)** There could never be "any issues"(Personal problems, Difficulties) between M.M.'s parents, regardless of who creates an 'issue,'—statements that gave K.Lee unsanctionable authority to deliberately create "issues" to prevent overnights, which she did.[T.11/18/2020 (Ruling).Pg.9,L.22.][**R.3418;** 2ndSRC.11-18-2019.T.(Ruling).Pg.9,L.6-15;L.21-25;Pg.10,L.1-10].

On 2/23/2020 J.Bain set aside his impossible-to-satisfy conditions (Op.Br.Pg.50); and his successor on 3/5/2020 did *not* allow Petitioner to qualify for overnights, ***by declaring J.Bain's order void***.**(T.3/5/2020.Pg.8,L.15-20;Pg.29, L10-25.Pg.30, L.1-25).**

6. **The COA misapprehended law and overlooked facts when it afforded unrestrained powers to chief judges, who are prejudiced and have conflicts of interest, to pick their successor judges and other judges without the protections of C.R.C.P.97.(Decision.¶s11-13)**

ARGUMENT. J.Bain was required to immediately stop his involvement in the instant case because he was prejudiced.(**Op.Br.Pgs.12,15,16-19,22-23,32,42,50**);C.R.C.P.97;*Aaberg v. District Court*, 136 Colo. 525,528(Colo.1957).

The COA decided at ¶s12-13 that **"Father raised this same recusal/successor judge issue in...**21CA0326...Not published...."; and the COA held that J.Bain did not err in picking his successor.(Decision ¶13). "We... **thus adopt it here."**

At **Appendix A** is the Petition for Rehearing filed in 21CA0326, which should be considered before it adopts the unpublished, pending decision in 21CA0326, as controlling in this case. The *Braswell* case should not be given precedential weight. *People v. Flynn*, 456 P.3d 75,85 n.6 (Colo.App. 2019); *Patterson v. James*, 454 P.3d 345,353 (Colo.App. 2018)("Unpublished opinions have no value as precedent").

This decision confers unrestrained power to all chief judges, along with the ability to influence the outcome of cases, by allowing them to pick successor judges and to assign cases, *even when they are admittedly highly prejudiced and disqualified to act in those very cases that are being re-assigned by them*, in violation of the protections of C.R.C.P.97 and the well-established holding in ***Aaberg*** **at 528(Colo.1957)("...**logically this charge of unfitness would extend to unfitness to pick his successor.").

Nothing is transparent to parties regarding picking a successor or assigning cases, which makes this COA's decision, expanding unrestrained power beyond the protections of C.R.C.P.97, even more problematic.

J.Bain, in violation of C.R.C.P.97, ordered his clerk to assign both cases 2012DR2531 and 2016DR30155 to 'new judges'**(R.3601)**.

After he was powerless to issue any orders regarding the cases for which he disqualified himself (Motion to Disqualify, **R.3391-3418**; Sworn Affidavit, R.3433-3465), J.Bain again violated C.R.C.P.97 by issuing an order on 2/24/2020 picking his successor.**(R.3631)**, with his clerk never complying with his 2/23/2020 order creating an appearance of partiality and impropriety for both him and his successor.**C.J.C.2.11(A);(R.3631),C.R.C.P.97**.["Upo n disqualifying himself, a judge shall notify...the chief judge... who shall assign another judge.... If no other judge in the district *is... qualified*(J.Bain disqualified himself), the chief judge shall notify forthwith the court administrator who shall obtain from the Chief Justice the assignment of a replacement judge"]; *State v. Schaeperkoetter*, 22 S.W.3d 740, 742,744(Mo. Ct. App. 2000)("The administrative control granted by the constitution 'must be exercised within the limitations of applicable Supreme Court Rules... The (disqualified) trial court is prohibited from taking any action other than to request the... Supreme Court to transfer a judge." *Schaeperkoetter* at 743-44(Mo.Ct.App. 2000); *Joshi v. Ries*, 330 S.W.3d 512,517 (Mo.Ct.App.2011). (Judge was not serving a ministerial function... when *his only option* was to sustain the application for the change of judge...." See *Ries*, at 517 n.13(Mo.Ct.App.2011)["the application of Rule 51.05(C.R.C.P.97 in the instant case) is based not upon the judge's title(e.g., Trial or Chief Judge), but rather upon the nature of the authority he

exercises(as a disqualified judge) over a litigant's case."].

By C.R.C.P.97, it was within the expectation of the parties that a highly-prejudiced judge who disqualified himself from his involvement in 2016DR30155 would *not* be responsible to issue yet another order picking his successor in that same case that he previously disqualified himself to handle because he is prejudiced. *Martinez v.Winner*, 771 F.2d 424,434(10th Cir.1985)("As chief judge, he had the responsibility to insure that the rules are followed.").

The judge re-assignment at issue was not a purely administrative act, because that act of assigning a successor judge to that particular case in which the chief judge expressly disqualified himself from acting further, was a function that is *not* allowed by C.R.C.P.97 and, therefore, not normally performed *by a highly-prejudiced and disqualified chief judge,* but rather, because J.Bain was disqualified, the assignment was a function performed by the court administrator and the Chief Justice.C.R.C.P.97.("The proper procedure *requires* that he *not* select his successor..." but proceed under C.R.C.P.97; *Aaberg at* 528(Colo. 1957); *Stump v. Sparkman*, 435 U.S. 349, 362 (1978)["...whether an act by a judge is (administrative)... relates to ...whether it is a function normally performed by a (disqualified chief judge), *and (satisfies) the expectations of the parties...*"].

7. **The COA overlooked facts and law regarding J.Miller's representation of Petitioner.**

ARGUMENT: J.Miller was Petitioner's supervising lawyer representing him on baseless allegations made to obtain an advantage in this parenting case. **Op.Br.Pgs.18,19,22-23**;(T.11/18/2019, Ruling,Pg.4,L.11-14);T.3/5/2020. Pg.6,L.17-22. The COA **failed to accept Petitioner's sworn affidavit as true**, which is required.(**OpBr.Pgs.18-19**).

"A judge ***shall be*** **disqualified in an action in which he...has been of counsel for any party**."C.R.C.P.97;("judge **must disqualify... if facts exist tying the judge to ...*some role* in the investigation... of the case during the judge's former employment.**"*People v. Julien*, 47 P.3d 1194,1198(Colo. 2002).

J.Miller did NOT say **"he did NOT supervise lawyers who represented** Father...."(Decision. Pgs.8-9.¶.21).

> **J.MILLER:** ***I do not believe...*** **I've supervised..(Attorneys) named in your motion. I...** ***have no knowledge about your criminal case....***
>
> **MR. MUHR: Knowledge is imputed....** (T.3/5/2020. Pg.12, L.24-25, Pg.13,L.1-8) (Op.Br.Pg.19, *Liljeberg* at 860-861(1988)("It does not depend on... whether the judge... knew of facts creating an appearance of impropriety...as long as the public might reasonably believe that he...knew).

("**Public Defender... Job Classification, R49P14**...Supervisors must 'evaluate employee performance...assign work...be accessible...write ...employee evaluations...recognize/answer ethical questions....)."

The COA overlooks the law mandating disqualification by citing opinions relating to former employment *in the DA's office.*(Decision.¶21) "...*Prosecutors* (unlike the public defender's office) *are not automatically 'associated' with other lawyers in that agency.* **Canon 3(C)(1)(b);***Carr v. Carr*, No. A-6393-11T2, at 15(App.Div.6/20/2013); *In re A.S.*, 447 N.J. Super. 539,544(App.Div.2016); *In re Opinion*, 293 Ga. 397, 398-99(Ga.2013)("...attorneys in a public defender's office are...treated as members of a law firm ...subject to the prohibition... when a conflict exists pursuant to Rule 1.7...."(Comment 1, Loyalty is essential in the lawyer's relationship to a client.... Conflicts ... arise from the lawyer's responsibilities to...a former client...(which) is imputed to all...public defenders working in the...office."*In re Opinion*, 293 Ga. 397,399(Ga. 2013).

Respectfully Submitted this 30th day of June, 2022,

/s/ By: William Muhr, *Pro Se*
Petitioner-Father

DATE FILED: July 14, 2022

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

El Paso County
2016DR30155

Court of Appeals Case Number:
2020CA2066
& 2021CA793
& 2021CA504

In re the Parental Responsibilities Concerning Child:
M M,
Appellee: Kristin Lee,
and Appellant: William Muhr.

ORDER DENYING PETITION FOR REHEARING

The motion to amend the caption is **GRANTED**. The **PETITION FOR REHEARING** filed in this appeal by: William Muhr, Appellant, is DENIED.

Issuance of the Mandate is stayed until: August 12, 2022

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: July 14, 2022

BY THE COURT:

Román, C.J. Casebolt*, J.
Hawthorne*, J.

*Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24-51-1105, C.R.S. 2021.

FILED: October 20, 2022

Colorado Supreme Court
2 East 14th Avenue
Denver, CO 80203
(720) 625-5150

Supreme Court of Colorado
No: 22 SC 0561

On Petition for Writ of Certiorari to the Colorado Supreme Court, Opinion Issued June 2, 2022 CHIEF JUDGE ROMÁN, Casebolt* and Hawthorne*, JJ., concur (*Sitting by Assignment) Case Number 20 CA 2066

Re: Parental Responsibilities of M.M., DOB 1/16/2016

In the Case of:

William Muhr, Petitioner
v.
Kristin Lee, Respondent

PETITIONER'S PETITION FOR CERTIORARI

II. ISSUES

1. Whether the Court of Appeals (COA) chief judge erred when he proceeded with a conflict of interest and allowed a disqualified chief judge under Chief Justice Directive 95-01 to pick his successor or assign cases to another judge, thereby causing

significant harm by subsequent rulings corroborating bias?

2. Whether an unopposed settlement that was understood by M.M.'s parents, consistent with the policies of the General Assembly, and benefited M.M. should be enforced by applying correct legal standards?

Sub-Issues

3. Whether J. Miller shall be disqualified, including by his adopting the opinions of disqualified judges as his permanent parenting order, thereby depriving Petitioner of a fair hearing on parenting before a judge who was not disqualified?

4. Whether the Supreme Court has the authority to void ab initio the current, controlling 2016 temporary order, made permanent, that was derived from an extrajudicial source and issued with actual bias and without jurisdiction?

5. Whether the successor erred in interpreting C.R.S.§14-10-115 to allow calculations of income on money not available to pay support, which was applied to the instant case?

6. Whether a remedy should be afforded to vindicate significant harm suffered from the violation of inalienable constitutional rights and to deter future violations?

III. REPORTS, OPINION, JUDGMENT, RULINGS FROM WHICH REVIEW IS SOUGHT

The COA made the Braswell-decision 21CA0326/22SC517 binding in Lee. (Lee-Decision

¶12). This Petition concerns the COA decisions in Braswell and Lee based on the Opening Briefs, Petitions for Re-hearings, and the Petition for Certiorari pending in the Braswell appeal.

IV. GROUNDS FOR JURISDICTION

(A) This case was decided on 6/2/2022.

(B) A PFR was filed on 6/30/2022, denied on 7/14/2022, and an extension was given until 10/20/2022 to file this petition.

(C)This Court has jurisdiction by C.R.S.§13-4-108;C.A.R.49,52 and Chief Justice Directive 95-01, amended 9/2005(hereafter C.J.D.95-01), ¶16 ("Any disputes arising from the exercise of the authority described in this directive shall be resolved by the Chief Justice.").

V. PENDING CASES IN WHICH THE SUPREME COURT HAS GRANTED CERTIORARI REVIEW ON THE SAME ISSUE

This court may grant review in Braswell, 22SC517, which was made binding in this case.(Lee-Decision¶12, Appendix A)(Hereafter Lee-Decision). The Braswell Petition for Certiorari, 21CA0326/22SC517, was filed 9/22/2022.

VI. STATEMENT OF CASE

A dispute arises, inter alia, from the exercise of the authority described in C.J.D.95-01 regarding whether disqualified chief judges with a clear conflict of interest can make the non-transparent assignment of cases to their favored judges. Six COA

judges have announced that this practice is authorized for chief judges throughout Colorado.(Lee-Decision.¶s10-14).

Consistent with this unprecedented interpretation of C.J.D.95-01, COA chief judge Román, with a conflict of interest, first assigned and allowed himself to proceed with the instant case 20CA2066. Later, with a conflict of interest, he assigned the companion Braswell case, 21CA0326, to his favored judges. The COA, in both cases, did not follow decisions and rules expressed by this court and misstated key facts.(Braswell-Petition,Pgs.6,7-25;Braswell-PFR,Pgs.5- 13,Appendix B; Lee-PFR, Pgs.5-15.).

Similarly, after disqualifying himself on 2/23/2020, J.Bain issued orders on 2/24/2020 transferring his Braswell and Lee cases to J.Miller. (R.3631; Lee-Opening Brief,Pgs.16-24, Appendix E (Hereafter Lee-Op.Br.);Lee-Decision, ¶s10-13).

J.Román construed C.J.D.95-01 to mean that J.Bain, and all other chief judges, like J.Román himself, should be given expanded powers and preferential treatment, unlike all other judges, to pick a favored successor or assign judges to a case, even when a particular chief judge is highly prejudiced, has a clear conflict of interest and/or has disqualified himself, or is required to disqualify himself, from any involvement with his cases because of misconduct, interests or bias.(Lee-Decision,¶s10-14;Braswell-Decision,¶s24-27,21CA0326; Lee-PFR,¶6,Pgs.9-13; Lee-Op.Br.¶s16-17;R.3391-3418;R.3433-3465;R.360; Braswell-Petition, Pgs.7-12,18-22, Appendix D (Hereafter Braswell-Petition).

However, chief J.Román's power derives from C.J.D.95-01 as determined by the Chief Justice—not

as determined by him in a way that drastically expands his own powers as chief judge contrary to the rules and decisions of this Supreme Court.[C.J.D.95-01¶16; Aaberg v. District Court, 136 Colo. 525,527- 28(Colo.1957); C.R.C.P.97; C.R.C.P.1; Beckord v. District Court, 698 P.2d 1323,1330(Colo.1985); City of Manassa v. Ruff, 235 P.3d 1051,1057(Colo.2010); In re Estate of Stevenson, 832 P.2d 718, 723(Colo.1992)]. J.Román did not exercise his administrative duties within the limitations of these applicable Supreme Court rules and decisions. Instead, J.Román interpreted C.J.D.95-01 to confer onto himself and J.Bain these unique, unfettered powers and prevented Petitioner to have his cases decided in the C.O.A. free of taint and the appearance of partiality.

Though the decision by J. Román that disqualified chief J.Bain with a conflict of interest can pick his successor under the authority of C.J.D.95-01was not previously litigated or adjudicated, chief J.Román gave the unpublished Braswell decision, 21CA326/22SC0517, precedential weight and made it binding in the instant case. The Braswell-Petition for Certiorari shows why the Braswell decision was issued in error.(Braswell-Petition,Pgs.7-12,18-22; See also Lee- PFR,¶6,Pgs10-13,Appendix C (hereafter Lee-PFR); Lee-Decision,¶12).

Chief J.Román is covered by the same C.J.D.95-01 as the trial court chief J.Bain.(Introductory paragraph C.J.D.95-01). Chief J.Román also serves and works very closely with chief J.Bain on the "Chief Judge Council" and personally meets with J.Bain at least four times a year, which J.Román did not disclose.(C.J.C.2.11(A) and Comments 2 and

5;C.J.D.95-01,¶13;). J.Román's impartiality is reasonably questioned.

J.Román's decision undermines public confidence in the integrity and impartiality of the judiciary. Indeed, with the non-transparent nature of judicial case assignments by disqualified judges, this high-court cannot exercise its supervisory powers over inferior courts to correct an abuse of power.

The chosen successor J.Miller, then misapplied Colorado law and issued a permanent parenting decision on 10/26/2020 that directly conflicts with decisions and rules of this court, thereby causing significant, ongoing harm to Petitioner, M.M. and her family. On 6/17/2016 the Magistrate, with actual bias, entered an unduly restrictive parenting order. The Magistrate prejudged the case with extrajudicial information and expressed her belief that M.M.'s mom is better able to serve the best interests of M.M. because of her sex (Lee-Op.Br.Pgs.29-33):

> "A lot of times it's the mom, and then the dad...hangs back and it isn't until maybe the child gets...older that the dad is a little bit more participatory ...6/17/2016 T.pg.9,L.18-25;T.10, L.1-2.
> ...often times there's like a primary-ish parent and then another parent and a lot of times it is the mom... I just think that's usually how things work out..." 6/17/2016 T.pg. 10,L.2-5.
>
> The Magistrate then ruled:
> "...there are studies that suggest that short... duration-- of parenting time(with

> Fathers) is best... with respect to parenting time, and so that's what I'm looking at..."

After the Magistrate in 2016 (and all subsequent judges) found that Petitioner is great dad, M.M. was not allowed to have any overnights, or any holidays, or any special days, or travel for any vacations with her dad.(Lee- PFR,Pgs.6-7; Lee-Op.Br.Pgs.26-28,30,31,39,46-47). After rejecting a 2018 unopposed settlement agreement on parenting, J.Bain held a parenting hearing on 11/18/2019. Again, like the Magistrate in 2016, J.Bain also found that Petitioner was a "great dad" and that mom was a fit mother.(Lee- Op.Br.Pgs.26-29). J.Bain then adopted the 6/17/2016 unduly restrictive temporary order, issued with actual bias and without jurisdiction, and made it his permanent order:

> J.BAIN: "I'm ordering that the current Temporary Order Parenting Plan(from 6/17/2016) become the Permanent Order."
>
> [Lee-Op.Br.Pgs.10,13-14,32-33,26-37,46-47, 50; Lee-PFR,Pgs.5-6; T.11/18/2019, Ruling, Pg.9,L.6-8; C.R.S.§19-1-102 (1.6)].

J.Bain then added additional undue restrictions to the temporary order made permanent. Contrary to the wishes of M.M.'s parents, J.Bain added a no-contact order; child exchanges in the lobby of a police station; limited M.M. to no more than one call a day to her dad; and, because he had entered a no-contact order, took away Petitioner's decision making.(Lee.Op.Br.Pgs.51-53,39,45-48;R.4312-4314):

J.Bain also imposed on M.M.'s dad three impossible conditions necessary to qualify to obtain two overnights a month:

> 1) "Everything must go well;"
> 2) "There can be no issues;" and
> 3) "Father must exercise ALL parenting time." (Dad can never arrive late at a child exchange occurring four times every week. Dad cannot travel outside Colorado Springs, for example to visit his sisters on the east coast, until M.M.'s 19th birthday, because doing so probably would make him late for exchanging M.M..(Lee-PFR,Pgs.5- 6,8,9; Lee-Op.Br.Pgs.11,28,42,46-47; Lee-Decision¶6).

On 11/18/2019, J.Bain purported to add a three-hour visit for Christmas, but he actually reduced time with M.M. on Christmas, since the Monday, Wednesday and Friday visits were already three hours from 3:30p-6:30p; and the week-end visits were five hours from 11a-4p alternating.(2016 temporary orders made permanent). Last year and this year, Petitioner and M.M. lose two hours with each other on Christmas.(Lee.Op.Br.Pgs.32,51-53):

However, J.Bain, on 2/23/2020, in response to a motion to disqualify, then disqualified himself and set aside his parenting order.(Lee-PFR,Pg.8;Lee-Op.Br.Pg.50;R.3418;R.3601).

A day after he had disqualified himself, he picked J.Miller as his chosen successor.(Lee-Decision,¶s10-14; Lee-Op.Br.Pg.16). J.Miller was Petitioner's supervising former counsel at the Public Defender's (P.D.'s) Office representing him on issues directly relating to this case.(Lee-Decision,¶21); Lee-

PFR,Pgs.13,14 with Affidavit at¶s11-14; Braswell-Petition,Pgs.12-13,15- 16(¶i);22,23; Lee- Op.Br.Pgs. 18,19,22-23).

Nonetheless, on 3/5/2020, J.Miller voided J.Bain's 11/18/2019 parenting order.

> COURT:..."Then that order (J.Bain's 11/18/2019 order) is void..." (T.3/5/2020, Pg.30,L.8-11;Lee-Op.Br.Pg.22).

On 3/5/2020 J. Miller also moved the child-exchange location to a police station next to Lee's home rather than to a mid-point location. The move prevents M.M. from spending time at her dad's home, because of frequent traffic congestion on I-25, that would cause Petitioner to be late returning M.M..

> COURT:..."(The 11/18/2019 parenting order) does not require you to go ... home to exercise your parenting time...Exercise it somewhere near the exchange location..."(Lee-Op.Br.Pgs.11,22, 33;R.4312-4314).

On 10/19/2020, J.Miller held a "status conference"--not a parenting 'hearing' per the COA Lee-Decision,¶6. J.Miller, for his 10/26/2020 signed permanent order, merely adopted J.Bain's parenting order, which comprised the 6/17/2016 temporary order made permanent and J.Bain's 11/18/2019 renditions on the record supplementing the 2016 temporary order made permanent with the aforesaid five additional undue restrictions and three

impossible-to-satisfy conditions necessary to obtain two overnights Lee-Op.Br.Pg.12,50-53;R.4312- 4314):

> COURT: ...I want to start with my status conference... Is your client...attending? (T.10/19/2020 ,Pg.3,L.2-3).
>
> CYBORON:...Nope...(Ms.Lee joined later by phone). (T.10/19/2020,Pg.3,L.10).
>
> COURT:"I am going to adopt Judge Bain's final orders with respect to parenting time...Mr.Cyboron...I will be signing the one that you filed back in...April(2020)." (T.10/19/2020, Pg.10,L.11- 15)(Lee-Op.Br.12, 13-14,49-50;Lee-PFR, Pgs.5,6,8-9).

When Petitioner, on 10/19/2020, asked for overnights, J.Miller forthwith denied his request claiming Petitioner did not comply with J.Bain's 11/18/2019 parenting order that J.Miller had expressly voided on 3/5/2020. (T.3/5/2020,Pg.30,L.8-11;Lee-Op.Br.Pg.22).

MR.MUHR:...I'd like to have overnights. (T.10/19/2020,Pg.10,L.20- 23).

MR.CYBORON:...Bain's(11/18/2019) order was Mr.Muhr could not miss any...time.(T.10/19/2020,Pg.12,L.18-23).

COURT:... "You're... correct. (F)or six months... (1) Assuming things GO WELL (2) there are NO issues and (3) father exercises ALL parenting time... The temporary orders (made permanent)...need to be

complied with...."(Overnights... DENIED). (T.10/19/2020,Pg.13,L.11-20)

On 10/26/2020 J.Miller entered his signed, permanent "ORDER FROM HEARING HELD 11/18/2019:"

> "1. This matter came before Judge Bain for final orders hearing on 11/18/2019...." "2.The existing.... parenting plan from June 2016 shall remain in place...."
>
> ... "Nunc pro tunc to 11/18/2019."

(R.4312-4314; Lee-Op.Br.Pgs.12,26-36,50-53§"C. Discussion.").

Thus, Petitioner was never afforded a hearing on parenting before a qualified judge(Lee-Decision¶6).

Next, the COA caused unnecessary litigation when it applied the wrong legal standard rejecting the stipulated settlement. [Lee-Op.Br.Pgs.13,36-49; R.3053-3071;3079].

Sub-Issues 3-6 are also extremely important to Colorado families.

VII. ARGUMENT

A. Reasons for the writ

The COA ruled in a way contrary to the views of this Court and the polices of the General Assembly, and has so far departed from the accepted and usual course of judicial proceedings as to call for the exercise of the Supreme Court's power of supervision.

B. Issues Raised/Preserved in the Lower Court:

The issues are preserved in Lee-Opening Brief: §5.Statement of Case,Pgs.10-13. §6.Argument Summary,Pgs.13-14. §7.Argument,§B.Preservation, Pgs.15-17;36-37. Lee-PFR,Pgs.5-15.

C. Standard of Review for Issues

The Standard of Review is contained in Lee-Opening Brief,Pgs.14,15, 36,37, including:

"We review de novo whether a trial court had jurisdiction. In re Spohr, 456 P.3d 86, 89(Colo. App. 2019). "A judge acts without jurisdiction when he is not appointed pursuant to constitutional or statutory authority."People v. Torkelson, 22 P.3d 560, 562(Colo. App. 2001). "Upon recusing, a judge loses jurisdiction to make any further rulings. Beckord at 1330.

"Because disqualification based on actual bias cannot be waived, a claim of actual bias may be reviewed on appeal even where the parties did not properly raise the issue in the trial court."People v. Jennings, 498 P.3d 1164,1170-71(Colo. App.2021).

Courts may address unpreserved constitutional issues on appeal. Tyra Summit Condos II Ass'n, Inc. v. Clancy, 413 P.3d 352,354(Colo.App.2017).

D. Argument

ISSUE 1. Disqualified chief judge lacks jurisdiction to assign cases in which he is disqualified to act, thereby causing significant harm by subsequent rulings.

J.Román's "impartiality might reasonably questioned."Aaberg at 527-528; Braswell-Petition,Pg.19; C.R.C.P.97; C.J.C. 2.11(A)and(A)(1)-Comments 2,4,5; "Statement of Case."

Chief J.Román made the Braswell decision binding in the instant case.(Lee- Decision,¶12;Lee-PFR,Pg.10).Foster v. Plock, 394 P.3d 1119,1123(Colo. 2017)(Issue preclusion applies only to identical issues fully litigated in Braswell).

The Braswell decision was issued in error, as set forth in the Braswell-Petition,Pgs.7-12,18-22.(See also Lee-PFR,¶6,Pgs10-13).

The disqualification procedures in C.R.C.P.97 do not allow disqualified J.Bain to pick his successor or order his subordinate clerk to assign "new judges" for him, which she did not do.(Braswell-PFR,Pgs.7-13,Appendix B;Lee- PFR,Pgs.10-13; Braswell-Petition,Pgs.18-23,21).

The COA erred in construing C.J.D.95-01 to mean that a disqualified chief judge may pick his successor without addressing precedent from this court.(Lee.Decison¶s10-14). Disqualified chief judges must proceed per the requirements of Aaberg at 527-528; C.R.C.P. 97, Beckord at 1330(Colo.1985); City of Manassa at 1057(Colo. 2010); In re Estate of Stevenson at 723];C.J.C. 2.11(A)and(A)(1) and Comments 4,5; C.J.C.3(C)(1)(a); and In re People, 2022 CO 24,10(Colo. 2022)["(All)...judges must be free of all taint of bias and partiality...."](Lee-Op.Br.Pgs.17-23;Braswell-Petition,Pgs18-23).

Temporary orders, and parenting orders issued with actual bias, do not grant "parenting time rights." Thus, J.Bain and J.Miller cannot make the 2016 temporary order their permanent order, or modify it. The COA did not apply the correct legal

standard under C.R.S.§14-10-129 ("court may make or modify an order granting or denying parenting time rights...") In re C.T.G, 179 P.3d 213, 221,222(Colo. App. 2007) ("Temporary orders do not grant 'parenting time rights....' Temporary orders ... determine matters pending final orders, and they do not carry res judicata...effect").

Petitioner never had a permanent parenting hearing before a qualified judge.(Lee-PFR,Pgs.5-7). In re Marriage of Hatton, 160 P.3d 326, 329(Colo.App. 2007)("...(A) court's interest in administrative efficiency may not be given precedence over a party's right to due process."). C.R.S.14-10-124(1.5)(a)(Hearing mandatory before court restricts father's parenting time with child). Troxel v. Granville, 530 U.S. 57,72 (2000)(Petitioner's right to decision making cannot be deprived without a hearing before a qualified judge. "There is a presumption that fit parents act according to the best interests of their children" and have a "fundamental right to make decisions concerning the care, custody, and control of their children.")(Lee-Op.Br.Pgs.18-20,26-30,39,45-53).

ISSUE 2. Unopposed settlement must be enforced

The settlement benefited M.M. in their efforts to re-unite their family.Lee- Op.Br.Pgs.38-39;43-48; 9/24/2018 unopposed "Request to Approve Signed Settlement Re Parenting..." ¶s3-4 thereof,R.3053-3071;3079).(Issue#3, Lee- Op.Br.Pgs.36-49).

All issues fabricated by chief J.Román were not issues between M.M.'s parents and/or identified as issues of concern by J.Bain.

J.Román applied the wrong legal standard by construing the agreement to render it void and unenforceable rather than to make it valid and binding.(Lee- Op.Br.Pgs.43-49).

M.M.'s parents have fundamental rights to maintain their family relationships free from governmental interference.In re Marriage of Hatton at 330.(Lee-Op.Br.Pgs.43-49;Decision¶28.).

Chief J.Román stated he would not enforce the agreement, because:

a. It was not notarized.(Lee-Decision,Pg.11,¶28). Neither parent, nor J.Bain, asserted that they did not sign the agreement.(Lee-Op.Br.Pg.38;R.3053);

b. It had illegible handwritten changes. (Decision¶29). Neither parent, nor J.Bain, asserted that the handwritten changes were illegible. The parties, in their unopposed motion to approve the agreement, provided J.Bain with a typed version of the same original agreement to ensure hand-written changes were not construed as "illegible." M.M.'s parents understood their changes.(Lee-Op.Br.Pg.38,39,43; R.3053-3071. Typed version attached as Exhibit B,R.3065-69);

c. It is incomprehensible.(Decison¶29). The agreement was understood by the parties who advised J.Bain that they had been following their agreement, which was "working well."(¶s1-5 of 9/24/2018 unopposed "Request to Approve Signed Settlement";R.3053-4;R.3044-3055; Lee-Op.Br.Pgs. 37,39-44);

d. It contained an inconsistency. (Decision,Pg.12,¶29). No one perceived an inconsistency where dad was permitted to spend as much time as he could with M.M. during the day, but mom would remain with overnights while the

parties were making well-defined efforts to reunite their family or until such efforts were abandoned.(Lee-Op.Br,Pgs.38-43,45).

e. Parties agreed not to date.(Decision ¶30). M.M.'s parents desired to commit to their family relationship, consistent with their unique circumstances identified in their unopposed motion for approval to end the parenting litigation. If M.M.'s mom chose to abandon her family by dating other people, the agreement provided the best outcome for M.M., for her fit parents to share parenting and joint decision making consistent with Colorado's public policies.(Lee-Op.Br.Pgs.10- 11,26,28,36-38,40-41,45-48,51,52);

f. M.M.'s parents chose to use location services(Lee-Decision,¶30). There agreement was appropriate to their circumstances and implemented and working well to facilitate restoring trust and re-uniting family.(Lee-Op.Br.Pgs.39-40).

g. The agreement allowed M.M.'s parents to vacation with M.M..(Lee- Decision,¶30,). Vacationing together with M.M. was building a stronger family relationship and "working well."(Lee-Op.Br.Pg. 39,last ¶thereof).

h. Provisions were "patently unenforceable." (Decision.¶30). Noting in the agreement was disputed; more litigation was unnecessary. See Troxel at 75 (Forcing parties into additional, unnecessary custody litigation under the circumstances further burdens parental rights).(Lee.Op.Br.Issue#3,Pgs.36-49); and

i. Their unopposed agreement would "promote discord."(Lee-Decision¶30). On 9/15/2016, the Magistrate signed her parenting order stating, "(E)ach party has demonstrated an ability to care for

their... daughter and place the needs of the child above their own."(R.582,583,ParaB.). The parents' mutual agreement allowing M.M.'s "great dad" to be equally involved in M.M.'s life is not contrary to M.M.'s well-being.(Lee-Op.Br.Pgs.27,26-36). Their agreement expressed their intent to benefit M.M..(Lee-Op.Br.Pgs.37,38,39,47-49.)

The agreement provided in Paragraph#1(Lee-Op.Br.Pg.40-41), that if mom abandoned her efforts to re-unite their family, as evidenced by her choice to date other men, then the plan would revert to an agreed-upon equal parenting plan between two judicially-determined-fit parents.(Op.Br.Pgs.26-36;37-49; 9/24/2018 Unopposed Request to Approve Settlement R.3053,¶s1-6). The parents explained in Paragraphs#5-6 of the 9/24/2018 unopposed request...", why Paragraph #1 was included to prevent the breakdown of their family.(Lee Op.Br.Pg.45;R3054-3055;Op.Br.Pgs.38-46; 9/24/2018 unopposed Request to Approve Settlement R.3053-3056, ¶s1-6,11 at Lee-Op.Br.Pgs.40-41).

M.M.'s mother chose to abandon efforts to reunite M.M.'s family with M.M. by dating other men. She also admittedly re-married and had another child, which was her free choice.(See Lee-Op.Br.Pgs.47-49).

Thus, by the terms of the agreement, "...the 'plan will revert' to a 50-50 parenting plan"(R.3066); with "joint decision making."[Last page--"All decisions affecting (M.M.) must be made jointly."].

"This document shall be effective upon the filing of the document with the court..." on 9/24/2018)(R.3069;Lee-Op.Br.Pg.40-43). The agreement should be enforced with no other limitations, nunc pro tunc to 9/24/2018. Troxel at

72.(There is a "presumption that fit parents act according to the best interest of their children" and have a "fundamental right to make decisions concerning care, custody, and control of their children"). As a remedy for constitutional wrongs suffered, Father should have 183 overnights and mother 182. This language establishes which parent has the majority of the parenting time. In re Marriage of Thomas, 501 P.3d 290,295 n.5(Colo.App.2021).

UB-ISSUE 3
Actual Bias

A. J.Miller was Petitioner's former counsel in the P.D.'s office. He cannot preside over these cases as directed by J.Román's application of the wrong legal standard that pertains to judges formerly employed at the District Attorney's office, citing C.J.E.A.B. Advisory Op.2019-04(Dec.20, 2019).(Lee-Decision,¶21,Apppendix A); McCall v. District Court, 783 P.2d 1223,1227-28(Colo.1989)(Confidential information obtained by a public defender from a client must be imputed to the other members of the public defender's staff); C.R.C.P.97; C.J.C.211 (A)(A)(1); Lee-PFR,Pgs.13,14, Appendix C (attached Verified Objection,¶s11-14, and Affidavit at¶s11-14, previously filed with the court); Braswell-Petition,Pgs.12-13,15-16(¶i);22,23; Lee-Op.Br.17,19, 26-29.(J.Bain finds Petitioner is "great dad"; Lee testifies she had made 100 police reports since 2016 temporary orders when M.M. was six months old.[(2ndSRec.T.11/18/2019, Complete,Pg.58,L.11-14]. (P.D.'s legal theory is that Lee's baseless reports

against M.M.'s "great dad" were made to try to obtain an advantage in this case).

B. Actual Bias is imputed on the successor judge when J.Miller adopted and made permanent 6/17/2016 temporary order issued with actual bias and adopted the 11/18/2019 parenting order issued by disqualified J.Bain.(T.10/19/2020,Pg.10, L11-15;Lee-PFR,Pgs.5,6).

C. Because of J.Miller's special employment relationship with his direct supervisor, J.Bain created a per se impermissible interest and appearance of bias when he picked J.Miller as his favored successor. Aaberg at 527-528;C.R.C.P.97; C.J.C.2.11(A)and(A)(1), and Comments 2,4,5;C.J.C. (3)(C)(1)(a). Chief J.Bain directly supervises and manages J.Miller.[Colo. Const.Art.VI,§5(4); C.J.D.-95- 01,Introductory para. and ¶s1, 2, 4(a)(i)and(iii), 5, 6(b)-(d), 8, 9(a)-(b), 14; Braswell-Petition,Pgs.11-14; Braswell-COA Decision¶32]. It is idiomatic, and reasonably inferred from J.Bain's supervisory role, that J.Miller's "impartiality might reasonably be questioned" when he has the irrefutable incentive to protect and serve his direct supervisor, who is faced with allegations of prejudice. [C.J.C.2.11(A); 2/13/2020 Disqualification Motion Pgs.2-4,R.3392-3394. C.R.C.P.97.(Lee-Decision,¶39)].

D. J.Miller's "impartiality might reasonably be questioned.... disqualification is required." C.R.C.P.97; C.J.C.2.11(A)and(A)(1) and Comments 2,4,5.(See Braswell- Petition,Pgs.7-23; and "Statement of Case").

SUB-ISSUE 4
Review of Temporary Order

This court should review the 2016 order issued with actual bias and without jurisdiction to prevent ongoing, significant harm.(Lee,PFR, Pgs.5-7,8,9); Lee.Op.Br.Pgs.11,26,29,39,45-49;¶C,Discussion,50-54). This court should exercise its authority to correct abuse of power.People v. Jennings at 1170-71.("...claim of actual bias may be reviewed on appeal even where the parties did not properly raise the issue..."). The 2016 temporary order made permanent and reinstated by the Braswell support decision(Lee-Decision,¶s39-40 and Braswell-Decision¶s17-19), should be rendered void ab initio.

SUB-ISSUE 5
Support applied to Lee

J.Miller misinterpreted child support statutes, then applied his income determination in Braswell to Lee, resulting in over $200,000.00 in support arrearages, including:

> "The Court is not going to give Father credit for (court-ordered) child support (payments) ...Those... (other) children could get jobs...."

See Braswell-Petition,Pgs.23-26; and Braswell-Opening Brief, "Issue 1,"Pgs.23-38 to address this issue.

SUB-ISSUE 6
Remedy for Harm and to Deter Future Violations

A remedy should be afforded to Petitioner to correct manifest injustice and deter future constitutional violations.Winston v. Polis, 496 P.3d 813, 819(Colo. App. 2021)("Courts retain broad authority "to fashion practical remedies when confronted with...constitutional violations"); Vogts v. Guerrette, 142 Colo. 527,531(Colo.1960)(Colorado Constitution Article II,§6 "is a command to the courts...to afford a remedy for injury to him by another, and that such right shall not be denied"); Matter of C.V, 579 N.W.2d 17, 23(S.D. 1998)("A parent who is deprived of due process is entitled to litigate his rights anew without prejudice from the adjudication proceedings from which he was excluded....A parent deprived of his or her due process rights with regard to a child will always have a remedy.")(Lee.Op.Br.Pg.36).

This court should award Petitioner 100 percent of the overnights retroactively to 9/15/2016 and for the next eight years to right the wrong that Petitioner has suffered by constitutional violations over the last seven years. To deter future constitutional violations of fundamental rights, an effective remedy would provide the aggrieved parent more than what was taken away to effectively deter judges acting in favor of one party because of actual bias and to make known that such conduct will confer greater benefits to persons harmed than to the party unjustly served.

VIII. Appendix

A. Lee COA Decision. ("Lee-Decision")

B. Braswell-Petition for Rehearing ("Braswell-PFR"), w/o attachments. (21CA326/22SC0517).

C. Lee-Petition for Rehearing ("Lee-PFR"), w/o Attachments. 2020CA2066/22SC0561

D. Braswell-Petition for Certiorari ("Braswell-Petition"), w/o attachments.

E. Lee-Opening Brief ("Lee-Op.Br.").

WHEREFORE, Petitioner respectfully requests this court to grant the Petition.

Respectfully Submitted,

_____

/s/William Muhr, Petitioner-Father

FILED: January 23, 2023

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

Certiorari to the Court of Appeals, 2020CA2066,
21CA504 & 21CA793
District Court, El Paso County, 2016DR30155

Supreme Court Case No:
2022SC561

In re the Parental Responsibilities Concerning M.M., a Child
Petitioner: William Muhr,
and
Respondent: Kristin Lee.

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, JANUARY 23, 2023.

Appendix K1

FILED: January 23, 2023

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

El Paso County
2016DR30155

Court of Appeals Case Number:
2020CA2066
& 2021CA793
& 2021CA504

In re the Parental Responsibilities Concerning Child: M M,

Appellee: Kristin Lee,
and
Appellant: William Muhr

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:

APPEAL DISMISSED IN PART, JUDGMENT AFFIRMED IN PART AND REVERSED IN PART, AND CASE REMANDED WITH DIRECTIONS

POLLY BROCK
CLERK OF THE COURT OF APPEALS
DATE: JANUARY 23, 2023

Appendix L1

FILED: September 15, 2016

DISTRICT COURT, EL PASO COUNTY, COLORADO
Court Address:
270 S. Tejon,
Colorado Springs, CO, 80901

Case Number: 2016DR30155
Division: 10
Courtroom:

Temporary Orders

The motion/proposed order attached hereto: GRANTED.

This matter comes before the Court on review of the proposed Temporary Orders filed July 5, 2016.

The Court has considered the proposed Temporary Orders as well as the objection to the same filed by the Respondent, and Petitioner's reply.

The Court finds that the proposed Temporary Orders is an accurate reflection of the Court's legal findings, conclusions and orders from the hearing.

The Court notes that Respondent's objection to the proposed Temporary Orders is not to the form of the order. C.R.C.P. 121 1-16. The Respondent includes additional information and requests that the Court reconsider the decision already made. The Magistrate is without jurisdiction to review or reconsider her ruling. C.R.M. 6 The Court notes that this issue has been addressed in the August 10, 2016 order issued by Judge Martinez.

The proposed Temporary Orders is hereby GRANTED. The Respondent may wish to file a Motion for Review pursuant to C.R.M 7a.

The Magistrate did not need consent of the parties to rule on this matter. If any party wishes to appeal the Magistrate's decision in this matter he or she must file a Motion for Review of Magistrate's Decision with the District Court Judge assigned to this matter within 21 days from the date this Order is mailed or otherwise transmitted to the parties pursuant to Rule 7(a) of the Colorado Rules for Magistrates.

The moving party is hereby ordered to provide a copy of this Order to any pro se parties who have entered an appearance in this action within ten days from the date of this Order.

Issue Date: 9/15/2016

/S/ MEREDITH ANN PATRICK
Magistrate

DISTRICT COURT, EL PASO COUNTY, COLORADO
270 South Tejon
Colorado Springs, CO 80903

Case Number: 2016DR30155
Division M/10 Courtroom

In re Parental Responsibilities Concerning:

Petitioner: Kristin Lee
v.
Respondent: William Muhr

TEMPORARY ORDERS

This matter came before the Court for Temporary Orders Hearing on June 17, 2016. Petitioner appeared with her legal counsel, John Cyboron, and Respondent appeared pro se. The Court heard testimony from both parties and from two witnesses on behalf of Respondent. The Court received certain exhibits into evidence and took judicial notice of case number 2012 DR 2531.

Based on the evidence presented and application of relevant statutes and factors relating to parenting time, including but not limited to §14-10-124 (1.5) and §14-10-115, the Court makes the following findings:

A. The parties were in a relationship and lived together for four years.

B. The Court notes conflict between the parties when they are together but that each party has demonstrated an ability to care for their infant

daughter and place the needs of the child above their own.

C. The Court finds it appropriate for Father to have frequent visitation with the child but not overnights at this time.

D. The Court finds Father not credible with respect to his claims regarding his current income.

E. The Court will not impute income to Mother at this time as the child is under 30 months of age.

F. Having reviewed Father's business bank statements and related evidence including his testimony regarding receiving $1,789 per month in unemployment compensation, the Court finds Father's gross monthly income to be $10,561.

G. Father pays $172 per month to provide health insurance for the child.

Therefore, the Court ORDERS as follows:

1. Father shall have parenting time every Monday, Wednesday and Friday for three hours and shall have a Saturday visit for five hours one week followed by a Sunday visit for five hours the following week and alternating thereafter. The first Sunday visit will be Father's Day 2016.

2. Applying the incomes of the parties noted above, temporary child support shall be payable commencing July 1, 2016 at $1,270 per month paid by Father to Mother in equal installments of $685 on the 1st and 15th of each month.

3. Father shall continue paying for the child's health insurance premiums.

The magistrate did not need consent of the parties to rule on this matter. If any party wishes to

appeal the magistrate's decision in this matter he or she must file a Motion for Review of Magistrate's Decision with the District Court Judge assigned to this matter within 21 days from the date this order is mailed or otherwise transmitted to the parties.

SO ORDERED THIS ____day of July 2016 nunc pro tunc June 17, 2016.

BY THE COURT:

_____

District Court Magistrate

FILED: October 26, 2020

DISTRICT COURT, EL PASO COUNTY, COLORADO
270 South Tejon
Colorado Springs, CO 80903

Case Number: 2016DR30155
Division 6
Courtroom

In re Parental Responsibilities Concerning:

Petitioner: Kristin Lee
v.
Respondent: William Muhr

ORDER FROM HEARING HELD NOVEMBER 18, 2019

This matter came before the Court (Division 22-Judge Bain) for final orders hearing on November 18, 2019. Petitioner was present with her legal counsel, John Cyboron, and Respondent was present with his legal counsel, Joseph Ditlow. At the beginning of the hearing the determination was made that only enough time was available to hear parenting time issues. Child support issues were set over for a hearing in January 2020.

The Court heard testimony from both parties and received various exhibits into evidence and based on same makes the following FINDINGS:

A. Colorado is the Home State of the child.

B. The Court has jurisdiction over the parties and the child.

C. The Parties were in a relationship for approximately eight years before the birth of the child.

D. The Parties have had a very volatile relationship throughout this case.

E. Police have been called on numerous occasions and the Court specifically notes that Father has been arrested just prior to hearings on numerous occasions.

In light of the evidence and above findings, the Court enters the following parenting time orders having considered all relevant factors per §14-10-124(1.5)(a):

1. No Contact Order: The Parties shall only communicate with each other via Talking Parents or similar application except for a true medical emergency involving the child in which case normal means of communication are allowed.

2. Parenting Time: The existing temporary order parenting plan from June 2016 shall remain in place for six months. During this six months, Father cannot miss one visit. Assuming things go well, there are no issues and Father exercises all that parenting time, beginning May 1, 2020 he will have an overnight each Friday and will have the child from Friday at 3:00 p.m. to 3:00 p.m. Saturday. Beginning December 1, 2020, the plan will change to allow Father to have the child every other Friday at 3:00 p.m. to Sunday at 3:00 p.m.

3. Phone Call with Child: Each parent shall be entitled to speak to the child by phone once per day

when the child is not in that parent's custody. A text can be sent to the parent who has the child requesting that the child call the other parent.

4. Christmas: Father will have the child every Christmas from noon to 3:00 p.m.

5. Passport for Child: The Parties shall cooperate in getting a passport for the child so that she can visit her great-grandmother in Korea.

6. Surgery for Child: The surgery currently scheduled for the child in December 2019 shall go forward as scheduled over Father's objection.

7. Decision Making: Mother is granted sole decision making.

SO ORDERED this October 26, 2020, *nunc pro tunc* November 18, 2019.

BY THE COURT:

/s/_____
District Court Judge