No. _____

In the Supreme Court of the United States

In re the Marriage of:

Joseph D. Rued,
Petitioner,

vs.

Catrina M. Rued,
Respondent.

On Petition for a Writ of Certiorari
to the Minnesota Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

During a divorce proceeding in Minnesota, a young child disclosed numerous instances of sexual abuse at the hands of his siblings. A Minnesota State District Court concluded abuse did not occur, based in part on "inconclusive" investigations by a social welfare organization and county Child Protective Services, as well as evidence from child's play therapist which the District Court admitted *sua sponte*, and without the therapist being called as a witness. The District Court used the affirmative conclusion that sexual abuse had not occurred as part of its justification for denying a father, Joseph Rued, custody of his child. This child was instead sent to live with Mother and siblings.

THE QUESTION PRESENTED IS:

Without a full presentation of the facts, did the District Court's affirmative conclusion that sexual abuse had not occurred deny due process to both Joseph Rued and his child.

PARTIES TO THE PROCEEDING

Petitioner is Joseph Rued, a father.

Respondent is Catrina Rued, a mother.

STATEMENT OF RELATED PROCEEDINGS

- *In Re the Marriage of Catrina Rued and Joseph Rued,* Minnesota Court No. 27-FA-16-6330

- *In Re the Marriage of Catrina Rued and Joseph Rued,* Minnesota Court of Appeals No. A21-0798, A21-1064,

Related Cases

- *In Re the Marriage of Catrina Rued and Joseph Rued,* Minnesota Court of Appeals No. A22-0812

- *In the Matter of the Welfare of the Children of: Catrina M. Rued and Joseph D. Rued*, Minnesota Court No. 27-JV-18-5395

- *Joseph Daryll Rued and on Behalf of minor child W.O.R and Catrina Marie Rued, et al*, Minnesota Court of Appeals No. A22-0593

- *Joseph Daryll Rued and on Behalf of minor child W.O.R and Catrina Marie Rued, et al*, Minnesota Court No. 70-FA-21-13336

- *Joseph Rued v. Commissioner of Human Services*, Minnesota Court of Appeals No. A22-1420

- *Joseph Rued v. Commissioner of Human Services*, Minnesota Court No. 70-CV-22-7318

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OPINIONS BELOW

The decision of the Minnesota Court of Appeals in the direct appeal is *In re the Marriage of Catrina Rued and Joseph Rued*, Minnesota Court of Appeals No. A21-0798, A21-1064, June 27, 2022 and is attached hereto in the Appendix, ("App B") [xx]. The Minnesota Supreme Court denied a petition for a writ of certiorari timely filed on September 28, 2022 and their denial is attached hereto in the Appendix ("App A") [xx].

JURISDICTION

The judgment for which a review is sought is *In Re the Marriage of Catrina Rued and Joseph Rued*, Minnesota Court of Appeals No. A21-0798, A21-1064. This petition for writ of certiorari is timely filed within ninety days of the denial of the petition at the highest State Court in the State of Minnesota, which occurred on September 28, 2022. It implicates Father and Child's fundamental due process concerns. "The due process protection provided under the Minnesota Constitution is identical to the due process guaranteed under the Constitution of the United States." *Sartori v. Harnischfeger Corp.*, 432 N.W.2d 448, 453 (Minn. 1988). The Jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. XIV, § 1 Due Process Clause.

> [N]or shall any State deprive any person of life, liberty, or property, without due process of law.

STATEMENT OF THE CASE

Joe Rued ("Father") and Catrina Rued ("Mother") were married in 2014 and divorced in 2016. (App. C A-48). Father and Mother have one child in common, W.O.R. ("Child"). Before the dissolution of Father and Mother's marriage, Child reported to Father and Father's parents ("Grandparents") instances of physical and sexual abuse by children of Mother from a previous marriage, which Mother facilitated. Both Father and Grandparents reported this abuse to authorities in Hennepin County, Minnesota. These reports gave rise to several Child Protective Services ("CPS") investigations. Child was interviewed three times by Cornerhouse, a social service in Minnesota that conducts forensic interviews of abused children. Around the same time, Mother filed for divorce (App. C A-48).

A custody trial followed where Child did not testify, but where several of Child's disclosures were admitted under the M.R.E. 807 "residual" hearsay exception. The record contained considerable direct testimony stating that Child had been abused. (App. C A-107). The District Court, however, concluded that Child had not been sexually abused, and used this conclusion to justify granting sole legal and physical custody to Mother, depriving Father of custody of his child and any meaningful ability to protect him from further abuse.

The District Court based its conclusions, in large part, on the results of CPS and Cornerhouse investigations concerning Child. CPS concluded that the investigations they commenced were "unfounded." Cornerhouse's reports likewise drew no conclusions regarding the veracity of Child's disclosures due to "source monitoring" concerns. In neither case did the court hear testimony from the interviewers or

caseworkers about why they had formed these conclusions, nor was Father able to cross-examine investigators. Citing Wikipedia, the District Court defined the issue of source monitoring as "a type of memory error where the source of the memory is incorrectly attributed to some specific recollected experience." (App. C A-125)

Relying principally on these alleged "source monitoring" concerns, as well as other evidence outside the record which Father had no meaningful opportunity to rebut, the District Court concluded there was no affirmative evidence Child had been sexually abused. But the district court went one step farther. Despite CPS and Cornerhouse interviewers inability to form a definite conclusion regarding abuse, the District Court itself, with no specialized experience or training of any kind, came to the unsupportable conclusion that Child had not been sexually abused. (App. C A-156). Father had no opportunity to cross-examine or present evidence to challenge this "source monitoring" theory. The District Court relied solely on judicially-noticed articles from Wikipedia regarding "source monitoring" instead of expert testimony subject to rigorous cross-examination.

No reliable evidence was present in the record on the extent and hazard of the abuse Child suffered, or the veracity of Child's disclosures. Rather, the District Court based its conclusions on CPS investigations and Cornerhouse interviews which the Minnesota Court of Appeals later acknowledged did not "affirmatively determine[] that the child was not sexually abused." (App.C A-24). The District Court used the possibility of source monitoring to conclude both that Father had not adequately proven abuse and that Child had not been sexually abused at all. This

latter conclusion was impossible to derive from the record before the District Court.

Nevertheless, the District Court relied heavily on this outcome-determinative conclusion, totally devoid of evidentiary support, to deny Father custody of Child. Child continues to live with Mother and Mother's children from a previous marriage, whom Child has repeatedly said abused him and continue to abuse him.

REASONS FOR GRANTING THE PETITION

The United States Supreme Court has repeatedly recognized that parental custody rights are, and have been, profoundly important. They are an interest "far more precious than any property right." *Lassiter v. Dep't of Soc. Servs. of Durham Cnty.,* N. C., 452 U.S. 18 at 27 (1981). "A parent's interest in the accuracy and justice of the decision to terminate his or her parental status is, therefore a commanding one." *Id.* On Appeal, the Minnesota Court of Appeals failed to recognize the gravity of the District Court's error in mistaking a lack of direct evidence with an affirmative conclusion that a child had not been sexually abused. In doing so, the District Court transformed a profound uncertainty into a certainty: one that Father was not capable of rebutting.

This case therefore presents a vital but heretofore unexamined question under the due process clause: the sweeping conclusion of the District Court, based on conjecture that abuse of a child did not take place, make it important for this Court to consider to what extent a district court, acting as factfinder in a child custody proceeding, can affirmatively conclude that a child has not been sexually abused.

I. The Court Should Grant Review to Vindicate Father's Right to the Custody, Care, and Control of his Child.

"In the vast majority of cases, state law determines the final outcome" of a divorce or child custody proceeding. *Lehr v. Robertson*, 463 U.S. 248, 256 (1983). Nevertheless, this Court has repeatedly recognized that "the Federal Constitution supersedes state law and provides even greater protection for certain formal family relationships." *Id.* at 257. "The intangible fibers that connect parent and child have infinite variety. They are woven throughout the fabric of our society, providing it with strength, beauty, and flexibility. It is self-evident that they are sufficiently vital to merit constitutional protection in appropriate cases." *Id.* at 256.

One such protection is the Due Process clause of the 14th Amendment, which precludes a state from depriving its citizens of liberty or property without due process of law. Parental rights to the custody, care, and control of their children are "an interest far more precious than any property right." *Santosky v Kramer*, 455 U.S. 745, 758–59 (1982) and thus eminently protected by the Due Process clause. This Court has also recognized that maltreatment proceedings "employ imprecise substantive standards that leave determinations unusually open to the subjective values of the judge." *Id.* at 762.

In these venues, the right to a fair hearing is of critical importance: "No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it." *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 171–72 (1951) (Frankfurter, J. concurring).

II. This Court Should Grant Review Because the District Court Denied Father a Meaningful Opportunity to Prove that Child had been Sexually Abused by Summarily Concluding that Child had not been Sexually Abused.

A governmental decision resulting in the loss of an important liberty interest violates due process if the decision is not supported by any evidence. *Superintendent, Massachusetts Corr. Inst., Walpole v. Hill*, 472 U.S. 445, 455 (1985). At a minimum, Due Process requires "*some* evidence from which the conclusion of [a] …tribunal could be deduced*" U.S. ex rel. Vajtauer v. Comm'r of Immigr. at Port of New York*, 273 U.S. 103, 106 (1927). This Court has overturned decisions of lower courts where the record "was so totally devoid of evidentiary support as to be invalid under the Due Process Clause of the Fourteenth Amendment." *Douglas v. Buder*, 412 U.S. 430, 432 (1973).

This is such a case: In Minnesota, as in most jurisdictions, "district courts do not gather their own evidence." *In re Guardianship of Doyle*, 778 N.W.2d 342, 348 (Minn. Ct. App. 2010) *see also* Minn. R. Evid. 201 ("a judicially noticed fact must be one not subject to reasonable dispute…"). They rely on evidence presented by adverse parties, subject to challenge by the opposing party.

In the case before the District Court, however, the record contained numerous affirmative statements that Child had been sexually abused, and no conclusive evidence he had not. Nevertheless, the District Court concluded not only that "that [Father]

has failed to prove [Child] was physically and/or sexually abused by anyone…." (App.C A-156) but that "…[Child] was not physically or sexually abused by anyone…." (App.C A-156)

Inter alia, the District Court based its conclusions on the following:

- During the Cornerhouse interviews of Child, Child displayed "…lack of affect one would expect from a child who has claimed to have been anally raped multiple times by multiple persons." (App.C A-169)
- "As [Father] and his parents continued to report that [Child] kept saying he was abused in [Mother]'s care, the allegations become more expansive and included more perpetrators..." (App. A-179)
- "No one who can be considered an expert in this area has concluded that [Child] was sexually abused." (App.C A-180)

The District Court further dedicated two pages of its analysis to letters from Dr. Anne Gearity ("Therapist"), who opined that Child's disclosures might not be genuine. (App.C A-86 & A-87). Therapist was not a witness and did not testify. The District Court provided no evidentiary basis for admitting these letters, which it did *sua sponte* and over the objection of Father. Therapist's letters were one of two critical sources the District Court relied on for its conclusions that Child's memory had been contaminated, and thus Child's disclosures could not be believed. (App.C A-87).

At best, these conclusions stand for the proposition that Child's disclosed sexual abuse had not been proven, not for the definite proposition that Child

had not been sexually abused. "In all kinds of litigation it is plain that where the burden of proof lies may be decisive of the outcome." *Speiser v. Randall*, 357 U.S. 513, 525 (1958). Here, the District Court speculated from the absence of conclusive evidence that the Child had been sexually abused to conclude that sexual abuse had not happened at all. This worked to Father's everlasting detriment, as the District Court used these conclusions to deny Father custody of the Child.

Using these conclusions, The District Court determined:

- "If [Child] is being physically and/or sexually abused in [Mother]'s custody, then clearly he is most safe with [Father]. However, if he is not being physically and/or sexually abused in [Mother]'s custody, then [Father]'s allegations are detrimental to [Child]'s health and well-being and he is most safe with [Mother]." (App.C A-157).
- "There is a concern that these continued inquiries will have a negative emotional impact on [Child] as he may begin to believe that he is a victim of abuse when in fact he is not." (App.C A-160).
- "Until such time as [Father] can reduce his inflexibility, come to grips with the fact that [Child] was not abused, and recognize how harmful his own actions and that of his parents have been to [Child] personally and to the relationships [Child] has with his mother and siblings, it is necessary for [Mother] to have the bulk of the parenting time with [Child]." (App. C A-162 & A-163).

Following an appeal, The Minnesota Court of Appeals affirmed the District Court's decision. The Court of Appeals concluded that "[a]ny error by the district court in admitting [Therapist]'s letters was harmless" even though the District Court had relied heavily on these letters to conclude Child had not been abused. (App.B A-37). The Minnesota Court of Appeals upheld the District Court's analysis of the statutory factors used to determine custody in Minnesota, which the Court of Appeals found sufficient given the District Court's conclusion that Child had not been sexually abused.

The Court of Appeals acknowledged that "…[F]ather is technically correct that none of the investigations affirmatively determined that the child was not sexually abused…." (App.B A-24) but nevertheless held that "[t]he District Court did not clearly err by drawing a reasonable inference that the child was not sexually abused based on four unsubstantiated CPS investigations, three [Cornerhouse] forensic interviews, and one [Child In Need of Protective Services] proceeding." (App.B A-24).

III. The Court Should Grant Review Because the District Court Excluded From Consideration an "Essential Element" of the Court's Ultimate Determination.

Due Process requires more than a hearing. Rather it is "the opportunity to be heard in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). "The hearing, moreover, must be a real one, not a sham or a pretense." *Palko v. State of*

Connecticut, 302 U.S. 319, 327 (1937), *overruled on other grounds by Benton v. Maryland*, 395 U.S. 784, 89 (1969). The lack of ability by a petitioner to challenge an essential element of the determination itself is repugnant to fundamental due process. "[F]airness can rarely be obtained by secret, one-sided determination of facts decisive of rights." *Joint Anti-Fascist Refugee Comm.*, 341 U.S. at 170.

This Court has recognized that a hearing which excludes consideration of an essential element from consideration does not comport with fundamental Due Process concerns: "[t]he hearing required by the Due Process Clause must be 'meaningful,' . . . . It is a proposition which hardly seems to need explication that a hearing which excludes consideration of an element essential to the decision … does not meet this standard." *Bell v. Burson*, 402 U.S. 535, 542 (1971).

The *Bell* court considered a statutory driver's license revocation scheme in which a driver could be deprived of his license without an ability to contest fault for the accident underlying the revocation action. This Court found such a scheme did not comport with fundamental due process concerns. Likewise, in *Stanley v. Illinois* this Court extended the determination in *Bell* to a statutory scheme in which allegedly unfit parents could be deprived of custody without the ability to contest the determination that they were unfit parents.

This Court found both schemes "repugnant to the Due Process Clause" because they deprived petitioners of a protected interest "without reference to the very factor . . . that the State itself deemed

fundamental to its statutory scheme." *Stanley v. Illinois*, 405 U.S. 645, 653 (1972).

In the present case, the veracity of Child's claims was clearly an essential element of the District Court's determination regarding Father's custody of Child. The District Court had an obligation, indeed a duty, to make sure these claims (and the evidence to the contrary) were presented fairly, with an adequate opportunity for rebuttal by both sides. "Since the State has an urgent interest in the welfare of the child, it shares the parent's interest in an accurate and just decision." *Lassiter*, 452 U.S. at 27.

Instead, Father was denied a meaningful ability to contest a fact the District Court clearly considered critical to its analysis of whether Father was a fit parent: Father was not allowed to call or cross-examine CPS workers or Cornerhouse workers, and the Therapist's letters were admitted *sua sponte* without Therapist even being sworn as a witness, let alone being cross-examined. On the other hand, the District Court repeatedly and systematically denied Father the ability to offer evidence that demonstrated the abuse of Child had occurred: for example, the District Court precluded the admission of Grandparents' journals, which contained contemporaneous accounts of Child's abuse as reported by the Child.

"Procedure by presumption is always cheaper and easier than individualized determination. But when, as here, the procedure forecloses the determinative issues of competence and care, when it explicitly disdains present realities in deference to past formalities, it needlessly risks running roughshod

over the important interests of both parent and child." *Stanley*, 405 U.S. at 656–57.

In the decision on appeal, the Minnesota Court of Appeals summarily concluded that it was not all abuse of discretion for the District Court to preclude such important considerations from its analysis, but the Minnesota Court of Appeals failed to appreciate the breathtaking scope of the District Court's error. This was not "discretion in the legal sense of that term, but… mere will. It [was] purely arbitrary, and acknowledge[d] neither guidance nor restraint." *Yick Wo v. Hopkins*, 118 U.S. 356, 366–67 (1886).

CONCLUSION

This Court has an opportunity to correct a grievous injustice by the District Court and the Minnesota Court of Appeals, one that critically implicates fundamental due process concerns. Father recognizes that custody determinations are characteristically an area of State, rather than Federal, law. *See Lehr v. Robertson*, 463 U.S. at 256; *see also Sosona v. Iowa,* 419 U.S. 393, 404 (1975). However, the issues presented are so profound, and the error of the District Court and the Minnesota Court of Appeals so clear, that it is imperative this Court act. For the reasons set forth above, petitioner respectfully requests that this Court grant the petition for writ of certiorari.

Respectfully submitted,

s/ William J. Mauzy

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DECEMBER 27, 2022

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Appendix C

Amended Order, State of Minnesota, Fourth Judicial District, *In Re the Marriage of Catrina Rued and Joseph Rued*, Court File No. 27-FA-16-6630 (October 22, 2020)……..A47

Appendix A

STATE OF MINNESOTA
IN SUPREME COURT

A21-0798
A21-1064

In re the Marriage of:

Catrina M. Rued,
Respondent,

vs.

Joseph D. Rued,
Petitioner.

ORDER

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

IT IS HEREBY ORDERED that the petition of Joseph D. Rued for further review be, and the same is, denied.

Dated: September 28, 2022

BY THE COURT:

s/
Lorie S. Gildea
Chief Justice

Appendix B

This opinion is nonprecedential except as provided by Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0798
A21-1064

In re the Marriage of:
Catrina M. Rued, petitioner,
Respondent,
vs.
Joseph D. Rued,
Appellant.

Filed June 27, 2022
Affirmed
Frisch, Judge

Hennepin County District Court
File No. 27-FA-16-6630

Beth Wiberg Barbosa, Gilbert Alden Barbosa PLLC, Edina, Minnesota (for respondent)
James J. Vedder, Moss and Barnett, Minneapolis, Minnesota (for appellant)
Considered and decided by Reilly, Presiding Judge; Worke, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Following the district court's order granting respondent-mother sole legal and physical custody of the parties' minor child, appellant-father argues that the district court clearly erred by making certain findings of fact and abused its discretion by granting mother custody of the child. Father additionally argues that he is entitled to a new trial, the district court was biased against him, and the district court

abused its discretion by awarding mother duplicate attorney-fee awards. We affirm.

FACTS

In 2013, appellant Joseph D. Rued (father) began dating respondent Catrina M. Rued (mother). Mother has two children from a previous marriage, M.A.R., born in 2006, and K.A.R., born in 2009 (stepdaughter and stepson, respectively; stepchildren, collectively). In February 2014, mother and father married. Shortly thereafter, mother became pregnant with W.O.R. (the child).

Almost immediately after marriage, mother and father had serious conflict. For example, father filed for divorce just two months after the wedding (although he did not pursue the divorce proceedings). Around that same time, mother sought to travel from Minnesota to Wisconsin, but father physically blocked her from leaving the premises of the marital home. And father's alcoholism became significantly worse during spring 2014. Father admitted to using alcohol and marijuana daily and cocaine weekly during this period.

In October 2014, mother gave birth to the child.

Sexual-Abuse Allegations

Shortly after the child's birth, father and his parents, Scott and Leah Rued (grandfather and grandmother, respectively; grandparents, collectively), allegedly witnessed stepson exhibiting sexualized behavior toward the child. Grandparents alleged,

for example, that they witnessed video footage of stepson (then age six) "touching, groping, [and] kissing" the child (then 17 months old) in his crib.[1]

[1]This video footage was never produced to the district court or any other child-protection or law-enforcement authority.

In September 2016, father and grandparents reported to Hennepin County child-protection services (CPS) that mother failed to protect the child from sexual abuse by stepchildren. Grandparents specifically claimed that "[stepdaughter] and [stepson's] therapist confirmed that they are likely victims of sexual abuse." CPS initiated the first of five child-protection investigations into the health and safety of the child. CPS interviewed stepchildren, mother, father, grandparents, and stepchildren's therapist. Stepdaughter told the investigator that "[father] drinks wine a lot and gets drunk," "[father] has broken plates all over the kitchen," and denied the sexual-abuse allegations. Stepson similarly stated that "his step-dad is drunk and gets drunk by drinking too much wine" and denied the sexual-abuse allegations. Stepchildren's therapist stated that neither stepchild disclosed sexual abuse but she could not rule out the possibility of sexual abuse. CPS concluded that there was "not a preponderance of the evidence to make a maltreatment finding in any of the allegations."

Around this same time, mother filed for divorce. Father moved to grandparents' house while mother continued living in the marital home with stepchildren. Father and mother shared physical custody of the child pursuant to a court-ordered schedule. Mother was ordered to not leave stepson and the child together unsupervised due to the allegations of sexual abuse.

In September 2017, father reported to CPS that the child allegedly disclosed that stepchildren remove the child's clothes and rub his private parts. In October 2017, father reported to CPS that the child, while riding in the car with grandmother, allegedly stated that stepson touched the child's private parts. CPS opened a second investigation,

interviewing stepchildren, the child, and mother, and having "short conversations" with father and grandmother. Stepdaughter and stepson each separately indicated that they "barely play with [the child] and are not allowed to be alone with him." They stated that "they have never rubbed his body nor removed his clothing nor changed his diaper." Stepdaughter indicated that her home life was difficult when father was around due to his drinking and anger issues. The child denied playing with stepdaughter and stepson and, "[w]hen asked about rubs, his responses were not understandable."

In October 2017, father was instructed to bring the child to CornerHouse, a child-advocacy center. CornerHouse conducted a sexual-abuse forensic interview of the child. CornerHouse concluded that, although "[the child] repeatedly mentioned the names [stepson] and [stepdaughter] when talking about 'pee' and 'butt' and 'touch,'" "the connection was unclear and [the child] seemed to vacillate." CornerHouse determined that "[the child's] ability to source monitor was still developing" and "strongly recommended that questioning of [the child] cease immediately."[2] CPS concluded the investigation with "no finding of maltreatment or neglect."

In June 2018, the child allegedly disclosed to grandmother that stepchildren penetrated his anus with their fingers. CPS opened a third investigation.

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[2] A source-monitoring problem occurs when someone is unable to distinguish how they know something—i.e., whether they actually experienced an event or inaccurately believe that they experienced an event because others said that an event happened to them. The parties' neutral custody evaluator testified that "children [the child's] . . . age are the most vulnerable to source-monitoring problems, because [of] their cognitive development[]."

In June 2018, CornerHouse conducted a second forensic interview of the child. The child again "did not make any disclosures as to being intentionally physically hurt or being sexually abused." Father also brought the child to a hospital, which concluded that there was no "finding concerning for abuse." In August 2018, CPS closed the case, determining that the sexual-abuse allegations were "unfounded."

In September 2018, father allegedly witnessed the child in the shower with the child's finger in his anus. Father asked the child what he was doing, and the child allegedly responded, "I am doing what [stepdaughter] does to me and what [stepson] does to me." Father reported this incident to CPS, which opened a fourth investigation. In October 2018, father reported additional allegations to CPS after the child (then approximately four years old) allegedly disclosed that mother and stepdaughter touched his penis "when it was big" and that mother had her "mouth on him." Shortly thereafter, CPS interviewed the child. The CPS investigator made the following interview notes:

> CPI asked if anyone has touched him on his privates recently, he said [stepdaughter] . . . and [stepson]. CPI asked if there was anyone else, he said Mommy, [mother's ex-husband], [grandmother], and [mother's father]. . . . CPI asked where on his private parts he was touched, he said butt and penis, both. CPI asked when this happened, he said last time. CPI asked

> what is last time and he said, "like last, um night. . . ." [H]e said he was on the sofa watching TV; he said [stepson] was sitting on his spot, CPI asked when this happened, he said it "happened tomorrow." CPI asked who was there and he said, "[stepdaughter], [stepson], and Momma. . . ."

CornerHouse interviewed the child a third time. CornerHouse again found that, "[i]n regards to the topic of concern, [the child] did name names, but he was unable to provide any context, or sensory or peripheral details." CornerHouse stated that it "would expect [the child] to provide more clear information as to what he had experienced. Instead, it appears that [he] may have been instructed to say that he was touched by his other family members." In November 2018, CPS "ruled out" the sexual-abuse report.

In December 2018, CPS reported a claim of mental injury by father against the child. The Hennepin County Department of Human Services (the county) initiated a child in need of protection or services (CHIPS) petition based on father's alleged false accusations of sexual abuse involving the child. The record in this appeal contains few details about the CHIPS proceedings. However, the record shows that the juvenile court refused to dismiss the CHIPS petition on father's motion because the county stated a prima facie case and that father was only allowed supervised visits with the child for a time. In August 2019, the CHIPS petition was dismissed.

Gluten and Dairy Allergy Allegations

In addition to their concerns that the child was sexually abused, father and grandparents expressed concern that the child had (and continues to have) severe food allergies to gluten and dairy. In October 2016, responding to father's concerns, mother had the child tested for food allergies by Dr. David Schroeckenstein, an allergy specialist at the child's pediatric clinic. Dr. Schroeckenstein conducted a skin allergy test which showed that the child was allergic to neither wheat nor dairy.[3] The following month, father took the child to another allergy specialist, Dr. Robert Zajac, who conducted a blood allergy test. The blood allergy test showed that the child was moderately allergic to dog dander[4] but not cow's milk or wheat.[5] In September 2017, father took the child to see Dr. Zajac for another blood allergy test. This second blood allergy test indicated that the child was allergic to casein, a protein in cow's milk, but not gluten.

Notwithstanding these test results, father and grandparents remained convinced that the child had serious allergies to dairy and gluten. In May 2017, after mother notified father that the child ate macaroni and cheese for dinner, father called the police to conduct a welfare check on the child at

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[3] The skin allergy test could only determine whether the child had food allergies, not food intolerances.

[4] Father and grandparents have a dog at their house, which they assert is hypoallergenic. Mother does not have a dog in her home.

[5] The test showed that the child's level of allergic reaction was a "0/1" on a 6-point scale, meaning that he had a "[v]ery low level" of dairy intolerance. The last page of the test result confusingly appears to contain a separate allergy analysis of the child, this time on a 0-3 scale. The numerical entries on this last page, however, are illegible. Moreover, it is unclear how or why a separate test result was reached and how it differs from the primary test result showing that the child had a very-low level of dairy intolerance.

mother's residence. Father repeatedly contacted and admonished the child's providers, including the child's daycare centers, for serving the child foods containing dairy and gluten. In March 2020, the child's daycare disenrolled him after father repeatedly contacted the daycare about the child's diet in what the district court found was harassing behavior.[6]

In 2020, during the custody trial, the child underwent further allergy testing at the Mayo Clinic. The Mayo Clinic conducted another skin allergy test on the child, again finding that he was allergic to dog dander but not dairy.[7] The Mayo Clinic did not test the child for allergies to gluten.

Custody-Evaluation Report and Psychological Evaluations

In November 2016, the district court appointed licensed psychologist Mindy Mitnick to conduct a neutral custody evaluation. This evaluation was more involved and took significantly longer than other evaluations that she had previously completed; Mitnick issued her full report in September 2018, almost two years after her appointment. Mitnick's report noted that "[t]his case's outcomes are fraught with peril for [the child] . . . . I make the following recommendations with the knowledge that the Court will have information available that was not available to me." Mitnick's report analyzed the 12 best-interests factors, recommending that father and mother share joint custody of the child.

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[6] A referee heard this matter and made recommendations which the district court adopted. Because the district court adopted the referee's recommendations, we refer to the actions of the referee as the actions of the district court. Minn. R. Civ. P. 52.01 ("The findings of a referee, to the extent adopted by the court, shall be considered as the findings of the court.").

[7] The Mayo Clinic test also found for the first time that the child was allergic to peanuts.

Mitnick's report noted several peculiarities about father's conduct involving the child and stepchildren. The report described, for example, that "[father] indicated that [the child] said . . . no less than 10 times, '[stepdaughter] and [stepson] poop on [his] nose' and [father] took this to be literally true because [the child] is 'never nonsensical.'" The report noted another occasion that father reported that the child disclosed that stepson "massages his testicles." But the report was skeptical of father's allegation, noting that "[a]n almost three-year-old would not have used the word 'massage' . . . . 'Massage' is a description provided by [father]." Mitnick's report described another occasion when father "was concerned about [stepdaughter (then approximately 11 years old)] spreading her legs while sitting on the floor and doing a backwards bridge because she was 'presenting herself.'" Mitnick's report disagreed with father's concern, stating that "[t]hese are both entirely typical behaviors for girls and do not have any sexual connotation."[8]

Mitnick concluded her report by stating that it seemed unlikely that mother or stepchildren were abusing the child. She wrote:

> There is no independent information supporting a determination that [the child] has been physically or sexually abused. [The child] has

[8] Mitnick's report also noted that "the attorney for [father and grandparents] stated in court in June 2018 that [grandmother] reported suspected abuse of [the child] *because I told her to*. I do not direct clients to take any action during evaluations because that would compromise my role as a neutral evaluator." (Emphasis added.)

> been sensitized to report negative information about his mother and [step]siblings. He may be reporting accurately but the interpretation is inaccurate and he may be reporting things that did not occur as young children sometimes do. He may also be reporting what he has heard others say to him and what he has overheard that others did not intend him to hear. He gains a great deal of attention from these negative reports.

The parties also hired licensed psychologist Dr. Samuel Albert as a neutral evaluator to conduct psychological assessments of the parties. Dr. Albert issued his final reports in July 2018, which Mitnick relied upon in her report.

Custody Trial

Between February and July 2020, the district court held a six-and-a-half-day custody trial. The district court received the following evidence.

Mother testified that she always supervised the child when he was with stepchildren following the court order requiring that stepson not be left unsupervised with the child. Mother testified that after Dr. Schroekenstein concluded that the child was not allergic to gluten or dairy, she resumed feeding the child those foods. Mother testified that she did not witness the child experience any adverse reaction after consuming gluten or dairy. Mother testified that the child's daycare also fed him foods containing gluten and dairy, and the daycare never contacted

mother about the child having an allergic reaction. Mother also testified to certain allegations of domestic abuse, including that in January 2016, father punched and slapped her repeatedly, resulting in stepdaughter calling the police.

Mother testified that on at least four occasions, father woke her up in the middle of the night to exorcise demons from her. Mother testified that "the [demon] extraction process involved [father] usually on top of me or pinning me down, pushing his forehead against mine, screaming for demons to get out," although the severity of the incident depended father's level of intoxication. Mother testified that to get the demon-extraction sessions to stop, she had to admit that her father (the child's maternal grandfather) molested her. Mother testified that father also held similar demon-extraction sessions with stepson.

Father testified to numerous examples of sexualized behavior by the stepchildren. He testified that in 2014, he found the stepchildren in a closed room with stepson's hand up stepdaughter's skirt. Father testified that he witnessed stepson (then six years old) on top of the child (then six or seven months old), gyrating his groin on the child's face with an erection. Father testified to additional instances of witnessing stepson acting in sexually inappropriate ways and performing sexually inappropriate acts on the child. Father testified that the child disclosed that mother also sometimes participated in the sexual abuse and that she was present during instances when the stepchildren would touch the child's private parts. Father also testified that mother physically abused the child.

Father testified that mother is a "master manipulator" and was able to manipulate stepchildren, the CPS investigators, the therapists,

and other experts into believing her version of events. Father testified that he believes in demons but never performed an exorcism as mother testified; instead, he "prayed for her." Father also testified that the child did not like his play therapist, whom father alleged the child referred to as "Momma's friend."

Father testified to two instances when police took him to the psychiatric unit of a hospital for alcohol detoxification. Father testified, regarding one of the incidents, that he returned to grandparents' home drunk and found the house locked; he broke several windows and fell asleep outside. When grandparents returned, they called the police. The police took father to a hospital psychiatric ward. But according to father, the police officer told him, "you seem fine" and "you really shouldn't be here [in the psychiatric unit]."

Grandmother testified that she learned to ask children about sexual-abuse allegations at a parenting class about child sex abuse that she took over 20 years ago. Grandmother testified that she kept logs of the child's sexual-abuse disclosures based on these parenting-class techniques. She testified that she witnessed stepson "dry humping" the child on multiple occasions and witnessed the child make numerous disclosures about sexual abuse by the stepchildren. Grandmother testified that she was "99.99% certain[]" that stepson, stepdaughter, *and* mother sexually abused the child.

Grandfather testified to similar allegations of sexual abuse against the child. He testified that there was no doubt in his mind that stepson, stepdaughter, and mother sexually abused the child. Father's nanny provided similar testimony.

Mitnick testified that she did not observe any behavior between stepson and the child that indicated that stepson sexually abused the child. She also

testified to the source-monitoring problem and explained that she did not believe that father and grandmother's questioning of the child was appropriate. Mitnick testified that she had "very serious concerns" about father and grandparents' "inability or refusal . . . to relinquish that belief [of sexual abuse being perpetrated against the child] in the face of multiple child protection assessments." Lastly, she testified that the false sexual-abuse allegations "[are] such a serious issue that I have to consider . . . that that alone disqualifies [father] from having legal and physical custody."

Dr. Albert testified at trial that he believed that father and grandparents were much more credible than mother.

Daycare Disenrollment and Daycare Order

As of January 2019, the child was enrolled in a private preschool. In March 2020, the preschool disenrolled the child after father repeatedly contacted it about the child's alleged food allergies. The district court credited evidence showing that father's contacts with the daycare were threatening and harassing, awarded mother attorney fees, and ordered father to not "hav[e] any contact with any future preschool or daycare or childcare provider for the child."[9]

Custody Order

In August 2020, the district court issued an 86-page custody order. The district court made numerous, detailed findings of fact.[10] It found that

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[9] Father filed a motion to amend the findings from this order, which the district court denied without a hearing.

[10] The district court noted that mother's counsel "raised virtually no objections throughout the trial" which resulted in "a plethora of evidence [being] introduced that otherwise would not have been admitted."

"both parties have made claims during the litigation that has caused their veracity to be questioned." The district court found that despite mother's sometimes-inconsistent statements, "it is [mother] [who] is the more credible of the parties, and that [father] is far less credible." The district court specifically found that "[father] is not a credible reporter of historical facts," father, grandparents, and the nanny are strongly biased against mother, and father, grandparents, and nanny's testimonies were "rehearsed."

The district court particularly emphasized the food-allergy and sexual-abuse issues. The district court found that the child was not allergic to dairy or gluten, but he was allergic to dog dander. The district court noted that "the child only showed [allergy] symptoms when in [father's] care." The district court also found that not only did father "fail[] to prove that [the child] was physically and/or sexually abused by anyone," but it specifically found that the child "was not physically and/or sexually abused by anyone, specifically [stepson], [stepdaughter], [mother], [mother's] ex-husband or her parents." (Emphasis in original.)

Turning to the question of custody, the district court stated that "[i]n spite of [father's] protests to the contrary the issue has always been simple: in whose custody is [the child] most protected." It opined:

> If [the child] is being physically and/or sexually abused in [mother's] custody, then clearly he is most safe with [father]. However, if he is not being physically and/or sexually abused in [mother's] custody, then [father's]

> allegations are detrimental to [the child's] health and well-being and he is most safe with [mother].

The district court then methodically analyzed the 12 best-interests factors and concluded that it was in the child's best interests for mother to have sole legal and physical custody of the child. These best-interests findings span 16 pages of the district court's order.

The district court made the following best-interests findings. The district court found that the child's physical and emotional needs were best met by mother because father's inflexible beliefs that the child has been sexually abused and has serious food allergies were harming the child. The district court found, for the same reasons, that the child's medical and mental-health needs were best met by mother. The district court found that although both parties contributed to the domestic violence during their marriage,

"because they are now separated and are likely to have only minimal contact in the future, this conduct will not affect [the child]." The district court instead stated that the "more salient concern" was whether the child had been physically and sexually abused while in mother's care. And, as it previously found, the district court determined that the child had not been so abused. The district court found that "these false allegations have endangered the child as they can alienate the relationship he enjoys with his mother and [step]siblings. It could also cause him to believe that he was victimized when, in fact, he was not."

The district court next found that the mental- and chemical-health circumstances of the parents favored mother. The district court found that mother suffers from "significant mental health issues," including post-traumatic stress disorder (PTSD), but

she is improving in therapy. The district court found that father "had serious chemical health issues during the marriage" and "has been sober for almost four years now." "However, [father] has significant barriers to understanding and admitting the effect that his drinking had on the marriage, and that affects his views on parenting issues related to [the child] in the present." The district court found that "[father] shows no signs of letting go of his uncompromising ways, and this will always work to [the child's] detriment. As such, this factor favors [mother]."

The district court also found that mother was more suited to provide ongoing care for the child and that the parties' proposed arrangements favored mother because "[father's] proposal . . . would effectively eliminate [the child's] relationship with his [step]siblings." The district court found that the benefits and detriments to limiting parenting time with one parent weighed in mother's favor because father's stringent belief that the child has been sexually abused "is detrimental to [the child]." The district court found that the parents' ability to support one another weighed in mother's favor. The district court stated that "[t]here are serious doubts that [father] will ever support [the child's] relationship with [mother]" but that "[mother], on the other hand, has expressed a willingness to try to work with [father] to co-parent [the child]." The district court concluded that each factor weighed either neutrally or in mother's favor and awarded sole legal and physical custody of the child to mother.

The district court then granted mother's request for attorney fees. The district court ordered that "[father] shall pay to [mother's] attorney the sum of $150,000.00 in need and conduct-based attorney's fees."

Posttrial Motions and Contempt Proceedings

In September 2020, father filed motions for a new trial and amended findings. Father argued that he was entitled to a new trial because the district court solely relied on two issues—whether the child was sexually abused and had food allergies—rather than assess each of the best-interests factors. Father also argued that a new trial was required because the district court "improperly made credibility determinations based on its own personal and professional experience" and "numerous procedural irregularities . . . occurred during trial." Father then filed a nearly 250-page motion for amended findings, contesting numerous facts in the district court's custody order. [11] Mother then filed a motion requesting that father be prohibited from having any contact with the child's daycare provider and from "harassing" mother regarding the child's alleged food allergies. Mother attached to her motion an affidavit from the director of the child's new daycare, wherein the director averred that father delivered multiple harassing and threatening letters relating to the daycare feeding the child foods containing gluten and dairy. Father also filed another motion in December 2020, requesting an order that the child undergo a full-scope food-allergy examination. In January 2021, the district court held a hearing on the parties' motions.

On March 1, 2021, the district court ordered father to show cause and appear relating to the contact he made with the child's new daycare regarding the child's diet. The district court alleged that father violated its March 2020 order, which barred father "from having any contact with any

[11] The district court initially denied father a hearing on his motion to amend the findings, but later granted a hearing.

future preschool or daycare or childcare provider for the child." On March 22, 2021, the district court held a contempt hearing and examined father as to whether he violated the March 2020 order. Father testified that he did not violate the March 2020 order because the subsequent August 2020 custody order expressly revoked all prior orders, there was nothing in the August 2020 custody order about the child's diet, and father was expressly allowed under Appendix A to the August 2020 custody order to have information related to the child's medical records. The district court declined to hold father in contempt but stated that it could have and issued a warning to both parties to not violate its orders going forward.

In April 2021, the district court issued an order on the parties' posttrial motions. The district court denied father's motion for a new trial, concluding that it did not make the custody trial "a two-issue case," did not make credibility determinations based on its own experience, and no procedural irregularities occurred during trial. The district court denied father's motion for amended findings based on its broad discretion to make custody determinations and concluded that his motion "is in reality an unauthorized motion for reconsideration." The district court also denied father's motion to have the child further tested for food allergies. The district court granted mother's additional request for conduct- and need-based attorney fees. And the district court issued a new order prohibiting father from having contact with the child's future daycare providers.

Also in April 2021, mother moved the district court to prohibit father and grandparents from having contact with the child's future pediatrician and future therapist and award mother additional attorney fees. In an affidavit attached to this motion, mother testified that no doctor at the child's pediatric clinic

would see the child because of father's numerous harassing communications. Mother also testified in the affidavit that the child's therapist discontinued serving the child because of father's harassing behavior. The following week, father responded to mother's motion by moving the district court to find mother in contempt for violating the district court's prior orders.

In May 2021, the district court held a hearing on these motions and issued an order shortly thereafter. The district court found that father violated its prior order by failing to pay mother's attorney $150,000 in fees.[12] The district court found that father's communication with the child's pediatrician was "harassing and abusive" and that the child's pediatrician terminated his services because of father's behavior. The district court granted mother's motion to prohibit father from having contact with the child's future pediatrician. The district court also found that the child's therapist terminated her services because of father's behavior. The district court granted mother's motion that father be prohibited from contacting the child's future therapist. The district court further found that "[father] and [grand]parents continue to endanger [the child] while he is in their care." The district court prohibited father "and any third-party that acts on his behalf, including [grand]parents," from having contact with the child's medical providers. The district court also granted mother's request for additional attorney fees.

Father appeals.

DECISION

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[12] The district court noted that father was likely in contempt of court, but that a contempt hearing would need to occur at a later date.

The record in this case is voluminous, consisting of 10 volumes of trial transcripts, totaling over 2,000 pages; 20 volumes of evidentiary material, containing over 3,000 pages and hundreds of exhibits; and over 40 volumes of documents, containing more than 8,000 pages. All together, we have carefully and painstakingly reviewed more than 13,000 pages of record in addition to the parties' briefs and multiple lengthy district court orders. We specifically highlight the importance of the parties' respective obligations to provide complete and accurate citations to the record in their briefs given the voluminous record and detailed allegations in this appeal. As our caselaw makes clear, citations to the record "are particularly important where . . . the record is extensive." *Hecker v. Hecker*, 543 N.W.2d 678, 681 n.2 (Minn. App. 1996), *aff'd*, 568 N.W.2d 705 (Minn. 1997).

In their respective briefs, both parties make numerous factual assertions without citing to the record. Failure to cite to the record is a violation of Minn. R. Civ. App.
P. 128.03, and "[a] flagrant violation of the rules to fail to provide citations to the record may lead to non-consideration of an issue or dismissal of the appeal." *Brett v. Watts*, 601 N.W.2d 199, 202 (Minn. App. 1999) (quotation omitted), *rev. denied* (Minn. Nov. 17, 1999). Although we do not conclude that any of the parties' failures to cite to the record in this case are flagrant, we note that the failure to comply with the rule diminishes the persuasiveness of the briefs. *See* 3 David F. Herr & Eric J. Magnuson, *Minnesota Practice* § 128.3 (1996).

Father makes four arguments on appeal. He claims that the district court: (1) clearly erred and abused its discretion when it granted mother sole custody of the child; (2) was biased against him; (3)

abused its discretion in various evidentiary rulings, necessitating a new trial; and (4) erred by granting mother duplicate attorney-fee awards. We address each argument in turn.

I. The district court did not clearly err by making certain findings of fact or abuse its discretion by granting mother sole custody of the child.

Father argues that the district court clearly erred when it found as a matter of fact that the child was not sexually abused and was not allergic to gluten or dairy and that, in the context of those erroneous findings, the district court abused its discretion when it granted mother sole custody of the child.[13]

A. The district court did not clearly err by making certain findings of fact.

We review the district court's findings of fact for clear error. *Thornton v. Bosquez*, 933 N.W.2d 781, 790 (Minn. 2019); *see also A.S. v. K.C.-W. (In re Welfare of C.F.N.)*, 923 N.W.2d 325, 334 (Minn. App. 2018), *rev. denied* (Minn. Mar. 19, 2019). Fact findings are clearly erroneous "when they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021). We "giv[e] deference to the district court's opportunity to evaluate witness credibility and revers[e] only if we are left with the definite and firm conviction that a mistake has been made." *Thornton*,

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[13] Father also argues that the district court abused its discretion by initiating a contempt proceeding against him. But the district court did not hold father in contempt. This issue is moot as we cannot provide father any relief. *State ex rel. Young v. Schnell*, 956 N.W.2d 652, 662 (Minn. 2021); *A.J.S. v. M.T.H. (In re Paternity of B.J.H.)*, 573 N.W.2d 99, 105 (Minn. App. 1998).

933 N.W.2d at 790 (quotation omitted). The clear-error standard does not permit us to reweigh the evidence, to engage in fact-finding anew, or to reconcile conflicting evidence. *Kenney*, 963 N.W.2d at 221-22. "When the record reasonably supports the findings at issue on appeal, it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary." *Id.* at 223 (quotation omitted).

1. The district court did not clearly err when it found that the child had not been sexually abused.

Father argues that the district court clearly erred when it found that the child was not sexually abused by mother, stepson, or stepdaughter. Father specifically asserts that this finding is unsupported by the record because the CPS investigations and relevant experts did not reach such a conclusion; they only found that the sexual-abuse allegations were "unfounded."

There is ample evidence in the record to support the district court's finding. CPS conducted *four* separate investigations into allegations that the child was sexually abused. None of these investigations concluded that there was evidence to support the allegations. And CPS did not just determine that the allegations were "unfounded"; it also determined that there was "not a preponderance of the evidence to make a maltreatment finding," made "no finding of maltreatment or neglect," and "ruled out" the sexual-abuse allegations. As part of these investigations, the child was subjected to three forensic interviews. These interviews similarly did not provide any support for the allegations of abuse. Instead, CPS arrived at the conclusion that father was making false sexual-abuse allegations and

launched an investigation into *him* for causing mental injury to the child. While father is technically correct that none of the investigations affirmatively determined that the child was not sexually abused and the CHIPS proceeding against father was ultimately dismissed, these investigations *do* reasonably support the district court's finding that the child was not sexually abused. The district court did not clearly err by drawing a reasonable inference that the child was not sexually abused based on four unsubstantiated CPS investigations, three forensic interviews, and one CHIPS proceeding.

Father similarly asserts that Mitnick's testimony does not lend support to the district court's sexual-abuse finding. He relies on Mitnick's testimony to argue that "she could not say with certainty what happened to [the child] because something that is unsubstantiated could still be true." Even if we agreed with father's argument, Mitnick's testimony that she could not conclude "with certainty" that the child was sexually abused does not contradict the district court's finding. *See Kenney*, 963 N.W.2d at 221 (stating that findings are clearly erroneous only "when they are manifestly contrary to the weight of the evidence"); *Loth v. Loth*, 35 N.W.2d 542, 546 (Minn. 1949) ("[O]n appeal, error is never presumed. It must be made to appear affirmatively before there can be reversal. . . . [T]he burden of showing error rests upon the one who relies upon it.").

Our independent review shows that Mitnick's testimony and report supports the district court's finding. In her report, Mitnick opined that "[t]here is no independent information supporting a determination that [the child] has been physically or sexually abused" and "[the child] gains a great deal of attention from these negative reports." Mitnick testified at trial that the child may have been

reporting events that were told to him rather than events he experienced himself. Mitnick specifically testified that she had "very serious concerns" about father and grandparents' "inability or refusal . . . to relinquish that belief [of sexual abuse being perpetrated against the child] in the face of multiple child protection assessments" and that the "false" sexual-abuse allegations "[are] such a serious issue that I have to consider . . . that that alone disqualifies [father] from having legal and physical custody [of the child]."

Contrary to father's assertions, the CPS investigations, forensic interviews, and Mitnick's report and testimony support rather than undermine the district court's finding that the child was not sexually abused. Accordingly, the district court did not commit clear error by making such a finding.[14]

2. The district court did not clearly err when it found that the child was not allergic to gluten or dairy.

Father next argues that the district court clearly erred when it found that the child was not allergic to foods containing dairy or gluten.[15] Father

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[14] We also note that we defer to the district court's credibility determinations. *Thornton*, 933 N.W.2d at 790. Regardless, father does not argue on appeal that the district court erred by discrediting the testimony of father, grandfather, grandmother, and the nanny regarding the sexual-abuse incidents that they allegedly observed perpetrated against the child.

[15] Father also argues that the district court "mischaracterized" his position, because he argued that "[the child] may have an allergy, sensitivity, *or* intolerance to these foods." (Emphasis added.) This argument does not square with father's repeated characterizations of the child's alleged allergies as extreme and life-threatening. Relatedly, father now makes much of the child's newly discovered peanut allergy. But, again, father's harassing behavior toward mother, the child's service providers,

specifically argues that the district court "relied on one outdated skin allergy test to adopt Mother's position . . . and disregarded ample evidence that supported Father's position." We disagree that the district court clearly erred and conclude that the record evidence supports the district court's finding of fact.

In October 2016, mother brought the child to his primary pediatric clinic; Dr. Schroeckenstein conducted a skin allergy test, and the child tested negative for dairy and gluten allergies. The following month, father brought the child to a different allergy clinic; Dr. Zajac conducted a blood allergy test and the child again tested negative for dairy and gluten allergies, but the child did test positive for a dog-dander allergy. These two tests provide sufficient support for the district court's finding of fact.[16] We

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and others concerned the child's alleged allergies to gluten and dairy, not peanuts.

[16] The record contains another test by Dr. Zajac that appears to support father's position, indicating that the child is allergic to a protein found in cow's milk. But that test alone is insufficient to establish that the district court clearly erred. *See Kenney*, 963 N.W.2d at 221 ("We will not conclude that a factfinder clearly erred unless, on the entire evidence, we are left with a definite and firm conviction that a mistake has been committed."). We also note that the Mayo Clinic conducted another skin allergy test on the child which indicated that the child was not allergic to dairy, and this is the most recent allergy-test result in the record. We reiterate that we afford great discretion to the district court in its assessment of the credibility of evidence and do not disturb factual findings based on the credited record. *Thornton*, 933 N.W.2d at 790; *see also Kenney*, 963 N.W.2d at 223 ("When the record reasonably supports the findings at issue on appeal, it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary." (quotation omitted)).

find no evidence in the record that any doctor ever limited the child's diet to restrict consumption of foods containing dairy or gluten and, as the district court found, "[the child] only showed symptoms when in [father's] care." As noted herein, the district court also specifically found that father was "not a credible reporter of historical facts." Because there is a factual basis in the record to support the district court's finding that the child did not have dairy and gluten allergies and the district court finding was not "manifestly contrary to the weight of the evidence," we cannot conclude that the district court clearly erred.[17] *Kenney*, 963 N.W.2d at 221.

B. The district court did not abuse its discretion by granting mother custody of the child.

Father next argues that the district court abused its discretion when it awarded mother custody of the child by "making this a two-issue case" and conducting only a cursory review of the best-interests factors. The district court is required to consider and assess the 12 statutory best-interests factors when weighing issues of custody and parenting time. Minn. Stat. § 518.17, subd. 1(a) (2020). The best-interests factors include: the child's physical, emotional, and cultural needs (factor 1); the child's medical, mental-health, and educational needs (factor 2); the preference of the child, if old enough (factor 3); the implications of domestic abuse on parenting (factor 4); physical, mental-, and chemical-health issues (factor

[17] Father also argues that the district court abused its discretion by denying his request for a full-scope allergy evaluation for the child. Given that the district court did not clearly err by finding that the child was not allergic to foods containing gluten or dairy, the district court acted within its discretion by denying father's motion.

5); the history and nature of each parent's caregiving for the child (factor 6); the willingness and ability of the parents to provide ongoing care for the child (factor 7); the effect of changes to the child's home, school, and community (factor 8); the effect of the proposed arrangements on the child, including impacts to significant persons in the child's life (factor 9); the benefits and detriments of minimizing and/or maximizing time with either parent (factor 10); the parents' ability to support the other parent (factor 11); and the willingness of the parents to cooperate in rearing the child (factor 12). *Id.*, subd. 1(a)(1)-(12).

A district court has broad discretion to determine the custody of the parties' children. *See Thornton*, 933 N.W.2d at 790 ("[A] district court needs great leeway in making a custody decision that serves a child's best interests, in light of each child's unique family circumstance."). A district court abuses its discretion if it misapplies the law, makes findings unsupported by the record, or resolves discretionary questions in a manner that is contrary to logic and the facts on record. *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022). The law "leaves scant if any room for an appellate court to question the [district] court's balancing of best-interests considerations." *Vangsness v. Vangsness*, 607 N.W.2d 468, 477 (Minn. App. 2000). "[D]etermination of a child's best interests is generally not susceptible to an appellate court's global review of a record, and . . . an appellate court's

> combing through the record to determine best interests is inappropriate because it involves credibility determinations." *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 546 (Minn. App. 2009) (quotation omitted).

1. The district court did not "mak[e] this a two-issue case."

Father argues that the district court abused its discretion by relying on its sexual-abuse and food-intolerance findings "almost to the exclusion of every other best interest factor." Father's assertion is belied by the district court's detailed 86-page order, 16 pages of which analyzed each statutory best-interests factor with particularity. While the district court placed significant emphasis on the unsupported sexual-abuse and food-intolerance allegations, opining that "[i]t is in this backdrop that this Court is asked to determine custody," our review does not support father's claim that the district court "exclu[ded]" other evidence that relates to the best-interests factors. Instead, we conclude that the district court properly and thoroughly evaluated all of the evidence received and sufficiently addressed each of the 12 best-interests factors. We also observe from our extensive review of the record and father's argument on appeal, that the focus of the overwhelming majority of father's arguments related to his position regarding the sexual-abuse and food-allergy allegations. That the district court devoted significant attention to these allegations is unsurprising and unremarkable given the copious evidence that father introduced regarding these issues and the continued attention that father devotes to these issues on appeal. Nevertheless, while father may disagree with the district court's determinations and the weight that it afforded to the evidence, the district court acted within its discretion by incorporating its sexual-abuse and food-intolerance findings in its determination of the best interests of the child.[18]

[18] Father argues that *Dabill v. Dabill*, in which we reversed the district court's custody-modification order based on unsubstantiated sexual-abuse claims, is analogous to the facts here. 514 N.W.2d 590 (Minn. App. 1994). But *Dabill* is

2. The district court did not abuse its discretion by granting mother custody of the child.

Father next argues that the district court abused its discretion by failing to fully consider certain best-interests factors, asserting that the district court's analysis was "utterly deficient." Father argues that the district court failed to fully consider mother's psychological profile; the proposed changes to the child's home, school, and community; the impact that custody would have on the child's relationships with father and grandparents; and the ability of the parties to support one another. We reiterate that district courts have broad discretion to assess the best-interests factors and we generally defer to the district court's determinations because

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distinguishable for multiple reasons, not the least of which is that *Dabill* involved a motion to modify custody while the current case involves an original award of custody. In custody-modification proceedings, a district court uses a different analysis than in an original award of custody. *Compare* Minn. Stat. § 518.17 (2020) (basing an initial award of custody on a child's best interests), *with* Minn. Stat. § 518.18(d) (2020) (requiring that "the district court shall not modify a prior custody order" unless it finds "that a change has occurred in the circumstances of the child"). And *Dabill* concerned only one or two abuse incidents and a single CPS investigation. Here, father and grandparents' allegations spurred four CPS investigations, three forensic interviews of the child, and one CHIPS proceeding against father. Moreover, in *Dabill* we held that the record did not support the district court's finding that anyone was "continuously reminding" the children of past abuse. 514 N.W.2d at 596. Not so here, as these allegations of abuse occurred continuously over multiple years and trial testimony established that such allegations could lead the child to wrongly believe that he is a victim of sexual abuse. Finally, unlike in *Dabill*, where the district court did not make any express finding as to whether abuse occurred, here the district court expressly found that *no* abuse occurred.

they inherently involve credibility findings that we are ill-equipped to review. *D.L.D.*, 771 N.W.2d at 546. Even so, we conclude that father's arguments lack merit.

First, we disagree with father that the district court failed to consider mother's psychological profile. Father acknowledges that the district court found that mother "has significant mental health issues," including PTSD. But father argues that the district court "minimized" these issues, noting that she was progressing in therapy, and failed to include Dr. Albert's uncontroverted psychological findings. The district court, however, is not required to adopt the recommendation of any witness, including an expert witness. *Kenney*, 963 N.W.2d at 224 ("[A] factfinder is not bound by witness testimony, even if uncontradicted, when there is reason to doubt the testimony."); *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985) ("The trial court is not . . . bound to adhere to such expert testimony if it believes it is outweighed by other evidence."). Moreover, father ignores the district court's analysis that *he* had significant chemical-health issues which contributed to him "show[ing] no signs of letting go of his uncompromising ways" which "will always work to [the child's] detriment." We are unconvinced that the district court failed to properly address mother's mental-health issues or that the district court abused its discretion by balancing the evidence before determining that this factor favored mother.

Second, father asserts that the district court abused its discretion by summarily finding that factor 8, the effect of proposed changes to the child's home, school, and community, weighed neutrally. Father primarily claims that the district court abused its discretion by not addressing the different educational plans mother and father proposed for the child—

father planned to send the child to a private school whereas mother desired to
send the child to the local public school. We disagree that the district court abused its discretion by not considering the child's future educational institution and reject father's assumption that his preferred private school is a superior choice for the child over mother's preferred public school. We also note that the child would have experienced a different educational environment regardless of whether the district court awarded custody of the child to father or mother, and the district court acted within its discretion by weighing this factor neutrally.

Third, father argues that the district court abused its discretion by failing to consider the impact that the child's placement with mother would have on the child's relationships with father and grandparents in its analysis of factor 9. The district court determined that this factor weighed in favor of mother because if father had sole custody, the child would likely become isolated from stepchildren and mother. While the district court did not specifically analyze the child's relationships with father and grandparents under this factor, it noted in its analysis of factor 11 that "[t]here are serious doubts that [father] will ever support [the child's] relationship with [mother]" but that "[mother], on the other hand, has expressed a willingness to try to work with [father]." The district court implicitly considered the relationships between the child, father, and grandparents and determined that those relationships could more likely be preserved by granting custody of the child to mother, whereas other important relationships to the child would not be preserved by granting custody of the child to father. The district court acted within its discretion by making such an assessment and determination.

Fourth, father argues that the district court abused its discretion by concluding that factor 11, the parents' willingness to support one another, favored mother. Father argues that the evidence demonstrated that mother "would not support [the child's] relationship with Father or his paternal grandparents" and the district court's conclusion that mother would support father in parenting the child is "unsupported by the evidence in the record." In support of his position, father cites to mother's trial testimony that she did not know what benefits the child derived from father or grandparents' presence in the child's life. We disagree that the district court clearly erred by making such a finding or abused its discretion by concluding that factor 11 favored mother. Trial testimony indicates, for example, that mother understood that the child loved and enjoyed spending time with father and grandparents. Because there is sufficient evidence in the record to support the district court's finding and conclusion, we see no clear error or abuse of discretion.

We specifically note that the district court thoroughly, separately, and with particularity analyzed each of the 12 statutory best-interests factors in 52 single-spaced paragraphs, spanning 16 pages of its order. Although father disagrees with the conclusions reached by the district court, we see no abuse of discretion in its analysis or conclusions.

II. The district court did not exhibit impermissible bias against father.

Father next argues that the district court "allowed its experience as a former prosecutor to influence its decision on what it deemed the most 'salient' issue in the case— whether [the child] suffered sexual and physical abuse" and the district court abused its discretion when it stated that it was "very familiar" with a CornerHouse interviewer.

"Our judicial system presumes that judges are capable of setting aside collateral knowledge they possess and are able to 'approach every aspect of each case with a neutral and objective disposition.'" *State v. Dorsey*, 701 N.W.2d 238, 247 (Minn. 2005) (quoting *Liteky v. United States*, 510 U.S. 540, 561-62 (1994)); *see also State v. Mems*, 708 N.W.2d 526, 533 (Minn. 2006) ("There is the presumption that a judge has discharged his or her judicial duties properly.").

Father argues that the district court's statement that "[t]his Court is very familiar" with a CornerHouse interviewer suggests improper influence. But that statement alone does not suggest bias or impropriety. Indeed, on the same page of the order, the district court wrote, "[t]he Court has reviewed the CornerHouse interview . . . and agrees with [the interviewer's] assessment, particularly as it relates to her suspicions that [the child] was coached to make allegations that he was abused." The district court stating that it reviewed the interview and credited the interviewer's assessment does not demonstrate bias, nor does it suggest that the district court clearly erred or abused its discretion.

Father also argues that the district court "allowed its experience as a former prosecutor to influence its decision on . . . whether [the child] suffered sexual and physical abuse" and "was undoubtedly influenced by its past experience and perhaps even sensitized to consider the impact of sexual abuse allegations on the alleged perpetrator rather than the impact on the alleged victim." We disagree.

The colloquy at issue occurred when the district court examined father's expert witness following father's counsel's redirect examination. Our review of the transcript demonstrates that the district court described a different case as an example to form a

question for the expert. The district court stated: "I used to be a prosecutor, and I recall very early on in my career where a gentleman was, and I'm convinced of this, falsely accused of sexually abusing his daughter." The district court used this example to question the expert regarding the unsubstantiated sexual-abuse allegations involving the child here. The district court then asked the expert a series of questions about how the expert thought it should weigh the evidence in the context of the unsubstantiated allegations.[19] The district court went on to *distinguish* the situation in the example from the instant case, stating:

> [I]n that situation, the daughter clearly was making this [sexual-abuse allegation] up because her and the father weren't getting along. . . . [The daughter's actions] didn't conform with his religion, so she made this up. *I mean, that's different from this situation because very clearly in that situation, it was an intentional false allegation*.

(Emphasis added.) This colloquy does not support father's contention that the district court was biased against him or predisposed to favor the victim of a sexual-abuse incident. Our review demonstrates that

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[19] For his part, the expert witness did not express any concern that this example was inappropriate and answered the district court's questions thoughtfully. The expert testified: "[T]hat's for the Court to decide what level of risk do we find and what is justified and recommended as a result of what we know and what we don't know."

the district court posed an example fact pattern to an expert witness who, in turn, responded to the district court's question. The mere fact that the district court referenced another case to pose a question does not overcome the presumption that the district court adjudicated this case objectively. *See Dorsey*, 701 N.W.2d at 247.

III. Father is not entitled to a new trial.

Father argues that he must receive a new trial because the district court abused its discretion by admitting and excluding certain evidence and erred by denying him a hearing on his April 2020 motion to amend the findings.

"We review a district court's decision to grant or deny a new trial for an abuse of discretion." *Christie v. Est. of Christie*, 911 N.W.2d 833, 838 (Minn. 2018). "But when an order for a new trial is based on a question of law, we review the district court's decision de novo." *Larson v. Gannett Co.*, 940 N.W.2d 120, 146 (Minn. 2020). "Where evidence is said to conflict with the trial court's ruling on this issue, 'the broadest possible discretionary power is vested in the trial court.'" *Vangsness*, 607 N.W.2d at 472 (quoting *Grorud v. Thomasson*, 177 N.W.2d 51, 53 (Minn. 1970)). "The refusal to grant a new trial will be reversed only if misconduct is 'so prejudicial that it would be unjust to allow the result to stand.'" *Id.* (quoting *Jack Frost, Inc. v. Eng. Bldg. Components Co.*, 304 N.W.2d 346, 352 (Minn. 1981)); *see generally* Minn. R. Civ. P. 61 (requiring that harmless error be ignored). An error is harmless "[w]hen there is no reasonable possibility that it substantially influenced the [fact-finder's] decision." *State v. Harvey*, 932 N.W.2d 792, 810 (Minn. 2019) (quotation omitted); *see Midway Ctr. Assocs. v. Midway Ctr., Inc.,* 237 N.W.2d 76, 78 (Minn. 1975) (stating that to prevail on appeal, an appellant must show both error and that error

prejudiced the appellant); *Toughill v. Toughill,* 609 N.W.2d 634, 639 (Minn. App. 2000) (citing this aspect of *Midway*).

A.The district court did not abuse its discretion by making certain evidentiary rulings.

Father argues that the district court erred by admitting letters from the child's play therapist and abused its discretion by excluding CPS interviews of the child, supplemental exhibits, and evidence that would have allegedly corroborated grandmother's testimony. We conclude that any error by the district court was harmless and see no abuse of discretion by the district court.

Father argues that the district court's admission of letters from the child's play therapist was "highly prejudicial" because the "district court discredited [father's] concerns about [the play therapist] based on the district court's description of [the play therapist] as 'experienced' and a 'well-known expert'" and the district court used the letters to find that the child was not subject to sexual abuse. But father does not identify any specific prejudice associated with the district court's ruling because he does not explain how the omission of the play therapist's letters would have changed the result of the trial. Our review of the district court's order and the record as a whole demonstrates that the district court relied far more heavily on the CPS investigations, Mitnick's report and testimony, the parties' trial testimony, and other evidence in a voluminous record. Any error by the district court in admitting the play therapist's letters was harmless.

Father's arguments regarding the district court's exclusion of the child's CPS interviews and exclusion of his late-filed supplemental affidavits fail for the same reason. Father alleges that the CPS

interviews "included [the child's] disclosures of sexual and physical abuse." But father does not offer useful record citations for this argument or specify what these CPS interviews would have shown or how they would have changed the result of the trial. Similarly, father summarily argues that the district court abused its discretion by excluding his supplemental affidavits as untimely without providing any information or argument as to how their exclusion prejudiced him. Any error by excluding this evidence was harmless.

Father argues that the district court abused its discretion by excluding grandmother's journals, which allegedly contained records of the questions that she asked the child regarding the child's sexual-abuse disclosures. Father specifically asserts that this evidence is admissible under Minn. R. Evid. 801(d)(1)(B), which defines certain evidence as "not hearsay" when it is "consistent with the declarant's testimony and helpful to the trier of fact in evaluating the declarant's credibility as a witness." But "[w]e afford the district court broad discretion when ruling on evidentiary matters, and we will not reverse the district court absent an abuse of that discretion." *Doe 136 v. Liebsch*, 872 N.W.2d 875, 879 (Minn. 2015). Here, it was well within the district court's discretion to exclude this evidence because it did not believe that the journal would have been helpful in evaluating grandmother's credibility. Father does not provide any compelling alternative argument as to how the district court abused its discretion by excluding such evidence or, again, how such exclusion was not harmless.[20]

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[20] Father also argues that the district court abused its discretion by eliminating his Appendix A rights to the child's medical records because its decision "was based on multiple levels of hearsay." But the district court's decision expressly did not rely

B.The district court did not err by denying father a hearing on his motion to amend the findings.

Father next argues that the district court violated his due-process rights and erred as a matter of law by denying him a hearing on his April 2020 motion to amend the findings of the district court's March 2020 order. However, as father repeatedly argued in the underlying proceedings, the district court's August 2020 custody order and May 2021 order superseded the March 2020 order about which father now complains. Father's argument is therefore moot.[21] *Schnell*, 956 N.W.2d at 662 ("An appeal must be dismissed as moot when a decision on the merits is no longer necessary or an award of effective relief is

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on hearsay, and the district court is permitted to alter the rights mentioned in Appendix A "if it finds it is necessary to protect the welfare of a party or child." Minn. Stat. § 518.17, subd. 3(c) (2020). The district court relied on father's own letters to the child's physician and mother's affidavit, stating that the child's primary physician (and the entire pediatric clinic) would no longer see the child, finding that "the issue of why [the child's physician] terminated medical care for . . . [the child] can be determined without the double hearsay statement" by "relying on the numerous correspondences written by [father] to [the physician]." The district court also specifically found that father's "correspondences to [the physician] follow the same pattern of abusive, harassing, and accusatory behavior that [father] exhibited with other professionals." This record unambiguously shows that the district court neither considered, nor needed to consider, any hearsay evidence to eliminate father's Appendix A rights.

[21] Father argues that the district court's denial of his request for a hearing was "highly prejudicial" to him because "numerous findings in the Court's August 28, 2020 [custody] Order were based on findings from its March 27, 2020 Order that Father sought to have corrected." We disagree that father suffered any such prejudice, as father received a full six-and-a-half-day trial to present his case to the district court in advance of the August 2020 custody order.

no longer possible."); *B.J.H.*, 573 N.W.2d at 105 (declining to address an issue in an appeal because the issue was moot).

IV. The district court did not abuse its discretion by granting mother attorney fees.

As a final matter, father argues that the district court abused its discretion by awarding mother attorney fees. Specifically, father argues that the district court abused its discretion by: (1) awarding mother $150,000 in attorney fees and denying father an opportunity to respond to counsel's attorney-fee affidavits; (2) awarding mother duplicate attorney-fee awards; and (3) awarding mother conduct-based attorney fees for conduct occurring outside of the litigation.

A district court has discretion to award need-based or conduct-based attorney fees, and we will not reverse a district court's award of attorney fees absent an abuse of discretion. *Gully v. Gully*, 599 N.W.2d 814, 825 (Minn. 1999); *see* Minn. Stat. § 518.14, subd. 1 (2020). The party seeking need-based attorney fees must establish that

> (1) the fees are necessary for the good-faith assertion of the party's rights . . . and will not contribute unnecessarily to the length and expense of the proceeding, (2) the party from whom fees are sought has the means to pay them, and (3) the party to whom fees are awarded does not have the means to pay them.

Phillips v. LaPlante, 823 N.W.2d 903, 907 (Minn. App. 2012) (citing Minn. Stat. § 518.14, subd. 1). A district

court may exercise its discretion to award "additional fees, costs, and disbursements against a party who unreasonably contributes to the length or expense of the proceeding." Minn. Stat. § 518.14, subd. 1. Generally, conduct-based fees are based on conduct occurring during the course of litigation. *Baertsch v. Baertsch*, 886 N.W.2d 235, 238 (Minn. App. 2016). The district court must make findings that explain the basis for an award of conduct-based attorney fees. *Brodsky v. Brodsky*, 733 N.W.2d 471, 477 (Minn. App. 2007). The party moving for attorney fees has the burden to show that the conduct of the other party warrants an award. *Baertsch*, 886 N.W.2d at 238.

A. The district court did not abuse its discretion by awarding mother $150,000 in need-based attorney fees.

The district court did not abuse its discretion when it awarded mother $150,000 in attorney fees. In its initial August 2020 order, the district court ordered that "[father] shall pay to [mother's] attorney the sum of $150,000.00 in *need and conduct-based* attorney's fees." (Emphasis added.) In April 2021, the district court amended its order to state that it was awarding the attorney fees exclusively under a need-based theory.

Father asserts that the district court's amended order was "inconsistent" with its findings of fact. He appears to argue that the district court's order was inconsistent because the district court stated that "[i]t is very obvious that [father] was trying to bankrupt [mother] in hopes that her attorney would withdraw for nonpayment" while simultaneously acknowledging that "[father] has already contributed to [mother's] attorney's fees and costs in this proceeding." Father's argument fails as

it does not address the need-based attorney-fee standard, which requires the good faith of the movant and the ability of the nonmovant to pay.[22] Minn. Stat. § 518.14, subd. 1. Even so, we see no merit to father's argument that the district court's findings were inconsistent or that this alleged inconsistency somehow precludes an award of attorney fees to mother. The district court expressly found that "[*a*]*lthough* [father] has already contributed to [mother's] attorney's fees and costs . . . [mother] *does not have the ability to contribute to her own attorney's fees and costs*." (Emphasis added.) Thus, the district court expressly acknowledged that father had provided mother *some* attorney fees while also finding that mother required *additional* attorney fees.

Father argues that the district court "failed to give proper weight to [mother's monthly budget] surplus of $431 per month, none of which she was using to pay her own fees." This argument also fails. The statute requires that the party being awarded fees "does not have the means to pay them." Minn. Stat. § 518.14, subd. 1(3). Such a finding does not require that the district court conclude that a requesting party have *no* excess income or that a party first bankrupt herself before the district court can award fees. Moreover, mother testified at trial that she had no surplus income because her total

[22] We note also that father provided lengthy trial testimony attempting to establish that he was unable to pay mother's attorney fees because he had already incurred over $1.5 million in attorney fees by the time of trial. But father also testified that he would be willing to expend additional money to pay for private-school tuition for the child and another special master to supervise the child's alleged food-allergy issues, among other additional expenditures. To the extent father argues that he does not have the means to pay fees, the record supports the district court's finding otherwise.

monthly expenses exceeded her net pay. The district court acted within its discretion by concluding that mother was entitled to need-based fees notwithstanding any alleged nominal surplus income that mother earned.

Father also argues that the district court did not permit him to respond to mother's attorney-fee affidavits. But father does not cite to anywhere in the record demonstrating that he attempted to respond to mother's affidavits or to a ruling from the district court denying him the opportunity to respond. We cannot find any support in the record for the proposition that father attempted to contest these affidavits.[23] Because we do not consider matters not argued to and considered by the district court, we decline to consider father's argument. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

B. Father's second attorney-fee argument is inadequately briefed.

Father next argues that the district court abused its discretion by awarding mother $61,407.50 in conduct-based attorney fees in May 2021. Father again claims that he was unable to respond to mother's attorney-fee affidavit, argues that this award was duplicative of the district court's previous $150,000 award because the fees were from the same

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[23] Father argues in his reply brief that he "raised this due process issue in his September 25, 2021 Motion for Amended Findings." But father does not cite to the record and we cannot find such a motion in the record. Moreover, even if father did submit such a posttrial motion raising this issue, an issue is raised "too late" if it is first raised in a motion for a new trial or a motion for amended findings of fact. *See Antonson v. Ekvall*, 186 N.W.2d 187, 189 (Minn. 1971) (new trial); *Allen v. Cent. Motors, Inc.*, 283 N.W. 490, 492 (Minn. 1939) (amended findings); *see also Grigsby v. Grigsby*, 648 N.W.2d 716, 726 (Minn. App. 2002) (citing these aspects of *Antonson* and *Allen* in a family-law appeal), *rev. denied* (Minn. Oct. 15, 2002).

time period, and summarily argues that the district court did not have a basis for issuing conduct-based fees.

"[O]n appeal error is never presumed. It must be made to appear affirmatively . . . [and] the burden of showing error rests upon the one who relies upon it." *Loth*, 35 N.W.2d at 546; *see Braith v. Fischer*, 632 N.W.2d 716, 724 (Minn. App. 2001) (applying this concept to a family-law appeal), *rev. denied* (Minn. Oct. 24, 2001). We decline to consider issues that are inadequately briefed. *State, Dep't of Lab. & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997); *see Brodsky*, 733 N.W.2d at 479 (applying *Wintz* to a family-law appeal).

The record contains numerous attorney-fee affidavits. Father does not cite to the record or inform us as to which awards he believes are duplicative. It is unclear from our review of the record which of the awards may be duplicative. The mere fact that certain fees overlap in time, by itself, does not necessarily mean that the bills are duplicative. For example, mother included two fee affidavits in her addendum that itemize costs for overlapping periods of time but clearly break down the costs at issue and demonstrate that the billed amounts are not for the same work performed. We decline to reach father's attorney-fee argument because it lacks specificity and is inadequately briefed.

C.The district court did not abuse its discretion by awarding mother $22,290 in attorney fees.

Father argues that the district court erred by awarding mother $22,290 in attorney fees after he "advocat[ed] for [the child's] dietary needs." Father argues that the district court erred because (1) it awarded conduct-based fees for behavior occurring outside of the litigation and (2) it awarded fees based

on the conduct of grandparents who are non-parties to this litigation.

The district court may award conduct-based attorney fees when a party "unreasonably contributes to the length or expense of the proceeding." Minn. Stat. § 518.14, subd. 1; *see Geske v. Marcolina*, 624 N.W.2d 813, 819 (Minn. 2001). Generally, conduct-based fees are based on conduct occurring during the course of litigation. *Baertsch*, 886 N.W.2d at 238; *see Brodsky*, 733 N.W.2d at 477 (affirming an award of conduct-based fees made under Minn. Stat. § 518.14, subd. 1, for fees incurred in proceedings ancillary to a dissolution proceeding).

Here, it appears that the district court's order for attorney fees related to events that occurred during and in connection with the litigation. In its May 24, 2021 order, the district court awarded mother conduct-based attorney fees on the theory that

> [father's] unreasonable conduct relating to [the child's pediatrician] and [play therapist's] terminations, [father's] parents contact with [the child's] school, and having to respond to [father's] meritless and frivolous requests . . . cause [mother] to incur attorney's fees to address these issues, which unnecessarily lengthen the proceeding.

It is unclear why father believes that these events occurred outside of the litigation. As the district court found, father and grandparents' actions repeatedly forced mother to engage in additional litigation and

incur additional attorney fees. The nature of father's conduct, primarily contacting and harassing providers regarding the child's alleged dietary needs, was entirely related to the present litigation.

We also see no abuse of discretion in the district court's conclusion that grandparents' actions here are attributable to father. The record shows that after the district court prohibited father from contacting the child's daycare, grandparents picked up where he left off, resuming the same harassing conduct that the district court had ordered father to stop. The district court specifically stated that it is "disturbing" that grandparents continue to assert that the judiciary lacks jurisdiction over them in this matter as they "endanger" the child by performing the same acts as father. Our review of the record supports the district court's conclusion that grandparents' actions are equally attributable to father here, and we see no abuse of discretion by the district court in awarding mother additional attorney fees.

Affirmed.

Appendix C

STATE OF MINNESOTA DISTRICT COURT
FOURTH JUDICIAL DISTRICT

COUNTY OF HENNEPIN FAMILY COURT DIVISION

In Re the Marriage of:

Catrina M. Rued,
Petitioner,

AMENDED[1]
ORDER

and

Court File No. 27-FA-16-6630

Joseph D. Rued,
Respondent.

The above-entitled matter came duly on for a trial before Referee Mike Furnstahl on February 24, February 26, March 5, March 18, July 16, July 17 and July 28, 2020.[2]

APPEARANCES:

Petitioner appeared in person and with her attorney, Beth Wiberg Barbosa, Esq.

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[1] On September 17, 2020, Petitioner's counsel filed a request asking the Court to reconsider its decision as it relates to child support. The Court granted that request and the parties thereafter filed their submissions on that issue. This Amended Order reflects the Court's decision on Petitioner's request.

[2] The trial was also scheduled for April 1 and 6, May 13, and June 1 and 25, 2020 but those dates were canceled due to the coronavirus.

Respondent appeared in person and with his attorneys, James J. Vedder, Esq. and Brittany M. Miller, Esq.

Based upon the evidence adduced and the arguments of the parties, the Court makes the following:

FINDINGS OF FACT

1. The parties were married on February 15, 2014 in the city of Bonita Springs, County of Lee, State of Florida. They were separated several times during their marriage: from March, 2014 to July, 2014; from November, 2015 to December, 2015; and from January, 2016 to May, 2016. The parties separated for the final time on August 25, 2016.
2. They are the parents of one joint child: [redacted] born October 31, 2014. Petitioner has two minor children from a prior marriage: [redacted] born April 27, 2006, and [redacted] ([redacted] born on November 20, 2009.[3]
3. On September 9, 2016, Respondent's parents, Scott and Leah Rued, filed a Petition for Third Party Custody seeking custody of [redacted] See: 27-FA-16-6323. This was due to claims that [redacted] was being abused by [redacted] and [redacted] and because the Respondent was drinking heavily and could not protect [redacted] from the alleged abuse. That matter was dismissed by the agreement of all the parties on November 26, 2019.

[3] [redacted] will sometimes refer to [redacted] as "Ria" or "Aiya," and [redacted] as "KoKo," "ToTo," or [redacted]

4. On September 21, 2016, Petitioner filed her Petition for Dissolution of Marriage. Respondent filed his Response on October 19, 2016.
5. A mutual No Contact Agreement has been in effect since November 4, 2016 which prohibits the parties from having direct contact with each other. On November 23, 2016, that Order was amended allowing them to have contact only about the following issues that relate to the joint child, and only via Our Family Wizard: medical issues, child care, activities, and parenting time schedules.
6. Prior to the commencement of the trial, this matter was suspended from December 7, 2018 until August 19, 2019 as a CHIPS petition was filed against the Respondent alleging mental injury to [redacted] See: 27-JV-18-5395. This was due to the numerous allegations made by the Respondent that [redacted] was physically and sexually abused while in the Petitioner's care and custody. As explained *infra,* none of the allegations were found to have merit.
7. The parties resolved a number of issues prior to the start of their trial. A Permanent Partial Stipulated Findings of Fact, Conclusions of Law, Order for Judgment and Judgment and Decree was approved by the Court and filed on April 24, 2019. The Partial Judgment and Decree, among other things, dissolved the parties' marriage. The Partial Judgment and Decree is incorporated herein by reference.
8. The issues at trial were limited to the parties' respective requests for custody and parenting time, and the Petitioner's request for attorney's fees.

9. The parties agree that this Court has jurisdiction over the custody status of the minor child within the meaning of MN Stats. §518D et. seq., known as the Uniform Children Custody Jurisdiction and Enforcement Act.
10. The parties have both said that they cannot co-parent. This Court agrees.
11. Two major disagreements the parties have voiced throughout this litigation relates to claims made by the Respondent.[4] The first is Respondent's claim that [redacted] is allergic to dairy and gluten and that he requires a special diet. This is not based on any medical testing, but rather on Respondent's claimed expertise in this area.
12. [redacted] was never tested for allergies until October of 2016, after the parties separated. The testing then was initiated by the Petitioner who sought to resolve the issue. The testing indicates that [redacted] does not require a special diet.
13. The Respondent, however, does not accept those results as they did not conform to his narrative on the issue. As a result the parties bickered back and forth and [redacted] was forced to undergo further testing. The Respondent's conduct here became so obnoxious that [redacted] was no longer allowed to attend his daycare, Prestige Academy, because of Respondent's insistence that they provide him with a special diet and because of the manner that he was treating the personnel there. The disagreements resulted in the appointment of a Special Master to resolve the issue which

[4] Both claims will be addressed in more detail *infra*.

resulted in further testing at the Mayo Clinic. Because the Respondent was not pleased with those results the issue remains unresolved.

14. The second major area of disagreement relates to the Respondent's claims that [redacted] has repeatedly been physically and sexually abused by numerous people while in the Petitioner's care and custody. The allegations have expanded throughout the pendency of this action to include more perpetrators and more serious incidents of abuse. As a result, [redacted] has been seen by medical personnel several times, interviewed at CornerHouse several times, and been the subject of investigations by Hennepin County Child Protection Services and the Eden Prairie Police Department several times. No independent person, therapist, forensic interviewer or organization has corroborated any of these allegations. This claim remains the seminal issue in this litigation.

15. In addition to the above, the parties have disagreed on virtually every facet of the child's life[5] including, but not limited to, whether and when he should be seen by a medical doctor or dentist and who should take him (See: Exhibit 202, p. 6), whether he should attend pre-school and what school he should attend this fall, how to interpret what the child says, (See: Exhibit 202, p;. 13), whether he should be in play therapy and with whom, (See: Exhibit 202, p. 19), how to make appropriate parenting time

[5] Mindi Mitnick, who conducted the Custody and Parenting Time Evaluation, observed: "The parents have been unable to agree on almost every aspect of [redacted] care." See: Exhibit 202, p. 74.

exchanges,[6] and whether he should be immunized (See: Exhibit 202, p. 6). In their conversations on Our Family Wizard the Respondent routinely interrogates the Petitioner on every scratch, bump, bruise, runny nose, rash or anything else he feels is out of the ordinary when the child returns to him for his parenting time, and documents this by taking pictures.[7] His questions are not those of a person who wishes to co-parent his child, but rather a person who seeks to constantly put the Petitioner on the defensive.[8] In addition, the interference of his parents make co-parenting a virtual impossibility.[9] Lastly, it is very clear that the Respondent and his

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[6] "Exchanges have been marked by tension and hostility." See: Exhibit 202, p. 76.

[7] The Respondent once showed Dr. Lutz, the child's pediatrician, a photo of a green-colored loose bowel movement from [redacted] and Dr. Lutz's response was "every child has that." See: Exhibit 202, p. 21.

[8] Dr. Sam Albert, who conducted psychological evaluations on the parties as well as the Respondent's parents, observed: "Joseph's tendency to use an interrogating style with Catrina when he wants information about a concern he has about [redacted] is likely to be an ongoing roadblock to gaining both trust and accurate information from Catrina." See: Exhibit 212, p. 27.

[9] Dr. Albert stated: "Although I believe that Leah and Scott have been exceedingly supportive and generous to Joseph, having one's parents in the various roles of employer, lender, housemate, part-time child care provider, investigator, and co-plaintiff over a nearly five year period, as suggested by the above list, raises concerns about enmeshment in this family unit. One concern raised by this is that all of these intertwined relationships could contribute to a rigid set of beliefs and attitudes about Catrina that are continually being mutually reinforced and that make it extremely difficult to be flexible in a possible future parenting or co-parenting capacity." See: Exhibit 212, p. 22

parents do not trust the Petitioner[10] and will not respect her opinions regarding the best interests of the child. Instead, they will simply ignore her.[11] While the Petitioner has expressed a willingness to get along with Respondent, it is also clear that she is "spent" and unable to accomplish this without help. It is also clear that she would have difficulty letting go of her resentments and this would adversely affect her co-parenting ability. (See: Exhibit 211, p. 32).

16. The Court finds that it would be detrimental to this child's best interests, which is this Court's "paramount commitment," See, e.g., *Olson v. Olson*, 534 N.W. 2nd 547 at 549 (Minn. 1995), if these parties were allowed even the opportunity to co-parent.[12] Given the history as outlined herein, the Court agrees with them that only one parent can be granted legal custody.

17. Petitioner seeks an award of sole legal custody and joint physical custody with her home designated as the child's primary residence.

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[10] For example, Scott Rued told Dr. Albert that "it would be 'impossible' to co-parent with Catrina, not only because of her psychopathy but because she cannot be trusted to protect [redacted] from the constant danger of abuse by [redacted] and [redacted] that he is in." See: Exhibit 214, p. 9.

[11] Ms. Mitnick observed: "In this case, there is a substantial risk of Catrina being marginalized in [redacted] life if he does not spend substantial time with his mother since there is no indication that he receives any positive messages about her while in his father's care." See: Exhibit 202, p. 73.

[12] Ms. Mitnick stated: [redacted] is surrounded by conflict, whose persistence can actually alter his brain's architecture and functioning. It is not possible to say when chronic stress becomes toxic, but [redacted] has experienced this hostile environment since he was less than two years old." See: Exhibit 202, p. 77.

She asks that the Respondent's regularly scheduled parenting time be limited to every Thursday from 3:00 p.m. to Friday at 3:00 p.m., and every other weekend from Friday at 3:00 p.m. to Monday return to school, or 9:00 a.m. if the child is not in school.

18. Respondent asks that he be given sole legal and sole physical custody of the child, and that Petitioner's parenting time be limited to every other weekend from Friday after school/daycare until Sunday at 7:00 p.m. In addition, he is willing to give the Petitioner the option of having parenting time every Wednesday evening from after school/daycare until 7:00 p.m.[13]

19. A pretrial hearing was held before this Court on February 3, 2020. Prior to that, the parties were given timelines to file their proposed exhibits and any objections to the other's exhibits. See: Order for Trial dated October 16, 2019.[14] Petitioner filed her Exhibits 1-75.

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[13] In her custody evaluation, Mindi Mitnick wrote that the Respondent's proposal for the Petitioner's parenting time was for three hours of supervised visits twice a week. See: Exhibit 202, p. 5. In his testimony, the Respondent said that this was his parent's proposal, and that Ms. Mitnick mistakenly attributed this to the Respondent as well. The Respondent made no attempts to have Ms. Mitnick amend her evaluation to reflect his true position. Moreover, his attorney never questioned neither him nor Ms. Mitnick about this alleged discrepancy during their testimonies. In the Court's view, it is highly unlikely that Ms. Mitnick "got this wrong" as Respondent claims.

[14] This Order was amended several times. By Order dated November 21, 2019, it was amended to extend all of the timelines due to the filing of the CHIPS petition which resulted in the Court losing jurisdiction. By Order dated December 12, 2019, some of the deadlines were extended by agreement of the parties. Finally, by Order dated January 22, 2020, some of the

She withdrew Exhibit 1 at the time of the pretrial. Her other exhibits were received without objection.

20. Respondent filed 436 exhibits, marked as Exhibits 201-637. Petitioner raised several objections to most of the exhibits. The Court's ruling on the admissibility of Respondent's exhibits is recorded in its Order filed February 14, 2020 as amended on April 16, 2020. Said Orders are incorporated herein by reference.

21. On July 2, 2020, the Respondent filed a Supplemental List of Exhibits. The Petitioner followed suit on July 9, 2020.[15] The parties filed their arguments for/against admissibility of the supplemental exhibits on July 13, 2020. On July 14, 2020, the Court ruled on the admissibility of the supplemental exhibits. Said Order is incorporated herein by reference.

22. In addition to the above, the following exhibits were received during the trial: Petitioners exhibits 76 and 77; and Respondent's exhibits 237, 241, 243, 376, 417, 459, 473, 493, 541, 636, 637 and 660. The Court also received, as the Court's exhibits, Exhibits A-G. Any other exhibits the admissibility of which have not herein be decided upon are determined to be inadmissible.[16]

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deadlines were extended a second time by agreement of the parties.

[15] All the supplemental exhibits were filed after the deadline imposed by the Court.

[16] On August 5, 2020, the Respondent's attorney sent to this Court an affidavit by Jay Jayswal purporting to be the foundation for the admission of Exhibits 642 and 643. The

23. At the hearing on February 26, 2020, the parties stipulated that in lieu of the testimonies of Chris Madel and Jennie Robbins (attorneys assisting the Respondent and his parents), the Court could consider as true that those persons instructed the Respondent to make reports to Hennepin County Child Protection

Services and the Eden Prairie Police Department based on advice from members of those organizations. During a telephone conference on May 20, 2020, the parties also agreed that David Valentini's deposition could be used in lieu of his trial testimony. See: Exhibit 657.

24. At trial, the Petitioner proffered the testimony from the following witnesses:

a. Petitioner;
b. Dana Craven;
c. Joan Snyder; and
d. Dr. Leah Osborn.

25. Respondent proffered testimony from the following witnesses:

a. Respondent;
b. Dr. Michael Shea;
c. Leah Rued;
d. Anastasia Bolbocceanu; and
e. Scott Rued.

26. The following witnesses testified as neutral evaluators:

a. Mindi Mitnick; and
b. Dr. Samuel Albert.

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record, however, closed on July 28. As such, the affidavit will not be accepted and the exhibits will not be received.

27. In addition, the Court took judicial notice of all prior orders in this case, the Third Party Custody matter, and the juvenile matter.

28. The trial on this matter was problematic for several reasons. First, Petitioner's counsel raised virtually no objections throughout the trial.[17] As a result, a plethora of evidence was introduced that otherwise would not have been admitted. This included hearsay, double hearsay, lay opinions for which there was no foundation, rank speculation, and interpretations of the evidence which was the Court's responsibility as trier-of-fact.

29. Because the Petitioner's attorney failed to make objections the Respondent took great license in introducing inadmissible evidence which severely muddied the record. The Respondent became so emboldened by this that he repeatedly testified to things that were far-fetched and incredible. For instance, the Respondent claimed that [redacted] dentist told him that he (the dentist) was concerned about the Petitioner's behavior and demeanor towards [redacted] suggesting that it was of a sexualized nature, and that he was close to reporting her to Child Protection but felt he didn't have enough evidence. It would seem that if the Respondent, in fact, possessed this damaging evidence then he would have called the dentist to testify. He did not. Yet this still became part of the record because it was not objected to.

[17] The Court repeatedly advised the attorneys that it would not interject and try their cases for them, saying it was only there to "call balls and strikes."

30. The Court understands that in a trial where one attorney fails to object the other is likely to take advantage of the situation. However, all attorneys have the ethical responsibility of ensuring that a trial proceeds properly, and are not authorized to introduce evidence they know is inadmissible.[18]

31. Second, the Court repeatedly encouraged the parties to get to the salient issue, i.e., whether [redacted] was physically and/or sexually abused. It was not until late in the trial that Respondent finally began to address this claim, and not until time was running out that he introduced the testimonies of Scott and Leah Rued, and Anastasia Bolbocceanu. This made it extremely difficult for the Court to create a record on which it could base its decisions regarding the admissibility of [redacted] statements, a major question of law in this litigation. Leah Rued, in particular, spoke so fast and often went so far afield from the question that this Court could not keep up with her testimony.

32. The Respondent, in turn, claimed that he didn't have sufficient time to present his case. This is not true. 6 1/2 days were devoted to

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[18] MN. R. Prof. Conduct 3.4 states: "A lawyer shall not: (e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, ..."

Some of this occurred when the Respondent and his witnesses were volunteering information that was not in response to his attorney's questions. However, it happened so often and was so pervasive that the attorney had the responsibility to advise his witnesses to answer only the question, and not to volunteer information that was otherwise inadmissible.

this trial on what should have been a simple question: whether Watt was abused while in the Petitioner's care. Instead, Respondent wasted time on minutiae when his time would have been more effectively spent on the salient issue.[19]

33. Lastly, it is clear that part of the Respondent's strategy was to flood the Court with paperwork so as to bolster his version of the narrative. He and his parents did that with Mindi Mitnick[20] and again with Dr. Sam Albert.[21]

34. He sought to introduce 467 exhibits totaling nine 4" three-ring binders. Most of these exhibits were clearly inadmissible in the form the Respondent sought their introduction. As to most one would be hard-pressed to make a good faith argument in favor of admission. The Respondent's conduct here smacks of desperation in that that which he couldn't prove he sought to establish by overwhelming the Court. This is a strategy that the Court witnessed him employ against the Petitioner as well by litigating and re-litigating every decision he didn't agree with.

35. The resulting conduct created a tremendous amount of unnecessary work for this Court, which it nonetheless was required to and did

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[19] The Court also notes that the Respondent used more than seven hours of allotted court time during the trial than the Petitioner. See: Petitioner's Attorney's Affidavit dated August 5, 2020.

[20] Ms. Mitnick testified that she accumulated three banker's boxes of records, most of which were provided by the Respondent and his parents.

[21] Dr. Albert said the four psychological evaluations that he did for this case were the most complex he had done in his career. See: Exhibit 211, p. 26.

undertake. The Respondent seems to have the opinion that he is entitled to dominate the Court's time, and to some extent that's true. However, there are other children and other parents that require the Court's attention, and the Respondent is not entitled to all of the Court's time even though he seems to think otherwise.

Background Information.

36. The parties' relationship can conservatively be defined as acrimonious almost from its inception. That has been magnified during the course of the litigation. Both have made claims against the other which are far-fetched and untrue. As can be seen from this Order, there are strong reasons to question the credibility of both parties. This has worked to the detriment against not only the joint child, but also against the Petitioner's nonjoint children as well.

37. The Petitioner grew up in a broken home in Wisconsin. Her parents divorced when she was seven years old after a tumultuous marriage. Shortly after the divorce her father, Randolph Bash, Sr., burned down the family home that she, her mother and her siblings were going to occupy. For this act he was sent to prison. She describes her father as mentally and physically abusive, a drug dealer and a bookie.[22] At times she also said that her father sexually abused her but has since recanted that statement, claiming that the Respondent was fixated on this issue and forced her to make those claims. Both the Respondent and his parents vehemently

[22] The Petitioner's parents have since reunited.

deny that and insist that the Petitioner repeatedly and voluntarily said that she was sexually abused by her father. None of the Petitioner's family members have assisted her in the present litigation except, perhaps, to provide her with moral support.

38. The Respondent grew up in a wealthy family. He was educated in private schools and subsequently obtained employment in his father's firm, HCI Equity Partners, a firm that specializes in leveraged buyouts and the subsequent development of companies prior to offering them for sale. See: Exhibit 212, p. 4. The Respondent testified that he is now employed as an independent contractor doing consulting work.

39. The wealth of the Respondent and his family has been evidenced in this litigation by the amount of monies they've expended not just in the litigation,[23] but also during the course of Respondent's relationship with the Petitioner. The monies spent in the litigation has led people to express concern that Respondent's strategy is to bury the Petitioner in legal fees in the hopes she will cave to his wishes. [24] It has resulted in this Court requiring him to pay much of Petitioner's attorney's fees to date, and is one of her requests that will be addressed more fully *infra.*

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[23] The Respondent testified that he has spent in excess of $1.4 million in litigation costs thus far.

[24] According to CPW Jade Pirlottt, this was a concern expressed by Hennepin County Child Protections Services, Dr. Anne Gearity, and the Juvenile Court. See: Exhibit 226, p. 31-5.

40. The Respondent's parents, Scott and Leah Rued, have been intimately involved in the litigation. They are entrenched in their support of the Respondent's position, supporting him completely while downplaying any responsibility he may have had in the marital discord.[25]

41. The Petitioner has indicated, and this Court has observed, that in this dispute she is facing not one opponent, but three. For example, shortly after this case was filed the Respondent's parents hired private investigators to follow her. They apparently never learned anything of value as no evidence was introduced regarding their findings.[26] Respondent also said that he and his parents hired a private investigator in

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[25] Regarding Leah Rued Mindi Mitnick wrote: "Dr. Albert and I found her to be protective of Joe rather than realistic about the extent of his alcohol use and its impact on Catrina." See: Exhibit 202, p. 40. Regarding Scott Rued Ms. Mitnick wrote: "Dr. Albert found Scott's overall credibility was average to above average. Nevertheless, he found him to minimize the harmful impact of Joe's alcoholism on Catrina." *Id.* at p. 42.

[26] The only evidence presented related to an incident that occurred on December 9, 2017, where an investigator followed the Petitioner to Wisconsin Dells and recorded that she was speeding with the children in the car. He apparently spent the night there watching her as he followed her home the next day. See: Exhibit 65. See, also, Court's Exhibit G.

The Court ordered the Respondent to disclose all of the reports of the private investigators. He disclosed the reports of the investigators hired by his former attorney, M. Sue Wilson. During Scott Rued's testimony the Court learned that another investigator provided information related to the investigation of the Petitioner's family in Wisconsin. However, that investigator apparently only provided verbal, and not written reports. This Court finds this highly suspicious that no written reports were provided, and questions the credibility of the Respondent and his father on this point.

Wisconsin to gather information on Petitioner's family members and determine which members were spending time together. See: Exhibit 202, p. 62. In addition, the Respondent's mother made contact with therapist Nancy Lowe before the Petitioner became her patient, and apparently tried to convince her that the Petitioner should be diagnosed as having a Borderline Personality Disorder. See: Exhibit 211, p. 22-3. Further, both parents would do drive-bys and walk-bys the Petitioner's house, resulting in the Petitioner's request for assistance from the Eden Prairie Police Department. Finally, cameras were installed in the Petitioner's home that were only removed after the Petitioner requested the Court to order it. The Respondent had an app on his phone that allowed him and his parents to view the Petitioner in the privacy of her home. Scott Rued has stated that they recorded some disturbing conduct in the home, [27] but curiously they never showed this material to the authorities in spite of its obvious relevance and the numerous contacts they

[27] Dr. Albert wrote: According to Scott, in March 2016, while viewing inside Catrina's residence remotely, Leah 'was agast (sic) to find [redacted] in the crib with [redacted]. . . . While the camera clarity was not great, the touching, groping, kissing of [redacted] by [redacted] was extremely concerning.' He indicated that this continued for two weeks and they saved some of the footage." See: Exhibit 214, p. 9. Leah Rued testified that they told both the Eden Prairie Police Department and Mindi Mitnick about this evidence but there is no notation in any of their reports that supports this. If this were conduct of a sexual nature as Leah Rued claimed, it is doubtful that the Eden Prairie Police Department would not have insisted that it be produced. The cameras were ultimately removed in November of 2016.

had with both the Eden Prairie Police Department and Hennepin County Child Protection Services. The Court questioned the Respondent as to why this material was not presented as part of his evidence and his responses were vague and lacking in credibility.

42. The parties met in 2012 and started dating in August of 2013. At that time the Petitioner was still living in Wisconsin and the Respondent in Minnesota. In September they came to Minnesota at Respondent's suggestion to spend the weekend with his parents. This was due to Petitioner's complaints that she was in fear of her family, in particular her father and her ex-husband Ted Reppas. It was during this time that Petitioner claimed that her father sexually abused her as a child. She also claimed that her ex-husband had physically and sexually abused her during their marriage. See: Exhibit 260. She later recanted many of these statements claiming that the Respondent forced her to make them.

43. Shortly after coming to Minnesota, Petitioner's father alleged that she had been kidnapped. As a result, the Respondent and/or his father hired attorney Andy Luger to represent her interests. On September 13, 2013, Mr. Luger wrote to Bash telling him that his daughter was not kidnapped, and that she desired no contact with him. See: Exhibit 22.

44. At some point it was decided that Petitioner and her children would remain in Minnesota with the Respondent and his parents. She told them that she had the legal right to move the

children out of the State of Wisconsin without the permission of her ex-husband. That claim was false as Petitioner's divorce decree clearly states that they had joint legal custody of their children, and as such, she did not have the authority to unilaterally move them to Minnesota.

45. With the help of Mr. Luger and Jenny Gassman-Pines (attorneys for the Greene Espel law firm), the Petitioner and Respondent entered into negotiations with Mr. Reppas which allowed the children to remain with her in Minnesota. To accomplish this, the Respondent paid Reppas $100,000 and the Petitioner gave up her right to seek child support. [28] This agreement was finalized in October of 2013. See: Exhibit 260.

46. Because of continuing complaints by Petitioner that her father and other family members were a danger to her, including an incident when Petitioner's mother and father showed up at Scott and Leah Rued's home,[29] the Rueds decided to hire 24/7 security protection for the Petitioner and her children.[30] Later it was recommended that she, her children, and the Respondent remove themselves to a home owned by Scott and Leah Rued in the State of Florida. It was

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[28] In addition, the Respondent agreed to pay $4,500 for Mr. Reppas' attorney's fees. See: Exhibit 260, p. 25.

[29] Scott and Leah Rued live in a gated community in Eden Prairie. Apparently Petitioner's parents gave false information to the guards at the gate that allowed them access into that community.

[30] The Respondent testified that the cost for this security detail was approximately $270,000.

while there that the parties were married on February 15, 2014.

47. Their wedded bliss was short-lived as in March of 2014 the Petitioner moved back to Wisconsin with her children. During a return visit on April 3, 2014, the Petitioner was attempting to leave Respondent's parent's home when the Respondent and his parents blocked her car. Petitioner emailed a friend who contacted the Eden Prairie Police Department. They responded shortly thereafter. See: Exhibit 2.

48. Petitioner advised the responding officers that she told the Respondent that she wanted a divorce as he was an alcoholic and verbally abusive. The Respondent and his parents told the officers that they wanted Petitioner to stay as a marriage counselor was en-route to speak with them. The officers told the Respondent that his actions were "borderline illegal." See: Exhibit 2, p. 5. Petitioner was allowed to leave and moved back into her old apartment with a friend. She stayed in Wisconsin until July of that year. On April 28, 2014, the Respondent filed for divorce.

49. On January 20, 2016, the Respondent was arrested for a domestic assault. In the time between when Petitioner returned from Wisconsin until that date, several incidents occurred which, if true, were indicative of the state of the parties' relationship.

50. In September of 2014, Petitioner alleged that Respondent tackled her to the ground and started hitting her. Petitioner claims she fought back against the attack. See: Exhibit 13. The Court notes that the Petitioner

would have been several months pregnant at the time. In June of 2015, Petitioner claims that Respondent physically abused her for the first time See: Exhibit 202, p. 25. This is in stark contrast to her statement in Exhibit 13, *supra.* On November 19, 2015, Petitioner claims that Respondent broke her cell phone. *Id*. On December 9, 2015, she claims that he threw her and her children's belongings into the garage, damaging some of the items. *Id*. On December 12, 2015, she alleges that he punched her repeatedly in the thigh, stomach and arm. *Id*.

51. Respondent denies much of these allegations and claims that he was the victim of violence by her. He claimed that Petitioner physically abused him 25 to 30 times prior to November of 2016. He told Dr. Albert: "she 'kneed me in the groin or elbowed me, punched me, threw hard objects at me, attacked me while I am sleeping, and threw me down multiple times.'" See: Exhibit 211, p. 10. When asked how the Petitioner could throw him down given the discrepancy in their sizes (Respondent is 6' 1" and 210 lbs., the Petitioner is 5' 4" and 135 lbs.) the Respondent admitted that she could not but, nonetheless, he "'genuinely experienced physical intimidation'" from her. *Id.*

52. As to the January 20, 2016 incident, Petitioner claimed that Respondent struck her several times and tried to put a cigarette out in her eye. She said that Respondent threatened to "shove a 2 X 4 up her ass." She said that Respondent was upset as he was required to enter chemical dependency treatment the following day. She yelled to her

daughter [redacted] to call the police who arrived and ultimately arrested the Respondent. See: Exhibit 8.

53. On January 22, 2016, Petitioner went to the Chanhassen Urgent Care Clinic as she was having trouble with recurring headaches from the January 20 incident. The Doctor's notes state that her systems were positive for what she was reporting, and diagnosed her with having a closed head injury. On January 25, 2016, she applied for and received an Ex parte Order for Protection.

54. On January 21, 2016, Respondent left the State of Minnesota and went to South Carolina for treatment with Kenny Crosswhite. [31] He remained in South Carolina until April of that year. See: Exhibit 8. On February 5, 2016, his Petition for Dissolution of Marriage filed on April 28, 2014 was dismissed.

55. Throughout the marriage the Respondent was abusing alcohol heavily. He was also smoking marijuana and snorting cocaine.[32]

56. During this time he was arrested twice for Driving Under the Influence. The first occurred on June 30, 2014 when the parties were separated. On that occasion he

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[31] Mr. Crosswhite was recommended to Leah Rued from members of the church she attended in Florida. He apparently did not have the qualifications to treat persons with substance abuse problems. Ultimately the parties grew disenchanted with him as he tried to involve himself in the Respondent's business affairs. Scott Rued advised Dr. Albert that he intends to sue Mr. Crosswhite. See: Exhibit 211, p. 29, f. 41.

[32] The Respondent said that he has been an alcoholic since the age of 17. See: Exhibit 212, p. 5.

mistakenly parked his car at someone else's home and it caught fire. See: Exhibit 3. He ended up paying the homeowner $17,330 for damages caused by the fire. See: Exhibit 4. The second incident happened on July 25, 2015. The parties were spending the weekend at a resort near Two Harbors, MN. The Respondent was found drunk and passed out behind the wheel of his car with the motor running at 6:00 o'clock in the evening. An intoxilyzer test was administered and the results showed a .26 blood alcohol level. See: Exhibit 5. His vehicle was subsequently forfeited. See: Exhibit 6. The Respondent told the arresting officers that he had paid his mother $30,000 cash for the vehicle.

57. In addition to the above, in December of 2013 the Respondent was admitted to a psychiatric ward in Bonita Springs, Florida due to his alcohol consumption. His parents called the police after he became intoxicated and was breaking windows at their home. He was also threatening suicide. See: Exhibit 210, p. 14.[33] On the afternoon of October 16, 2015, the Respondent was taken in handcuffs as a "drunk/intoxicated person" to the emergency room of the University of Minnesota Medical Center, Fairview. From there he was admitted to the acute psychiatric unit where he was diagnosed with

[33] The Court questioned the Respondent about this incident. He claimed that the officers involved made the decision to take him to the psych ward but then told him he was fine and shouldn't be there. The Court pointed out that it made no sense for the officers to decide to take him to the psych ward if they felt it wasn't necessary, but the Respondent insisted that this was true. The Court finds that the Respondent's testimony here is not credible.

Alcohol Induced Delusional Disorder, Alcohol Use Disorder, and Alcohol Dependence.[34] According to the hospital records, the reason for his admission was that he "had gotten into an altercation in the parking lot of a chemical dependency treatment center where you were seeking admission for treatment and had tried to elope from the emergency room."[35] While there he was shouting about demon possession, that his mother was possessed by demons, and was threatening to commit suicide. See: Exhibit 210, p. 14. Part of his hospitalization required him to be placed on an alcohol withdrawal protocol. However, after three days he was discharged at his request and the protocol was not completed. At the time he declined to coordinate care with any outpatient providers. See: Exhibit 212, p. 6.[36]

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[34] As to this incident Dr. Albert said: "Such an episode is an uncommon and telling indicator of how severely Joseph's functioning can be disrupted by alcohol." See: Exhibit 212, p. 21.

[35] The altercation was with his father it occurred at Health Recovery Systems. The Petitioner said the Respondent punched his father in the stomach. See: Exhibit 210, p. 14. The Respondent claimed he merely pushed his father out of the way. As with the incident in Florida, See: f. 32, *supra,* the Court does not find Respondent's testimony here to be credible.

[36] The Respondent failed to disclose these incidents to both Dr. Albert and Ms. Mitnick, in spite of their requests for a history of his hospitalizations/health. When asked by Ms. Mitnick to explain why the Respondent hadn't put together a list of his contributions to the marital discord as requested in her questionnaire and as the Petitioner had done, the Respondent replied that "it was irrelevant because the real issues were Catrina providing safety for [redacted] and her personality changes." See: Exhibit 202, p. 44.

58. The Respondent acknowledged some of his problematic behaviors related to drinking in his conversations with Dr. Samuel Albert. These included: "typically having 10 or more drinks at a time, needing to use alcohol in the morning once a month to recover from the previous night's drinking, being unable to stop drinking once a month, having what he later indicated was a history of 20 to 25 blackouts that lasted up to a couple of hours, getting into physical fights with (the Petitioner) when drinking, getting into trouble at work because of drinking, using alcohol fairly often before noon, experiencing severe shaking after heavy drinking, receiving inpatient treatment for alcohol abuse or dependence, and being arrested for DUI" See: Exhibit 212, p. 7.[37] His mother has said that Respondent has attempted alcohol treatment six times, four times during the marriage. See: Exhibit 213, p. 7.

59. The Respondent's condition caused great stress in the parties' marriage, particularly for the children [redacted] and [redacted] who suffer from PTSD as a result of their time living with the Respondent. This will be discussed in more detail *infra.* Aside from the damage caused, the Respondent's condition calls into question the veracity of many of the claims he says occurred during the marriage.[38] It is

[37] The Respondent denied this history to Mindi Mitnick. See: Exhibit 202, p. 33.

[38] Dr. Albert wrote: "it was unclear to what extent he may have memory gaps or distortions about certain recalled events that had occurred in his marriage during periods of anger combined with alcohol use. See: Exhibit 212, p. 3.

undisputed that the Respondent has remained sober since September 1, 2016.

60. In addition to the above, Petitioner asserts that Respondent was engaged in some (apparently) faith-based conduct which was extremely disconcerting for both her and her non-joint children. Petitioner claims that Respondent told her that he was a prophet and could cast out demons. She told Mindi Mitnick:

> Joseph believes he can see demons in people and is able to cast them out by forcing people to look into his eyes by grabbing them or pinning them down where he is nose to nose with the person. He will shout, "demons get out!" Then, he will force the person to repeat after him, "Jesus Christ is the Son of God who has came into the flesh and has died on the cross." He believes he casts the demons into himself and has told me on several occasions that the constant drinking of wine keeps the demons quiet.
>
> He has "casted demons out" of my son [redacted] on three occasions. Stopping only after [redacted] was in tears and I pleaded with him to stop. However, if I didn't repeat the phrase exactly how he said it, he would tell me that I was still demon possessed and would make me repeat it until I said it exactly how he said it. Then, he would stare into my eyes and ask me questions about my father: do you believe

> your father molested you; do you remember anything about when your father molested you; he penetrated you annually [39] didn't he? If Joseph didn't like the answer, he would pin me down again and ask the same question until I said what he wanted to hear. This could last for hours until I was so exhausted and would say anything he wanted to hear just to end it. See: Exhibit 210, p. 14.

61. During the trial the Petitioner testified that the Respondent brought up the issue of demons early in their relationship but that she didn't think he meant it literally. She said Respondent said that he was a prophet without a home, and that his mother was possessed by demons. She said that once his mother set him up with a woman who was possessed by demons. Respondent was taking her to thesouthern United States when he realized she was possessed and the demons had infiltrated his parents who were on the East Coast. He then had to travel there to extract the demons from his mother. The Petitioner said that Respondent's parents shared his feelings on this issue.[40]

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[39] It's the Court's belief that the Petitioner meant to say "anally".

[40] Leah Rued told Dr. Albert that she has had personal experiences with the supernatural. See: Exhibit 213, p. 5. Dr. Albert reported that Scott Rued told him "that he has had experiences that indicate divine intervention, including some related to the present case." Mr. Rued said that, in his church: "We've seen a situation where a person was demonically possessed . . . we are taught to command demons to leave our house." See: Exhibit 214, p. 4.

62. When Mindi Mitnick asked Respondent about this he said he "was not a prophet ordained by G-d but was someone who spoke the truth." Further, she said "Joe, Scott, and Leah believe demons are a part of the world and that people can be affected by things that are not of their volition. Joe would try to cast out Catrina's demons which she described as intense and frightening. He denied trying to cast out demons from [redacted] as Catrina reported, because he was too young to give consent." See: Exhibit 202, p. 27.

63. When Dr. Albert broached the subject the Respondent denied much of what the Petitioner said. He told Albert that he was "merely praying for Catrina that 'any unclean spiritual entities flee.'" Dr. Albert said the Respondent's response to his query was "unusually vague." See: Exhibit 212, p. 24.[41]

64. At trial, the Respondent also denied the Petitioner's claims. He said he believes in demons because he's a Christian. He said he didn't do exorcisms as described by Petitioner, that he merely prayed for her. He testified that he never attempted to perform an exorcism on [redacted] again that he merely prayed for him.

65. Notwithstanding the Respondent's denials, Dr. Albert felt the Petitioner was telling the truth: "Her detailed description of much more aggressive behavior by Joseph and the fear

[41] Dr. Albert said that the Respondent's religiously-based behavior towards her and [redacted] could be "reasonably described as well outside normal limits." See: Exhibit 211, p. 14.

she felt appeared to be truthful." *Id.* Moreover, this Court watched carefully during this portion of the Petitioner's testimony, and finds that the spontaneity of her testimony, the detail she provided, and the affect she displayed all support a finding that she was truthful in this testimony. Lastly, in her discussions with Child Protection Investigators, Petitioner's child [redacted] provided a similar description as her mother regarding what the Respondent did to [redacted][42]

66. The Petitioner had her own issues that obviously affected the marriage. She has been diagnosed by Dr. Albert as having Posttraumatic Stress Disorder, Chronic, with Dissociation. See: Exhibit 211, p. 31.[43] Dr. Albert testified that on occasion during their visits, the Petitioner would just "go

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[42] For example, during an interview with CPI Jay Jayswal and Off. Ryan Kuffel, [redacted] said that once the Respondent was holding her brother's head and told him to look into his eyes and that it was very scary. See Exhibit 222, p. 5455. A few weeks prior to that [redacted] made similar statements to Mr. Jayswal, and said that Respondent would talk in a weird way. See: *Id*, p. 16-17. The Court is hard pressed to understand how this child could describe something so articulately not knowing its relevance to litigation that occurred several months later unless the experience was true.

When the Court questioned the Respondent about this he provided an outlandish answer. He said that Petitioner had essentially programmed [redacted] and [redacted] to be master manipulators, knowing exactly what their mother would want them to say about issues germane to the custody dispute, and so skilled that not even experienced therapists could uncover this devious behavior.

[43] Nancy Lowe, the Petitioner's therapist, diagnosed her with having *Complex* Posttraumatic Stress Disorder. Dr. Albert pointed out that this is not recognized by the Diagnostic and Statistical Manual (DSM)-V.

away" or would "check out." He explained that the Petitioner would dissociate when she felt her safety or security was being threatened. As the Court understands, this was a defense mechanism that the Petitioner would utilize rather than experience or re-live a traumatic event. Dr. Albert wrote that:

> Catrina's symptoms include a history of experiencing physical abuse and threats to her physical safety; experiencing intense fear or helplessness at such times; witnessing physical abuse of her mother by her father; having intrusive and distressing memories of past abuse, including flashbacks; feeling intense distress when she is exposed to reminders of past traumatic events; making efforts to avoid thinking or talking about past traumas; being unable to recall significant portions of her childhood; difficulty sleeping; irritability or outbursts of anger; and having dissociative episodes. *Id.*[44]

67. The Petitioner would also force herself to purge after a meal. She said she did this as a coping mechanism during her marriage. The Petitioner had food issues as a child, and was poised to enter Melrose Center for bulimia in September of 2016 but the litigation commenced instead. See: Exhibit 211, p. 8 and Exhibit 212, p. 12.

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[44] Nancy Lowe described the Petitioner as having "the classic signs of a battered woman." See: Exhibit 211, p. 22.

68. Dr. Albert also concluded that the Petitioner had anger issues. This he attributed to what he considered to be credible reports by all three of the Rueds. The Petitioner has also indicated, and later denied, that she had suicidal thoughts. See: Exhibit 211, p. 7, and Exhibit 263, p. 182-4.

69. Of note is the strong interest in the Rueds to have the Petitioner diagnosed with a personality disorder. This, apparently, was done to bolster their claims that the Petitioner is a "master manipulator." Nancy Lowe described to Dr. Albert a "very unusual occurrence in 2016 in which Leah had previously scheduled an appointment with her because she wanted to discuss Borderline Personality Disorder and asked Ms. Lowe to diagnose someone Leah knew with BPD whom Ms. Lowe had not met." At the time, Leah Rued brought with her a "shopping bag full of Borderline Personality Disorder books." Ms. Lowe told Ms. Rued that she could not diagnose someone she had not met, and later found out the person Ms. Rued was referring to was in fact the Petitioner. See: Exhibit 211, p. 22-23. Dr. Albert found that while the Petitioner had traits of a person with Borderline Personality Disorder as well as Anti-Social Personality Disorder, he could not conclude that she suffered from those disorders.

70. In July of 2016, Petitioner started therapy with Nancy Lowe. At approximately the same time her children started therapy with Dr. Sally Beck. [45] On August 22,

[45] [redacted] did not commence therapy until the Spring of 2018, even though the Respondent claimed he was repeatedly the

Respondent's parents filed a report with Hennepin County Child Protection alleging that [redacted] was being sexually abused and harassed by [redacted] and [redacted] Shortly thereafter the litigation commenced.

71. As stated *supra,* both parties have made claims during the litigation that has caused their veracity to be questioned. The following are examples of the Petitioner's conduct that raised this concern.

72. In the fall of 2013 the Petitioner told the Rueds that her father had physically, sexually and emotionally abused her as a child. She later put those claims into an unsigned affidavit that she intended to use in her pursuit to allow her and her children to remain in the State of Minnesota. See: Exhibit 260. She later denied that her father sexually abused her and claimed that the Respondent had "brainwashed" her into making those statements. In an affidavit filed with the Court in September of 2016, she wrote: "For the first time on September 15, 2016, I learned from Child Protection Services that I executed an Affidavit in 2013 stating my father molested me. I did not write this affidavit nor was I aware of the content of the affidavit." See: Exhibit 211, p. 19-20.

73. The Petitioner's claims here are not credible. Setting aside the issue of whether her father had, in fact, sexually abused her, the overwhelming evidence indicates that the Petitioner was a willing participant in the making and revising of the affidavit which is

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victim of physical and sexual abuse. [redacted] therapist is Dr. Anne Gearity, a recognized expert in play therapy.

Exhibit 260, See, e.g., Exhibit 202, p. 25, and therefore her claims to the contrary are clearly false.[46]

74. Another incident involves contact between the parties that occurred on April 9, 2017. At that time a No Contact Order was in place prohibiting all contact except for that regarding [redacted] and only by Our Family Wizard. In addition, the Petitioner had an Order for Protection against the Respondent that had been in effect since January 25, 2016. See: Exhibit 12.

75. The Respondent said that he was going to the Golf Galaxy store in Bloomington when he noticed that the Petitioner was following him. He said he pulled into the parking lot and that the Petitioner parked her car next to his, walked to his car and asked to speak to him. The Petitioner's version was just the opposite: that it was the Respondent that followed her and initiated the contact in violation of the orders. See: Exhibits 359 and

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[46] In that same affidavit the Petitioner claimed that her ex-husband, Ted Reppas, likewise physically, emotionally and sexually abused her during the marriage. She has since walked back on those claims as well.

There were six drafts of this affidavit. In the final one she said that Mr. Reppas "has hit, slapped, punched, kicked, and pushed me . . . . He would taunt me, . . . call me names regularly, including bitch, dog and slave and made an indirect threat toward her in bed." She also said that Reppas "forced me to have sex with him . . . that continued for the rest of our marriage." See: Exhibit 211, p. 11. In her conversation with Dr. Albert she "denied that her relationship with Mr. Reppas had ever been volatile." *Id.* She said that some of the statements in the affidavit were not true and "were manufactured by Joseph." *Id.* at p. 12. The Court does not find this to be credible.

360. The dispute was resolved when the Respondent obtained a copy of video from the incident which clearly showed that his version of the events were truthful, and the Petitioner's version was not. See: Exhibit 388. Clearly the Petitioner lied here.[47]

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[47] An incident that the Respondent and his parents point to as evidence of the Petitioner's lack of credibility occurred on September 1, 2016 which was related to the domestic violence from January 20. On that day the Respondent went to the marital home with his father. The Petitioner was residing there at the time, and claimed the pair were there to force her to testify falsely in the upcoming domestic abuse trial. She said they wanted to know her "plan" regarding her testimony. See: Exhibit 10. Respondent says that the reference to a "plan" related to their relationship and whether the Petitioner wanted to continue in the relationship or had a plan for something else. He said the visit had nothing to do with the upcoming criminal trial as he had been offered a plea bargain, and therefore knew there was not going to be a trial. As such, there was no need to pressure the Petitioner about her testimony. The incident on September 1 resulted in a second arrest of the Respondent for domestic abuse.
Both Dr. Albert and Mindi Mitnick expressed their belief that the Petitioner was not credible in her claims that she was unaware of the existence of a plea bargain. See: Exhibit 202, p. 29. Their belief was based, in large part, on a letter the Respondent's attorney, David Valentini had sent to Ms. Mitnick. See: Exhibit 351. Ms. Mitnick requested the letter to determine which version of the September 1 incident was true. In his letter to Ms. Mitnick, Mr. Valentini said that the prosecutor from the January 20 incident offered a plea bargain on June 14, 2016. The offer was for the Respondent to "plead guilty to 5th Degree Assault with a stay of adjudication for one year, undergo a presentence investigation, comply with any recommendations and pay a fine." *Id.* The letter further states: "I met with Mr. Rued, his wife Katrina (sic) and attorney John Lucas in my office on August 11, 2016. We agreed to accept this offer since it would keep Mr. Rued's record clear. When we appeared on September 6, 2016 for the Settlement Conference, the offer was rescinded due to the new charge . . . ." *Id.*

76. In spite of the above, this Court finds that, on balance, it is the Petitioner that is the more credible of the parties, and that the Respondent is far less credible.[48]

77. There were several times during his testimony that the Court felt that the Respondent was not being truthful, some of which have already been detailed in this Order. Other instances will be detailed here. For example, Mindi Mitnick testified that the Respondent took it as the literal truth when [redacted] told him that the Petitioner painted his butt green. In his testimony the Respondent denied this, said that knew that this was an exaggeration on [redacted] part,

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Mr. Valentini's deposition was introduced in lieu of his live testimony. See: Exhibit 657. He testified that he made a mistake in his letter to Ms. Mitnick when he stated that he had met with Petitioner and Respondent in August 2016. He testified that he met with the Petitioner in June 2016 shortly prior to the June 14 hearing. *Id.* at p. 36-7. He also testified that a plea bargain was offered to the Respondent in June 2016; however, they had not affirmatively accepted the offer or informed the prosecutor that the Respondent would accept it. *Id.,* p. 10. Mr. Valentini testified that in August 2016 he only met with the Respondent to discuss the hearing in September 2016. *Id.* p. 37. Finally, Mr. Valentini testified he did not know if the Petitioner was aware of the plea bargain offered in June 2016. *Id.*

Therefore it appears that the Petitioner was the more credible of the parties as it relates to the incident that occurred on September 1, and it is likely that Ms. Mitnick and Dr. Albert would have a different position of the parties' veracity had they been privy to Mr. Valentini's sworn testimony.

[48] It should be noted that Dr. Albert found the Petitioner to be the least credible as compared with Scott, Leah and Joseph Rued. Dr. Albert opined, however, that some of her statements that appear to be deliberate dishonesty are in fact the product of her PTSD: "What appears to be deliberate dishonesty by Catrina is sometimes likely to be psychological denial instead." See: Exhibit 211, p. 28.

and that he made that clear to Ms. Mitnick. He said that Ms. Mitnick "just got it wrong."

78. The Court does not find this testimony to be credible. Ms. Mitnick was clearly alarmed by the Respondent's perception of this statement, thought it was highly relevant to her work here, and is not likely to have misinterpreted what the Respondent told her.

79. Another example are the Respondent's allegations regarding Dr. Anne Gearity. As stated *supra,* Dr. Gearity is [redacted]play therapist and, by all accounts, is an expert in this area.[49] However, just getting [redacted]in to see Dr. Gearity was a struggle, mostly because of the Respondent's objections.

80. After the second CornerHouse interview on October 20, 2017, both CornerHouse personnel and Hennepin County Child Protection Services strongly suggested, *inter alia,* that [redacted]see a play therapist who could assist in determining if, in fact, [redacted] was abused.[50] He was provided a list of four locations that provide play therapy. One would have thought that he would have acted on this advice immediately. Surprisingly he did not. One would also have thought that he would have supplied this

[49] Mindi Mitnick testified that Dr. Gearity is well respected in this area. CPW Jade Pirlott confirmed this as well. See: Exhibit 226, p. 55.

[50] The Respondent testified that only the Child Protection Worker, Nan Morris, suggested play therapy. He suggested that he ignored this advice as he perceived Ms. Morris to be hostile towards him. However, his own exhibit contradicts this claim. On p. 4 of Exhibit 271 it states: "Refer for specific therapeutic and supportive services—HCCPS/CH (Hennepin County Child Protection Services/CornerHouse)."

information to the Petitioner. Not surprisingly he did not do that either.

81. Instead, the Petitioner was provided with this information by CPW Nan Morris a few days later. It was the Petitioner who then immediately contacted all four agencies. One wonders why she would do this if in fact [redacted] was being abused in her care since therapy would likely have exposed this as true, and this "exposure" would have greatly affected her custodial rights to [redacted] The Petitioner was well aware that the claimed abuse was a contentious issue in the custody proceeding. Yet it was she, and not the Respondent, who demonstrated no fear of the recommended therapy.

82. Two of the locations had a wait list for several months. The telephone number for the third location was not working. The last location's voicemail was full. As a result, the Petitioner contacted CPS for more recommendations and received two, one of which was Family Innovations. The Petitioner was able to get an appointment there with Lindsay Johnson. The Petitioner informed the Respondent of the intake appointment on the day of that session. The Respondent communicated to her that he didn't think that play therapy was in [redacted] best interests, See: Exhibit 527.

83. The Respondent took umbrage with Petitioner's conduct here, rightfully saying that the parties had joint legal custody and that he should have been involved in the decision. What he fails to acknowledge, however, is that he also took it upon himself

to make unilateral decisions that should have involved the Petitioner.[51]

84. The Petitioner also informed the Respondent that [redacted] first therapy appointment with Ms. Johnson was scheduled for December 7, 2017. She suggested that he contact Ms. Johnson herself or participate in the appointment. *Id.* When the Petitioner refused to agree to cease the therapy the Respondent's former attorney sent correspondence to Ms. Johnson demanding that the therapy stop, and that she turn over copies of all of her reports that she had accumulated to date. See: Exhibits 511 and 524.

85. As a result, a telephone conference was held with this Court on November 29, 2017. There the Respondent argued that a decision on [redacted] play therapist should wait until Mindi Mitnick completed her Custody and Parenting Time Evaluation. Respondent said that Ms. Mitnick told him that her report would be completed by the end of November

[51] For example, the Respondent made the following doctor appointments for [redacted] without consulting with, or informing, the Petitioner: September 20, 2016 appointment with New Kingdom Health Care; October 7, 2016 appointment with Urgent Care in Chanhassen; October 18, 2016 appointment with Midwest Children's Resource Center; October 19, 2016 appointment with Urgent Care in Chanhassen; October 24, 2016 appointment with Urgent Care in Chanhassen; and October 25, 2016 appointment with Urgent Care in Chanhassen. Additionally, the Respondent only informed the Petitioner of doctor appointments on November 15, 2016 and November 30, 2016 on the day of the appointments. He informed the Petitioner of a dentist appointment on November 16, 2017 after the fact, and did not apprise her of two ER visits in 2017 where [redacted] was examined for sexual abuse. See: Exhibit 527.

or early December. The Court decided that the parties should postpone play therapy until December 9 for the report to be completed and that if it wasn't, the parties and Court would again confer by telephone on December 14. See: Order filed December 12, 2017. Ultimately the parties agreed on March 9, 2018 for [redacted] to engage in play therapy with Dr. Gearity. The Court approved this via an Order filed on March 23, 2018. Therefore, because of the Respondent's objections, more than five months passed before [redacted] was able to get the therapy that was first suggested on October 20, 2017. While waiting for the therapy to begin, the Respondent claims that [redacted] was reporting to him that he was repeatedly abused while in the Petitioner's custody. If this is true, one wonders why the Respondent thought it was in [redacted] best interests to delay the therapy.[52]

86. It should be noted that Dr. Gearity found no evidence to support the Respondent's allegations that [redacted] was abused.

87. It is in this background that the Respondent's statements about Dr. Gearity be judged. The Respondent claims that [redacted] sees Dr. Anne Gearity as biased, calls her "mama's friend" and has repeatedly said since May of 2018 that he does not want to see her. The Court finds that these claims are not credible. First, they contradict the reports Dr. Gearity provided in the juvenile matter. Dr. Gearity said she first met [redacted] in March of 2018 and

[52] In her report, Ms. Mitnick wrote: "Joe's resistance to [redacted] being in therapy is in stark contrast to his focus on [redacted] physical health." See: Exhibit 202, p. 19.

saw him six times until therapy was suspended to allow Mindi Mitnick to finish her report. She then started seeing him again on November 11, 2018 and has continued with his therapy since that time. It does not seem that [redacted] would have had sufficient contact with Dr. Gearity from March until May to form the opinion the Respondent claims he has. Further, it's doubtful that a child of [redacted] age could have discerned that Dr. Gearity was "mama's friend" unless that idea was suggested to him. Lastly, Respondent's claims contradict the reports of Dr. Gearity as she has repeatedly said that [redacted] easily engages in play therapy with her. See: Exhibits B, C, D and E. Dr. Gearity is an experienced and well-known expert in this field. See: Exhibit 226, p. 55. If she thought that therapy was compromised because of negatives feelings [redacted] had towards her she would have ended the relationship. She has not.

88. The Respondent also claims that the Dr. Gearity has been verbally antagonistic towards him. The Court finds this to be extremely disingenuous. The Respondent has repeatedly asserted the protections of the Safe Harbor Agreement that prohibits either party from calling Dr. Gearity as a witness, [53] yet he makes these scurrilous claims against her knowing that they cannot

[53] When it was decided that [redacted] should be involved in therapy, the parties agreed that Dr. Gearity would be [redacted] therapist. As part of that agreement they negotiated a Safe Harbor provision. This prohibits the parties from viewing Dr. Gearity's notes or calling her as a witness to give testimony. See: Stipulation and Order dated March 23, 2018.

be contradicted due to the prohibitions of that agreement. It seems clear that the Respondent makes these negative comments only because Dr. Gearity doesn't support his narrative that [redacted] was abused.

89. Even more than his testimony, Respondent's uncompromising and unrealistic view of the world so defies common sense that his credibility is significantly challenged. At i*nfra* the Court discusses the Respondent's views on the issues of [redacted] diet and whether he was abused so those topics will not be repeated here. But the Respondent has proffered other opinions that are so far removed from reality, and so lacking in even a minutiae of corroboration that they cannot be considered to be reliable. Rather, they appear to be his attempt to explain inconsistencies in the narrative that does not support his positions.

90. For example, the Respondent claims that the people at CornerHouse were hostile towards him.[54] The Court finds this claim to be false. The Court has worked with CornerHouse since 1989, and knows their personnel and their mission. CornerHouse does not treat parents who believe their children have been victimized with hostility; they treat them with dignity, respect and compassion. The Court finds that the Respondent makes this claim only because CornerHouse did not adopt his conclusion that [redacted] was abused.

91. Further, Respondent's justification of his conduct that resulted in [redacted] removal from

[54] Respondent's former attorney alleged that CornerHouse was acting as Petitioner's advocate, and was "unabashedly hostile" to him. See: Exhibit 526, p. 2.

his preschool is mind boggling. [redacted] was attending Prestige Academy and by all accounts enjoyed going there and had developed some very good friendships. Respondent insisted they provide [redacted] with a dairy and gluten free diet even though allergy testing showed this to be unnecessary. The professionals at Prestige Academy did everything they could to work with the Respondent but he continued to badger, bully and harass them to the point that they essentially expelled [redacted] from their school. The Respondent says that it was the people at Prestige Academy who are to blame and that he did nothing wrong. The Respondent says he was only protecting [redacted] when no one else would, and that only he had [redacted] best interests at heart. One wonders how it worked to [redacted] best interests when he was told he was no longer welcome at his school and would no longer see the friends he had developed there.[55]

92. In addition, the Respondent is convinced that the Petitioner's father, Randolph Bash, Sr., has not only had repeated contact with [redacted] but has been sexually abusing him as well. This is in spite of the fact that there is not one shred of evidence that Mr. Bash has even met the child.

93. The Respondent had private investigators perched outside the Petitioner's home looking for evidence that would support his claims, and found none. See: Exhibit G. He reached this conclusion only because at times [redacted] has referenced an unknown,

[55] For a more complete explanation of this incident see this Court's Order dated March 27, 2020.

unnamed man with white whiskers. He said that [redacted] sometimes referred to this person as the "Ghost." Somehow the Respondent was able to determine that the white whiskered ghost was Randolph Bash.

94. Lastly, the Respondent believes that the Petitioner is a master manipulator who is able to control the narrative by influencing even the professionals, and does so without their knowledge. He testified that she is very effective at presenting evidence that's not accurate, that she's able to read people well, and therefore has the ability to control things like [redacted] play therapy. According to the Respondent, the people the Petitioner was able to manipulate in this case included Sally Beck, Nancy Lowe, Nan Morris, Dr. Anne Gearity, Officer Ryan Kuffel, and Jay Jayswal.

95. According to the Respondent she has passed these skills on to her children as well. During questioning by the Court the Respondent admitted that if the claims against [redacted] and [redacted] are true, then they surely are severely damaged children. The Court questioned him how this could be since their therapist found no evidence to support this conclusion. [56] The Respondent said these children "absolutely" have the ability to fool their therapists, that they are scared and smart and know what they need to do to

[56] Ms. Beck has indicated that the children suffered trauma but that there was no evidence that this was because they were sexually abused. The trauma was the result of the Respondent's drunken rages, and his insistence that [redacted] be separated from the rest of the family.

survive. He said that they tow the Petitioner's line.

96. The Respondent's statements fly in the face of the other evidence presented in this case. These children, and the Petitioner, have been examined by doctors, therapists, social workers and police officers. Not one of these professionals support the Respondent's claims.In the Court's view, this is all in the Respondent's mind and was created to explain the gaps in the narrative that he endorses.

97. The twists in the logic of the Respondent are so disconnected that they verify the Court's findings that the Respondent is not a credible reporter of historical facts.

98. As corroboration for this testimony, the Respondent proffered the testimonies of his parents, Scott and Leah Rued, and of [redacted] nanny, Anastasia Bolbocceanu. The Court likewise did not find these testimonies to be compelling.

99. The bias of these witnesses cannot be understated, the Respondent's parents for the obvious reasons. Their hatred for the Petitioner was remarkable in their testimonies as well as in their statements to Ms. Mitnick, Dr. Albert, and all of the Child Protection workers, police officers, forensic interviewers, therapists and other persons who were connected to this case.

100. In addition, Ms. Bolbocceanu was anything but a neutral third party. When she was interviewed by Off. Ryan Kuffel she had an attorney present that was paid for by the Respondent. One has to wonder why it was

necessary for her to be represented by counsel. She was not a suspect in any foul play. The purpose of her interview was only to advance the investigation.

101. In addition, Ms. Bolbocceanu's testimony mimicked that of the Respondent, particularly as it relates to why [redacted] allergic reactions were not the result of his contact with the family dog, but rather due to his failure to have a dairy and gluten free diet in Petitioner's care.

102. The testimonies of all three of these witnesses were, as with the Respondent, rehearsed. In spite of the fact that they were testifying about numerous instances they purportedly witnessed, none appeared to need the advantage of notes to refresh their recollections. In spite of the fact that the record of this case is voluminous, all were aware of the issues/statements/incidents that could negatively impact the Respondent's case, and all appeared to have the same explanations that, while contradicting the testimonies of other, neutral third persons, seemed to mimic the testimony of the Respondent. This was particularly striking when they challenged the findings and testimony of Mindi Mitnick, and was done in spite of the fact that they requested no changes in her report nor challenged her testimony during cross examination.

103. One such example relates to Scott Rued's reaction to [redacted]failure to make disclosures during one of the interviews at CornerHouse. Ms. Mitnick documented that "Scott reported in late June that, when Joe

told him [redacted] did not make an abuse disclosure at the second CornerHouse interview, Scott sobbed in front of [redacted] said, 'Bapa sad. Is Bapa sad because he thinks I lied?'" The Respondent and his parents knew this evidence was detrimental to their position as Ms. Mitnick called this "highly inappropriate," and said this was "another indicator of the intense conflict that surrounds this child." See: Exhibit 202, p. 76. Yet the Respondent and his father testified to something in stark contrast. They said that Scott Rued was "sad" or "devastated" but was not sobbing. In spite of this obvious contrast on an important point Ms. Mitnick was not challenged about the contents of her report.

104. With that the Court will now turn to the two recurring themes that were constant throughout the litigation, both involving allegations that the Petitioner is negligent in the care of the joint child: 1) that [redacted] has allergies to dairy and gluten which Petitioner ignores to [redacted] detriment; and 2) that he is being physically and sexually abused by several people while in Petitioner's care and custody, and that she refuses to protect him from the alleged abuse.

[redacted] Diet.

105. Respondent and his parents have persistently claimed that [redacted] is allergic to gluten and dairy. This is in spite of the fact that he had never been *properly* tested for food allergies until Petitioner had him tested in October of 2016.[57] Respondent and his

[57] Respondent proffered Exhibit 631, which is a letter from Dr. Troy Spurrill, apparently as proof that [redacted] has food

parents persist in this opinion in spite of the fact that there is now medical evidence to the contrary.

106. Respondent and his parents claim to have specialized knowledge in this area, having suffered from allergies themselves. In addition, they have donated monies and created a foundation to study the issue.

107. Petitioner testified that, until her final separation from Respondent, she went along with the diet that Respondent and his parents wanted [redacted] to follow. She testified that it was just easier to go along rather than go against them on this issue. Given the animosity in existence here, the Court finds Petitioner's testimony on this point to be credible.

108. On September 20, 2017, the child had a blood draw for a RAST test.[58] This was done at New Kingdom Health Care under the direction of Dr. Robert Zajac. The test indicated that he tested high for a casein intolerance which is a protein found in cow's milk. See: Exhibit 622. However, that report also clearly states: "This test(s) was performed using a kit that has not been cleared or approved by the FDA."

109. On October 27, 2016 the Petitioner took the child to see Dr. David Schroeckenstein. This was a referral by [redacted] pediatrician, Dr.

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allergies. Dr. Spurrill is a chiropractor and Respondent has offered no evidence, nor has he even argued, that Dr. Spurrill is competent to diagnose or treat allergies.

[58] A radioallergosorbent test (RAST) is a blood test using radioimmunoassay test to detect specific IgE antibodies, to determine the substances a subject is allergic to. This is different from a skin allergy test, which determines allergy by the reaction of a person's skin to different substances.

Stephen Lutz. When Respondent found out he attempted to cancel the appointment. In the Court's view the Respondent's conduct here defies logic as it seems that any parent would want to know with certainty if their child has allergies. Irrespective of Respondent's objections, the appointment went on as scheduled.

110. Dr. Schroeckenstein completed a report which was received into evidence as Exhibit 39.Under the section entitled "History of Present Illness" Dr. Schroeckenstein states the following:

> (Child) is brought by mother for testing. She wants to make sure that he is not allergic to wheat, milk or tree nuts, and to make sure that he does not have celiac disease.[59] His father is allergic to tree nuts. His father and paternal grandmother choose not to eat dairy or gluten products, and so his mother wants to make sure that this is not a problem. [redacted]has had no apparent sx (symptoms) after having dairy or wheat. He has never had tree nuts.

In the section entitled "Impression and Plan" Dr. Schroeckenstein writes:

> [redacted]**has no food allergies. There is no need or reason to avoid any foods in his diet.** Specific allergies are not transferred from a parent to a child.

[59] Celiac disease, sometimes called celiac sprue or gluten-sensitive enteropathy, is an immune reaction to eating gluten, a protein found in wheat, barley, and rye. Mayoclinic.org

(Emphasis Added). See, also: Exhibit 40.

111. As a result, Petitioner discontinued [redacted] gluten and dairy free diet sometime in October of 2016.[60]

112. Respondent subsequently contacted Dr. Schroeckenstein on October 31, 2016. Respondent claimed that [redacted] seemed to be intolerant of the foods he was tested for. Dr. Schroeckenstein said that [redacted] could not be tested for food intolerances and that his negative tests did no (sic) eliminate this as a possibility." Dr. Schroeckenstein further stated that "IgG tests have no validity in diagnosing a food intolerance." [61] Exhibit 620.[62]

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[60] Apparently the Petitioner was not forthright in timely disclosing her change of position to the Respondent. Respondent's Exhibit 317 is an email from Petitioner's counsel's paralegal to Respondent's then attorney, M. Sue Wilson. The email is dated November 8, 2016 and states, in pertinent part: "Ms. Rued continues to feed [redacted] a gluten free/dairy free diet and will do so until further order of the court."

[61] IgG tests are blood tests. Exhibit 39 indicates that Dr. Schroeckenstein conducted skin tests on [redacted] The Respondent was told by Dr. Lutz that IgG tests have no validity in diagnosing food intolerances, but they do for allergies. See: Exhibit 202, p. 20.

[62] The Respondent testified that when he spoke to Dr. Schroeckenstein, he told him of his family's history with allergies and that the Dr. responded that he never would have administered the tests he did if he had that information. The Court does not find this testimony to be truthful. For one thing, it contradicts the Dr.'s statement in Exhibit 39 wherein he says: "Specific allergies are not transferred from a parent to a child." If this is the Dr.'s medical opinion, then Respondent's family history would be irrelevant to the Dr.'s diagnosis and treatment. In addition, the testimony fits within the Respondent's narrative on the issue of [redacted] alleged

113. Thereafter, on November 30, 2016, Respondent had [redacted] tested again at New Kingdom Healthcare by Dr. Zajac. See: Exhibit 621. Dr. Zajac performed IgG tests. Respondent avers that [redacted] tested 2 (on a 0 to 3 scale) for an intolerance to cow's milk. The report indicates that a level 2 is in the moderate range for food intolerances. Furthermore, the report indicates that the test performed by Dr. Zajac "has not been cleared or approved by the U.S. Food and Drug Administration." This was consistent with what Dr. Schroeckenstein told the Respondent on October 31.

114. Of note is that [redacted] did test positive for being allergic to dog dander. See: Exhibit 621, p. 1. The Court notes that Respondent's parents have a dog which they claim is "hypoallergenic," and that [redacted] spends much of his father's parenting time at his grandparent's home. According to the Mayo Clinic: "There's no such thing as a hypoallergenic dog breed, although some individual dogs may cause fewer allergy symptoms than others." Mayoclinic.org. Respondent has repeatedly taken photographs of [redacted] when he thinks there is evidence that [redacted] is reacting to food eaten during the Petitioner's parenting time. See: e.g., Exhibits 334, 376, 382, 417, 423, 442, 459, 460, 473, 551, 554, 560, and 594. In spite of the medical evidence to the contrary, he insists that his parent's dog cannot be the cause of these reactions. Rather, they can only

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allergies. As has been seen elsewhere in this litigation, where the true facts don't fit the Respondent's narrative, he has been more than willing to "fill in the gaps" to fit his own version.

be the result of the diet [redacted] was being fed in his mother's care.

115. Even if it could be said that the IgG tests have a degree of accuracy, it must be remembered that, at best, they showed that the child has an "intolerance" and not an allergy. According to the Mayo Clinic, there is a big difference between the two:

> A true food allergy causes an immune system reaction that affects numerous organs in the body. It can cause a range of symptoms. In some cases, an allergic food reaction can be severe or life-threatening. In contrast, food intolerance symptoms are generally less serious and often limited to digestive problems. Mayoclinic.org.

116. In addition to the several occasions where the Respondent took photos of [redacted] he also took him to the hospital to document his claims.[63]

117. What is curious is that the child only showed symptoms when in the Respondent's care. He reported that [redacted] exhibits symptoms when he returns from visits with his mother. However, the Petitioner does not report these symptoms and neither did the professionals at Prestige Academy. There the child complained of only two stomach aches for the almost 15 months that he child attended

[63] Respondent took [redacted] to Urgent Care in November, 2016 because of complaints of "wheezing." He did so again in April of 2017. In May of that year he contacted the Eden Prairie Police Department to report that Petitioner had fed [redacted] macaroni and cheese.

their school. During this time they did not feed [redacted]a gluten or dairy free diet. See: Order filed March 27, 2020.

118. The disagreement between the parties on this issue resulted in Petitioner relenting to Respondent's request that a Special Master be appointed on this issue. See: Order filed December 9, 2019. Petitioner says she only agreed to this as she was afraid that Respondent's conduct towards the employees at Prestige Academy would result in the child's removal from that school. Petitioner was prophetic in her fears.

119. In an email stream on July 20, 2020, the attorneys allowed this Court to speak directly to the Special Master, Senior Judge Tanja Manrique. Judge Manrique indicated that negotiating a resolution with the parties was challenging as they were not aligned on the scope of preferred testing and the logistics of [redacted]medical appointments. She also noted, nevertheless, that both parties have been willing to accept her recommendations, such as the selection of the May Clinic to conduct the testing. Respondent's first choice was the Mount Sinai Hospital in New York, and Petitioner's preference was Children's Hospital in Minneapolis. As to the extent of testing, the referral from [redacted]primary care doctor was for "full scope" allergy testing and an appointment with a pulmonologist. Respondent maintained that a blood test should be included, whereas Petitioner thought it was not crucial given that [redacted] previously had been subjected to a blood test. The parties ultimately agreed that if the May Clinic recommends blood tests, or if the

> Respondent requested blood tests, the Petitioner would agree so long as Mayo also tested [redacted] for animal allergies. The Special Master anticipated a blood test would be conducted. However, the testing physician, Dr. Jenny M. Montejo, refused to conduct blood tests but did conduct skin tests. The results indicated that [redacted] tested positive as allergic to cats, dogs, and peanuts,[64] but negative to dust mites, molds, milk and eggs. See: Exhibit F.[65] Dr. Montejo has indicated she will evaluate [redacted] further by administering a "food challenge," which involves feeding him certain foods and observing him to determine if he experiences any allergic reactions. The parties scheduled a telephone call with Dr. Montejo for August 4, 2020, to discuss the logistics of this

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[64] [redacted] had previously tested negative to pine nuts.

[65] The test results (Exhibit F) were instructive for other reasons. Dr. Montejo said that upon entering the room and introducing herself the Respondent asked if he could record the visit and was told that that was not allowed. Dr. Montejo described the interaction between the parties "as tense and they kept interrupting each other throughout the visit, making it difficult to obtain information."

Dr. Montejo "ordered and interpreted skin testing. Skin prick test was positive to cat (8 x 5 mm wheal with a flare), dog (9 x 7 mm wheal with a flare), and peanut (7 x 5 mm wheal with a flare). Negative to dust mites, molds, milk and egg. Negative and positive controls reacted appropriately." Dr. Montejo said that [redacted] does have findings on his physical exam that support allergic rhinitis (an allergic response to specific allergens)." She explained that "food allergies do not cause changes in the nasal mucosa as the ones I found. This (sic) changes are due to aeroallergen exposure" (any airborne which triggers an allergic reaction). As a result, she recommended that [redacted] avoid contact with cats and dogs, and recommended that the Respondent's parent's dog be "relocated."

procedure, and the Special Master will participate in that call.

120. While a final test for allergies is still being contemplated by Dr. Montejo,[66] the results thus far do not support the Respondent's claims. In fact, they strongly suggest the opposite to be true. Respondent's past sworn statements that he has scientific proof that [redacted] has allergies that require a dairy and gluten free diet are false. See, e.g.: Exhibit 222, p. 6. His statement that prior Court Orders support his claims are likewise false. *Id*.

121. Dr. Zajac and Mindi Mitnick had at one time suggested that the parties follow a Whole 30 diet or have a neutral allergist resolve the issue. These suggestions had merit and may have resolved this issue months ago. However, one wonders whether Respondent would have followed those recommendations if the results did not conform to his opinion on the matter. Clearly his history in this litigation demonstrates that he will refuse to compromise and will continue to antagonize those who don't support his position. Based on this history, the Court has serious concerns whether Respondent will even abide by the decision of the Special Master if it is contrary to his position.

122. While Respondent has strenuously said that he is only acting as his son's advocate and only in his son's best interests the results show quite the opposite. The evidence clearly

[66] Dr. Montejo wrote that "the gold standard to diagnose a food allergy is an oral challenge, which is food introduction under medical supervision."

shows that his conduct endangers his son's health and welfare.

123. For example, Dr. Zajac has refused to treat his [redacted] or have anything to do with Respondent due to his behavior. On March 15, 2018, New Kingdom sent Respondent a letter that states, in pertinent part: "We also ask that you discontinue your attempts to contact, communicate with or schedule [redacted] with our providers at our clinic effective immediately." See: Exhibit 44. Respondent then sent an email asking why New Horizon was taking that position. They responded by saying: "In no circumstances are we the mediator between parents. The receipt of the exchange between the two parents that you hand delivered to our clinic would be a violation of our policy . . . ." Respondent then sent them another, more lengthy email, to which they replied: "Dr. Zajac does not feel comfortable providing care moving forward, . . ." See: Exhibit 45.

124. In addition as stated *supra,* Prestige Academy essentially expelled [redacted] from their school due to his father's conduct as he was insisting that the provide [redacted] with a dairy and gluten free diet. This was done after several warnings for the Respondent to cease and desist his rude and disruptive behavior. His conduct was so egregious that it required the involvement of parties' attorneys, as well as the attorney from Prestige Academy.[67]

125. It was well known that [redacted] had close friends at Prestige. The Respondent alluded

[67] See: this Court's Order dated March 27, 2020.

to this fact during his testimony at trial. Jade Pirlott[68] testified that [redacted] had a "little buddy" at the school and that "the two of them were thick as thieves." See: Exhibit 226, p. 96, l. 4-7. One wonders about the confusion, embarrassment and loss that [redacted] felt when he suddenly found out that he was no longer welcome at Prestige Academy, and how this squares with Respondent's claims that he only acts in [redacted] best interests.

126. Lastly, Dr. Montejo's recommendation that Respondent "get rid of the dog" has fallen on deaf ears. Respondent insists that he is correct, and Dr. Montejo is wrong, that [redacted] is not allergic to the family dog. This conclusion is preposterous. It seems that rather than admit he may be wrong, the Respondent is willing to allow [redacted] to feel the effects of his exposure to the animal. One is hard-pressed to understand how this can be in [redacted] best interests.

Allegations that [redacted] was Physically and Sexually Abused.

127. The second recurring theme in this litigation is the allegation that [redacted] has repeatedly been physically and sexually abused while in Petitioner's custody, and that she has failed to protect him from the alleged abuse. This is the seminal issue in this litigation. The Court notes that in examining these allegations several points are salient to the analysis: 1) all of the allegations originate from the

[68] Ms. Pirlott was the social worker from Hennepin County Child Protection who was assigned as the primary case manager for the CHIPS matter, 27-JV-18-5395.

Respondent or his family;[69] 2) all of the allegations arose after the Petitioner accused the Respondent of domestic violence on January 20, 2016; 3) no independent third person, organization, medical personnel, law enforcement agency, social services agency or forensic interviewer corroborates any of the allegations; 4) while it may be true that many if not all of the statements were not intentionally elicited from the child for inappropriate reasons, the statements were nonetheless made under circumstances that are suspect; 5) during the five videotapes that were provided to the Court where [redacted] is asked about the allegations, in none does he show any evidence or trauma that one would expect from a child who has experienced what was alleged; and 6) as time went on, the statements became more expansive as more persons were identified as alleged abusers of [redacted] and more abuse is alleged to have occurred all at a time when the Petitioner was under increased scrutiny regarding her care of the child.

128. Because neither party wished [redacted] to testify, the allegations he made rest on the admissibility of his statements. Respondent proffers several of [redacted] statements mainly under MRE 807, the residual exception to the hearsay rule, which states as follows:

> A statement not specifically covered by rule 803 or 804 but having equivalent circumstantial

[69] The Court is including [redacted]nanny, Anastasia Bolbocceanu, in its definition of "family" recognizing that she is not a blood relative.

> guarantees of trustworthiness, is not excluded by the hearsay rule, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party, sufficiently in advance of the trial or hearing, to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name, address and present whereabouts of the declarant.

129. All of the provisions of the rule that are required prior to admission of the statements have been met with the exception of findings that each individual statement has "equivalent circumstantial guarantees of trustworthiness:" the statements are offered for a material fact; the statements are more probative on the point for which it is offered than any other available evidence; the general purposes of the rules and the interests of justice will be served by admission of statements that have

"equivalent circumstantial guarantees of trustworthiness"; and Respondent has given Petitioner notice of his intent to offer the statements sufficiently in advance of the trial to provide her with a fair opportunity to object to the statements.

130. To determine whether a statement has "equivalent circumstantial guarantees of trustworthiness" the Court looks at the time, place and circumstances surrounding the making of the statements. In other words, "A party seeking admission of an out-of-court statement . . . must 'establish that the totality of the circumstances surrounding the making of the statements show the statements were sufficiently trustworthy . . . .'" *State v. Ahmed*, 782 N.W. 2nd 253 at 260 (Minn. Ct. App. 2010). "Stated differently, the focus is not on all the circumstances, including evidence at trial corroborating the child's statements, but only on those circumstances actually surrounding the making of the statements." *State v. Lanam*, 459 N.W.2nd 656 at 661 (Minn. 1990). "(T)he analysis required by the rule focuses on whether the statement itself is reliable, not whether the person to whom the statement is made is reliable." *Ahmed, supra.*

131. Factors the Court should consider when determining admissibility of a child's statements "include, but are not limited to, whether the statements were spontaneous, whether the person talking with the child had a preconceived idea of what the child should say, whether the statements were in response to leading or suggestive questions, whether the child had any apparent motive

to fabricate, and whether the statements are the type of statements one would expect a child of that age to fabricate." *Lanam*, *supra,* citing *Idaho v. Wright*, 110 S. Ct. 3139 at 3449-52 (1990).

132. With this in mind the Court will, within the limits stated herein, examine the allegations, including those based on [redacted] statements, to determine whether the statements are admissible, and also whether the allegations are credible.[70]

133. There were many other statements attributed to [redacted] that were testified to, particularly by the Respondent, that the notice provisions required by MRE 807 were not adhered to. These statements were pervasive and clearly inadmissible. Even though they were not objected to the Court will not consider those statements as admissible evidence except as indicated herein to challenge the credibility of the witnesses.

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[70] Because the statements [redacted] purportedly made to Scott and Leah Rued and Anastasia Bolbocceanu were introduced late in the litigation, the Court did not have the ability to make the inquiry necessary to determine each statement's admissibility under MRE 807. However, in order to rule on the merits of the allegations the Court will examine the veracity of the statements without ruling on their admissibility.

Leah Rued testified that [redacted] made statements referencing physical and/or sexual abuse on the following dates: September 27, 2017; September 28, 2017; October 8, 2017; March 25, 2018; June 7, 2018; June 18, 2018; June 22, 2018; June 29, 2018; and October 29, 2018.

Anastasia Bolbocceanu testified to statements [redacted] made on June 6, 2017; June 7, 2018; June 18, 2018 and October 31, 2018.

Scott Rued testified to the statements [redacted] made on June 7 and 18, 2018.

134. In his testimony on July 16 and 17, 2020, after many strong suggestions by the Court, the Respondent finally testified to statements he claims were made by [redacted] that relate to physical or sexual abuse. There were a total of 55 statements he seeks to introduce that occurred from January 11, 2017 to November 28, 2018. The Court has reviewed each of these statements and finds that all of the statements are admissible under the residual exception to the hearsay based on the foundational evidence presented.

135. Many of the statements were spontaneous. While the Respondent clearly was expecting [redacted] to continue to make statements of this sort, many of the statements were not prompted by his questions. There is little to no evidence that the statements were in response to leading or suggestive questions. These are not the statements one would expect a child to make given that many of them describe sexual experiences. It can fairly be said that [redacted] had a motive to fabricate these allegations since it is clear he received positive reinforcement from the Respondent and his parents when he made the statements, but the Court finds that that evidence goes to the credibility of the statements, and the analysis under MRE 807 is strictly related to admissibility.[71]

136. As stated herein, the Court is not able to examine the admissibility of [redacted] statements to Scott and Leah Rued and

[71] Petitioner objected to the introductions of statements [redacted] made on October 20, 2017 and March 10, 2018 on the grounds of insufficient notice. Those objections are overruled.

Anastasia Bolbocceanu. However, some reflection on Leah Rued's competence to ask appropriate questions of [redacted] is necessary.

137. Leah Rued testified that she learned how to question a child regarding allegations of abuse by taking a class more than 20 years ago. She indicated that she followed those precepts and did not ask [redacted] leading questions, knowing that that could result in a false report.

138. What Leah Rued failed to mention is that she did some additional study on this issue. She reviewed a PowerPoint presentation prepared by Mindi Mitnick that Ms. Mitnick was unaware of until that point was brought up during her examination. Ms. Mitnick testified that that presentation was not intended for lay persons, but rather for those who conduct forensic interviews such as the people at CornerHouse.

139. Moreover, Ms. Mitnick questioned Leah Rued about her interviewing skills, and Leah Rued admitted that she often asked [redacted] leading questions. Because these multitude of interviews were not recorded, and particularly because so little time was devoted to how the questions were asked or how the statements were made as a prelude to determine admissibility, it is impossible for the Court to say, unequivocally, how much Ms. Rued's inability to ask appropriate questions influenced [redacted] in making the statements. However, it is clear from the totality of the evidence that [redacted] was influenced.

140. Reviewing the statements the Respondent testified to, the Court finds that the

statements made on the following dates are irrelevant as [redacted] made no credible claims that he was either physically or sexually abused by anyone: January 11, 2017; February 20, 2017; June 5, 2017; September 12, 2017; October 17, 2017; October 20, 2017; November 23, 2017; January 3, 2018; February 11, 2018; and August 11, 2018.

141. Respondent claims that [redacted] made statements that he was physically abused on the following dates: February 23, 2017; April 1, 2017; April 3, 2017; May 15, 2017; May 29, 2017; June 20, 2017; July 27, 2017; July 28, 2017; September 10, 2017; October 30, 2017; November 3, 2017; November 6, 2017; November 29, 2017; January 27, 2018; February 27, 2018; April 10, 2018; May 1, 2018; May 8, 2018; June 28, 2018; July 10, 2018; August 6, 2018; August 26, 2018; and October 8, 2018. While the Court finds these statements admissible, it does not find them to be credible. In spite of the fact that the Respondent routinely took photos of [redacted] to document his allegations, he took only two photos of the 23 instances of physical abuse that he testified to. Exhibit 493 is a photo of the injury related to [redacted] comments on October 30, 2017. It shows a minor scratch. Respondent testified that [redacted] eye was also blackened. Exhibit 493 clearly shows that it was not. Exhibit 574 is a photo that relates to the statement from May 1, 2018. It shows bruising on the child's legs. Nothing about that photo is compelling in supporting an allegation that [redacted] was physically abused.

142. In addition, [redacted] is a child who likes to tattle. CPW Jade Pirlott testified to this in her deposition. See: Exhibit 226, p. 73. She also witnessed this. See: Exhibit 232, p. 37 of 71. Further, siblings play and when they do they sometimes sustain minor injuries. Siblings also fight and likewise will get minor injuries.[72] The Court doesn't view [redacted] statements as anything more than sibling rivalry. Lastly, it's very clear that [redacted] enjoys the attention he receives when he makes these statements, and Respondent, his parents, and [redacted] nanny all reinforce that attention. See, e.g., Exhibit 636.
143. What is more salient to the Court's responsibilities here is whether [redacted] was sexually abused.
144. Hennepin County Child Protection Services and the Eden Prairie Police Department were asked to and did investigate several of these allegations.
145. The first complaint came on August 22, 2016 when Leah Rued reported that [redacted] was being sexually harassed by [redacted] and [redacted] It was alleged that [redacted] approached [redacted] face with an erection while thrusting his lower body towards him. It was also alleged that [redacted] has been caught doing erotic videos on his iPad, and that he masturbates anally to the point of having explosive bowel movements. Exhibit

[72] Mindi Mitnick wrote: "Joe and his parents do not appear to recognize that siblings fight, . . . These incidents do not necessarily mean that Catrina is failing to supervise adequately or that abuse is occurring." See: Exhibit 202, p. 701.

244, p. 2. During this time Respondent also claimed that [redacted] collated and created a slide show of nude and sexually explicit photos that he showed to [redacted] that he caught [redacted] and [redacted] making an inappropriate video where they were both naked and which was of a sexual nature, and that he caught [redacted] and [redacted] touching each other's genitals. See: Exhibit 202, p. 89.

146. The case was assigned to Child Protection Investigator (CPI) Amanda Hunter.[73] She investigated the matter along with Eden Prairie Police Officer Robert Geis. These are the incidents that resulted, in part, in Scott and Leah Rued filing for Third Party Custody of [redacted] What appears to have motivated the filing is the belief that [redacted] and [redacted] therapist concluded that they were victims of sexual abuse at the hands of Petitioner's father.

147. On September 14, 2016, both [redacted] and [redacted] were interviewed at their respective schools. Marie was interviewed at Prairie View Elementary and appeared healthy and well-groomed. She said her siblings sometimes argue but enjoy playing games together. She said she has a nice relationship with her mom but that her step-dad yells sometimes. She described some of the chaos in the household in that the Respondent would get drunk a lot, have fights with her mom which included breaking dishes. [redacted] says Respondent also once broke her IPad.

[73] She is also referred to as Amanda Kepler as she was married at some time during this process.

She denied the allegations of sexual abuse. Exhibit 287, p. 2-3.[74]

148. [redacted] was interviewed at St. Hubert's. He likewise appeared healthy and well-groomed. When asked about the Respondent he reported that he never sees his evil step-dad. He said he is evil because he is mean and yells. He said his step-dad does not like his mother and thinks that she doesn't understand anything. His step-dad wouldn't let his mother see [redacted] because he is mean. He said that his stepdad gets drunk by drinking too much wine. He didn't want to talk about the fighting in the home. He said he was unsure whether someone had touched him sexually and said he didn't want to talk about it. He continually tried to change the subject when it was brought up. He said he feels safe at home. Exhibit 287, p. 6.

149. The Petitioner was interviewed on September 15. She said she had never seen [redacted] approach [redacted] and make sexual actions towards him. She said she caught him looking at Rihanna music videos on his iPad but denied him watching pornographic videos.[75] She immediately stopped him and

[74] All of the Child Protection reports were received without objection. The reports contain multiple instances of hearsay. Since the reports were received without objection, everything contained in the reports, including the hearsay material, has become a part of the court record.

[75] In her report Ms. Hunter said it was [redacted] that was caught looking at the music videos. From the context of her entire report however, it is clear that she was referring to [redacted]

put the parental controls back on the iPad.[76] She denied [redacted] said or did anything inappropriate. Her only concerns about [redacted] was when she found urine in his room and feces in the bathtub. She talked to the therapist about this who advised her that this could be from stress. Exhibit 287, p. 7-9.

150. Petitioner further stated that Respondent is obsessed with believing that her father molested her as a child. She said the only time she would admit that was when Respondent would pin her down, place his forehead to her forehead, and make her admit that her father abused her. She said Respondent continues to make claims that her older two children were sexually molested. She said she had a pending domestic abuse case that was pushed out to December 5 and that [redacted] was subpoenaed to testify. She said Respondent and his father have been pressuring her to lie because it would be a liability to their firm if Respondent were convicted. She said that Respondent drinks daily and his parents repeatedly have told her not to call the police because family does not call the police on one another. She said she's been in therapy with Nancy Lowe since June, all while the Rueds have been trying to convince her that she has Borderline Personality Disorder. She said they try to tell her that she's crazy. *Id.*

151. Sally Beck was also interviewed. Of note is Dr. Beck's statement that she never reported to Respondent or his parents that [redacted] and [redacted] were sexually abused, only that her

[76] In her testimony, the Petitioner said that Respondent was intoxicated when he witnessed this incident, and attributed his intoxication to distorting the reality of what occurred.

job was to attempt to rule that out.[77] She said that she cannot rule out sexual abuse because [redacted] encopresis can be a sign of sexual abuse, but it can also be a sign of a psychological stressor, constipation, or something else. She said Petitioner told her that [redacted] started smearing his feces in June, around the time that the Respondent came back from treatment.

152. She indicated that the children have been in therapy with her since July of 2016, and that both children denied being sexually abused. She said that [redacted] play therapy evidences "trauma play" which Dr. Beck believes was a reflection of the children's home environment. She said that [redacted] is very "frantic" in his play and that his play revolves around protection and danger. She stated that he will often play with toys and say things to the toys like "honey, hurry—you are going to die" and then he will bring the toys to a safe place in order to rescue them.[78]

153. Dr. Beck said that [redacted] describes domestic violence in their sessions and that

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[77] See #146 *supra.*

[78] What Dr. Beck described was also seen by others. For example, the Respondent's sister, Alex Rued, testified "When I met [redacted] in 2013 the thing that I remember that sort of carried through is the way that we would play, and it was always building safe homes, ..." See: Exhibit 262, p. 18, l. 17-19. Marie Ness, a friend of the Petitioner, described [redacted] as "very fragile and scared." She said he used to play with her youngest daughter about "saving a family from a fire." See: Exhibit 202, p. 56. The Petitioner told Mindi Mitnick that when [redacted] was playing with his toys "he was constantly saving the family from a tragic situation." See: Exhibit 210, p. 11.

Respondent gets drunk a lot drinking wine. [redacted] also reported that one time Respondent said to Petitioner: "You only want your son here so he can suck your vagina." [redacted] said that that comment made her sick.

154. Dr. Beck discussed a session she had with both parents on August 22. There the Respondent did not want the Petitioner to disclose that [redacted] was being sent to his room on those nights when [redacted] came back from his grandparents. She witnessed Respondent touching Petitioner's leg and say "this isn't something that we are going to talk about here," and that it's something to discuss with the other therapist. Dr. Beck told Respondent that it was something to talk about as [redacted] was her client. She could tell that Petitioner was angry during the session, but never aggressive. Dr. Beck said that the parties were keeping the children separate. Exhibit 287, p. 10-11.

155. On October 27, 2016, Respondent reported to Officer Rosati of the Eden Prairie Police Department that [redacted] was the victim of malicious punishment while in the care of the Petitioner. It was alleged that there were four circular bruises seen by Anastasia Bolbocceanu on the upper thigh of [redacted] left leg when she was changing [redacted] They appeared to her to be marks from someone's fingers. [redacted] allegedly told the Respondent "Mommy did that." Exhibit 246, p. 2.

156. All of the above allegations were closed as unfounded by both Hennepin County Child Protection and the Eden Prairie Police Department. Off. Geis testified at his

deposition that there wasn't enough evidence to support the allegations, that he followed all appropriate protocols in both investigations, and that he looked at all relevant info. One of reasons he reached this conclusion was because the Respondent told Officer Rosati that he thought [redacted] was safe and did not need to be removed from the Petitioner's home. Exhibit 243, p. 39. Ms. Hunter reported that, after consulting with her supervisor, it was determined that there was not a preponderance of evidence to make a maltreatment finding. Exhibit 287, p. 17.

157. On October 18, 2016, [redacted] was brought to Midwest Children's Resource Center by his father with concerns that he was being sexually abused. He presented with no symptoms or injuries. He was seen there by Dr. Mark Hudson.[79]

158. Dr. Hudson's summary states as follows: In summary, [redacted] Rued is a nearly 2-year-old male toddler who has a normal exam. Because of his young age, he is unable to be interviewed regarding concerns of possible sexual abuse. It is difficult to interpret behaviors in toddlers and it is nearly impossible to diagnose sexual abuse based upon behavior alone, particularly in situations where there is significant stress. There may be significant amount of stress when children transition back and forth between parents. This stress may be expressed as acting out behaviors. See: Exhibit 47.

[79] Dr. Hudson is a well-known expert on child abuse, and is the Director of the Midwest Children's Resource Center.

159. Dr. Hudson's report concludes with no recommendations for "Safety and Protection" and no recommendations for "Counseling and Therapy." He did, however, have the following recommendation for "Education":

> The following educational materials were recommended: "It's My Body" by Lory Freeman, as well as "Telling Isn't Tattling" by Kathryn Hammerseng, to assist father in talking with his son about the concepts of appropriate and inappropriate touch. We also discussed with father the formulation of family rules to include the concept of no secrets. We also provided for father a copy of our booklet, "Understanding Children's Sexual Behaviors." *Id.*

160. On May 16, 2017, Respondent took [redacted] to Midwest Children's for a second time. This time he claims [redacted] has bruising on his right bullock that wasn't there three hours prior to the visit, after he had stayed away from [redacted] the previous two days.

161. The Doctor's report concludes: "Low suspicious for physical abuse at this point. The bruising is very small and could be due to falling (on a toy). . . . MCRC Beth Carter was contacted who agreed that the suspicion for abuse is low . . . ." Exhibit 48.

162. Leah Rued testified that on September 27, 2017, [redacted] made several statements to her that were of a sexual nature. She said that she was putting him down for a nap and he pulled on her blouse. She said that [redacted] said

"KoKo take Y's clothes off." [redacted] said he "pees and poops on the floor" and that "KoKo take Y diaper off." She said that [redacted] said that both [redacted] and [redacted] change his ([redacted] diaper. She said [redacted] said "KoKo rub Y back without a diaper or clothes on and that he "pee and poop on floor." [redacted] said that "KoKo rub Y belly." [redacted] also purportedly pointed to his butt and rectum and said "KoKo rub Y here." He spread his legs and pointed to his penis and said "KoKo rub Y here." Leah Rued asked him where this happens and he supposedly said "KoKo bed, [redacted] too." She asked him where his mother was and he said "Mama in bed alone." [redacted] also said "bug bites too" and pointed to his penis area. He said [redacted] gave him "but bites" and that his mother, [redacted] and [redacted] give him "bug bites."[80]

163. As stated *supra,* because this information came late in the trial and because Leah Rued spoke so quickly it was impossible for the Court to determine if these statements met the minimum threshold for admissibility under MRE 807.[81] Several points are salient, however, not just with the above statements, but with all statements [redacted] purportedly made to Leah Rued.

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[80] In her report Mindi Mitnick noted that [redacted] "grandparents appeared to interpret statements from [redacted] as indicative of abuse when they contain limited information that others could not interpret that way. See: Exhibit 202, p. 12.

[81] The Court is referencing the Respondent's Notice of Intent to Offer Statements of a Child from January 15, 2020 for much of the dialog involving the statements [redacted] purportedly made to Leah Rued.

164. First, much of this dialog is not [redacted] words but Leah Rued's interpretation of what he said. Second, there was no testimony as to when Leah Rued wrote down the statements where she quotes [redacted] and whether they were accurate. Third, the only evidence as to how Leah Rued questioned [redacted] and whether her questioning was appropriate is her testimony that she only asked open ended questions based on what she learned from a class more than 20 years ago. Lastly, Leah Rued clearly is a person that had preconceived ideas of what [redacted] might say as she was, apparently, committed to recording everything that the child said that could be detrimental to the Petitioner.

165. Leah Rued testified that [redacted] made additional statements on September 28, 2017. She said that she was wiping [redacted] after a bowel movement and [redacted] said "KoKo too." [redacted] then purportedly pointed to his scrotum and said "KoKo too." Leah Rued asked him if someone touches him there and he said "Yes, KoKo." Leah Rued asked him if this is happening when [redacted] diaper is being changed and he said "No. Poop. KoKo poop." [redacted] later put his hand on his scrotum and said "KoKo rub." [redacted] then put his hand on his penis and said "KoKo." Leah Rued asked him where his mother was when this happens and he said "No. Mama KoKo time out."

166. As a result of the above allegations, another report is made to Child Protection. Nan Morris is assigned the case from Child

Protection. [82] Officer Rob Geis is again assigned from the Eden Prairie Police Department.

167. On September 28, 2017, [redacted] was interviewed at his school. He said that [redacted] sleeps with his mother, and he ([redacted] sleeps in a separate room. He said he sleeps in the hallway outside of his mother's bedroom when he gets scared.[83] He said he barely plays with [redacted] and denies sexually touching [redacted] or [redacted] Exhibit 242, p. 6.

168. [redacted] was interviewed on the same date at the same school. She said that [redacted] sleeps in a crib in their mother's room. She said there was a security camera in that room. She said [redacted] never sleeps in any other room, and that only her mother changes [redacted] diaper and gives him baths. She said there were rules in the home in that her mother has to supervise if they want to play with [redacted] She said [redacted] and [redacted] do not play alone, and that she has not seen anyone rub [redacted] front or back. She said neither her nor [redacted] have ever inappropriately touched [redacted] Exhibit 242, p. 6-7.

169. On September 29, 2017, the Respondent brought [redacted] to Children's Hospital for an examination. This is the third time Respondent took [redacted] to Children's. Respondent claimed that when [redacted]

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[82] Leah Rued testified that Nan Morris was dismissive of her. Ms. Morris testified that she didn't know what she did that Leah Rued took offense to. See: Exhibit 241, p. 37.

[83] This was because the Petitioner, out of an abundance of caution, would lock her bedroom door at night so that [redacted] and [redacted] could not enter the room without her knowledge.

arrived at his home that morning he was saying he was being touched inappropriately.

170. The report from Children's states that the Respondent "noted some bruising around the patient's scrotum which was thought to be in the pattern of a hand. The patient's father also noted some chafing around the anus." The report said Respondent said "I'm bringing him in just for documentation."

171. The examining doctor's report states:

> Patient has evidence of erythema[84] as above. Given the chafing to the saddle region and the erythema, at this time, I favor more irritation such as from a diaper rash rather than bruising. I do not see any evidence of bruising in the shape of a hand, mark or bruising otherwise to the scrotum or the perineal region. There is no evidence of perianal bruising, rectal fissure, prolapse or evidence of previous trauma from anal penetration otherwise that I can see. Exhibit 49.

172. Dr. Sally Beck provided a letter dated September 26, 2017. In it she stated that she's been seeing [redacted] and [redacted] since July 21, 2016. Both children reported that [redacted] was being isolated from the family and made to stay in his room while the rest of the family was in the main portion of the house. Respondent said this was to protect [redacted] from being sexually abused by [redacted] [redacted] reported that she was afraid of her step-father when he drank. [redacted] further

[84] Erythema is a superficial reddening of the skin.

stated that she was upset that [redacted] was being isolated and that she never saw him engage in any inappropriate behavior. [redacted] reported being afraid from witnessing her stepfather grab her mother and that she heard sexually inappropriate language from him which was very traumatizing.

173. It was apparent to Dr. Beck that the children were experiencing trauma from their home environment, rather than trauma from sexual abuse. Exhibit 242, p. 1-2.

174. On a date prior to October 12, Nan Morris met with [redacted] during an unannounced visit at Petitioner's home. [redacted] showed her his bed which was located in Petitioner's room. [redacted] denied playing with [redacted] or [redacted] or sleeping in their rooms. When asked about rubs [redacted] responses were not understandable. Exhibit 242, p. 7.

175. Ms. Morris also spoke to the Petitioner that day. Petitioner was unsure where all the security cameras were but said the ones in her and [redacted] room were removed. She said that [redacted] sleeps in her bedroom in his crib, and that she locks them in at night. She always has him by her side and doesn't leave him alone at all with his siblings even if she has to go to the bathroom or take a shower. She does this so she doesn't risk accusations from the Rueds. She was very concerned that [redacted] keeps saying that [redacted] is "icky" or "bad" and waits for praise from this. She feels very intimidated by the "other side" and is not sure what to do except to keep battling it out in court. She feels badly for all the children as they can't grow up in a healthy non-paranoid environment. Exhibit 242, p. 8.

176. Child Protection and Law Enforcement had made the decision to close their investigations as unfounded when an additional allegation was brought to their attention on October 12, 2017.

177. Leah Rued testified that [redacted] made statements to her on October 8, 2017 when they were driving in a car. She said [redacted] was making sounds with his mouth and when she asked what he was doing he said [redacted] lick [redacted] body." He then repeated this and repeated [redacted] lick Aiya butt. [redacted] lick KoKo butt." He then said "KoKo touch [redacted] here" pointing to his penis. Then he said "isn't that funny?" When asked where this happens he said "Aiya room." He then said "Mama fight bad guy." Later he talked about how he has to fight to get his toys back from [redacted] and [redacted] and gets many "owies."

178. In the Court's view these statements are not credible. Rather than sounding like reports of sexual abuse, these repeated statements sound like a child who's getting attention from saying things that get a rise out of his listener. Further, a child who is reporting sexual abuse is not likely to think it is funny, he's more likely to act confused or traumatized. As to the comments about the toys, in the Court's view this sounds like typical sibling rivalry.

179. As a result of the new allegations it was decided to conduct a CornerHouse interview with [redacted] This was done after consultation between Child Protection, GAL Brad Kearns and Mindi Mitnick. Those interviews occurred in two sessions, one on October 19

and then again on October 20. Both interviews were conducted by Anne Lucas Miller.

180. A Caregiver meeting was held via telephone with the Respondent on October 17. The purpose was to collect information about [redacted] overall development and unique needs. The Respondent advised, *inter alia,* that [redacted] is friendly and open in social settings; that he "loves saying hi to everyone"; that he is likely to be okay in the interview setting; that he has a "pretty good attention span"; and that he is generally understandable. See: Exhibit 271, p. 2.

181. [redacted] was interviewed for approximately 191/2 minutes on October 19. Ms. Miller said that he presented as a 2 year, 11 month old boy with skills and abilities in a developmentally expected range. She wrote that he seemed primarily capable of short, concrete words or phrases provided in response to focused specific inquiries. She said it appeared that it was cognitively difficult for [redacted] to respond to broad invitations, or to comprehend and utilize abstract concepts. She reported that [redacted] was often unresponsive, but it was not clear if he did not understand, was intentionally avoidant, or was just not listening. She said he frequently responded with a phrase that sounded like "not right now," and that his speech was occasionally unclear. *Id.* at p. 3.

182. On October 20, [redacted] was interviewed for approximately 30 minutes, Ms. Miler once again reported that the information [redacted] provided was limited and unclear, although

he did seem more animated and comfortable at this meeting. He was again easily distracted, and again often used the phrase "not right now." She said his enunciation was sometimes difficult. *Id.*

183. Because of his age and abilities, Ms. Miller used a focused or direct inquiry which is a technique CornerHouse uses for younger children who may have difficulty maintaining attention. The questions were often repeated and rephrased. Ms. Miller said that the information that [redacted] provided was limited and unclear. At times he would appear to indicate something specific, then offer nothing further or provide information that seemed unrelated or contradictory. There was little context or content to his statements and it was difficult to understand what he was trying to communicate. *Id.* at p. 4. He repeatedly mentioned the names "Toto" and "Ria" when talking about "pee," "butt" and "touch," but the connection was unclear and he seemed to vacillate. *Id.*

184. It was concluded that the uncertainties of [redacted] report could have been the result of a number of factors: developmental understandings, inattentiveness, avoidance, or external influences. Ms. Miller said that it "appeared that [redacted] ability to source monitor was still developing."[85] *Id.*

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[85] A "source monitoring error" is a type of memory error where the source of the memory is incorrectly attributed to some specific recollected experience. Wikipedia. Mindi Mitnick testified that it was appropriate for CornerHouse to recommend that the adults not speak to [redacted] about sexual

185. The Court has reviewed these interviews and agrees with Ms. Miller's assessment. See: Exhibits 269 and 270. [redacted] was repeatedly given the opportunity to disclose incidents of physical and/or sexual abuse, and disclosed none. As stated *supra,* he sometimes used the names of his step-siblings when talking about private parts, but did not indicate that they abused him in any way, and several times denied that they did anything to him. In addition, the Court found [redacted] to be very difficult to understand and did not have the vocabulary or ability to articulate that Respondent claimed he had. The only consistent thing he said during these interviews is "not right now" which he said in response to a variety of questions, not just those germane to the allegations.

186. Respondent, who brought [redacted] to CornerHouse, was interviewed immediately after the second interview. It was strongly recommended by both Child Protection and CornerHouse that questioning of [redacted] cease immediately, and that he should be removed from any discussions regarding allegations of abuse except in the context of an independent, neutral, therapeutic setting. It was also recommended that [redacted] be involved in play therapy to begin learning safety education for himself and that, if he was being abused, the abuse would come out in therapy. Respondent was provided a list of organizations who could provide such therapy. [86] It was further

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abuse as it could cause a source monitoring problem, and that [redacted] was at an age where he was most vulnerable to this.

[86] As stated *supra,* he Petitioner was given the same list a few days later.

recommended that Respondent discontinue taking [redacted] to hospitals to look for sexual abuse. Lastly, it was recommended that [redacted] be enrolled in a neutral daycare so he could start to develop social skills with others his own age, as well to remove him from a daily potential stressful situation. The Respondent "appeared quite upset with these recommendations and stopped the interview." Exhibit 242, p. 17.

187. Both Child Protection and the Eden Prairie Police Department closed their investigations and determined that the allegations were unfounded.

188. Leah Rued testified to another statement made by [redacted] on March 25, 2018. She said on that date she was reading [redacted] a book when he purported said: [redacted] pulls his pants down. [redacted] touches [redacted] butt. Mama ran in and tells [redacted] to pull his pants up."

189. The next report came on June 7, 2018. On that date the Respondent testified that he and [redacted] had been swimming. They left the pool as [redacted] was scheduled to be returned to his mother. [redacted] was taking a shower before the exchange and told Respondent "my butt hurts on the inside," and tried to soothe himself by sitting in the pooling water around the drain. Respondent says he asked [redacted] why his butt hurt and [redacted] said [redacted] and Toto put their fingers not on my body but in my butt." Respondent checked [redacted] and said that his anus was red. [redacted] made these statements approximately 15 min before he was to be returned to the Petitioner.

190. The Respondent said he asked [redacted] nanny, Anastasia Bolbocceanu, to watch [redacted] while he considered what he should do next. Respondent testified that he didn't feel he could go to the police or Child Protection as that wouldn't be safe for either [redacted] or himself. He ultimately decided to seek emergency relief from the Court.

191. Anastasia got [redacted] out of the shower and brought him into the family room where he repeated the statements to her and Leah and Scott Rued. This was recorded and received as Exhibit 636.

192. The Court has reviewed Exhibit 636 and found it to be very enlightening. The exhibit is a short video that obviously was taken shortly after [redacted] got out of the shower as his hair is still wet. He is standing on a couch smiling without clothing when the following colloquy occurs:

Leah:	"Tell Anastasia what happened."
[redacted]	"Right here" (appears to be pointing to his buttocks).
Anastasia:	"What they do with their fingers?" (baby talk).
[redacted]	"Put them their fingers in there."
Anastasia:	(Gasps) [redacted] that not right."
Leah:	"Can you show us what they did?"
Anastasia:	"Dada missed it. Can you show him? That's important [redacted]"

Respondent: "Should we get the clothes going?"

[redacted] Giggles.

193. [redacted] knows he is being recorded as he looks directly into the camera. He very clearly enjoys the attention as he is smiling throughout and giggles at the end. His affect is not of a child who's been traumatized by having been anally penetrated, but rather that of one who is performing. He falls back on the couch in a playful manner and shows no evidence of the injury or pain to his buttocks that the Respondent described [redacted] felt only a few minutes earlier. The other persons are coaching him to make the statements and reaffirm to him that it's "important."

194. The Respondent testified that [redacted] continued to talk about this and purportedly said "mama wasn't there and Ria and Toto said this doesn't hurt but it hurts a lot."

195. [redacted] is returned to his mother's but the Respondent obtains emergency relief and had him back in his care at approximately 5:00 p.m. on June 8. The Respondent testified that [redacted] was limping when he returned, and said "Ria and Toto kicked him." He said that when warm water hit [redacted] penis he doubled over in pain. When asked why his penis hurt he purportedly said "Ria and Toto hit my penis." The Respondent said he looked at [redacted] penis and it appeared to him that it had been rubbed.

196. Contrary to the recommendations from CornerHouse, the Respondent took [redacted] to Children's Hospital on June 8, 2018. This was his fourth visit to Children's. The

concern again is physical and sexual abuse. However, the examining physician concluded: "There is no bruising, abrasions or other findings concerning for abuse at this time." See: Exhibit 78.

197. As a result of these allegations, another case is opened with Child Protection. Tamishia Anderson is assigned as the Child Protection Investigator, and Ryan Kuffel is assigned from the Eden Prairie Police Department.

198. Ms. Anderson and Off. Kuffel's interviewed the Petitioner on June 18, 2018. She told them the following: that after they got married the Respondent kept trying to convince her that she was sexually abused by her father; that he then backed off and started saying that [redacted] was thrusting his penis into [redacted] face; that the allegations started after he was arrested for domestic abuse, and returned after spending a month with a life coach; after that the Respondent started to allege that [redacted] and [redacted] were sexually abusing [redacted] she's never had any concerns regarding [redacted] behavior towards [redacted] the only disconcerting behavior she has seen in [redacted] is when he thought the Respondent was coming back to live with them; she has a video camera in her room to cover herself against the allegations; she's afraid to even let the children play together as the Rueds evaluate every scrape and bruise including taking pictures of [redacted] bowel movements. Exhibit 238, p. 3-4.

199. Ms. Anderson and Off. Kuffel also spoke to [redacted] and [redacted] Both children reported "no bad touches." Exhibit 238, p. 4. Ms.

Anderson testified in her deposition that [redacted] appeared as a "normal, happy, sweet kid" and that neither he nor [redacted] made any concerning disclosures. Exhibit 237, p. 39.

200. Two CornerHouse interviews with [redacted] were scheduled for June 21 and 22, 2018. Because [redacted] started to spontaneously share information, it was decided that the second interview was not necessary. Forensic interviewer Julie Stauffer conducted the interview.

201. A Caregiver Meeting was held by telephone with the Respondent on June 19. The Respondent described [redacted] as bright; that he should do fine in the interview; that his speech is okay but some words are hard to understand; that [redacted] is articulate for his age; and that regarding his body parts [redacted] uses the words "penis" and "butt." CornerHouse also reported the following that they felt was inappropriate for the Caregiver Meeting:

> While the purpose of this Caregiver Meeting was not to elicit allegation-specific information, Mr. Rued spontaneously offered that [redacted] seems frightened of his mother and half siblings, that [redacted] has been told this mother will be nice to him if he does not talk about what his half siblings have reportedly done to [redacted] and that she will be mean if he does talk about it, and that [redacted] has been told that he was dreaming. See: Exhibit 273, p. 3.

It appears to this Court that this was the Respondent's prepared explanation should

[redacted] not report abuse in the interview. None of the Respondent's allegations were confirmed in the interview.

202. The Court has reviewed the tape of the CornerHouse interview. See: Exhibit 272. In that interview, [redacted] was much more animated, open, and willing to engage with the interviewer than in the previous interviews. His speech was still difficult to follow most times, and he didn't have the level of articulation Respondent claimed [redacted] had as a 3-year, 7-month old child.

203. The interview lasted approximately 40 minutes. Ms. Stauffer repeatedly gave [redacted] the opportunity to report any abuse he experienced by asking him open-ended questions, repeating questions, rephrasing questions, and directing [redacted] to the salient topics without being leading or suggestive. He was repeatedly asked if someone told him what to say or what not to say and declined all of those invitations. At no time did [redacted] report that he was physically and/or sexually abused by his step-siblings, the Petitioner, or anyone else. What was described appeared to be nothing more than typical sibling rivalry.

204. Early on in the interview he described what appeared to be an argument he had with [redacted] where they were both were wanting to sit by their mother, and [redacted] did something [redacted] didn't like. He said they were watching TV and [redacted] was on his IPad and [redacted] hit or kicked at his "spot" and his mother told them to "stop it right now." Other statements [redacted] made include the following: that he "didn't know very well" what Toto did to hurt him; that he doesn't

know what Toto used to hurt him; that when asked how he knew Toto hurt him he replied "because" and nothing more; that he heard someone say that Toto hurt him but he didn't know who said that; that someone pinched his toes; that no one hurt his body and he told no one that; that Toto takes his toys; that no one hurt him anywhere on his body; that his mom is nice to him; that he doesn't "know about that stuff" when asked if his mom was mean to him; that nothing is scary in his home; that no one in his family is scary and that they are all "nice to him"; and that neither Toto or Ria are scary. As to his body parts [redacted] refused to identify a name for a penis and called a butt a "body."

205. After the CornerHouse interview CPI Anderson and Off. Kuffel spoke to the Respondent. He indicated the following: [redacted] almost "daily" makes disclosures that he's being abused by [redacted] and [redacted] while in the Petitioner's care; that Petitioner was sexually molested by her father and other family members and he was concerned that now she is allowing it with her children; that in 2014 he witnessed [redacted] and [redacted] touching each other inappropriately and told Petitioner about it in which she just cried and didn't know what to do. He also discussed the statements [redacted] made that triggered the investigation.[87] Exhibit 238, p. 7.

[87] CPI Anderson and Off. Kuffel also met with Leah Rued on July 11. Ms. Anderson testified that was done as Leah Rued brought the matter to Child Protection's attention, and she wanted to give her a full and fair opportunity to provide

206. Both the Respondent and Scott Rued testified to what occurred after the interview. Scott Rued testified that he was waiting for them to exit CornerHouse and upon exiting the Respondent told Scott that [redacted] made no disclosures during the interview. The Respondent and Scott Rued testified that Scott was "sad" and "devastated" but nothing more.

207. This is in stark contrast to what Scott Rued told Mindi Mitnick. In her report she states:

> Scott reported in late June that, when Joe told him [redacted] did not make an abuse disclosure at the second CornerHouse interview, Scott sobbed in front of [redacted] said, "Bapa sad. Is Bapa sad because he thinks I lied?" Joe said he told him "No." See: Exhibit 202, p. 76.

208. Obviously the Respondent and his parents know how devastating this information is to their version of the narrative. It contradicts their claims that they did nothing to suggest what [redacted] should or shouldn't say. It contradicts their claims that [redacted] statements were made freely and without coercion on their part. However, by his conduct here Scott Rued was sending a powerful message that he wants the child to disclose something that may not be true, and is disappointed in him when he doesn't. Mindi Mitnick said as much in her report when she said:

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whatever other information she had that may be helpful. Exhibit 237, p. 22-23.

> Discussing this with [redacted] present was highly inappropriate. And Scott's inability to contain his emotion is another indicator of the intense conflict that surrounds this child. *Id.*

209. This is yet another example where the Respondent alleges that Ms. Mitnick misstated the historical facts. As with the other cited examples the Court highly doubts this claim to be true. This was an extremely salient fact which had great importance for Ms. Mitnick in her evaluation. It does not seem possible that she would have gotten this wrong. It seems if she did then the Respondent would have at least challenged her on this during his examination of her, which he did not.[88]

210. The matter was again closed by both Child Protection and Law Enforcement. In CPI Anderson's opinion, [redacted] did not make any disclosures as to being intentionally physically hurt or being sexually abused." Exhibit 238, p. 6. In her deposition, Ms. Anderson testified she determined that there was no evidence that the incident happened as alleged. She corrected Respondent's counsel when he tried to suggest that her findings didn't mean that the allegation was false, only that there wasn't enough evidence to support it. Ms. Anderson responded:

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[88] In addition to Ms. Mitnick's 83 page report, the Respondent had 430 pages of her notes. Clearly if Ms. Mitnick inaccurately reported this incident it would have been reflected in her work which would have given the Respondent ample fodder for cross examination.

> I don't like the way that's worded. It's almost saying that I believed that it happened but there wasn't enough evidence to prove it, and that's not the case. Exhibit 237, p. 42, l. 18-21.

She also said:

> . . . based on the information and the evidence that we had founded (sic) during the investigation, there was no evidence showing that the event happened, and that's why there was no maltreatment finding made. *Id.,* l. 24-25.

211. The Respondent testified to another statement that [redacted] made on September 22, 2018. On that date [redacted] was with him at his parent's cabin in Wisconsin. [redacted] was in the shower and he saw that [redacted] had his finger in his anus. He asked [redacted] what he was doing and [redacted] purportedly said "what Ria and [redacted] do." He asked where this happened and [redacted] said "in the sun room in Mama's house." The Respondent purportedly recorded this conversation with his phone, but curiously failed to introduce the recording as part of his evidence.[89]

212. The matter was reported to Child Protection on September 26, 2018 and Jay Jayswal was assigned to investigate. On the same date he screened [redacted] by interviewing him at his father's home. The pertinent parts of [redacted] statements are as follows: he was safe in his

[89] Exhibit 612 is purportedly a transcript of that incident. Prior to trial, the Court ruled it would be admissible if proper foundation were laid. That was not done so it was not received.

mother's home with [redacted] and [redacted] touched him on his private parts; he denied that anyone else touched his private parts; when asked what [redacted] did he said "touch my body"; when asked where on his body he said "right in the middle"; when Mr. Jayswal asked him to point where he pointed to his bottom/butt; when asked when it happened he said "probably on Friday"; he said it happened at "mama's house"; and he said it was over his clothes. Exhibit 222, p. 7.

213. On the same date Mr. Jayswal interviewed the Petitioner by conducting an unannounced visit at her home. She said, in pertinent part, that this was not the first time a child protection report has been made, and that she always keeps an eye on [redacted] and he is never alone with the other children. Exhibit 222, p. 7.

214. On October 5, 2018, Mr. Jayswal conducted a formal interview of [redacted] at his mother's home. His mother was not present during the interview. [redacted] said the following: He was asked when his birthday was and he said October 5; he was asked if his birthday was today and he said "probably no"; when asked what "safe" meant he said "protected away of other people"; he said he was safe in his mother's home with [redacted] and [redacted] he said he trusts his mother; when asked why [redacted] and [redacted] don't go to his dad's house anymore he said "probably my dad kicked them out"; he said he plays with [redacted] and [redacted] and his mother is there; he said it hasn't always been like that but he didn't know when it was different; he said he doesn't play with [redacted] and [redacted] alone

because his mom would get mad; he said his mom would get mad because she thinks [redacted] and [redacted] would hurt him; he didn't know how they would hurt him; he denied that [redacted] and Marie hurt him. Exhibit 222, p. 14-15.

215. Mr. Jayswal then interviewed the Petitioner. She said that [redacted] is always with her and never alone with [redacted] or [redacted] and that they have to ask permission to play with [redacted] She was concerned that [redacted] is being told by the Respondent and his parents that he is being hurt by his siblings and that eventually [redacted] will believe it. She said a few weeks past they were at [redacted] bus stop and [redacted] asked [redacted] and [redacted] if they hurt him as a baby. They all said no and [redacted] said his father told him that they hurt him as a baby. Petitioner told him that did not happen and they did a group hug. Exhibit 222, p. 19-20.

216. On the same date Mr. Jayswal interviewed [redacted] She said, in pertinent part: she denied being touched inappropriately; she listed people she could tell if she were touched inappropriately; she denied seeing someone touch someone else on their private parts; she said only her mother changes [redacted] diapers, not her or [redacted] only her mother helps [redacted] go to the bathroom, not her or [redacted] her mother is always watching when they play with [redacted] as they are not allowed to play with him alone; her mother has to be present because of the court case; she again said they are not allowed to play with [redacted] alone and her mother does not step away; she doesn't like Respondent; he was mean to

[redacted]a lot; he would send him to his room a lot; one time he grabbed [redacted]and told him to look into his eyes and she was scared; he would also talk in a weird way; [redacted]doesn't really like him either; she said her mother is nice; she was aware that they have said "some bad stuff about me" that she did to [redacted]she doesn't know what it is but believes it's gross; she denied that her mother told her not to say something; her mother told her to be truthful. Exhibit 222, p. 16-17.

217. On the same date Mr. Jayswal interviewed [redacted]who said, in pertinent part: he denied that anyone touched him in his private parts; he denied touching anyone in their private parts; he said maybe he's seen someone touch someone else's private parts and then explained an incident at school where someone threw a ball at his private parts by accident; he denied touching [redacted]private parts or that anyone touches anyone else's private parts at his home; he was scared of Joseph and Leah as they were mean; Joseph would yell at him and send him to his room; his mother is watching them when he plays with [redacted]and [redacted]he said that was because Scott and Leah make a lot of lies; his mother wants to prove that they are wrong. Exhibit 222, p. 17-18.

218. As part of this investigation, Mr. Jayswal also interviewed Leah Rued on October 10, Anastasia Bolbocceanu on October 18, and Scott Rued on October 18. Exhibit 222, p. 26-37.

219. On October 21, 2018, the Respondent made another report to Child Protection. Respondent testified that on October 20,

when [redacted] was showering, he said "Ria and Mama touches penis when it is big." He didn't recall if [redacted] had an erection at the time. He said later when he was helping [redacted] into his pajamas, he saw a pattern bruising on the inside of his left arm and [redacted] said "Mama hit me with a hammer."

220. It was also reported that on October 21, Respondent's sister, Alex Rued, was reading a book entitled *It's My Body* when [redacted] alleged he was sexually abused by [redacted] and [redacted]

221. Jay Jayswal was again assigned to conduct the investigation along with Eden Prairie Police Officer Ryan Kuffel.

222. The Respondent introduced the deposition of his sister Alex in lieu of her live testimony. See: Exhibit 262. Alex Rued testified that she graduated from Hamilton College in New York, and then received a graduate degree from Georgetown University. She is presently employed at the Commerce Department reviewing foreign investments for security risks. She lives in Washington, D. C.

223. She described her relationship to [redacted] as "incredibly close." *Id.* at p. 8, l. 15. Regarding the October 21 incident, she testified that they had a book that they received from, she believed, Children's Hospital. She asked [redacted] if he wanted to read the book as she understood that no one had read it to him.[90] As

[90] This was given to the Respondent by Dr. Mark Hudson when he first brought [redacted] to Children's Hospital on October 18, 2016. Given that the Respondent has made so many claims that [redacted] was sexually abused, and given that both Dr. Hudson and CornerHouse recommended that [redacted]

the book starts out, it goes through good touches. [redacted] gave as examples of good touches "high fives, sitting on grandma's lap." Next the book talked of bad touches. She asked [redacted] for examples of bad touches and he said [redacted] and [redacted] touch my penis and my butt." Alex Rued said he said that "just like that." Alex Rued testified she froze and [redacted] said "my penis and my butt" and pointed to them. She asked if adults ever give him bad touches and he said his mom touches his penis during rest time and during the day and Ted touches his penis and he touches Ted's penis. She asked if he ever tells people about that and [redacted] said "Mom says not to because then no dad." They reached the end of the book where apparently the reader is to practice the sign that he/she doesn't want people touching them so she told [redacted] "Okay. So this is what you say, 'Don't touch me, I don't like it'" and [redacted] responded "Oh, I don't say that. I'm just a little boy." Alex Rued testified that [redacted] wanted to read the book four times and at one point said: "Why does everyone ignore me?" Alex Rued

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be educated about good/bad touches, it is baffling that no one thought to do this until two years later, especially given that Respondent insists that everything he does is to protect [redacted]

Respondent's response is that he taught [redacted] the names of his body parts and didn't go further as he felt he would be endangering both himself and [redacted] This is not credible. The book was given to the Respondent early in the litigation, before any suspicion that Respondent was inflicting mental injuries to [redacted] It was designed to <u>educate</u> [redacted] about good/bad touch so that he could protect himself. Having him memorize his body parts does little or nothing to advance that education.

testified that [redacted] was very contemplative and serious during the entire time. She said that was the only disclosure [redacted] made to her. p. 24-28.

224. The Court finds that [redacted] statements to Alex Rued are admissible under the residual exception to the hearsay rule. The statements were essentially spontaneous and not in response to leading questions. They are not the type of statement that one would expect a child to fabricate. While it may be said that Ms. Rued had a preconceived idea that [redacted] would make these statements as she was aware that he had made them to other members of her family, and while it could be argued that [redacted] has a motive to fabricate as it may appear to him that he receives a favorable response when he makes these statements,[91] on balance the statements demonstrate sufficient "circumstantial guarantees of trustworthiness" such that they are admissible under MRE 807. See, also, *State v. Ahmed*, 782 N.W. 2nd 253 at 260 (Minn. Ct. App. 2010) and *State v. Lanam*, 459 N.W.2nd 656 at 661 (Minn. 1990).

225. As a result of the new allegations, Jay Jayswal screened [redacted] on October 22. He asked [redacted] if anyone touched him on his

[91] For example, Alex Rued testified that on one occasion [redacted] asked her if she hated him and was relieved when she told him she loved him. Ms. Rued's interpretation of this incident was that [redacted] or the Petitioner had told [redacted] that people hate him. See: Exhibit 222, p. 30-31. This is rank speculation on the part of Alex Rued. A better interpretation is that this is another incident where [redacted] is seeking affirmation that what he is doing is pleasing to the Rueds.

privates recently and he said Ria and [redacted]. He was asked if there was anyone else and he said Mommy, Ted, Noni and Randolph. Mr. Jayswal asked who Noni was but could not understand [redacted] response. He asked who Ted and Randolph were and [redacted] said he only knows their names. [redacted] said he was touched on his butt and his penis, that it occurred at his mother's house, and the last time was "like last, um night." He was asked where in momma's house this happens and he said "in some room." [redacted] said he was on the sofa watching TV and [redacted] was sitting on his spot. He was asked when this happened and he said it "happened tomorrow." He was asked who was there and he said "Ria, [redacted] and Momma." He was asked what they touched him with and he said "in the middle of my butt." He was asked what body part they used and [redacted] said "butt." He was asked what they were doing and [redacted] said they were playing hide and go seek. He then said he and [redacted] wanted to play a different game and he wanted to go for a walk so they went for a walk up the block. Mr. Jayswal asked if they touched him on skin or clothes and [redacted] said "clothes." Exhibit 222, p. 40-41.

226. On October 23, Mr. Jayswal contacted the Petitioner and advised her that there was a new allegation wherein she was alleged to be the offender. He advised that a CornerHouse interview was scheduled for October 26, 2018. Exhibit 222, p. 43.

227. The forensic interview on October 26 was assigned to Judy Weigman.[92]

228. According to Ms. Weigman's report, [redacted] presented as a three-year eleven-month old boy with social, cognitive and emotional abilities that appeared to be in a range appropriate to what might be expected for his age. He engaged with the interviewer and the interviewing process but appeared distracted, often times asking the interviewer what time it was as he and the Respondent were going to a "movie theater with games" that day.[93] Throughout the interview he made many confusing and conflicting statements about whether he was touched sexually and by whom. Ms. Weigman gave [redacted] many opportunities to explain what, if anything, happened to him

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[92] This Court is very familiar with Ms. Weigman having worked with her on several child sexual abuse prosecutions during its former employment as a prosecutor in the Hennepin County Attorney's Office. This Court knows her to have many years of experience as a forensic interviewer, and has extensive knowledge in this area.

[93] Respondent said that the day before the interview [redacted] wanted to go and see a movie. Respondent said there were no age appropriate movies for him so he found an arcade instead. As they were driving there [redacted] fell asleep so Respondent turned around and drove home. When they got home [redacted] woke up and was upset. The following morning he told [redacted] they were going to CornerHouse but [redacted] wanted to go to the arcade. He said this was not something he "staged" to occur after the visit to CornerHouse. Later that same day, the Petitioner picked [redacted] up from his father's to commence her parenting time. [redacted] asked if he was going back to his dad's the same day. When his mother told him no he said "But my dad said if I went to that place and told them that [redacted] and you hurt me that he would take me to the movies today."

that resulted in his fourth visit to CornerHouse. See: Exhibit 275.

229. In her report, Ms. Weigman made the following observations:

> Given [redacted] apparent abilities, in spite of his young age, this interviewer would expect him to provide more clear information as to what he had experienced. Instead, **it appears that [redacted] may have been instructed to say that he was touched by his other family members.** Even though [redacted] was offered numerous opportunities to report what he may have experienced his responses continued to be ambiguous and unclear. *Id* at p. 3. (Emphasis Added).

Ms. Weigman went on to say:

> It is extremely unlikely that CornerHouse would accept another referral with similar allegations, from the same family members. **It is strongly recommended that [redacted] be allowed to enjoy life as the young child he is. In this regard, it is recommended that adults in his life need to refrain from questioning and suggesting various scenarios in order to influence [redacted] allegiance to his mother and siblings.** *Id.* (Emphasis Added).

230. The Court has reviewed the CornerHouse interview, See: Exhibit 274, and agrees with Ms. Weigman's assessment, particularly as it relates to her suspicions that [redacted] was

coached to make allegations that he was abused.

231. The interview lasted approximately 45 minutes. Shortly after the commencement of the interview Ms. Weigman says "Now we're going to talk a little bit about . . ." when [redacted] interrupts her and says "Ria and [redacted]" This was done without any prompting from Ms. Weigman. Shortly thereafter he said that he and the Respondent were going to the movies "with games" after the interview. On at least 11 occasions thereafter, he asks for the time as he wants to leave to go to the movies. It appears to this Court that [redacted] was told that if he talked about [redacted] and [redacted] abusing him he would then be rewarded by going to the movies. Later, when asked whose idea it was to come to CornerHouse he whispers to Ms. Weigman "dad's". On a couple of occasions he references to being touched by "Ria" and [redacted] and "mama" but his affect doesn't change—he shows no emotion that would suggest he was traumatized or confused which one would expect if the allegations were true. In addition, he provides little context for the alleged touching such as where it occurred, when it occurred, etc., except for a brief reference that it occurred at his mom's house on a sofa in "some" or "sun" room. He very clearly acts as if he was forced to come to CornerHouse to speak about these issues and says "yay!" when Ms. Weigman ultimately ends the interview.

232. On October 26, Mr. Jayswal and Off. Kuffel interviewed the Petitioner who told them the

following: she had parenting time with [redacted] from October 17 at 5:00 p.m. to October 19 at 5:00 p.m.; [94] on October 17 she and the children went skating at church in the evening and then came home, had a snack and went to bed; on October 18 they had breakfast and went for a walk to the park, [redacted] had a nap and then after dinner they watched a movie/series; on October 19 they went on a boat ride on the Mississippi with one of her friends and her children; when they got back to her house she packed [redacted] things and took him to the Respondent's home; she denied that there was any hammer in the home. She also said that [redacted] and [redacted] last saw their father Ted Reppas on October 1 but [redacted] did not see him. She said that Randolph, her father, has never been to her home and the children do not know him as "Randolph." She said "Nona" is her mother and the last time [redacted] saw her was the prior June. Exhibit 222, p. 47-48.

233. On October 28, the Petitioner sent Mr. Jayswal and Off. Kuffel an email which included a list of things [redacted] had told her after returning to her care. These included:

> October 26: On Friday, after Petitioner picked up [redacted] he asked her, "Am I going back to my dad's today?" Petitioner responded "No, not until Monday." He asked her if that was "today." She said no, it was in three days. He then became upset and said "But my dad said if I went to that place and told

[94] This was MEA week.

them that [redacted] and you hurt me that he would take me to the movies today." She told him that she was sure his father would not go to the movies without him and would wait until he ([redacted] came home to go to the movies with him. [redacted] purportedly said: "but I did what my dad said and he said we would go today." She again told [redacted] that his dad would not go to the movies without him and changed the subject to his planned birthday party.[95]

October 27: [redacted] asked Petitioner: "Why does my dad say that you, [redacted] and [redacted] hurt me?" She responded that she was not sure. She then asked [redacted] what he thought about it. [redacted] told her that that is not the truth, that is a lie. He raised his arms up half way and said I tell my dad no but he does not listen. She told [redacted] that that must be difficult for him but to remember the truth. She then redirected him to his birthday cake they were picking up. Exhibit 234, p. 125.

234. On October 30,[96] Mr. Jayswal and Off. Kuffel interviewed [redacted] at her school. She said, in pertinent part: she denied that her brothers play with a toy that looks like a hammer; she

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[95] See, also, f. 92 *supra.*

[96] Mr. Jayswal's report indicates this occurred on October 20, 2018. See: Exhibit 222, p. 54. This is a typographical error. See: Exhibit 222, p. 57.

confirmed the boat trip on the Mississippi; she denied that anything odd happened; she denied being alone with [redacted] and said that her mother was always there; her mother has to watch [redacted] and take him everywhere otherwise she would get in trouble; she's been told that Scott and Leah are saying things about them; [redacted] sleeps in a crib in her mother's room; there's a camera in [redacted] room; there's a camera in [redacted] room too but it's covered up; she doesn't want to see Joseph because he drinks; once Joseph was holding her brother's head and told him to look into his eyes; she said that that was very scary and it happened twice; she denied seeing any inappropriate touches; she denied seeing [redacted] touch [redacted] she talked about her biological father; and said she saw him recently; [redacted] was not there; [redacted] has never seen her father or her (maternal) grandfather; her grandfather has never been to their house, only her grandmother; her name for her grandmother is "Nana"; she said there's nothing she's worried or concerned about. Exhibit 222, p. 54-55.

235. On the same date, Mr. Jayswal and Off Kuffel interviewed [redacted] at his school. He reported, in pertinent part: things were going well at home; when they were out of school for MEA week they went skating at Rollergarden, then they went on a boat on the Mississippi; he didn't play with [redacted] alone as his mother has to be watching; his mother is always watching because Scott, Leah and Joseph make up lies and his mother wants to make sure it is not real; his mom told him that; it makes him mad because he feels like

he can't do a lot; he wishes that they could play alone; he denied that anyone touched his private parts or that he's touched anyone's private parts; he last saw his father in August; his father dropped him off in September; [redacted] was not with them; his (maternal) grandfather has never been to his house. Exhibit 222, p. 56-57.

236. On November 1, Mr. Jayswal interviewed [redacted] regarding the things Petitioner had told him about on October 28. He said, in pertinent part: he and his father talk about [redacted] and [redacted] he didn't know what his father said about them; he said his mother talks to him about what is the truth and what is a lie and it's a game; he said it's the truth that his father talks about [redacted] and [redacted] and his father has to stop saying those things; he was asked why his father has to stop and he said "because my mom asked me to say that"; he was asked if his father says the truth or a lie when he talks about [redacted] and [redacted] and he said a lie; he didn't know why it was a lie; he said "dada" (his father) is saying the lies; he was asked if he ever lies about [redacted] and [redacted] and he said no; he said he doesn't know what his father lies about; he says his mother says the truth but doesn't know what she says. Exhibit 222, p. 59.

237. On November 1 Mr. Jayswal called the Respondent to advise him that the report he made was ruled out. Exhibit 222, p. 60.

238. On November 3, 2018, it was reported to Child Protection that [redacted] was having pain in his feet and was limping when taken to

the zoo.[97] [redacted] purportedly said that [redacted] pounded on his feet "like bongos." He also said that [redacted] hit him in the head with closed fists. Exhibit 222, p. 69. On November 5, Mr. Jayswal advised the Respondent that this report was ruled out as well. Exhibit 222, p. 61.

239. Respondent testified that on November 4, 2018, [redacted] was in the shower playing when he said "Ria and [redacted] touch my butt and penis" and "I do not like it." He was asked when was the last time that this occurred and he said "last time at Mama's."

240. On November 7, Mr. Jayswal called Petitioner and advised her of this new allegation.

241. On November 8, Mr. Jayswal interviewed the Petitioner at her home. She indicated the following: the allegation of sexual abuse of [redacted] by [redacted] and [redacted] did not happen as they are never alone together; she said the pounding of [redacted] feet never happened; they do not hit in her house; she agreed to sign a Release of Information so the CPI could speak to [redacted] therapist.

242. On November 8, Mr. Jayswal interviewed [redacted] at his mother's home. He indicated the following: Ria and [redacted] don't touch his privates anymore; "they don't do any bad touch to me again"; he didn't remember the last time they did it; then he said yes when asked if they did it last week; he said he didn't know what they did; when asked who "they" were he said [redacted] and

[97] Some reports say this allegedly occurred on November 3, others say it occurred on October 31. Anastasia Bolbocceanu testified it occurred on October 31.

Momma; when asked if that was a truth or a lie he said [redacted] and [redacted] do not need to do that anymore"; he was asked again if that was a lie and he said he thinks his mother would get mad at him; he didn't know why his mother would get mad at him; he didn't remember the last time he went to the zoo; his toes hurt right now; when asked why he said [redacted] and [redacted] don't hurt him anymore; he said [redacted] and [redacted] don't touch his feet anymore; he didn't know the last time they did. Mr. Jayswal observed that [redacted] toe nails were chipped and that he had a small, light mark on his forehead. When asked what happened [redacted] said he didn't know. Exhibit 222, p. 71.

243. On November 8, Mr. Jayswal interviewed [redacted] at her school who said, in pertinent part: she denied that she, [redacted] her mother or [redacted] had touched anyone inappropriately; she denied seeing anyone hit [redacted] on his feet; she denied that her mother leaves [redacted] alone. Exhibit 222, p. 72.

244. On November 8, Mr. Jayswal interviewed [redacted] at his school who said, in pertinent part: he denied touching [redacted] or his mother on their private parts; no one has touched him on his private parts; neither he nor [redacted] or his mother touch anyone's private parts. He denied hitting [redacted] on his feet. Exhibit 222, p. 72-73.

245. On November 15, Mr. Jayswal received a call from Ann Gearity, [redacted] therapist. Dr. Gearity was concerned that [redacted] may be "brainwashed" as the Respondent keeps making allegations and the child has been

CornerHoused several times. Dr. Gearity was worried that Respondent was using Child Protection to gain custody of [redacted]She said in therapy, [redacted]is comfortable with both parents. He has never said anything about abuse to her. [redacted]had not disclosed any issues at home and nothing in his face or body language makes her concerned. She said during one visit the Respondent said that [redacted]told him that he wouldn't tell the truth. Exhibit 222, p. 80.

246. It was reported to Child Protection that on November 23, 2018, [redacted]reported that he was anally penetrated by the Petitioner, [redacted]and [redacted]He said that this happened in the living room and all were involved in the molestation. He said that this happened for multiple days from the prior Wednesday night (November 21) until he was transferred to the Respondent's care on November 23. Exhibit 222, p. 83.

247. On November 24, Child Protection Investigators FNU Higgins and FNU Jones spoke with [redacted]at Respondent's home. In response to their questions he said that [redacted]and [redacted]touched his penis and butt. He made no mention that his mother touched him inappropriately. CPI stopped asking questions at that point. Exhibit 222, p. 84.

248. On November 28, a court consult was held with Child Protection and the Hennepin County Attorney's Office regarding the allegations of mental injury to [redacted]by the Respondent. The purpose of the meeting was to determine if the matter was to proceed with

the filing of a CHIPS petition or in some other fashion. Exhibit 222, p. 86.

249. On December 2 it was reported to Child Protection that [redacted] was sexually abused by [redacted] and [redacted] on two occasions. On November 27 he reported that he had been molested by them when his mother was present. This is alleged to have occurred between November 24-26 when he had parenting time at his mother's home. [redacted] reported that his shirt was on, but they pulled down his pants and molested his penis and anus. He yelled at them to stop but they said they would only stop if the Respondent moved back into the house. On December 1 he reported that [redacted] and [redacted] molested him in a room upstairs in his mother's house, and that his mother was not present at the time. Exhibit 222, p. 91.

250. Neither Child Protection nor the Eden Prairie Police Department conducted any further investigations to the allegations raised by the Respondent. Instead, on December 4, 2018 a KVC [98] meeting was held that included current and previous Child Protection Investigators/supervisors, several members of the Eden Prairie Police Department, Hennepin County Attorneys, Intake staff, Interns and Adoption Resource Workers, and two KVC coordinators.[99] A total of 19 people

[98] KVC stands for Knowledge, Values and Connections, and is a method for providing services to families and children who have experienced trauma as a result of abuse or neglect. See: KVC.org. Jade Pirlott explained that it is a new protocol being used by Hennepin County that looks at providing for more collaboration. See: Exhibit 226, p. 11.

[99] Ms. Pirlott explained why some people were there who seemed to have no connection to the case. *Id*, p. 11-13.

were involved in this collaborative meeting which lasted 31/2 to 4 hours. As a result, it was decided that the matter would be referred to the Juvenile Court and a CHIPS petition and an Order for Immediate Custody were prepared and filed on December 7. The petition alleged that [redacted] suffered mental injury at the hands of the Respondent for his repeated claims of abuse that were unsubstantiated.

251. By this time [redacted] had been seen at Children's Hospital at total of four times without any evidence to corroborated the Respondent's allegations; he likewise had been seen by CornerHouse four times who provided no evidence to corroborate the allegations; there had been four investigations by both the Hennepin County Child Protection Services and the Eden Prairie Police neither of which could substantiate any of the allegations.[100]

252. At trial, the Court questioned the Respondent regarding his belief of the veracity of [redacted] allegations, and particularly whether he thought it was even possible that [redacted] was not physically and/or sexually abused. The Respondent steadfastly insisted that all of [redacted] statements were true, and insisted that he was sexually abused by the Petitioner, [redacted] and Randolph Bash, Sr. As to Petitioner's mother he said he believed that [redacted] was physically abused by her but not sexually abused. The Court pointed out that

[100] In fact, the Eden Prairie Police Department forwarded recommendations to the Hennepin County Attorney's Office for the Respondent to be charged criminally. See: Exhibit 234, p. 148.

this latter point was inconsistent with what [redacted] disclosed.

253. Apparently the Respondent felt that his inflexibility on this issue was harmful to his cause because he modified his position when he returned to the stand on July 28, 2020. Then he said that in some ways he didn't believe that the abuse occurred. He also said that he believed that it was more likely true than not. He denied that this was a change from his prior testimony when clearly it was.

254. This Court finds that the Respondent has failed to prove that [redacted] was physically and/or sexually abused by anyone. Further, it is important to [redacted] for the Court to find, and it does so find, that [redacted] was <u>not</u> physically and/or sexually abused by anyone, specifically [redacted] the Petitioner, her ex-husband or her parents. The basis for the Court's findings is detailed in #275 *infra.* What is clear is what Mindi Mitnick warned against—the Respondent and his parents have created a source monitoring problem. [redacted] was questioned so many times by the Respondent, his parents, and his nanny and clearly received positive reinforcement for making these disclosures that it became impossible for him to separate fact from fiction when questioned by these people. It is time now for the parties to move on and heed the advice of Judy Weigman: to let [redacted] be allowed to enjoy his life as a young child, free from the pressures of persons attempting to influence his allegiances to his mother and siblings.

<u>Custody and Parenting Time</u>

255. It is in this backdrop that this Court is asked to determine custody and parenting time based on the best interests of [redacted]Rued. In spite of Respondent's protests to the contrary the issue has always been simple: in whose custody is [redacted]most protected. If he is being physically and/or sexually abused in Petitioner's custody, then clearly he is most safe with the Respondent. However, if he is not being physically and/or sexually abused in Petitioner's custody, then Respondent's allegations are detrimental to his health and well-being and he is most safe with the Petitioner.

256. When a district court is deciding a custody dispute, a child's best interests is the court's "paramount commitment." *Olson v. Olson*, 534 N.W. 2nd 547 at 549 (Minn. 1995). "The guiding principle in all custody cases is the best interest(s) of the child." *Pikula v. Pikula,* 374 N.W. 2nd 705 at 711 (Minn. 1985). As such, the court considers the best interest factors in MN Stats. §518.17, Subd. 1(a)(1)-(12). §518.17, Subd. 1(b), clauses (1) to (9) of the statute govern the application of the best interest factors. They say:

> (1) The court must make detailed findings on each of the factors in paragraph (a) based on the evidence presented and explain how each factor led to its conclusions and to the determination of custody and parenting time. The court may not use one factor to the exclusion of all others, and the court shall consider that the factors may be interrelated.

(2) The court shall consider that it is in the best interests of the child to promote the child's healthy growth and development through safe, stable, nurturing relationships between a child and both parents.

(3) The court shall consider both parents as having the capacity to develop and sustain nurturing relationships with their children unless there are substantial reasons to believe otherwise. In assessing whether parents are capable of sustaining nurturing relationships with their children, the court shall recognize that there are many ways that parents can respond to a child's needs with sensitivity and provide the child love and guidance, and these may differ between parents and among cultures.

(4) The court shall not consider conduct of a party that does not affect the party's relationship with the child.

(5) Disability alone, as defined in section 363A.03, of a proposed custodian or the child shall not be determinative of the custody of the child.

(6) The court shall consider evidence of a violation of section 609.507 in determining the best interests of the child.

(7) There is no presumption for or against joint physical custody, except as provided in clause (9).

(8) Joint physical custody does not require an absolutely equal division of time.

> (9) The court shall use a rebuttable presumption that upon request of either or both parties, joint legal custody is in the best interests of the child. However, the court shall use a rebuttable presumption that joint legal custody or joint physical custody is not in the best interests of the child if domestic abuse, as defined in section 518B.01, has occurred between the parents. In determining whether the presumption is rebutted, the court shall consider the nature and context of the domestic abuse and the implications of the domestic abuse for parenting and for the child's safety, well-being, and developmental needs. Disagreement alone over whether to grant sole or joint custody does not constitute an inability of parents to cooperate in the rearing of their children as referenced in paragraph (a), clause (12).

257. The best interests factors are as follows:

A child's physical, emotional, cultural, spiritual, and other needs, and the effect of the proposed arrangements on the child's needs and development.

258. [redacted] is and has been in a difficult situation all of his life. He obviously feels pressure from the Respondent and his parents to make allegations against his mother and siblings. In addition, he experiences the stress of an extremely vitriolic divorce. Given this, it is remarkable that he has been able to thrive as much as he has.

259. The Respondent doesn't seem to understand this. He professes that he only has [redacted] best interests at heart but his actions say otherwise. He puts his own self-interests above that of his son. His unwillingness to compromise and his "win at all costs" attitude is detrimental to [redacted] well-being. He has attempted to marginalize the Petitioner, [redacted] and [redacted] in [redacted] life. This, in itself, is abusive.

260. Mindi Mitnick testified that the Respondent's continued questioning of [redacted] about sexual and physical abuse was emotional abuse to [redacted] On cross examination, the Respondent admitted that he continues to question [redacted] and record his statements. There is concern that these continued inquiries will have a negative emotional impact on [redacted] as he may begin to believe that he is a victim of abuse when in fact he is not. Ms. Mitnick testified the following:

> Because in very young children, like [redacted] we actually do run the risk of what's called a source-monitoring problem. And that means-- and it could be anyone, not just a young child--that we stop being able to distinguish how we know something. Was it told to us? Did we hear it? Or did we experience it? And so children [redacted] age are the most vulnerable to source-monitoring problems, because their cognitive development is simply not where it is even at five, certainly not where

> it is at seven where children have better cognitive skills to say someone told them versus it actually happened to them. So, questioning can confuse children. And, of course, if things are suggested to a young child in the questions then they are at most risk of adopting things that have been said in questions. Tr. 21, Ln; 5-20.

261. Ms. Mitnick elaborated on her concerns regarding [redacted]

> By my end of the work with the family I was truly concerned about the rigid and inflexible beliefs that Scott, Leah, and Joe had about what was happening in Catrina's home with extreme hypervigilance about anything negative happening to [redacted]Again, every bruise being seen as a sign that he had been harmed in an intentional way in her care. Every scratch being seen as, you know, a sign of negligence on her part.
>
> I was concerned that [redacted] couldn't have normal sexual curiosity without it being labeled as a sign of abuse and, therefore, suppressed. Tr. Pg. 35, Ln: 20-25, Tr. Pg. 36, Ln: 1-5.

262. There is the additional stressor regarding [redacted]dietary needs. While this decision will ultimately be made by the Special Master, the medical evidence thus far

indicates that [redacted] needs are not what the Respondent claims. Further, the Court has serious concerns whether the Respondent will follow the decision of the Special Master or simply continue the contentious litigation on this point. For example, Dr. Montejo suggested that the Respondent remove the family dog due to [redacted] allergy to dog dander and the Respondent has refused, claiming that the Doctor is just wrong in her assessment. Whatever happens, it is clear that [redacted] remains in the middle of this dispute and can feel the effects of the tension between his parents.[101]

263. To protect [redacted] it is important that [redacted] remain in therapy for as long as Dr. Gearity deems it necessary. The Respondent has refused to continue with this therapy, blaming Dr. Gearity. The reality is that because Dr. Gearity didn't adopt the Respondent's narrative and found no evidence that [redacted] was sexually abused, the Respondent just quit taking [redacted] to see her in spite of a Court Order to the contrary.

264. To further protect [redacted] it is necessary to reduce the Respondent's parenting time from that which is presently in place. Until such time as the Respondent can reduce his inflexibility, come to grips with the fact that [redacted] was not abused, and recognize how harmful his own actions and that of his parents have been to [redacted] personally and to the relationships he has with his mother and

[101] See, e.g., the Court's Exhibit F which indicates that [redacted] was present during the contentious exchanges between the parties in the presence of Dr. Montejo.

siblings, it is necessary for the Petitioner to have the bulk of the parenting time with [redacted]

265. This factor favors the Petitioner. She is the one who immediately sought to get [redacted] into therapy. She is the one that continues to take [redacted] to see Dr. Gearity. She is the one that sought to get [redacted] into daycare and away from the toxic environment in the Respondent's home. Between her and the Respondent, she is the one that can best be entrusted to look after and protect [redacted] emotional, spiritual and other needs.

Any special medical, mental health, or educational needs that the child may have that may require special parenting arrangements or access to recommended services.

266. As stated *supra,* [redacted] needs to remain in therapy for as long as Dr. Gearity recommends. This is his only need that requires special parenting arrangements or recommended services.

267. Other than that the parties need to follow the advice of Judy Weigman who conducted the last interview of [redacted] at CornerHouse. In her report she said:

> It is strongly recommended that [redacted] be allowed to enjoy life as the young child he is. In this regard, it is recommended that adults in his life need to refrain from questioning and suggesting various scenarios in order to influence [redacted] allegiance to his mother and siblings. See: Exhibit 275, p. 3.

268. [redacted] needs a home environment free from discord, free from the competition for [redacted] as the "prize," and free from situations where he's not placed in the unfair position of having to choose between the people he loves. Based on everything the Respondent has shown this Court, it is clear that [redacted] won't have that while in his care.

269. This factor favors the Petitioner.

The reasonable preference of the child, if the court deems the child to be of sufficient ability, age, and maturity to express an independent, reliable preference.

270. The child is less than six years old which is not of sufficient age and maturity to express an independent, reliable preference. This factor is neutral

Whether domestic abuse, as defined in section 518B.01, has occurred in the parents' or either parent's household or relationship; the nature and context of the domestic abuse; and the implications of the domestic abuse for parenting and for the child's safety, well-being, and developmental needs.

271. As stated *supra,* it is clear to this Court that domestic violence between the parties occurred during their marriage. The Court agrees with the assessments of Mindi Mitnick and Dr. Albert that both parties contributed to this violence, notwithstanding their assertions to the contrary, and that the Respondent minimizes his involvement in part due to his lack of memory from his alcohol abuse. However, because they are now separated and are likely to have only minimal contact in the future, this conduct will not affect [redacted]

272. Of more salient concern are the allegations that [redacted] has been physically and sexually abused by the Petitioner, [redacted] and others while in Petitioner's care.

273. MN Stats. Sec. 518B, Subd. 2(a) and (b) defines "domestic abuse" as including "1) physical harm, bodily injury, or assault; (2) the infliction of fear of imminent physical harm, bodily injury, or assault; or (3) criminal sexual conduct, within the meaning of section 609.342, 609.343, 609.344, 609.345, or 609.3451 by a "household or family member." The allegations of the Respondent and his parents, if true, would constitute domestic abuse as defined by the statute.

274. However, the Court here finds that the overwhelming evidence supports the finding that [redacted] was not abused, and specifically that he was not the victim of either physical or sexual abuse by any household or family member or anyone else while in the care and custody of the Petitioner.

275. There is a plethora of reasons for this finding:

a. The Respondent and his parents are not credible. On a number of occasions as outlined herein the Respondent and his parents provided testimony that was clearly false, which calls into question everything they've reported. They clearly hate the Petitioner and wish nothing but bad things for her. They view [redacted] not as their own flesh and blood but

rather as the "prize" in this litigation that they are bent on winning at all costs. Whenever someone who investigated the allegations determined that there was no validity to their claims they attacked them alleging that they sided with the Petitioner because they were overcome by her abilities as a "master manipulator." They refused to accept the position of anyone that doesn't agree with their narrative,[102] even to the detriment of [redacted][103] They claimed that Mindi Mitnick got several points wrong in her Custody Evaluation but never bothered to even challenge her on those points during

[102] In her report, Mindi Mitnick describes how Scott and Leah Rued complained about everyone in the "system" that didn't agree with their position. This included the Guardian ad Litem, the Child Protection Workers, people that the Respondent dealt with at CornerHouse, and various law enforcement personnel. She said: "In December 2017, Scott said that he thought Catrina had also tried to 'front run' my evaluation. I told them that she did not speak with me before they did and so could not have done that. This appeared to be a pre-emptive effort to say I, too, was biased by Catrina's accounts in case they did not like my recommendations." See: Exhibit 202, p. 14.

[103] An example is the Respondent's refusal to follow Dr. Montejo's suggestion that they remove the family dog from [redacted]presence. Even though Dr. Montejo works at the Mayo clinic, one of the finest medical facilities in the entire world, the Respondent feels he knows more about allergies than Dr. Montejo.

cross examination. [104] They were warned about the dangers of repeatedly questioning [redacted] by CornerHouse, the Child Protection Workers, and Mindi Mitnick but they ignored that advice which led to what clearly was a source monitoring issue.

b. Four concurrent child protection and criminal investigations were conducted and all of those were closed with no findings of abuse. The Court finds that these were thorough investigations, and that all the principal witnesses were interviewed. They followed the protocol that's been in place in Hennepin County since the opening of CornerHouse in the late 1980's. The Respondent's claims that the persons conducting these investigations were doing the bidding of and being manipulated by the Petitioner are outlandish

[104] These included Respondent's recommendations for the Petitioner's parenting time; that Respondent thought [redacted] was telling the literal truth when he reported that the Petitioner painted his butt green; that Scott Rued reported that he was sobbing after the CornerHouse interview in June of 2018; and that someone had shown [redacted] a photo lineup.

and false. To suggest that all of these investigations came to the same conclusion for the reasons Respondent espouses is far-fetched and untrue

c. .Four interviews of [redacted] were conducted at CornerHouse and none of those interviews could corroborate the Respondent's allegations. CornerHouse has served as a national model for the forensic interviews of children since the early 1990's. Their personnel have conducted seminars on their interviewing protocols statewide, nationally, and even internationally. They are widely respected as the "gold standard" for the forensic interviews of children. In not one interview could they provide corroboration in support of the Respondent's allegations. In fact, Judy Weigman, an experienced forensic interviewer, found that [redacted]was being pressured into making the allegations and strongly suggested that the adults responsible stop this conduct.

Even more telling than the lack of disclosures [redacted] made during the four CornerHouse interviews, is the lack of affect one would expect from a child who has claimed to have been anally raped multiple times by multiple persons. [redacted] showed no confusion from these alleged sexual attacks. He showed none of the pain that a child normally expresses who has, in fact, been abused in the manner the Respondent claims.

d. The Respondent and his parents claim to have three other videos that confirms the truthfulness of the allegations, yet decided to only introduce one of those. The Court inquired about Respondent's Exhibit 636. It was only because of the Court's inquiry and its interest in making that a part of the record that Exhibit 636 was received. The Exhibit is remarkable in that it shows the disconnect between reality and what the Respondent and his parents claim to be true. In that short video it is clear that [redacted] is playing to the camera and is enjoying the attention he's

receiving. He is smiling and jumping on the couch, showing none of the injury the Respondent claimed he showed only a few minutes prior. He's encouraged to repeat his statements and given tacit praise when he does. At the end of the video the boy giggles! As with the situation with the CornerHouse interviews, he shows none of the affect one would expect of a child to show who is reporting multiple instances of sexual abuse by multiple persons.

Another video that the Respondent and his parents refused to introduce was the video inside of the Petitioner's home. Scott Rued told Dr. Albert that this video was from March of 2016 and that Leah was aghast to see [redacted] in the crib with [redacted]. . . touching, groping, kissing of [redacted] by [redacted] was extremely concerning." See: Exhibit 214, p. 9. Yet for some reason, in spite of the fact they attempted to introduce nearly 500 other exhibits, they never even attempted to introduce perhaps the

most pertinent exhibit in their possession. Their explanations for this failure were vague and not credible. Leah Rued testified they told the Eden Prairie Police Department and Hennepin County Child Protection about this video but they never asked for it. This is not believable. Nowhere in the vast volumes of records of these agencies is there any reference to Leah Rued or someone else describing the video or offering to produce it. The Eden Prairie Police Department were conducting a criminal investigation during these times. Had they been aware of the tape's existence they would have insisted that it be turned over voluntarily. If the Rueds refused then they would have gotten a search warrant to seize the video. None of this happened because these agencies were never informed of the tape's existence. Moreover, it must be recalled that questions about introducing the video were raised first by the Court and early in the litigation that was spread out over five months. Yet in

spite of knowing that the Court felt this to be an important piece of evidence the Respondent never sought to introduce it. Surely the Respondent wasn't averse to supplementing the record with additional exhibits as he requested the admittance of an additional 30 "Supplemental Exhibits" after the deadline for filing exhibits had passed.

The last video that was not introduced at trial was the Respondent's taped interview of [redacted] that occurred on September 22, 2018. According to the Respondent's testimony, [redacted] was reporting anal penetration by [redacted] and [redacted] He proffered Exhibit 612 prior to the trial which reportedly is a transcript of that incident, yet never laid the proper foundation to admit the exhibit nor did he attempt to admit the recording.

e. The Respondent took [redacted] to Children's Hospital on four occasions to document evidence that [redacted] was abused and, on all four of

those occasions, the medical experts could find no evidence to support the allegations. See: Exhibits 47, 48, 49 and 78. In spite of the fact that the Respondent was told that it was not in [redacted] best interests to continually take him to the hospital, the Respondent ignored that advice. Irrespective of the effect this was having on his son, the Respondent's actions here appear to be of one intent on winning the "prize."

f. Throughout the litigation it was the Petitioner who was interested in getting to the truthfulness of the allegations, whereas the Respondent fought against that, expecting instead that everyone involved should just accept his claims without question. When it was suggested by Child Protection and CornerHouse that [redacted] be involved in play therapy it was the Petitioner who acted immediately. It was the Respondent who resisted. If [redacted] was being abused in the Petitioner's care by, among other people the Petitioner, then the last thing she would

have wanted was for that boy to be involved in therapy because that would have uncovered the abuse. However, because of the Respondent's curious intransigence [redacted] was forced to wait five months before the therapy could begin. Respondent's excuse that he was afraid that the Petitioner would dominate the therapy due to her abilities as a "master manipulator" are patently ridiculous.

In addition, it was the Petitioner would wanted to enroll [redacted] in a neutral day care and not the Respondent. If [redacted] was in fact being abused then the more eyes of neutral third persons on [redacted] the greater the danger for the Petitioner. If [redacted] truly was being abused then Petitioner would have fought against [redacted] attending day care for fear that her family secret be discovered. She did not. Her lack of fear of disclosure were well warranted as during the many months that [redacted] attended Prestige Academy, he made no such disclosure.

g. If the Respondent's claims regarding the sexual conduct of [redacted] and [redacted] are true, then it can fairly be said these children are extremely sick psychologically. Yet there were in therapy with Sally Beck for approximately three years and, in all that time, she found no evidence that they have the psychopathy that would support the Respondent's claims. She reported that they suffer from PTSD because of a home environment dominated by the Respondent's drunken rages. She reported no sexually deviant behavior, and no evidence that either were the victims of sexual abuse as Respondent insists.

h. [redacted] has been in play therapy with Dr. Anne Gearity since the Spring of 2018. Dr. Gearity said she uses "no directed play as well as informed conversations" with [redacted] She said "This allows him to feel at ease and spontaneously announce any worries; . . . ." She said [redacted] has never indicated any concerns." See: Exhibit B.

As to sexual content in the therapy, Dr. Gearity reported that

"While [redacted] does continue to place his hand atop his penis (through his pants), this seems like typical four year old boy behavior. I saw it first in spring when he was actively toilet training. Now it is more a habit, evident as he makes transitions. This behavior dissipates once he is engaged in play. **There appears to be no sexual content or need. [redacted] has never made any comments about sex, about being touched, about fearing for his safety.**" *Id.* (Emphasis Added).

At one point in the therapy [redacted] told Dr. Gearity something that his (paternal) Grandmother said his mom did. When she asked [redacted] if that really happened, "he seemed initially confused and then corrected that it wasn't. . . . If he was trying to report difficulty or distress, I am confident his demeanor and regulation would have been changed. Then and now, [redacted] behavior suggests he does not feel endangered." *Id.*

Dr. Gearity noted disconcerting behavior on the part of the Respondent, suggesting that his reports regarding [redacted] concerns were not accurate. For example, in a session on November 7, 2018, Respondent told her that [redacted] told him on the ride to the therapy

that he would "lie to you (Dr. Gearity), he would not tell you (Dr. Gearity) the truth." She noted that [redacted] did not react to this claim. She also said that in a session on November 21, the Respondent told her: [redacted] was angry because he still had to see M and K." She said [redacted] immediately pushed at his father's leg (the Respondent was sitting down) and "grimaced, sticking out his tongue." Dr. Gearity asked "Is that [redacted] and [redacted]" and the Respondent answered affirmatively. She observed that [redacted] had no evident negative reaction, or affirming response about being angry." Dr. Gearity further reported that during a session on December 5, 2018, she tried to reassure the Respondent that [redacted] seemed to be thriving." He agreed but insisted that [redacted] continued to be afraid and being hurt and "asked directly for [redacted] to tell me what happened." Dr. Gearity observed that [redacted] "hit at father, grimaced and said nothing to indicate confirmation." She asked [redacted] "if he had worries; he said no. There was nothing in his words or actions to suggest he was distressed." *Id.*

In her report that was received as Court's Exhibit C, Dr. Gearity expressed concerns about the

continued investigations into allegations that [redacted] was abused. She said "Children at this age do not usually lie. They may adjust their truth to better express

what they wish. But they are highly susceptible to being told something is true, or being influenced to perceive danger by adults' words and behaviors. This is a risk in contentious divorce proceedings."

In her last report dated May 22, 2019 and received as Court's Exhibit E, Dr. Gearity unequivocally states: "**I have seen no evidence that [redacted] has been physically or sexually harmed, ...**" (Emphasis Added).

It would seem that if [redacted] were abused in the multitude of times by the multitude of perpetrators that the Respondent and his parents have reported, then something corroborating the allegations would have been disclosed to Dr. Gearity during [redacted] therapy. Nothing was. In fact the opposite was true. Dr. Gearity described [redacted] as a "delightful, engaging, creative and resilient boy" who was doing the best he could to deal with the strife from his parent's divorce, but she found no evidence of abuse.

i. As the Respondent and his parents continued to report that [redacted] kept saying he was abused in the Petitioner's care, the allegations became more expansive and included more perpetrators all the while the Petitioner was under increased scrutiny by the courts, social workers, the police, the Custody and Parenting Time Evaluator, and most especially, the Respondent and his parents. At first the reports were that [redacted] penis and butt were being touched. This later grew into allegations of anal penetration on multiple occasions. At first it was only [redacted] that was reported to have sexually abused [redacted] Later it became [redacted] and [redacted] working in tandem. Later it included the Petitioner. Finally it included all these persons plus the Petitioner's ex-husband and both of her parents. The Petitioner knew she was being watched; she knew that the Petitioner and his parents had hired private investigators to follow her; she knew that video cameras had been placed in the home. In spite of all this no one, not the least of which included the Respondent and his parents, could offer any evidence that the Petitioner was violating the Court's Order that [redacted] not have contact with [redacted] and

[redacted] unless he was supervised. Even the Petitioner's lay witnesses, Dana Craven and Joan Snyder, reported how conscientious the Petitioner was about this, and described that [redacted] was always with the Petitioner.

j. No one who can be considered an expert in this area has concluded that [redacted] was sexually abused. This includes the forensic interviewers from CornerHouse. It also includes Mindi Mitnick who is a leading expert in the country on this issue. See: Exhibit 204. It even includes the Respondent's expert, Dr. Michael Shea.

276. In the final analysis it should be clear to any objective-minded person that [redacted] was not physically or sexually abused by anyone while in the Petitioner's care and custody. However, these false allegations have endangered [redacted] as they can alienate the relationship he enjoys with his mother and siblings. It could also cause him to believe that he was victimized when, in fact, he was not. Until such time as the Respondent and his parents come to grips with the truth it is expected that [redacted] will continue to be endangered in the Respondent's care. As such, this factor strongly favors the Petitioner.

Any physical, mental, or chemical health issue of a parent that affects the child's safety or developmental needs.

277. It is well documented that the Petitioner has significant mental health issues in that she suffers from Posttraumatic Stress Disorder, Chronic, with Dissociation. This is a result from suffering significant abuse throughout her life, not the least of which occurred during her marriage to the Respondent.

278. To her credit, she has involved herself in therapy and is improving. Dr. Albert noticed the change in the Petitioner in the year that he spent with her doing his psychological evaluation. He said:

> I would note, however, that over the course of Catrina's 6 contacts with me covering a 12-month period, she became increasingly non-defensive, present, and better regulated emotionally. In her last two interviews, I observed some continued defensiveness but no instances of dissociation. She seemed to adopt a more cooperative and trusting attitude with me over time. According to her most recent psychotherapy records, this may reflect broader psychological changes she is undergoing. See: Exhibit 211, p. 4.

Dr. Albert went on to say:

> Catrina reported that several of her symptoms have been improving noticeably. Disturbing memories are still present but "not bad" and are causing "no interference." They have also become "further and further (apart)." She added that "I'm not reliving anything;" rather, they are

> less like flashbacks than disturbing "thoughts." When she feels guilt about previous abuse, she is able to tell herself "it's not my fault." Catrina mentioned that an additional helpful too in her psychotherapy sessions has been "doing EMDR."[105] In addition, she "journals" when she is feeling unusually stressed. *Id.* at p. 7-8.

and:

> I observed positive changes in Catrina throughout the 12 months of interviews, particularly regarding decreased defensiveness and better emotional regulation, and note that her more recent therapy records reflect this as well. *Id.* at p. 31.

279. Mindy Mitnick testified that she had enough information that Petitioner was participating in her therapy appropriately. In fact, she testified that when she inquired of Petitioner whether she learned anything in therapy, the Petitioner "could say out loud the skills that she was learning and how she was using them right in our sessions to help her cope with difficult questions I was asking her, because I asked many difficult questions." Tr. Pg. 59, Ln: 3-7.

280. It is undisputed that the Respondent had serious chemical health issues during the

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[105] Dr. Albert explained that "EMDR stands for Eye Movement and Desensitization Reprocessing. It is a form of psychotherapy that is increasingly being used with individuals who have distressing memories and beliefs." See: Exhibit 211, f. 7.

marriage which have been documented in this Order. To his credit he has been sober for almost four years now. However, the Respondent has significant barriers to understanding and admitting the effect that his drinking had on the marriage, and that affects his views on parenting issues related to [redacted] in the present.

281. Dr. Albert said it was "unclear to what extent he (the Respondent) may have had memory gaps or distortions about certain recalled events that had occurred in his marriage during periods of anger combined with alcohol use." See: Exhibit 212, p. 3. Dr. Albert said the Respondent was upset when he was confronted about this:

> Joseph appeared upset when I informed him that, given his history of anger, excessive drinking, physical aggression at times outside of his marriage, and numerous blackouts of up to a 2-hour duration, it was very plausible to me that he had been physically abusive toward Catrina more than he had reported." *Id.* at p. 8.

282. Dr. Albert concluded that he believed that "Joseph exhibited a pattern of verbal and physical abuse that is likely to have been greater than he has reported." Dr. Albert listed 13 reasons in support of his opinion. *Id.* at p. 23.

283. Mindi Mitnick echoed those perceptions. In her report she said that "Joe took minimal responsibility for the impact of his drinking on (Catrina) and the older children, ..." See: Exhibit 202, p. 34. In her testimony she said

that she never got the "sense from Joe of any empathy for what he did in his relationship with Catrina as a result of his alcoholism. There continued to be minimization by him, Scott and Leah about his drinking and its impact on Catrina, [redacted] and [redacted]" Tr. Pg. 60-61; Ln: 23-25 and 1-3.

284. Respondent's parents supported the Respondent's version minimizing the effect his drinking had on the marriage, blaming the Petitioner instead. Mindi Mitnick observed Respondent's parents blamed Petitioner for Respondent's alcoholism stating her mental health caused it. They failed to recognize that Respondent had an alcohol problem prior to his relationship with Petitioner. *Id.* Dr. Albert said that Scott Rued "appeared to view Joseph as a victim of Catrina's lying and maliciousness. He was uniformly supportive of his son's version of events where Joseph and Catrina have differed." See: Exhibit 212, p. 14. He said that Leah Rued "did not accept that Joseph may have been more volatile with Catrina under the influence of alcohol and/or drugs than he was apparently reported (sic) to his parents." *Id.*

285. All of the above contributes to the Respondent's attitude that he "can't be wrong." It makes it extremely difficult for him to admit that [redacted] was not abused, and impossible for him to co-parent with the Petitioner.

286. Dr. Albert said that Respondent has a "strong need to see himself in a positive way and to be held in high regard by others." *Id.* at p. 21. He said that "Joseph tests as someone who has a strong need to make his own decision and who

wants 'veto rights' over decisions that would affect or control him." *Id.* at p. 27. Dr. Albert says that the over involvement of Scott and Leah Rued is a contributing factor in Respondent's rigid attitudes. *Id.* at p. 22.

287. Similar observations were made by Frank Tougas, a licensed psychologist and the Director of Pinnacle Behavioral Healthcare. The Respondent was ordered to complete their program after his conviction from the domestic abuse charges. Mr. Tougas listed as his diagnosis of the Respondent "Adjustment Disorder with mixed disturbance of emotions and conduct. Testing suggested narcissism, difficulty seeing problems with his own behavior, and a lack of personal insight. He showed 'little patience for the mistakes of others,' difficulty when things don't go as expected, and difficulty calming himself when angry." See: Exhibit 202, p. 43.[106]

288. Ms. Mitnick testified that she was familiar with narcissistic traits. She described it as:

> So in layperson's term, narcissism is an intense self-focus where one expects the world to meet one's needs instead of having more reciprocal relationships with other people. Kind of an assumption that if it's good for me it's good for you. There's a lot of self protectiveness that's part of narcissism; so there's a lot of hiding of one's faults because one doesn't

[106] The Respondent's probation officer, Queeta Karmo, saw similar traits. She said: "It should be noted as identified in the PSI, Def presented as well rehearsed and calculated. Additionally, he did not appear honest/forthcoming as he presented conflicting information." See: Exhibit 20, p. 113.

> want the world to know that one is imperfect. There can be a lot of inflation of one's self-worth to convince other people of how special you are." Tr. Pg. 61, Ln: 7-16.

She testified that she saw "Joe as having very limited ability to admit his faults." Tr. Pg. 61, Ln: 19-21.

289. Mr. Tougas' statements seem to mirror Ms. Mitnick's statement in her evaluation about Respondent: "Asked about why he had not put together a list of his contributions to the marital problems (in my questionnaire) as Catrina had done, Joe said it was irrelevant because the real issues were Catrina providing safety for [redacted] and her personality changes." See: Exhibit 202, p. 43.

290. What continues to affect [redacted] safety and developmental needs is Respondent's stubborn attitude that he cannot be wrong, his continued insistence that [redacted] was abused, and his willingness to alienate [redacted] from his mother and siblings in order to win this litigation. Dr. Albert was prophetic when he described how the Respondent and his parents view [redacted] as the "prize" in this divorce proceeding.

291. Dr. Albert testified that he recommended the Respondent attend therapy to address the issues he described in his psychological evaluation. Dr. Albert noted that it would take more than a year to address all of the issues he recommended be addressed assuming that Respondent was attending weekly sessions. The Respondent testified that he did not believe he needed anymore therapy because there was nothing wrong with him.

292. The Respondent shows no signs of letting go of his uncompromising ways, and this will always work to [redacted] detriment.[107] As such, this factor favors the Petitioner.

The history and nature of each parent's participation in providing care for the child.

293. Both parents have participated in providing for [redacted] care. It appears that early in [redacted] life both relied on the services of a nanny. Once the litigation commenced the Petitioner no longer used a nanny and provided for [redacted] care on her own. Until the recent past it appears that the Respondent's participation was less than that of the Petitioner as he continued to rely on nanny services, and also depended on his parents to provide care for [redacted] Nonetheless, the Court finds this factor to be neutral.

The willingness and ability of each parent to provide ongoing care for the child; to meet the child's ongoing developmental, emotional, spiritual, and cultural needs; and to maintain consistency and follow through with parenting time.

294. Of the two, the Petitioner is more suited to provide ongoing care for [redacted] to meet his needs, and to follow through with parenting time. This is due to the Respondent's negative feelings towards the Petitioner which are reinforced by his parents, his stubborn insistence on the narrative that he's chosen that [redacted] was abused and has allergies, and

[107] Dr. Albert described persons like the Respondent to have a "certain rigidity of thought in which Joseph would find it difficult to compromise because the individual is convinced of his own moral position." See: Exhibit 202, p. 39.

his interest in alienating [redacted] from his mother and siblings.

295. The Respondent originally suggested that the Petitioner only have supervised parenting time for only three hours at a time and twice a week. In addition, he recommended that he have the child for every holiday except Mother's Day and Petitioner's birthday. This meant that the Petitioner would never have [redacted] on his birthday. See: Exhibit 202, p. 5. His testimony that that was his parent's recommendation and that Mindi Mitnick "got it wrong" in her evaluation is not credible. Ms. Mitnick is one of the top professionals in this area in the country and it is unlikely that she would have incorrectly reported this important piece of evidence.

296. At trial, Respondent suggested that the Petitioner be given overnights every other weekend and may, if she wants, spend an additional four hours with [redacted] on Wednesdays. This is less than 15% of the parenting time which is less than the statutory presumed amount of 25%. See: MN Stats. Sec. 518.175, Subd. 1(g). Mindi Mitnick was correct when she wrote: "In this case, there is substantial risk of Catrina being marginalized in [redacted] life if he does not spend substantial time with his mother since there is no indication that he receives any positive messages about her while in his father's care." S: Exhibit 202, p.73.

297. This factor favors the Petitioner.

The effect on the child's well-being and development of changes to home, school, and community.

298. This factor is neutral as the Court's decision will not lead to changes in home or community and [redacted] appears to be integrated into both of his parents' homes and communities.[108]

The effect of the proposed arrangements on the ongoing relationships between the child and each parent, siblings, and other significant persons in the child's life.

299. By adopting the Respondent's proposal it would effectively eliminate [redacted] relationship with his siblings. The Respondent never mentioned [redacted] siblings when he testified about this factor, which demonstrates that he doesn't think those relationships are important to [redacted]

300. By allowing the Petitioner to have sole legal custody, [redacted] will likely be attending the same schools as his brother and sister, and they can develop more as a family than under Respondent's plan which would isolate [redacted] from his mother and siblings.

301. This factor favors the Petitioner.

The benefit to the child in maximizing parenting time with both parents and the detriment to the child in limiting parenting time with either parent.

302. In the Court's view, it is always beneficial for a child to spend as much time with both parents as possible. The only exception is

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[108] The Respondent testified that he sold the marital home at [redacted] request. He claimed that [redacted] had bad memories from the alleged abuse he suffered at the hands of his siblings and others. The Court does not find the Respondent's testimony on this point to be credible. There was no evidence from any other source that [redacted] was ever uncomfortable living in that house, even though [redacted] was visited in the home several times by Child Protection workers. If there was such discomfort one of them surely would have noticed it.

when the conduct of one parent is detrimental to or endangers the child. Here Respondent's conduct is detrimental to [redacted] Respondent's endorsement of [redacted] statements creates the real danger that [redacted] will believe that he was, in fact, sexually abused by his mother, brother, sister and others. Respondent's conduct endangers [redacted] because it undermines [redacted] relationship with his mother. See: *Smith v. Smith*, 508 N.W.2d 222 (Minn. App. 1993). [redacted] needs and deserves to grow up in a happy and healthy environment, one free from false allegations.

303. This factor favors the Petitioner.

Except in cases in which domestic abuse as described in clause (4) has occurred, the disposition of each parent to support the child's relationship with the other parent and to encourage and permit frequent and continuing contact between the child and the other parent.

304. There are serious doubts that the Respondent will ever support [redacted] relationship with the Petitioner. He is so entrenched in his position, so convinced in the righteousness of his cause, and so focused on winning [redacted] as the "prize" that it's doubtful he will ever change. In addition, given that Respondent's parents endorse his positions and reinforce his negative feelings towards the Petitioner it is extremely unlikely that they will ever support [redacted] relationship with his mother.

305. The Petitioner, on the other hand, has expressed a willingness to try to work with the Respondent to co-parent [redacted] and the hope that it may occur in the future. In addition, she sought to vacate the no contact order but

that was resoundingly denied by the Respondent. The only question for the Petitioner is whether she can ever get past the resentment she rightfully feels towards the Rueds.

306. This factor favors the Petitioner.

The willingness and ability of parents to cooperate in the rearing of their child; to maximize sharing information and minimize exposure of the child to parental conflict; and to utilize methods for resolving disputes regarding any major decision concerning the life of the child.

307. As stated throughout this opinion, these parents are unwilling to cooperate in the rearing of their child. Even though the Petitioner has expressed a willingness to co-parent, she still must overcome the resentment she's experienced from the treatment by the Respondent and his parents. To date, she has not done that. As such, this factor is neutral.

308. Given all of the above it is imperative that only one parent be given the ultimate authority to make decisions on [redacted] behalf. After a careful examination of all the evidence and applying the best interests factors it is clear to this Court that that person must be the Petitioner. To decide otherwise would be detrimental to [redacted] health and well-being, and to his relationship with his mother and siblings.

309. The parties presently share equal parenting time. As the Court stated *supra,* it is always best for a child if they were to be allowed to spend as much time with both parents as possible. The only exception is when one

parent engages in conduct that is detrimental to or endangers the child. That exception is present here.

310. Unless and until that Respondent can honestly demonstrate that he and his parents will no longer instill false statements of abuse into [redacted] mind, he will continue to endanger [redacted] because he undermines the very important relationship that [redacted] has with his mother. As such, the Respondent's parenting time will be reduced to that amount ordered herein.[109]

Child Support

311. On October 5, 2020, the Respondent filed the following affidavit which the Court accepts in total:

Joseph D. Rued states as follows:

1. I am the Respondent in the above proceeding. Petitioner ("Catrina") has requested that the Court reconsider its decision regarding child support. This Affidavit is provided pursuant to the Court's request for submissions.

CALCULATION OF CHILD SUPPORT

[109] Mindi Mitnick testified that: "I think Joe, Scott, and Leah think Catrina is incapable of making healthy decisions for [redacted] and, therefore, they would not be likely to involve her in decisions going forward. There was a persistent pattern of not informing her about things, like, doctor's appointments; that's a form of marginalizing. I think it would a very real risk if, for instance, Joe had sole legal custody." Tr. 34, Ln: 5-11.

2. I currently pay basic child support in the amount of $932 per month. I also pay for our son's medical and dental insurance coverage, his unreimbursed/uninsured medical, dental and therapy expenses, all child care costs, and his athletic and extracurricular activity expenses. If the Court determines it is appropriate to recalculate my basic child support obligation, I respectfully request that the Court do so based on the following assumptions:

(a) **My Income.** I earn gross income of $20,000 per month. (Trial Tr. 3/18/20, p. 24:11 14).

(b) **Catrina's Income.** Catrina earns gross income of $4,583 per month. (Trial Ex. 76) and (Trial Tr. 3/5/20, p. 31:9–11). She also has the ability to earn bonus income, which is not included in the above calculation of her income.

(c) **Minor Child.** We have one minor child together: [redacted]

(d) **Non-Joint Minor Children.** Catrina

has two non-joint minor children.

(e) **Medical and Dental Insurance.** I previously agreed to pay for [redacted] medical and dental insurance coverage without any contribution from Catrina.

(f) **Child Care Costs.** I previously agreed to pay for all of [redacted] child care costs without any contribution from Catrina.

(g) **Parenting Time.** Under the Court's Order dated August 28, 2020, I have 104 overnights with [redacted] and Catrina has 261 overnights with him per year. However, this issue is currently pending before the Court as I have filed a Motion for a New Trial and a Motion for Amended Findings.

3. A child support calculation based on the above results in me

owing $1,451 per month in basic child support.

Petitioner's Request for Attorney's Fees

132. MN Stats. §518.14, Subd. 1 states: "Except as provided in section 518A.735, in a proceeding under this chapter or chapter 518A, the court shall award attorney fees,

costs, and disbursements in an amount necessary to enable a party to carry on or contest the proceeding, provided it finds:

(1) that the fees are necessary for the good faith assertion of the party's rights in the proceeding and will not contribute unnecessarily to the length and expense of the proceeding;

(2) that the party from whom fees, costs, and disbursements are sought has the means to pay them; and

(3) that the party to whom fees, costs, and disbursements are awarded does not have the means to pay them.

312. MN Stats. §518.14, Subd. 1 authorizes the Court, in its discretion, to award "additional fees, costs and disbursements against a party who unreasonably contributes to the length or expense of the proceeding." A party unreasonably contributes to the length and expense of litigation where, *inter alia,* a party adopts non-cooperative and obstinate positions, See, e.g., *Korf v. Korf,* 533 N.W. 2nd 706 at 711 (Minn. App. 1996); violates court orders, See, e.g., *Crosby v. Crosby,* 587 N.W. 2nd 292 at 298 (Minn. App. 1998); takes

"duplicitous and disingenuous positions," See, e.g., *Redmond v. Redmond,* 594 N.W. 2nd 272 at 276 (Minn. App. 1999); employs delay tactics, *Dabrowski v. Dabrowski,* 477 N.W. 2nd 761 at 766 (Minn. App. 1991); refuses to pay a court-ordered obligation despite having the ability to do so, See, e.g., *Szarzynski v. Szarzynski,* 273 N.W. 2nd 285 at 296 (Minn. App. 2007); or advances arguments "so specious as to force the conclusion that so unfounded a position could be advanced only to harass," See, e.g., *Roehrdanz v. Roehrdanz,* 438 N.W. 2nd 687 at 691 (Minn. App. 1989). A Court need not find that a party acted in bad faith to support an award for conduct-based attorney's fees. It is sufficient if the court finds that the party's actions unreasonably contributed to the length and expense of the proceeding. See, e.g., *Geske v. Marcolina,* 624 N.W. 2nd 813 at 818 (Minn. App. 2001).

313. Because conduct-based fees are based solely on a party's behavior, they may be awarded irrespective of the financial resources of the parties. See, e.g., *Dabrowski v. Dabrowski,* 477 N.W. 2nd 761 at 766 (Minn. App. 1991). Conduct-based attorney's fees are not appropriate where "both parties presented colorable legal arguments on difficult issues," See, e.g., *Kitchar v. Kitchar,* 553 N.W. 2nd 97 at 104 (Minn. App. 1996), or where the party seeking an award has themselves contributed to the length and expense of the proceeding. See, e.g., *Kahn v. Tronnier,* 547 N.W. 2nd 425 at 431, n.5 (Minn. App. 1996).

314. The District Court must make findings regarding the basis for conduct-based fees. *Kronick v. Kronick,* 482 N.W. 2nd 533 at 536

(Minn. App. 1992). It must identify the offending conduct, the conduct must have occurred during the proceedings, and the conduct must be found to have unreasonably contributed to the length or expense of the proceedings. MN Stats. §518.14, Subd. 1 and *Geske v. Marcolina,* supra.

315. The Court grants the request from the Petitioner for additional need and conduct-based attorney's fees and costs in this proceeding. Although the Respondent has already contributed to Petitioner's attorney's fees and costs in this proceeding, Petitioner does not have the ability to contribute to her own attorney's fees and costs. The Respondent has had the means to continue the costly litigation without any financial constraints as evidenced by the approximate $1.4 million dollars spent on attorney's fees and approximately $160,000 in expert fees as of March 18, 2020.

316. From the very beginning of this third-party action and dissolution action, the Respondent's parents have been enmeshed in this litigation. It is evidenced by the amount of information they provided to Ms. Mitnick and Dr. Albert, they have helped fuel the ongoing litigation for the past forty-four months. Both Respondent and his parents have tried to convince experts and the Court that the Petitioner had severe mental health issues that impaired her ability to be a parent and is negligent. The Respondent and his parents, through their former attorney hired private investigators to conduct multiple surveillances of Petitioner and her children, which were invasive and could be considered as stalking.

The Respondent's parents drove by the Petitioner's home to see who was at her home. Petitioner and her children's lives have been disrupted and scrutinized so much that the Court finds not only an award of need-based attorney's fees is warranted but also conduct-based fees award should be awarded. Their actions of continued allegations and reports of sexual and physical abuse to CPS contributed to the length of the litigation.

317. Throughout this proceeding, the Petitioner has expressed that she has been on the defensive because she did not have the financial resources to hire experts or take depositions. Yet, the Petitioner had to respond to multiple written discovery requests including request for admissions. She was subjected to a deposition and the Respondent's attorney hoped to take a second deposition of the Petitioner. In this proceeding, there were the following court appearances or phone conferences that Petitioner's attorney had to be involved in for issues that the Respondent raised:

A. September 21, 2016: Motion Hearing;

B. October 21, 2016: Telephone Motion Hearing;

C. November 14, 2016: Initial Case Management Conference;

D. November 28, 2016: Correspondence to Court;

E. November 28, 2016: Correspondence to Court;

F. November 29, 2016: Correspondence to Court;

G. November 30, 2016: Correspondence to Court;
H. December 2, 2016: Review Hearing;
I. December 27, 2016: Correspondence to Court;
J. January 24, 2017: Telephone Motion Hearing;
K. February 28, 2017; Telephone Motion Hearing;
L. March 6, 2017: Correspondence to Court;
M. March 6, 2017: Correspondence to Court;
N. March 20, 2017: Motion Hearing;
O. July 17, 2017: Motion Hearing (by telephone);
P. November 7. 2017: Correspondence to Court;
Q. November 8, 2017: Correspondence to Court;
R. November 22, 2017: Correspondence to Court;
S. November 28, 2017: Correspondence to Court;
T. November 29, 2017: Review Hearing;
U. November 29, 2017: Correspondence to Court;
V. December 1, 2017: Correspondence to Court;
W. January 10, 2018: Review Hearing;
X. February 22, 2018: Review Hearing;
Y. March 2, 2018: Correspondence to Court;

Z. March 2, 2018: Correspondence to Court;
AA. March 29, 2018: Correspondence to Court;
BB. April 16, 2018: Review Hearing;
CC. June 13, 2018: Motion Hearing;
DD. June 28, 2018: Correspondence to Court;
EE. July 2, 2018: Correspondence to Court;
FF. July 10, 2018: Correspondence to Court;
GG. July 30, 2018: Review Hearing;
HH. August 15, 2018: Correspondence to Court;
II. August 15, 2018: Correspondence to Court;
JJ. September 5, 2018: Review Hearing;
KK. September 18, 2018: Correspondence to Court;
LL. October 9, 2018: Review Hearing;
MM. November 19, 2018: Motion Hearing;
NN. November 26, 2018: Correspondence to Court;
OO. November 29, 2018: Correspondence to Court;
PP. December 3, 2018: Correspondence to Court;
QQ. December 10, 2018: Correspondence to Court;
RR. December 13, 2018: Correspondence to Court;
SS. December 17, 2018: Correspondence to Court;

TT. December 31, 2018: Correspondence to Court;
UU. January 10, 2019: Motion documents served to compel discovery;
VV. January 21, 2019: Correspondence to Court;
WW. February 1, 2019: Correspondence to Court;
XX. April 4, 2019: Review Hearing;
YY. October 15, 2019: Motion Hearing;
ZZ. November 22, 2019: Correspondence to Court;
AAA. November 22, 2019: Correspondence to Court;
BBB. November 25, 2019: Correspondence to Court;
CCC. November 25, 2019: Correspondence to Court;
DDD. December 4, 2019: Correspondence to Court;
EEE. December 5, 2019: Correspondence to Court;
FFF. December 6, 2019: Correspondence to Court;
GGG. December 11, 2019: Review Hearing;
HHH. December 23, 2019: Motion and Memorandum filed objection to deposition of Petitioner;
III. December 31, 2019: Correspondence to Court;
JJJ. March 12, 2020: Emergency Motion Documents Filed;
KKK. April 14, 2020: Motion for Amended Findings;
LLL. May 5, 2020: Correspondence to Court; and

MMM. June 2, 2020: Correspondence to Court.

318. The Petitioner needed an attorney to represent her in this proceeding to advocate for her good faith claims that she and her children did not physically and sexually abuse the parties' nonjoint children, that she believes it is in the best interest of the parties' son that she have sole legal and physical custody of him. Without an attorney, she would not have been able to present her, and she would have been at a real risk of possibly losing custody of her son. It is very obvious that the Respondent was trying to bankrupt the Petitioner in hopes that her attorney would withdraw for nonpayment or Petitioner would give into his demands for custody and parenting time. The Petitioner's attorney was her sole support in this legal proceeding other than her therapist. Unlike the Respondent, the Petitioner did not have family close by to help her either financially or emotionally. The Petitioner has been able to maintain two jobs and parent three children under the tremendous pressures brought on by the Respondent and his parents. The Petitioner would not have been able to manage without the assistance of her attorney advocating for her through every motion hearing, CPS investigation, juvenile proceeding, telephone conferences, depositions, and trial.

319. The Petitioner had to incur attorney's fees for simple things such as getting reimbursed for the moving fees. The Respondent was supposed to reimburse the Petitioner for the moving fees. The Petitioner provided the Respondent proof of payment; however, the

Respondent refused to reimburse her and paid the moving company directly. The Petitioner had to get reimbursed from the moving company. There were issues with payment for KinderCare in May 2020 that Petitioner had to incur fees. Finally, there were issues regarding providing a gluten and dairy free diet at KinderCare that Petitioner had to incur fees.

320. The Respondent took fourteen depositions prior to trial that Petitioner's attorney had to attend. The depositions were costly for the Petitioner to attend and while the Respondent certainly has a right to depose individuals as part of formal discovery, the Court also has a right to award need and conduct-based attorney's fees to Petitioner for having to attend and appear. The Petitioner does not have any assets from the marital estate to pay for her attorney's fees in this proceeding. The Petitioner received a property settlement of $150,000 to use towards a purchase of a homestead.

321. Petitioner has a gross income annual income of $55,000 ($4,583.33 per month)and net monthly income is $3,428.32 and her monthly expenses are

Mortgage:	$1960
Electric & Water:	300
Center Point Energy:	25
Internet:	115
Republic Waste Services:	60
Car Insurance:	100
[redacted]Before School Program:	260
Minnesota Care:	37
ADT Security:	55
Lawn Services/Snow removal:	80
Groceries:	600
Gas:	160
Sitter Services:	160
Total	$3,912

See: Exhibits 74 and 76. Petitioner does not have the means to contribute to her attorney's fees and costs in this matter.

322. However, the Respondent has been able to retain experts, pay his attorney to take fourteen depositions and pay for the costs associated with the depositions. The Respondent was awarded his non-marital homestead, which he testified he sold for approximately $800,000 in June 2020. Additionally, he was awarded the stocks and bonds from HCI Equity. The Respondent earns approximately $20,000 per month. He currently lives with his parents in their home; and therefore, he did not testify that he has any living expenses he contributes to while living with them. He certainly has the ability to contribute $150,000.00 towards the Petitioner's attorney's fees and costs in this proceeding.

323. The Respondent argues that the Petitioner did not care for the homestead properly during her exclusive use and occupancy. Additionally, he testified there was mold in the home. Therefore, it should be considered in the award of attorney's fees and costs. However, the Respondent did not provide any documentation to support his testimony.

324. Finally, the Respondent testified that he should not pay for the Petitioner's fees because a significant amount was associated with the juvenile matter when the Petitioner had a public defender. However, the Respondent mislead the Court in his testimony. The Respondent was provided a copy of the Petitioner's legal

invoices from her attorney on the first day of trial, February 24, 2020. The Respondent testified on March 18, 2020 that in reviewing the invoices, there appeared to be a significant amount associated with the juvenile matter. Tr. Pg. 39 Ln: 10-12, Ln: 23-25, Pg. 40, Ln: 1-21. The Respondent had ample time to review the invoices prior to his testimony. The Petitioner's attorney's fees associated with the juvenile matter was approximately $650.00. See: Affidavit of Beth Wiberg Barbosa. This is hardly a significant amount as the Respondent tried to persuade the Court through his testimony. This is another example of how the Petitioner has had to incur fees to correct the Respondent's deliberate misrepresentations to the Court. It is reasonable for the Court to award the Petitioner need and conduct-based fees of $150,000.00.

325. The Petition was filed in good faith and for the purposes set forth therein.

ORDER

1. **LEGAL CUSTODY.** The Petitioner is granted sole legal custody of the parties' joint minor child, [redacted] born October 31, 2014.

2. **PHYSICAL CUSTODY.** The Petitioner is granted sole physical custody of the parties' joint minor child, [redacted] born October 31, 2014. The Petitioner's home is designated the primary residence of the child.

3. **PARENTING TIME.** The Respondent shall have unsupervised parenting time as follows:

a. Every Thursday from after school or 3:00 p.m. if there is no school until Friday morning drop off at school or 8:00 a.m. if there is no school; and

b. Every other weekend from Friday after school or 3:00 p.m. if there is no school, until Sunday at 7:00 p.m.

4. **HOLIDAY SCHEDULE.**

Holiday	**Mother's Parenting Time**	**Father's Parenting Time**
New Year's Eve (if not included in Winter Break, 12:00 p.m. on 12/31	Odd-Numbered Years	Even-Numbered Years
New Year's Day (if not included in Winter Break, 12:00 p.m. on 1/1 until 12:00 p.m on ½)	Even-Numbered Years	Odd-Numbered Years
Easter (if not included in Spring Break, 9:00 a.m. on Easter	Odd-Numbered Years	Even-Numbered Years

Sunday until start of school or child care on Monday)		
Spring Break (per school calendar once [redacted] starts kindergarten)	Odd-Numbered Years	Even-Numbered Years
Mother's Day (from 9:00 a.m. on Sunday until drop-off at school or child care Monday or 9:00a.m.)	Every Year	Never
Memorial Day (until [redacted] starts school, beginning 9:00 a.m. on Monday until 9:00 a.m. or drop-off at child care the next day; once [redacted] starts kindergarten, 4:00 p.m. on Friday until drop-off at school on Tuesday or 9:00 a.m.)	Even-Numbered Years	Odd-Numbered Years

Father's Day (from 9:00 a.m. on Sunday until drop-off at school or child care Monday or 9:00 a.m.)	Never	Every Year
Fourth of July (from 9:00 a.m. on 7/4 until 9:00 a.m. on 7/5)	Odd-Numbered Years	Even-Numbered Years
Labor Day (until [redacted] starts school, beginning 9:00 a.m. on Monday until 9:00 a.m. or drop-off at child care the next day; once [redacted] starts kindergarten, 4:00 p.m. on Friday until drop-off at school on Tuesday or 9:00 a.m.)	Odd-Numbered Years	Even-Numbered Years
Halloween and [redacted] Birthday (beginning at	Even-Numbered Years	Odd-Numbered Years

5:00 p.m. on 10/31 until 9:00 a.m. on 11/1 or drop-off at child care or school; the party who does not have [redacted] on his actual birthday will be able to hold the children's birthday party; both parties may hold family parties).		
Thanksgiving (from 9:00 a.m. on Thursday until 5:00 p.m. on Sunday)	Odd-Numbered Years	Even-Numbered Years
Christmas Eve (from 12:00 p.m. on 12/24 until 12:00 p.m. on 12/25)	Even-Numbered Years	Odd-Numbered Years
Christmas Day (from 12:00 p.m. on 12/25 until 12:00 p.m. on 12/26)	Odd-Numbered Years	Even-Numbered Years

First Half of Winter Break (Once [redacted] starts kindergarten, the first half of Winter Break will start at 12:00 p.m. on 12/26 and end at 12:00 p.m. on the middle day; if there are an odd number of overnights, the party with the first half of Winter Break will have it)	Odd-Numbered Years	Even-Numbered Years
Second Half of Winter Break (Once [redacted] starts kindergarten, the second half of Winter Break will start at 12:00 p.m. on the middle day and continue until school resumes)	Even-Numbered Years	Odd-Numbered Years

5. **VACATIONS.** Each party is awarded two (2), 7-day increments of vacation parenting time per year.

These two (2), 7-day increments may not be used consecutively and they must overlap with that parent's regularly-scheduled weekend parenting time. Each party shall provide the other with at least 30 days' notice of their intent to exercise this time. Additionally, the party must place this vacation on the Our Family Wizard calendar.

In the event that both parties request the same timeframe for vacation parenting time, Petitioner will have priority in odd calendar years and Respondent will have priority in even calendar years. At least 7 days prior to the vacation parenting time, the traveling parent must provide the off-duty parent with travel itinerary and emergency contact information. Neither party shall travel without itinerary and emergency contact information being provided at least 7 days prior to travel.

6. **SPECIAL DAYS.** Special days may be added to either party's schedule by mutual agreement of the parties, in writing, and shall include weddings, funerals, and family reunions, for the parties' immediate family (siblings, parents, or first cousins). Such days shall take into consideration the best interests of the children and shall not be unreasonably withheld. The parties recognize that it is important for the children to participate in these types of activities and celebrations. The parties shall provide as much advanced notice as is possible in arranging for Special Day visits. The party requesting a Special Day visit shall be responsible for all transportation and related travel expenses.

In the event a party loses any regularly-scheduled parenting time due to a Special Day, that lost parenting time must be offered to be compensated within thirty (30) days. In this event, the parenting time that is lost must be replaced with the same type of parenting time (i.e., if a weekend is taken, a weekend must be replaced).

7. OTHER PARENTING TERMS. In addition to the foregoing, the parties shall abide by the following:

a. Promotion of Love and Affection: Each parent shall exert every reasonable effort to maintain free access and unhampered contact and communication between the child and the other parent. Each parent shall refrain from words or conduct, and shall discourage other persons from uttering words or engaging in conduct, which would have a tendency to estrange the child from the other parent, to damage the opinion of the child as to the other parent, or which would impair natural development of the child's love and respect for the other parent. Neither parent shall tell the child they are just like the other parent.

b. Parenting Style: Each parent shall honor the other parent's parenting style, privacy and authority. ***Each parent will make ordinary day-to-day decisions about the child while the child is with him or her.*** Neither parent shall interfere in the parenting style of the other nor shall either parent make plans or arrangements that would impinge upon the other parent's authority or time with the child without the express agreement of the other. Each parent shall encourage the child to discuss his grievance against a parent directly with the parent in question. Both parties shall make every reasonable effort to encourage direct parent-child bonding and communication.

c. Information as to Welfare of the Minor Child: Each parent shall provide the other parent promptly with receipt of any significant information regarding the welfare of the child, including physical and mental health, performance

in school, extracurricular activities, etc.

d. Neither Parent to Request Decisions by Child: Neither parent shall ask the child to make decisions or requests involving the parenting time schedule. Neither parent shall discuss the schedule with the child except for plans which have already been agreed to by both parents in advance.

e. No Communication with Child as to Status of Support: Neither parent shall advise the child of the status of child support payments or other legal matters regarding the parent's relationship.

f. Neither Parent to Use Child for Information: Neither parent shall use the child directly or indirectly to gather information about the other parent or to communicate verbal messages to the other parent.

g. Notice: As soon as either parent is aware that the above schedule must change, they shall notify the other parent as quickly as possible, but at least 48 hours in advance. Should

the change in schedule mean that one of the parties has lost time with the child, the parties shall negotiate and increase time the following week if the schedule permits.

h. School and Extracurricular Activities: The parties acknowledge that school activities and extracurricular activities are important to the minor child's development and growth and that as he ages, the activities may increase. The parties agree that the minor child will attend all required school functions, including, but not limited to, the following: all school events (e.g. talent show, open house, or winter program); school conferences; sports; after school activities; volunteer activities or work; choir; summer camps or summer school. If such an activity is scheduled during a parent's scheduled time with the minor child, that parent may either elect to attend such activity as parenting time or forfeit that time.

i. Bedtime: The parties shall use their best efforts to be

consistent with the child's bedtimes. Bedtimes will be agreed upon beforehand, and unless expressly agreed will be adhered to, and return times will give the child adequate time to prepare for returning to school the following day. The parties recognize that as the child get older, bedtimes and return times may change.

j. Consistent Rules and Guidelines: The parties shall make all reasonable efforts to maintain similar rules and guidelines in their homes for the minor child, and shall communicate to each other what each considers age appropriate. The parties shall not encourage the minor child to keep secrets from the other parent, and will agree prior to obtaining tattoos or allowing him/her to pierce ears or other body parts.

k. Sick Care: If any child is ill during scheduled time, each parent will make arrangements to care for him.

8. DEPENDENCY EXPEMPTIONS AND HEAD OF HOUSEHOLD. For the tax year 2020 and in each year thereafter, Petitioner

shall be entitled to claim the parties' minor child as and for a dependent for tax purposes. The parties shall each execute such forms as are necessary including but not limited to IRS form 8332 requirement (or any successor form) to implement the terms of this provision. In the event either party fails to execute the appropriate tax documents absent good cause shown, s/he shall be liable to the other for all lost tax benefits, and responsible for payment of any attorneys' fees and costs to enforce this provision. Petitioner shall be able to claim head of household commencing with tax year 2020 and each year thereafter.

9. [redacted]**THERAPY.** The joint minor child shall remain in therapy with Dr. Anne Gearity until such time as Dr. Gearity determines that therapy is no longer warranted. Each party shall assist and participate in said therapy as per the directions of Dr. Gearity.

10. **SUPERVISION OF CHILDREN.** The Court's prior Order that [redacted] and [redacted] be supervised at all times when around [redacted] and that they cannot be left alone with him is hereby **vacated.** The Petitioner shall discuss with the children's therapists and determine the best way to re-integrate the children and shall follow the recommendations of the therapists.

11. **CHILD SUPPORT.** The Court is unable to calculate a modification of child support as no evidence was introduced regarding the costs the Respondent pays for the joint child's medical and dental expenses.

Basic Support: Commencing September 1, 2020, the Respondent shall pay to the Petitioner $1,451 per month as and for basic child support. Support payments shall continue until each child, while a minor, becomes emancipated, marries, dies, enters the military service, or is no longer a "child" within the meaning of Minn. Stat. §518A. Respondent shall pay an additional 20% for any arrears owed since that date until the same are paid in full. A copy of the Minnesota Child Support Guidelines Worksheet as attached herein and made a part hereof.

Medical Support. The terms of the Permanent Partial Stipulated Judgment and Decree entered on April 23, 2019 pertaining to medical support are incorporated herein.

Unreimbursed and Uninsured Expenses. The terms of the Permanent Partial Stipulated Judgment and Decree entered on April 23, 2019 pertaining to unreimbursed and uninsured medical, dental and therapy expenses are incorporated herein.

Child Care. The terms of the Permanent Partial Stipulated Judgment and Decree entered on April 23, 2019 pertaining to child care costs incurred on behalf of the minor child are incorporated herein.

12. **ATTORNEY'S FEES.** Respondent shall pay to Petitioner's attorney the sum of $150,000.00 in need and conduct-based attorney's fees within 90 days of this Order.
13. **OTHER MOTIONS.** All other motions not herein decided are **denied.**

14. **SERVICE.** Service of a copy of this order shall be made upon the parties by first-class U.S. mail at each party's last known mailing address, or upon their attorneys, which shall be due and proper service for all purposes.

15. **APPENDIX A**. The attached Appendix A is incorporated and made a part of this Order. Appendix A contains provisions regarding Payments to Public Agency, Minn. Stat. §518A.50; Depriving Another of Custodial or Parental Rights- a Felony, Minn. Stat. §609.26; Non-Support of Spouse or Child, Minn. Stat. §609.375; Rules of Support, Maintenance, Parenting Time, Minn. Stat. §518.17; Modification of Child Support, Minn. Stat. §518A.39; Parental Rights, Minn. Stat. §518.17; Income Withholding, Minn. Stat. §518A.53; Address or Residence Change, Minn. Stat. §518A.27; Cost-of-Living Adjustments, Minn. Stat. §518A.75; Docketing of Judgments, Minn. Stat. §548.091; Attorney Fees and Collection of Costs for Enforcement of Child Support, Minn. Stat. §518A.735; Parenting Time Expeditor Process, Minn. Stat. §518.1751; and Parenting Time Remedies and Penalties, Minn. Stat. §518.175.

BY THE COURT:

THE FOREGOING FACTS WERE FOUND BY ME AFTER DUE HEARING AND THE FOREGOING ORDER THEREON IS RECOMMENDED

FINDINGS OF FACT AND ORDER APPROVED AS OF DATE HEARD

s/_____

Mike Furnstahl	Nelson Peralta
Referee of District Court	Judge of District Court

APPENDIX A

NOTICE IS HEREBY GIVEN TO THE PARTIES:

I. PAYMENTS TO PUBLIC AGENCY. According to Minnesota Statutes, section 518A.50, payments ordered for maintenance and support must be paid to the Minnesota child support payment center as long as the person entitled to receive the payments is receiving or has applied for public assistance or has applied for support and maintenance collection services. Parents mail payments to: P.O. Box 64326, St. Paul, MN 55164-0326. Employers mail payments to: P.O. Box 64306, St. Paul, MN 55164.

II. DEPRIVING ANOTHER OF CUSTODIAL OR PARENTAL RIGHTS -- A FELONY. A person may be charged with a felony who conceals a minor child or takes, obtains, retains, or fails to return a minor child from or to the child's parent (or person with custodial or parenting time rights), according to Minnesota Statutes, section 609.26. A copy of that section is available from any court administrator.

III. NONSUPPORT OF A SPOUSE OR CHILD – CRIMINAL PENALTIES. A person who fails to pay court-ordered child support or maintenance may be charged with a crime, which may include misdemeanor, gross misdemeanor, or felony charges, according to Minnesota Statutes, section 609.375. A copy of that section is available from any district court clerk.

IV. RULES OF SUPPORT, MAINTENANCE, PARENTING TIME.

A. Payment of support or spousal maintenance is to be as ordered, and the giving of gifts or

making purchases of food, clothing, and the like will not fulfill the obligation.

B. Payment of support must be made as it becomes due, and failure to secure or denial of parenting time is NOT an excuse for nonpayment, but the aggrieved party must seek relief through a proper motion filed with the court.

C. Nonpayment of support is not grounds to deny parenting time. The party entitled to receive support may apply for support and collection services, file a contempt motion, or obtain a judgment as provided in Minnesota Statutes, section 548.091.

D. The payment of support or spousal maintenance takes priority over payment of debts and other obligations.

E. A party who accepts additional obligations of support does so with the full knowledge of the party's prior obligation under this proceeding.

F. Child support or maintenance is based on annual income, and it is the responsibility of a person with seasonal employment to budget income so that payments are made throughout the year as ordered.

G. A *Parental Guide to Making Child-Focused Parenting-Time Decisions* is available from any court administrator.

H. The nonpayment of support may be enforced through the denial of student grants; interception of state and federal tax refunds; suspension of driver's, recreational, and occupational licenses; referral to the department of revenue or private collection agencies; seizure of assets, including bank accounts and other assets held by financial

institutions; reporting to credit bureaus; interest charging, income withholding, and contempt proceedings; and other enforcement methods allowed by law.

I. The public authority may suspend or resume collection of the amount allocated for child care expenses if the conditions of Minnesota Statutes, section 518A.40, subdivision 4, are met.

J. The public authority may remove or resume a medical support offset if the conditions of section 518A.41, subdivision 16, are met.

K. The public authority may suspend or resume interest charging on child support judgments if the conditions of section 548.091, subdivision 1a, are met.

V. MODIFYING CHILD SUPPORT. If either the obligor or obligee is laid off from employment or receives a pay reduction, child support may be modified, increased, or decreased. Any modification will only take effect when it is ordered by the court, and will only relate back to the time that a motion is filed. Either the obligor or obligee may file a motion to modify child support, and may request the public agency for help. UNTIL A MOTION IS FILED, THE CHILD SUPPORT OBLIGATION WILL CONTINUE AT THE CURRENT LEVEL. THE COURT IS NOT PERMITTED TO REDUCE SUPPORT RETROACTIVELY.

VI. PARENTAL RIGHTS FROM MINNESOTA STATUTES, SECTION 518.17, SUBDIVISION 3. UNLESS OTHERWISE PROVIDED BY THE COURT:

A. Each party has the right of access to, and to receive copies of, school, medical, dental, religious training, police reports, and other important records and information about the

minor children. Each party has the right of access to information regarding health or dental insurance available to the minor children. Presentation of a copy of this order to the custodian of a record or other information about the minor children constitutes sufficient authorization for the release of the record or information to the requesting party.

B. Each party has the right to be informed by the other party as to the name and address of the school of attendance of the minor children. Each party has the right to be informed by school officials about the children's welfare, educational progress and status, and to attend school and parent teacher conferences. The school is not required to hold a separate conference for each party.

C. Each party has the right to be notified by the other party of an accident or serious illness of a minor child, including the name of the health care provider and the place of treatment.

D. Each party has the right to be notified by the other party if the minor child is the victim of an alleged crime, including the name of the investigating law enforcement officer or agency. There is no duty to notify if the party to be notified is the alleged perpetrator.

E. Each party has the right of reasonable access and telephone contact with the minor children.

VII. WAGE AND INCOME DEDUCTION OF SUPPORT AND MAINTENANCE. Child support and / or spousal maintenance may be withheld from income, with or without notice to the person obligated to pay, when the conditions of Minnesota Statutes, section 518A.53, have been

met. A copy of that section is available from any court administrator.

VIII. CHANGE OF ADDRESS OR RESIDENCE. Unless otherwise ordered, each party shall notify the other party, the court, and the public authority responsible for collection, if applicable, of the following information within ten days of any change: residential and mailing address, telephone number, driver's license number, social security number, and name, address, and telephone number of the employer.

IX. COST OF LIVING INCREASE OF SUPPORT AND MAINTENANCE. Basic support and / or spousal maintenance may be adjusted every two years based upon a change in the cost of living (using the U.S. Department of Labor, Bureau of Labor Statistics, consumer price index Mpls. St. Paul, for all urban consumers (CPI-U), unless otherwise specified in this order) when the conditions of Minnesota Statutes, section 518A.75, are met. Cost of living increases are compounded. A copy of Minnesota Statutes, section 518A.75, and forms necessary to request or contest a cost of living increase are available from any court administrator.

X. JUDGMENTS FOR UNPAID SUPPORT; INTEREST. According to Minnesota Statutes, section 548.091:

A. If a person fails to make a child support payment, the payment owed becomes a judgment against the person responsible to make the payment by operation of law on or after the date the payment is due, and the person entitled to receive the payment or the public agency may obtain entry and docketing of the judgment **without notice** to the person responsible to make the payment.

B. Interest begins accruing on a payment or installment of child support whenever the unpaid amount due is greater than the current support due.

XI. JUDGMENTS FOR UNPAID MAINTENANCE. A judgment for unpaid spousal maintenance may be entered and docketed when the conditions of Minnesota Statutes, section 548.091, are met. A copy of that section is available from any court administrator.

XII. ATTORNEY FEES AND COLLECTION COSTS FOR ENFORCEMENT OF CHILD SUPPORT. A judgment for attorney fees and other collection costs incurred in enforcing a child support order will be entered against the person responsible to pay support when the conditions of Minnesota Statutes, section 518A.735, are met. A copy of that section and forms necessary to request or contest these attorney fees and collection costs are available from any court administrator.

XIII. PARENTING TIME EXPEDITOR PROCESS. On request of either party or on its own motion, the court may appoint a parenting time expeditor to resolve parenting time disputes under Minnesota Statutes, section 518.1751. A copy of that section and a description of the expeditor process is available from any court administrator.

XIV. PARENTING TIME REMEDIES AND PENALTIES. Remedies and penalties for wrongful denial of parenting time are available under Minnesota Statutes, section 518.175, subdivision 6. These include compensatory parenting time; civil penalties; bond requirements; contempt; and reversal of custody. A copy of that subdivision and forms for requesting relief are available from any court administrator.

Child Support Guidelines Worksheet

Parent A: Joseph Rued
Parent B: Catrina Rued

IV-D Case Number:
Court File Number:

Number of Joint Children: 1
Date: 10/1/2020

		Parent A	Parent B	Combined
Income	1a. Monthly Income Received	$20000	$4583	----
	1b. Child(ren)'s Social Security/Veterans' Benefits Derived From a Parent's Eligibility	$0	$0	----
	1c. Potential Income	$0	$0	----
	1d. Spousal Maintenance Orders Obligated to be Paid	$0	$0	----
	1e. Child Support Order(s) Obligated to be Paid for Nonjoint Child(ren)	$0	$0	----
	1f. Monthly Gross Income (1a+1b+1c-1d-1e)	$20000	$4583	----
Adjustments	2a. Number of Nonjoint Child(ren) in the Home (Maximum number allowed is 2)	0	2	----
	2b. Deduction for Nonjoint Child(ren) in the Home	$0	$592	----
	3. Parental Income for Determining Child Support (PICS)	$20000	$3991	$23991
	4. Percentage Share of Combined PICS	83%	17%	----
	5. Combined Basic Support Obligation	----	----	$1883
	6. Pro Rata Basic Support Obligation	$1563	$320	----
Basic Child Support Obligation	7. Basic Support Obligation After Parenting Expense Adjustment (if applicable)	$1451		----
Child Care Obligation	8. Child Care Support Obligation for Joint Child(ren)			----
Medical Support Obligation	9a. Monthly Cost of Health Care Coverage for Joint Child(ren)	$0	$0	----
	9b. Pro Rata Share of Health Care Coverage Costs	$0	$0	----
Appropriate Coverage Available	9c. Contribution to Health Care Coverage			----
	9d. Monthly Cost of Dental Coverage for Joint Child(ren)	$0	$0	----
	9e. Pro Rata Share of Dental Coverage Costs	$0	$0	----
	9f. Contribution to Dental Coverage			----
	9g. Medical Support Obligation-Appropriate Coverage Available			----
No Appropriate Insurance Available	10. Medical Support Obligation for Public Coverage			----
Uninsured/Unreimbursed Expenses	11. Share of Uninsured and/or Unreimbursed Medical Expenses	83%	17%	----
	12. Net Child Support Obligation	$1451	$0	----
Benefits Adjustment	13. Child(ren)'s Social Security/Veterans'			----

EXHIBIT A

	Benefits Derived from Parent's Eligibility			
Computing a Final Obligation	14. Total Child Support Obligation	$1451	$0	----
	15a. Monthly Gross Income	$20000	$4583	----
Ability to Pay Calculation	15b. Income Available for Support	$18724	$3307	----
	16. Monthly Child Support Obligation - No Adjustment Necessary	$1451	$0	----
	17. Amount of Reduction	$0	$0	----
Child Support Obligation Adjustment	18. Medical Support			
	Original Obligation			----
	Amount of Reduction			----
	New Obligation			----
	19. Child Care Support			
	Original Obligation			----
	Amount of Reduction			----
	New Obligation			----
	20. Basic Support			
	Original Obligation			----
	Amount of Reduction			----
	New Obligation			----
	21. Monthly Child Support Obligation After Adjustment			----
Presumptive Minimum Order/Basic Support Only	22a. Presumptive Minimum Order for 1 or 2 Joint Children			----
	22b. Presumptive Minimum Order for 3 or 4 Joint Children			----
	22c. Presumptive Minimum Order for 5 or More Joint Children			----

Parenting Expense Adjustment Supplement

Parent A: Joseph Rued
Parent B: Catrina Rued

IV-D Case Number:
Court File Number:

Number of Joint Children: 1
Date: 10/1/2020

	Parent A	Parent B	Combined
1. Number of Annual Overnights for joint child(ren)	104	261	----
2. Percentage of Parenting Time	28%	72%	----
3. Basic Support Obligation	$1563	$320	$1883
4a. Percentage of Adjustment for Parenting Time between 10% and 45%			
4b. Amount of Adjustment for Parenting Time			
4c. Obligation after Parenting Expense Adjustment			
5a. Percentage of Parenting Time is at Least 45.1% for Both Parents			

5b. Each Parent's Percentage Share of Combined PICS			
5c. Each Parent's Pro Rata Basic Child Support Obligation			
5d. Obligation After Parenting Expense Adjustment			
6a. Obligation after Parenting Expense Adjustment Based on the Number of Annual Overnights	$1451		----
6b. Greater than 55% Parenting Time Adjustment			----

Child Care Support Obligation Supplement

Parent A: Joseph Rued
Parent B: Catrina Rued

Number of Joint Children: 1

	Parent A	Parent B
1. PICS	$20000	$3991
2a. Monthly Cost of Child Care for Joint Child(ren)	$0	$0
2b. Number of Child(ren) Receiving Child Care		
2c. Cost of Child Care to be Applied to Tax Tables		
3. Federal Child Care Credit Percentage		
4. Estimated Monthly Federal Child Care Credit		
5. Minnesota Child Care Maximum Allowable Credit		
6. Estimated Monthly Minnesota Child Care Credit		
7. Total Estimated Tax Credits		
8. Net Child Care Cost		
9. Percentage Share of Combined PICS	83%	17%
10. Pro Rata Share of Net Child Care Cost		
11. Child Care Support Obligation if any Joint Child is Covered by Child Care Assistance and Parent A Meets Income Limits for Child Care Assistance		

Child Support Summary

Parent A: Joseph Rued
Parent B: Catrina Rued

Number of Joint Children: 1
Date: 10/1/2020

	Parent A	Parent B
Basic Support Obligation Amount	$1451	$0
Child Care Support Obligation Amount	$0	$0
Medical Support Obligation Amount	$0	$0
Child Support Obligation Total Amount	$1451	$0
Share of Uninsured and/or Unreimbursed Medical Expenses	83%	17%
Notes:		

Disclaimer: The child support guidelines worksheet, instructions, and calculator are for information and educational use only and are not a guarantee of the amount of child support that will be ordered. The results obtained are only as accurate as the information used. The actual child support order may be affected by other factors. The Court has the final authority to determine the amount of the child support order. If this worksheet is attached to a court order, it is part of the

Court's decision. This worksheet may or may not show the amount the Court decided to order. If the amount in the order is different, that is the amount to be paid.

Calculated by the Minnesota Child Support Guidelines Calculator on 10/1/2020 at 1:07 PM