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App. 1

**Opinion issued February 17, 2022**

[SEAL]

**In The Court of Appeals  
For The First District of Texas**

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**NO. 01-20-00284-CV**

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**DMITRY NIKOLENKO, Appellant**

**V.**

**LUIZA NIKOLENKO, Appellee**

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**On Appeal from the 328th District Court  
Fort Bend County, Texas  
Trial Court Case No. 18-DCV-25118**

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**MEMORANDUM OPINION**

In this divorce proceeding, we consider whether (1) a Russian divorce decree deprived the trial court of subject-matter jurisdiction to grant the parties a divorce, (2) the trial court abused its discretion by refusing to permit the husband to testify by electronic means, (3) the trial court abused its discretion in rendering arrearage judgments, (4) the trial court abused its discretion in its award of debts, and (5) the trial court abused its discretion in its award of possession and access.

Because we conclude that the temporary orders supporting the arrearage judgments were void, we

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vacate that portion of the trial court’s final divorce decree but affirm the remainder.

### **Background**

#### ***The Parties’ Relationship***

Dmitry Nikolenko (“Dmitry”) and Luiza Nikolenko (“Luiza”) were married on March 15, 2011 in Tashkent, Uzbekistan. Luiza is from Tashkent, and Dmitry is from Russia. Not long after the marriage, Dmitry’s employer, Schlumberger, transferred him to Houston, Texas, and he and Luiza moved there together. Luiza arrived in the United States under a dependent visa as Dmitry’s spouse. In May 2012, the parties purchased their home located on Radcliffe Lake Drive in Katy, Texas (the “Katy house”). A few months later, their first child, Sofia, was born in Houston.

Dmitry and Luiza continued to live at the Katy house until October 2014, when Schlumberger transferred Dmitry to Brunei for a temporary, three-year assignment. Because the family planned to return to Houston when the Brunei assignment expired, they kept the Katy house and rented it out while they were living in Brunei. Dmitry and Luiza’s youngest daughter, Maria, was born in Brunei.

In February 2017, Dmitry’s contract expired in Brunei and the parties began planning their return to Houston. Dmitry contacted Schlumberger to request the transfer back to Houston and he applied for new visas for Luiza, Maria, and the family’s nanny. Dmitry

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also began looking at Houston-area schools for the children.

After Maria was born, the parties' marriage began to deteriorate. Dmitry wanted to remain in the marriage for appearances. In April 2017, Luiza told her mother via text message that she wanted a divorce. Dmitry discovered Luiza's text messages. He asked Luiza for a second chance and continued to prepare for the family's return to Houston, including by arranging to ship the family's belongings back to Houston. Dmitry asked Luiza to take the children to Kuala Lumpur, Malaysia for dental work for Maria, and then recommended they vacation in the Philippines with friends. He purchased the airfare, and Luiza and the children left for their trip in June.

After Luiza arrived in Malaysia with the children, Dmitry blocked her debit card and left her without access to any other accounts or credit cards. Luiza also discovered that Dmitry had canceled her and the children's health insurance. She borrowed money from friends to pay expenses while she and the children were in Malaysia and the Philippines.

On June 18, 2017, Luiza asked Dmitry to confirm the date of their return to Houston. Dmitry responded that they would leave on July 3 or 4. But Dmitry contacted Luiza again and asked to meet her in Malaysia without the children present. At their meeting, Dmitry told Luiza that he had canceled their return tickets to Houston and that she must move to her mother's house in Uzbekistan.

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On June 30, 2017, Luiza emailed Dmitry to tell him she planned to return with the children to the Katy house, as originally planned, because she had nowhere else to go. Two days later, Luiza asked Dmitry by email to forward the tickets for their July 4 flight to Houston. When she did not receive the tickets from Dmitry, Luiza borrowed money from her brother to purchase another set of return tickets. On July 4, she arrived in Houston with the children and the nanny and moved back into the Katy house.

About three weeks later, on July 28, 2017, she let Dmitry know that she and the children were living in Katy. Dmitry responded and acknowledged that he had received Luiza's emails explaining her return to Houston.

### ***Luiza Petitions for Divorce in Fort Bend County***

On May 4, 2018, Luiza filed for divorce in the 328th District Court of Fort Bend County. She requested to be appointed the children's temporary managing conservator and requested temporary support from Dmitry in the form of child and spousal support.<sup>1</sup> Because Luiza did not know where Dmitry was living, only that he had returned to Russia and was still employed by Schlumberger, Luiza moved to serve Dmitry

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<sup>1</sup> The divorce action Luiza filed on May 4, 2018 was the second divorce proceeding filed by Luiza. Luiza first filed for divorce in July 2017 under cause number 17-DCV-243694, but later dismissed that action and refiled in the underlying cause number.

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with the divorce petition via substituted service. The trial court granted Luiza's motion for substituted service.

After Dmitry failed to answer, the trial court conducted a default hearing on Luiza's request for temporary orders. And on June 6, 2018, the trial court entered temporary orders. Dmitry was granted supervised visitation with the children and ordered to pay \$2,137.50 in child support and \$2,000.00 in spousal support each month. He was also ordered to obtain health insurance for the children.

### ***Dmitry Petitions for Divorce and Custody Orders in Russia***

On June 29, 2018, Dmitry filed a special appearance, plea to the jurisdiction, and plea in abatement. In his plea to the jurisdiction, Dmitry argued that the trial court lacked subject matter jurisdiction because he had commenced a divorce proceeding against Luiza in Russia in September 2017 and the Russian court had granted a divorce on March 16, 2018. The copy of the Russian divorce decree attached to his plea to the jurisdiction, entered in case number 2-127/5-2018, stated that Luiza did not appear and that "her place of residence [was] unknown." It also stated that the Russian court had appointed a lawyer to act as a Luiza's representative because her residence was unknown. After finding that Luiza "did not appear in the session of court, not having received legal notice," and that "her whereabouts are unknown," the Russian court

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dissolved Dmitry and Luiza's marriage.<sup>2</sup> The Russian divorce decree was also admitted as an exhibit at trial.

On July 12, 2018, Dmitry filed his second amended special appearance and plea to the jurisdiction. In his amended plea, he argued that, in a separate lawsuit, a Russian court had granted him temporary custody of the children on June 29, 2018. The Russian court found that Luiza "resides in the territory of the Russian federation, being a citizen of another state, she does not have a permanent place of residence or registration . . . her minor children are forced to move from one home to another . . . [she] cohabits with numerous men at frequent intervals, does not care about the health of the children, [and] hides her place of stay, which infringes on the rights of the father[.]" According to Luiza, she and the children had never resided in Russia and Dmitry had known she was living in Katy since July 2017.

The trial court denied Dmitry's special appearance and plea to the jurisdiction. The trial court considered the effect of the Russian orders and, in its ruling, found they were invalid and refused to recognize them.

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<sup>2</sup> Dmitry amended his special appearance and plea to the jurisdiction numerous times, each time including these same allegations related to the Russian divorce. Dmitry also filed a Request for Declaratory Judgment, requesting that the trial court declare that Dmitry and Luiza "were divorced on March 16, 2018, in Russia under Case No. 2-127/5-2018." Dmitry reurged the issue of the Russian divorce in his motion for new trial, arguing that res judicata precluded the re-litigation of the dissolution of the parties' marriage.

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In January 2019, Dmitry again challenged the proceedings based on the same Russian orders. He filed a motion to bifurcate the divorce from the custody suit on the ground that the divorce was barred by res judicata. After a hearing, the trial court again refused to recognize the Russian divorce decree and denied the motion to bifurcate.

### ***Dmitry's Visa***

Dmitry's visa expired on May 9, 2019. On June 14, Dmitry moved for a continuance of the August trial setting, noting that he had recently retained counsel, needed additional time to prepare for trial, and that he needed additional time to secure "the necessary visas" to attend the trial. At the June 27 hearing on Dmitry's motion for continuance, Dmitry's counsel argued that, to attend trial, Dmitry needed "to go to Moscow from the town he is in Russia and obtain that Visa." But the process of obtaining a visa was not quick and could take "longer than two, three weeks to get [the visa]." When asked if Schlumberger could assist with a visa, Dmitry's counsel stated that he had asked, but Dmitry said Schlumberger could help only if he was "going to work" and "this is not a work situation."

Luiza opposed a continuance. Her counsel argued:

Dmitry ha[s] known since May 2019, when [Luiza] requested [a] trial setting, that this would be going to trial . . . If he has not done anything since May to go and get a Visa, that's his own doing. It's now mid[-]June and if he

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has not yet done that, that's a situation of his own making.

Luiza's counsel also objected to the continuance because it was uncertain whether she could be present for later setting, as her own visa was set to expire at the beginning of September and she was told she could not get another extension.

To accommodate both parties' potential visa issues, the trial court ordered Luiza "to attempt to get another extension." If an extension was granted, the trial would be reset in October. But if the extension was not granted, the case would proceed to trial on August 26 and 27. Dmitry's counsel expressed concern about an August trial, stating: "I understand the Court is in a pickle but, hopefully, the way we slice the pickle is not by making my guy participate in trial without being here[,] which is exactly what will happen if we do it in August." When asked whether Dmitry could attend trial by Skype if he was unable to attend in person, the trial court stated that "[w]e can try to do something like that" and that, "[i]f things go where we have to do the Skype thing, as much as I hate doing that, we're going to have to do it."

The trial court also urged Dmitry to work immediately toward getting his visa, stating Dmitry should "get that visa going instanter" "get started on his [visa] application right this very second and talk to Schlumberger" about whether it could assist him in this process, and "start getting things going [today]." Further, in the docket entry for the June 27 hearing, the trial

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court wrote: “If [Dmitry] *needs* to appear by Skype, the court will allow that.” (Emphasis added.)

Although the timing is not clear from the record, Luiza obtained an extension of her visa at some point and the trial was continued until October. On October 15, Dmitry moved for another continuance, asserting that he needed time to investigate new allegations of fraud and bribery included in an amended pleading filed by Luiza. The motion did not mention Dmitry’s visa status or request a continuance on that basis. But at the October 17 hearing on the motion, Luiza’s counsel raised the issue of Dmitry testifying via Skype, and the trial court agreed Dmitry would need to personally attend trial. Dmitry’s counsel objected that the trial court had previously addressed this issue but stated that he would file a motion if needed. The trial court stated it would take the matter under advisement but indicated a “strong inclination” not to “allow anybody to testify via Skype on a case like this.”

Dmitry moved for another continuance on October 21, noting that the trial court had “indicated an unwillingness to permit [him] to testify via Skype or other electronic means” and that without a continuance, he would be unable “to participate—at all—in the trial of this matter.” Dmitry also stated, in a recent meeting with “United States Homeland Security officials at the US Embassy in Russia,” he was told he would be issued a tourist visa. Dmitry asserted that after he explained his need to be present for trial, officials indicated a “tourist visa for his entry to the United States . . . [would] be ready in 2-3 days.” Dmitry estimated it

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would take him one day to travel to Houston after he received the visa. Therefore, Dmitry requested a one-week extension of the trial date—until October 30—so that he could “participate in the trial of this matter.”

On the morning of October 22, the first day of trial, the trial court heard argument on Dmitry’s motion for continuance. The trial court acknowledged its June 27 docket entry stating that, “[i]f [Dmitry] needs to appear by Skype, the court will allow that,” and concluded it would allow Dmitry to appear by Skype. The trial court asked parties to see if Dmitry was available by Skype, as trial was set for “today and tomorrow.”

Later that same day, trial began. Before proceeding to testimony, the trial court took a short break at the request of Dmitry’s counsel. Upon returning from the break, which was off the record, the following exchange occurred:

THE COURT: Back on the record in Nikolenko. And the Court takes notice this June 27, 2019 docket entry which I previously read into the record, last sentence that the docket entry says if Mister needs to appear by Skype, the Court will allow that. Court finds that Mister does not need to appear by Skype given that since June 27, 2019 he has had the opportunity to appear in this court and has not and has had ample opportunity to obtain a Visa or do whatever he needs to do to get here and participate in this trial and with that, we’re going to go forward with this case.

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DEFENSE COUNSEL: Just for clarity, Judge, are you changing your prior ruling concerning the use of Skype?

THE COURT: No. I'm not changing my prior ruling. My prior ruling, if he needs to appear by Skype, the Court will allow that. Court does not find that he needs to appear by Skype.

DEFENSE COUNSEL: I understand.

Trial proceeded in Dmitry's absence.

After trial, the trial court entered a final decree of divorce on January 7, 2020. In the decree, the trial court appointed Luiza as the children's sole managing conservator and appointed Dmitry possessory conservator. Finding there was a credible risk that Dmitry would abduct the children, the trial court ordered that Dmitry's visitation should be supervised by Guardians of Hope. The trial court also restricted Dmitry's possession and access to the "Saturday and Sunday immediately following the 1st, 3rd, a[nd] 5th Friday of each month, beginning at 10:00 a.m. and ending at 4:00 p.m. on Saturday and beginning at 10:00 a.m. and ending at 4:00 p.m. on Sunday." Further, based on the temporary orders, the trial court ordered Dmitry to pay (1) \$34,200 in child support arrearages, (2) \$4,720 in medical support arrearages, and (3) \$30,000 in spousal support arrearages. The trial court further recognized the following as marital debts: (1) \$11,000 to Nikolay Matusevich, (2) \$3,500 to Louisa Khetagurova, (3) \$6,350 to Yulia Starkova, and (4) \$190,177.53 to

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Richard Gomez, Luiza's fiancé.<sup>3</sup> The trial court also filed findings of fact and conclusions of law on February 13, 2020.

### ***Dmitry's Motion for New Trial***

On February 6, 2020, Dmitry moved for a new trial, asserting the issue of his visa, among other things. In support of his motion, Dmitry testified to his efforts to obtain his visa. He testified that he learned he would not be able to get a work visa through Schlumberger in August 2019. Thereafter, he sought a business visa through Schlumberger in August and September 2019 but was not successful. He then testified that he applied for an emergency tourist visa in Russia on October 10, despite previously testifying at his October 10 deposition that he had not yet applied for a visa and was waiting on approval from Schlumberger. Finally, despite previously representing to the trial court on October 21 and 22 that he would have a tourist visa in "2-3 days" and could appear in person for trial on October 30, Dmitry testified that as of the date of the new trial hearing, his application had not been finalized and was in "administrative checking" status. Dmitry also admitted that although his visa expired in May 2019, he waited until October to apply for a tourist visa.

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<sup>3</sup> Evidence was presented that the various debts were related to expenses paid for medical bills and basic living expenses.

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The trial court denied Dmitry's motion for new trial, and this appeal followed.

### **Jurisdiction**

In his second issue, Dmitry argues that the trial court lacked subject-matter jurisdiction because a Russian court had already granted the parties a divorce. Dmitry's jurisdictional argument rests on his contention that the trial court was required to recognize the Russian divorce. Luiza responds that the trial court properly refused to recognize the Russian divorce because there was evidence that divorce was fraudulent or obtained without due process, including lack of notice to her of the proceedings.

#### **A. Standard of Review**

Subject-matter jurisdiction concerns the court's "power to hear and determine cases of the general class to which the particular one belongs." *Middleton v. Murff*, 689 S.W.2d 212, 213 (Tex. 1985) (per curiam). Subject-matter jurisdiction is essential for a court to have authority to decide a case; it is not presumed and cannot be waived or conferred by consent. *See Dubai Petroleum Co. v. Kazi*, 12 S.W.3d 71, 76 (Tex. 2000); *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 443-44 (Tex. 1993); *see also Alfonso v. Skadden*, 251 S.W.3d 52, 55 (Tex. 2008) (per curiam) (subject-matter jurisdiction cannot be waived and can be raised at any time). Whether a trial court has subject-matter jurisdiction is a question of law subject to de novo review.

*See Mayhew v. Town of Sunnyvale*, 964 S.W.2d 922, 928 (Tex. 1998); *Fuentes v. Zaragoza*, 555 S.W.3d 141, 153 (Tex. App.—Houston [1st Dist.] 2018, no pet.).

## **B. Jurisdiction to Hear Divorce**

Texas law presumes that every marriage is valid. *See* TEX. FAM. CODE § 1.101 (“[E]very marriage entered into in this state is presumed to be valid unless expressly made void by Chapter 6 or unless expressly made voidable by Chapter 6 and annulled as provided by that chapter.”); *Fuentes*, 555 S.W.3d at 153. The presumption applies to persons who were married outside Texas, like Dmitry and Luiza. *See id.* § 1.103 (“The law of this state applies to persons married elsewhere who are domiciled in this state.”).

A valid marriage must exist for a trial court to have subject-matter jurisdiction over a suit for divorce. *Gray v. Gray*, 354 S.W.2d 948, 949 (Tex. App.—Houston 1962, writ dism’d) (“A suit for divorce presumes a valid marriage.”). If a marriage previously was legally dissolved, the court lacks subject-matter jurisdiction to again dissolve that marriage. *See Ashfaq v. Ashfaq*, 467 S.W.3d 539, 544 (Tex. App.—Houston [1st Dist.] 2015, no pet.) (trial court lacked jurisdiction because parties had divorced before filing for divorce in Texas); *Fidalgo v. Galan*, No. 13-01-469-CV, 2003 WL 21982186, at \*3 (Tex. App.—Corpus Christi Aug. 21, 2003, no pet.) (not designated for publication) (trial court lacked subject-matter jurisdiction because “a previous divorce action had been filed by [appellant] in Mexico that resulted in

the issuance of a divorce decree and orders and relief identical to the relief sought in the Texas divorce action”).

### **C. Recognition of the Russian Divorce**

A trial court may decline to recognize a foreign judgment obtained without due process. *Fuentes*, 555 S.W.3d at 154. Recognition of a foreign judgment obtained in the absence of due process constitutes an abuse of discretion. *Id.*; *Ashfaq*, 467 S.W.3d at 541. “[D]ue process requires that no other jurisdiction shall give effect, even as a matter of comity, to a judgment elsewhere acquired without due process.” *Ashfaq*, 467 S.W.3d at 541 (quoting *Griffin v. Griffin*, 327 U.S. 220, 228 (1946)); *accord In re E.H.*, 450 S.W.3d 166, 172 (Tex. App.—Houston [14th Dist.] 2014, pet. denied). “At a minimum, due process requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner.” *Scally v. Tex. State Bd. of Med. Exam’rs*, 351 S.W.3d 434, 447 (Tex. App.—Austin 2011, pet. denied) (citing *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *University of Tex. Med. Sch. at Hous. v. Than*, 901 S.W.2d 926, 930 (Tex. 1995)). The Full Faith and Credit Clause of the United States Constitution does not require a domestic court to give binding effect to a foreign country judgment when the validity of the judgment is disputed. *Fuentes*, 555 S.W.3d at 154; *see also Reading & Bates Constr. Co. v. Baker Energy Res. Corp.*, 976 S.W.2d 702, 714-15 (Tex. App.—Houston [1st Dist.] 1998, pet. denied) (“Texas, like its sister states, is *not* constitutionally required to give full faith and

credit to the judgments of foreign countries.”) (emphasis in original); *Schacht v. Schacht*, 435 S.W.2d 197, 202 (Tex. App.—Dallas 1968, no writ) (holding Texas court was not required to recognize Mexican divorce decree because Full Faith and Credit Clause “does not require that binding effect and validity be given a judgment of a foreign country such as Mexico, more especially where such judgments are shown to be invalid”).

#### **D. Analysis**

Here, Dmitry contends that the parties had already been granted a divorce in a Russian decree, which was admitted into evidence at trial, on March 16, 2018. According to Dmitry, because the parties were already divorced, the trial court lacked subject-matter jurisdiction to grant the divorce. We disagree.

In its divorce decree, the Russian court stated that Luiza did not appear and that “her place of residence [was] unknown.” The Russian court also stated that it appointed a lawyer to act as Luiza’s representative because her residence was unknown. After finding that Luiza “did not appear in the session of court, not having received legal notice,” and that “her whereabouts [were] unknown,” the Russian court purported to dissolve the marriage between Dmitry and Luiza.

Contrary to the statements in the Russian divorce decree, however, the trial court had evidence before it that Dmitry was in fact aware that Luiza was residing in Katy beginning in July 2017. At trial, Luiza testified that on March 15, 2018 (the date of the Russian divorce

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decree), Dmitry knew that she and the children were living in the Katy house. She also introduced her July 28, 2017 email to Dmitry informing him that she had “been in Houston with the children for 3 weeks now” and were waiting for Dmitry at the Katy house. In his deposition, which was admitted as a trial exhibit, Dmitry admitted that Luiza communicated this information about where she was living to him on July 28, 2017. Furthermore, in his briefing on the jurisdictional issues, Dmitry admitted that he knew in July 2017 that Luiza and the children had returned to Texas and that he remained in communication with Luiza through December 2017. Thus, the trial court could have determined that Dmitry obtained the Russian divorce without due process by falsely representing to the Russian Court that he did not know Luiza’s whereabouts.

Dmitry does not address the issue of his alleged misrepresentations to the Russian court in his appellate briefing. Instead, he contends that the trial court abused its discretion by failing to recognize the Russian divorce because the record demonstrates that Luiza was aware of the Russian divorce proceedings and even negotiated property and custody terms as part of those proceedings. In support of this argument, Dmitry cites to testimony from a May 2, 2018 hearing on Dmitry’s special appearance and plea to the jurisdiction. But this hearing occurred in the first divorce proceeding under cause number 17-DCV-243694, which Luiza dismissed. The final judgment on appeal is from Luiza’s refiled action under cause number 18-DCV-25118.

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Neither the transcript nor the exhibits from the May 2, 2018 hearing in the prior cause number were entered into evidence at any hearing or the trial on the merits in cause number 18-DCV-251118. Although Dmitry requested the trial court take “judicial notice of the file” for the purposes of the July 26, 2018 hearing on his special appearance in the underlying cause number, the trial court did not rule on his request. Moreover, a trial court may not take judicial notice of prior testimony; instead, “for testimony from a prior hearing or trial to be considered in a subsequent proceeding, the transcript of that testimony must be properly authenticated and entered into evidence.” *Guyton v. Monteau*, 332 S.W.3d 687, 693 (Tex. App.—Houston [14th Dist.] 2011, no pet.). Because the transcript of the testimony from the May 2 hearing was not entered into evidence, we do not consider that testimony.

Even if Luiza were aware of the Russian divorce proceeding, as Dmitry contends, there was no evidence introduced that Luiza received proper notice or service of that proceeding. In fact, she testified at trial that she was never served in the Russian divorce proceeding, and the Russian divorce decree itself notes that Luiza did not “receive[] legal notice.” *See Duruji v. Duruji*, No. 14-05-01185-CV, 2007 WL 582282, at \*5 (Tex. App.—Houston [14th Dist.] Feb. 27, 2007, no pet.) (mem. op.) (rejecting husband’s argument that wife had knowledge of Nigerian divorce action because he sent her e-mails and copies of documents, as “these do not prove proper service,” and holding trial court did

not err in refusing to enforce Nigerian divorce decree); *see also Caldwell v. Barnes*, 154 S.W.3d 93, 97 n.1 (Tex. 2002) (“A party who becomes aware of the proceedings without proper service of process has no duty to participate in them.”).

Based on this record, the trial court acted within its discretion in declining to recognize the Russian divorce. Accordingly, we hold that the trial court had subject-matter jurisdiction over the Texas divorce proceeding. *See Fuentes*, 555 S.W.3d at 154-55 (holding trial court had subject-matter jurisdiction over Texas divorce proceeding and did not abuse its discretion in declining to recognize alleged prior Mexican divorce decree considering evidence Mexican divorce proceeding was fraudulent); *Duruji*, 2007 WL 582282, at \*5 (holding trial court did not err in refusing to enforce Nigerian divorce decree where evidence was introduced that wife did not receive proper notice of Nigerian divorce action).

We overrule Dmitry’s second issue.<sup>4</sup>

### **Testimony Via Skype**

In his first issue, Dmitry argues that the trial court abused its discretion in denying his October 21,

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<sup>4</sup> Because we conclude that the trial court did not abuse its discretion in declining to recognize the Russian divorce, and thus, had subject matter jurisdiction, we do not address Dmitry’s additional argument under this issue that the trial court erred in dividing the estate as of the date of the Texas divorce because the date of division should have been the date of the Russian divorce.

2019 motion for continuance based on Dmitry's inability to personally attend trial. Alternatively, Dmitry argues that the trial court abused its discretion by refusing to allow Dmitry to appear by Skype, thus denying him due process.

#### **A. Motion for Continuance**

##### **1. Standard of review and applicable law**

The denial of a continuance motion is reviewed for an abuse of discretion. *Joe v. Two Thirty Nine Joint Venture*, 145 S.W.3d 150, 161 (Tex. 2004). A motion for continuance cannot be granted except for sufficient cause, by consent of the parties, or by operation of law. TEX. R. CIV. P. 251. Moreover, the motion must be verified or include a separate affidavit. *See id.* The sufficient cause alleged by Dmitry in the instant case was predicated upon the absence of a party, Dmitry, from trial. A trial court is not required to grant a continuance simply because a party cannot attend trial. *Richards v. Schion*, 969 S.W.2d 131, 132 (Tex. App.—Houston [1st Dist.] 1998, no pet.); *Vickery v. Vickery*, No. 01-94-01004-CV, 1997 WL 751995, at \*20 (Tex. App.—Houston [1st Dist.] Dec. 4, 1997, pet. denied) (not designated for publication) (“The mere absence of a party does not entitle him to a continuance.”). When a continuance is sought because of the unavailability of a party, we look to Texas Rule of Civil Procedure 252. *See In re Guardianship of Cantu de Villarreal*, 330 S.W.3d 11, 27 (Tex. App.—Corpus Christi 2010, no pet.); *Hawthorne v. Guenther*, 917 S.W.2d 924, 929 (Tex.

App.—Beaumont 1996, writ denied); *see also* TEX. R. CIV. P. 252.

Rule 252 states:

If the ground of such application be the want of testimony, the party applying therefor shall make affidavit that such testimony is material, showing the materiality thereof, and that he has used due diligence to procure such testimony, stating such diligence, and the cause of failure, if known; that such testimony cannot be procured from any other source; and, if it be for the absence of a witness, he shall state the name and residence of the witness, and what he expects to prove by him; and also state that the continuance is not sought for delay only, but that justice may be done; provided that, on a first application for a continuance, it shall not be necessary to show that the absent testimony cannot be procured from any other source.

TEX. R. CIV. P. 252; *see also* Vickery, 1997 WL 751995, at \*20 (“If the ground of the motion is the necessity of the testimony of an absent party, the movant must show, among other things, that the testimony is material and what is expected to be proved by the testimony.”).

## 2. Analysis

In his October 21 motion for continuance, Dmitry stated that he was able to secure a tourist visa and requested a one-week continuance of the October 22 trial

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setting so that he could attend and participate in person, given the trial court’s “unwillingness to permit [Dmitry] to testify via Skype or other electronic means.” Dmitry’s motion asserted:

1. [Dmitry] recently met with United States Homeland Security officials at the US Embassy in Russia. After explaining his situation (i.e. that he needs to be present for trial of this case), the official indicated that they Will issue a “tourist visa” for his entry to the United States, and that it Will be ready in 2-3 days. After receiving the visa, it will take [Dmitry] 1 day to travel to Houston.
2. This Court has previously indicated an unwillingness to permit [Dmitry] to testify via Skype or other electronic means, so without a continuance, [Dmitry] will not be able to participate—at all—in the trial of this matter.
3. [Dmitry] respectfully requests that this Court grant a continuance of 1 week so that he may participate in the trial of this matter.

Although Dmitry stated that if a continuance was not granted, he would not be able to participate in the trial, he did not assert that he planned to testify at trial, address the nature of his testimony, or explain why his testimony would be material. Nor did he show that his deposition testimony, the entirety of which was entered into evidence at trial, was insufficient. Because Dmitry’s October 21 motion for continuance did

not comply with the Rule 252 requirements, we cannot conclude that the trial court abused its discretion by denying the motion. *See* TEX. R. CIV. P. 252; *see also* *Shadoian v. Shook*, No. 03-18-00242-CV, 2018 WL 3625766, at \*3 (Tex. App.—Austin July 31, 2018, no pet.) (mem. op.) (holding trial court did not abuse its discretion by denying new trial on ground of appellant’s unavailability because appellant’s motion for continuance did not assert that appellant would testify at final hearing, address nature of appellant’s testimony, or explain why his testimony would be material and, therefore, did not comply with Rule 252); *In re Guardianship of Cantu de Villarreal*, 330 S.W.3d at 27 (applying Rule 252 and holding arbitrator did not abuse its discretion by denying appellants’ request to continue arbitration because appellants did not argue that their presence and testimony at arbitration was material, they made no offering of what testimony or evidence they planned to present, and they did not show that any such evidence could not be procured by means other than their attendance); *Vickery*, 1997 WL 751995, at \*20 (holding trial court did not abuse its discretion by denying appellant’s motion for continuance based on his absence because motion did not state why appellant’s presence was necessary to assist in his defense, did not identify matters to which appellant would testify, and did not explain why appellant’s deposition testimony was insufficient).

## **B. Appearance by Alternative Means**

We now turn to the focus of Dmitry’s second issue—the trial court’s denial of his request to participate in trial via Skype. A trial court’s ruling on a party’s request to participate at trial by alternate means is reviewed for an abuse of discretion. *In re Z.L.T.*, 124 S.W.3d 163, 165 (Tex. 2003). We will not reverse the trial court’s decision unless the trial court acted unreasonably or arbitrarily “without reference to any guiding rules and principles.” *Beaumont Bank, N.A. v. Buller*, 806 S.W.2d 223, 226 (Tex. 1991) (quoting *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241-42 (Tex. 1985)).

A trial court has broad discretion over the conduct of a trial. *See Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 240 (Tex. 2001). For example, under Texas Rule of Evidence 611, a trial court has reasonable control over the mode and order of interrogation of witnesses and presentation of evidence. TEX. R. EVID. 611; *see also Guimaraes v. Brann*, 562 S.W.3d 521, 544-45 (Tex. App.—Houston [1st Dist.] 2018, pet. denied). Under this rule, the trial court’s discretion is limited to that which is (1) reasonable and (2) in the pursuit of justice as well as efficiency. TEX. R. EVID. 611; *see Dang v. State*, 154 S.W.3d 616, 619 (Tex. Crim. App. 2005). In certain contexts, this discretion has extended to allow parties to present the testimony of witnesses via electronic means.

For example, in the criminal context, many courts have permitted witnesses to testify using closed-circuit

systems, video conferencing systems, telephone, or other electronic means. *See, e.g., Gonzales v. State*, 818 S.W.2d 756, 764 (Tex. Crim. App. 1991) (holding trial court did not deny appellant his constitutional rights by allowing child witness to testify by two-way closed-circuit system); *Paul v. State*, 419 S.W.3d 446, 459 (Tex. App.—Tyler 2012, pet. ref'd) (“Jordan’s serious health situation was an exceptional circumstance that warranted permitting her testimony by a computer video conferencing system.”); *Rivera v. State*, 381 S.W.3d 710, 713 (Tex. App.—Beaumont 2012, pet. ref'd) (“We conclude that under the circumstances, the preference for having witnesses testify in the courtroom must give way to the practical considerations involving Taylor’s military obligation that made his physical presence impractical.”); *Stevens v. State*, 234 S.W.3d 748, 782 (Tex. App.—Fort Worth 2007, no pet.) (“Ward’s tenuous health situation—documented by letters from his treating cardiologist—was an exceptional circumstance that warranted permitting his testimony by two-way closed circuit television.”); *Acevedo v. State*, No. 05-08-00839-CR, 2009 WL 3353625, at \*8 (Tex. App.—Dallas Oct. 20, 2009, pet. ref'd) (not designated for publication) (allowing pregnant witness with risk of miscarriage to testify by means of two-way conferencing system). In these cases, the witness was permitted to testify via electronic means because the witness was ill, a child, or on active military duty. And each of these cases involved a criminal defendant’s Sixth Amendment rights under the Confrontation Clause. U.S. CONST. amend. VI (“In all criminal prosecutions, the

accused shall enjoy the right . . . to be confronted with the witnesses against him[.]”).

Additionally, Texas courts allow inmates to appear in civil cases by video or audio communications under certain circumstances. Though courts may not deny incarcerated inmates access to the courts based solely on their status as inmates, an inmate does not have an absolute right to appear in person. *In re Z.L.T.*, 124 S.W.3d 163, 165 (Tex. 2003). In assessing whether an inmate has a right to be present in person, Texas courts weigh the inmate’s right of access against protecting the integrity of the correctional system, based on several factors. *Id.* Courts may also permit hearings at a jail or at a Texas Department of Criminal Justice facility and may conduct hearings with video communications technology. *See TEX. CIV. PRAC. & REM. CODE § 14.008(a).* Among the factors that a trial court weighs in assessing an inmate’s right to appear in person is whether the inmate “can and will offer admissible, noncumulative testimony that cannot effectively be presented by deposition, telephone, or some other means.” *In re Z.L.T.*, 124 S.W.3d at 165-66.

But courts have also stated that to be entitled to appear in person or through video communications technology, the inmate must not only request access to the court through the alternate means but also “*demonstrate why a trial court should authorize them.*” *See Graves v. Atkins*, No. 01-04-00423-CV, 2006 WL 3751612, at \*2-3 (Tex. App.—Houston [1st Dist.] Dec. 21, 2006, no pet.) (mem. op.) (emphasis added); *Brown v. Preston*, No. 01-16-00556-CV, 2017 WL 4171896, at

\*3 (Tex. App.—Houston [1st Dist.] Sept. 21, 2017, no pet.) (mem. op.) (“However, to be entitled to appear in person or through alternate means, such as video communications technology, the burden rests squarely on the prisoner-inmate to request access to the court through these alternate means and to demonstrate why a trial court should authorize them.”); *see also J.G. v. Tex. Dep’t of Family & Protective Servs.*, 592 S.W.3d 515, 522 (Tex. App.—Austin 2019, no pet.) (noting “inmate has the sole burden to request access to the court through these alternate means and to demonstrate why a trial court should authorize them,” and holding trial court did not abuse its discretion by not allowing incarcerated father to participate in termination hearing by alternate means, in part, because father provided no factual information demonstrating why his personal appearance via alternate means was necessary given his counsel’s presence at trial).

Finally, in a divorce and child custody case involving issues similar to those raised by Dmitry, this Court rejected the appellant’s argument that her due process rights were violated because the trial court did not permit her to testify at trial via Skype. *See Guimaraes*, 562 S.W.3d at 544. This Court stated there was nothing in the record to support the appellant’s contention that she was unable to attend trial, other than her fear of being arrested upon entry into the United States. *Id.* As explained by the Court, because the appellant “could have attended trial, but chose not to do so,” the denial of her request to appear by Skype was “the consequence[] of [her] own choice not to physically appear

for trial.” *Id.* Considering the trial court’s broad discretion over the conduct of a trial, this Court held that the trial court did not abuse its discretion in refusing to allow the appellant to testify via Skype. *Id.* at 544-45.

With these principles in mind, we turn to Dmitry’s argument that the trial court abused its discretion, and violated his due process rights, by refusing to allow him to testify at trial via Skype.

### **C. Analysis**

Dmitry argues that by denying his request to participate in trial via Skype, especially after stating at the June 27 hearing that a remote appearance would be allowed, the trial court “deprived Dmitry of his basic right, guaranteed by principles of due process, to be meaningfully heard in a meaningful way and to aid in the trial of his case.” Relying on cases involving absent inmates, Dmitry contends the same analysis should apply to an individual, like himself, “who is refused participation in his trial due to his immigration status preventing his entry into the United States.” Dmitry also argues that the facts here are distinguishable from those in *Guimares* because, unlike the appellant there, he appeared for his deposition, was prepared to participate in the trial via Skype, participated in mediation, and “attempted several different avenues to rectify his immigration status to be able to attend personally, but these efforts were unsuccessful.” Thus, he contends, there was no evidence to support the trial

court's finding that he had the ability to attend trial and chose not to do so.

For the reasons set forth below, and under the specific facts of this case, we conclude that the trial court did not abuse its discretion in denying Dmitry's request to participate in trial via Skype. We first note that, despite Dmitry's assertion to the contrary, the trial court did not unconditionally order at the June 27 hearing on Dmitry's motion for continuance that Dmitry could appear via Skype for trial. Instead, after discussing under what circumstances the trial would be continued until October, the trial court urged Dmitry to begin the process of obtaining his visa "right this very second." Only after discussing the steps Dmitry needed to take to obtain a visa did the trial court state that, "[i]f things go where we have to do the Skype thing, as much as I hate doing that, we're going to have to do it." (Emphasis added.) The docket entry from that hearing also indicates that Dmitry would be allowed to attend trial via Skype, *if needed*.

Moreover, Dmitry's account of his efforts to obtain a visa changed and conflicted over time. For instance, at that June 27 hearing, Dmitry's counsel acknowledged that Dmitry may have to travel to Moscow to obtain visa: "It's just a matter of getting it done so that he can be here timely. I understand." Later, during his October 10 deposition, Dmitry testified that, as of that date, he had not applied for a visa but that he was "planning to apply . . . as soon as [he] receive[d] a message from [Schlumberger] that he can do it." Five days later, on October 15, Dmitry moved for a continuance

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based on new allegations in Luiza's amended pleading but did not request any additional time to obtain a visa. Nor did he update the trial court on the efforts he had undertaken to secure that visa. At the October 17 hearing on that motion, on the contrary, Dmitry's counsel indicated that Dmitry was "flying all over Russia trying to get his Visa worked on" when the issue of his appearance via Skype came up. Less than one week later, on October 21, Dmitry filed another motion for continuance, stating that he had recently been told by officials at the U.S. embassy in Russia that he would have a tourist visa in "2-3 days." Dmitry estimated that, after receiving the visa, it would take him one day to travel to Houston.

Yet at the March 2020 new trial hearing, Dmitry testified that he learned he would not be able to get a work visa through Schlumberger in August 2019 and, thereafter, he unsuccessfully sought a business visa through Schlumberger in August and September 2019. He then testified that he applied for an emergency tourist visa in Russia on October 10, despite previously testifying at his deposition on that date that he had not yet applied for a visa and was waiting on approval from Schlumberger. Finally, despite previously representing to the trial court on October 21 and 22 that he would have a tourist visa in "2-3 days" and could appear in person for trial on October 30, Dmitry testified that as of the date of the new trial hearing, his application had not been finalized and was in "administrative checking" status. Dmitry also admitted that although his

visa expired in May 2019, he waited until October to apply for tourist visa.

The record shows that Dmitry knew on June 27, 2019 at the latest that he needed to begin the visa process so that he could attend trial. Though we acknowledge that in various exchanges with the parties, the trial court was less than clear about whether Skype testimony would be allowed, the trial court's order from the June 27 hearing was that “[i]f [Dmitry] needs to appear by skype, the court will allow that.” (Emphasis added.) The trial court ultimately concluded that Dmitry did not *need* to appear by Skype because, “since June 27, 2019 he has had . . . ample opportunity to obtain a Visa or do whatever he needs to do to get here and participate in this trial,” and failed to do so. We conclude that this case is like *Guimaraes*, in that Dmitry chose not to take the steps necessary to obtain a visa to appear in person, as instructed by the trial court, and therefore, his failure to obtain the visa in enough time to appear at trial was a product of his own choice. *See* 562 S.W.3d at 544.

At the very least, Dmitry could have informed the trial court of the steps he had taken to obtain his visa, and why they were unsuccessful, in a motion for continuance or in a motion to appear by alternative means. Even in the inmate context, this Court has required absent inmates to affirmatively demonstrate why a trial court should authorize their appearance by alternative means. *See Graves*, 2006 WL 3751612, at \*2-3; *Brown*, 2017 WL 4171896, at \*3; *see also J.G.*, 592 S.W.3d at 522. Dmitry chose not to do so until his

motion for new trial, and his new-trial testimony conflicted with the representations he previously made through counsel and at his own deposition. Moreover, Dmitry's counsel attended trial, introduced exhibits by stipulation, and cross-examined witnesses. And the entirety of Dmitry's deposition was admitted into the evidence. *See In re Z.L.T.*, 124 S.W.3d at 165-66 (in weighing inmate's right to appear in person, trial court considers whether inmate "can and will offer admissible, noncumulative testimony that cannot effectively be presented *by deposition*, telephone, or some other means" (emphasis added)); *In re J.G.*, 592 S.W.3d at 522 (holding trial court did not abuse its discretion by refusing incarcerated father's request to participate in termination hearing by alternate means, in part, because father provided no factual information demonstrating why his personal appearance via alternate means was necessary in addition to his counsel having appeared for him in trial court); *In re J.D.*, No. 13-16-00062-CV, 2016 WL 3068260, at \*3 (Tex. App.—Corpus Christi May 26, 2016, no pet.) (mem. op.) (holding trial court did not abuse its discretion by denying appellant's request to appear telephonically because, although she stated in her motion for new trial that her lack of finances and living in Ohio were why she did not appear at trial, "she offered no reasons as to why her telephonic presence was required or why her counsel would be unable to adequately represent her unless she was allowed to appear telephonically").

We further find the facts of *In re J.C.*, 582 S.W.3d 497 (Tex. App.—Waco 2018, no pet.), a case cited by

Dmitry, distinguishable. In that case, the Waco Court of Appeals held that the trial court did not abuse its discretion by allowing a witness at a commitment hearing to testify by Skype. *Id.* at 502. The court distinguished *Guimares*, noting that the appellant there, who was a party to the divorce and child custody proceeding, chose not to appear based on her fear of being arrested. *See id.* at 502-03. In contrast, in *J.C.*, the witness, who was not a party and lived out of state, had only four days' notice of the hearing at which her testimony was desired. *Id.* at 503. Remarking that it saw "no reason at this time to create a *per se* rule precluding the trial court's admission of testimony in a trial through alternate means such as Skype or other technological platform that accommodates video as well as audio presentation of evidence," the court concluded that this decision should be left "to the discretion of the trial court based on the facts and circumstances presented and subject to appellate review for an abuse of that discretion." *Id.* at 504. The court held that "because of the short timetable for the hearing and the distance the witness would have to travel to attend the hearing in person and because the trial court has discretion over the conduct of the trial," the trial court did not abuse its discretion by permitting the non-party witness to testify via Skype. *Id.*

Unlike in *J.C.*, Dmitry was a party with ample notice of the trial setting. We agree with the Waco Court of Appeals that there is no reason to adopt a *per se* rule either permitting or precluding the trial court's exclusion of testimony in a trial through alternate means

such as Skype. Instead, this decision should be left “to the discretion of the trial court based on the facts and circumstances presented and subject to appellate review for an abuse of that discretion.” *Id.* at 504.

Based on the record here, because Dmitry had ample notice of the trial setting and was directed by the trial court to take affirmative steps to secure a visa, and because of Dmitry’s conflicting account of the steps he took to obtain that visa, we cannot say that the trial court abused its discretion by precluding Dmitry from testifying via Skype.

Accordingly, we overrule Dmitry’s first issue.

### **Arrearage Judgments**

In his third issue, Dmitry argues that the trial court abused its discretion by rendering arrearage judgments for \$34,200 in unpaid child support, \$4,720 in unpaid medical support, and \$30,000 in unpaid spousal support, because the temporary orders authorizing such support were void for lack of proper service. Specifically, Dmitry contends the substitute service ordered by the trial court did not comply with Texas Rule of Civil Procedure 106 and, therefore, service was ineffective on Dmitry. According to Dmitry, the trial court could not have proceeded with a hearing on the temporary orders and any resulting order was void. He

requests that the arrearage judgments, which rest on those void temporary orders, be vacated.<sup>5</sup>

### **A. Law Applicable to Temporary Orders**

In a suit affecting the parent-child relationship, the trial court may make a temporary order for the safety and welfare of the child, including an order for the temporary support of the child. TEX. FAM. CODE § 105.001(a)(2). A temporary order for the support of the child may not be rendered “except after notice and a hearing.” *Id.* § 105.001(b). Likewise, “[w]hile a suit for dissolution of a marriage is pending and on the motion of a party or on the court’s own motion after notice and hearing, the court may render an appropriate order . . . requiring payments to be made for the support of either spouse.” *Id.* § 6.502(a)(2).

### **B. Personal Jurisdiction**

A claim of a defect in service of process challenges the trial court’s personal jurisdiction over the defendant. *Livanos v. Livanos*, 333 S.W.3d 868, 874 (Tex. App.—Houston [1st Dist.] 2010, no pet.). Establishing personal jurisdiction over a defendant requires valid service of process. *See In re E.R.*, 385 S.W.3d 552, 563 (Tex. 2012) (“Personal jurisdiction, a vital component

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<sup>5</sup> Dmitry does not challenge the final divorce decree on the basis that the trial court lacked personal jurisdiction over him due to defective service. His only challenge is to the arrearage judgments, i.e., the portion of the divorce decree based on the temporary orders.

of a valid judgment, is dependent ‘upon citation issued and served in a manner provided for by law.’”) (quoting *Wilson v. Dunn*, 800 S.W.2d 833, 836 (Tex. 1990)); *In re P. RJ E.*, 499 S.W.3d 571, 574 (Tex. App.—Houston [1st Dist.] 2016, pet. denied). “If service is invalid, it is ‘of no effect’ and cannot establish the trial court’s jurisdiction over a party.” *In re E.R.*, 385 S.W.3d at 563; *see In re P. RJ E.*, 499 S.W.3d at 574. A complete failure of service deprives a litigant of due process and deprives the trial court of personal jurisdiction; any resulting judgment is void and may be challenged at any time. *In re P. RJ E.*, 499 S.W.3d at 574-75; *In re E.R.*, 385 S.W.3d at 566. “When a defendant has not answered, the trial court acquires jurisdiction over the defendant solely on proof of proper service.” *Livanos*, 333 S.W.3d at 874.

“Unlike subject matter jurisdiction, the lack of personal jurisdiction may be waived.” *Arnold v. Price*, 365 S.W.3d 455, 458 (Tex. App.—Fort Worth 2011, no pet.). “A party enters a general appearance and waives a special appearance ‘when it (1) invokes the judgment of the court on any question other than the court’s jurisdiction, (2) recognizes by its acts that an action is properly pending, or (3) seeks affirmative action from the court.’” *Id.* at 458-59 (quoting *Exito Elecs. Co. v. Trejo*, 142 S.W.3d 302, 304 (Tex. 2004)). Furthermore, under Texas Rule of Civil Procedure 121, “[a]n answer shall constitute an appearance of the defendant so as to dispense with the necessity for the issuance or service of citation upon him.” TEX. R. CIV. P. 121. But “a general appearance must be entered before the

judgment that is at issue to waive personal service.” *In re P. RJE.*, 499 S.W.3d at 575 n.4; *see also Williams v. Nexplore Corp.*, No. 05-09-00621-CV, 2010 WL 4945364, at \*3 (Tex. App.—Dallas Dec. 7, 2010, pet. denied) (mem. op.) (“[A] general appearance which waives defects in service must precede any action of the court which such appearance validates.”).

### **C. Substituted Service**

Texas Rule of Civil Procedure 106(b) provides:<sup>6</sup>

Upon motion supported by affidavit stating the location of the defendant’s usual place of business or usual place of abode or other place where the defendant can probably be found and stating specifically the facts showing that service has been attempted under either [subsection] (a)(1) or (a)(2) at the location named in such affidavit but has not been successful, the court may authorize service

- (1) by leaving a true copy of the citation, with a copy of the petition attached, with anyone over sixteen years of age at the location specified in such affidavit, or

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<sup>6</sup> Rule 106(b)(2) was amended effective December 31, 2020, to clarify that a court may, in proper circumstances, permit service of citation electronically by social media, email, or other technology. *See Final Approval of Amendments to Texas Rules of Civil Procedure 106 and 108*, Misc. Docket No. 20-9103 (Tex. Mar. 13, 2020); TEX. R. CIV. P. 106 cmt. We cite to the version of Rule 106 in effect when substituted service was ordered in this case.

(2) in any other manner that the affidavit or other evidence before the court shows will be reasonably effective to give the defendant notice of the suit.

TEX. R. CIV. P. 106(b).

Substitute service is not authorized under Rule 106(b) without an affidavit that meets the requirements of the rule. *See Wilson v. Dunn*, 800 S.W.2d 833, 836 (Tex. 1990); *Olympia Marble & Granite v. Mayes*, 17 S.W.3d 437, 444 (Tex. App.—Houston [1st Dist.] 2000, no pet.) (op. on reh'g).

#### **D. Analysis**

Here, Luiza filed her divorce petition on May 4, 2018 in which she requested temporary spousal and child support. Four days later, on May 8, Luiza moved for substituted service, stating that it was “impractical to secure the personal service of process in this cause on [Dmitry], either by certified or regular mail or by delivery to [Dmitry] in person because [Dmitry] has refused to accept any form of service and continues to refuse to accept any certified or registered mail and/or he is purposely evading the service of process.” In her supporting affidavit, Luiza stated:

- “My attorney, John Lohmann, III, made numerous attempts to get my husband’s employer, Schlumberger, to furnish my husband’s current place of employment and current residential address, but they refused to give any information;”

- “. . . [M]y attorney hired a process server and he was unable to even get into Schlumberger’s building, much less find someone he could have served with the court documents;”
- “[Dmitry] is avoiding service with intent to obtain such possession and custody, and I therefore need to get him served with this divorce action by substituted service;” and
- “This Affidavit is being made to show the necessity of serving my husband and the problems I am having getting the divorce petition served.”

On May 23, the trial court granted Luiza’s motion for substituted service stating that it was “impractical to deliver the citation to [Dmitry].” The trial court ordered that Dmitry could be served by personal service “through Capitol Corporate Services, Inc., the registered agent of [Dmitry’s] employer, Schlumberger, located at 206 E. 9111 St., Suite 1300, Austin, Texas 78701.” A little less than two weeks later, on June 4, the trial court entered temporary orders requiring Dmitry to pay \$2,137.50 in monthly child support, to pay \$2,000 in monthly spousal support, and to obtain health care coverage for the children.

As noted above, under Rule 106(b), a trial court may authorize substitute service “upon motion supported by affidavit.” TEX. R. CIV. P. 106(b). The affidavit must state: (1) “the location of the defendant’s usual place of business or usual place of abode or other place where the defendant can probably be found” and (2) the “specifi[c] . . . facts showing that service has been

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attempted under either [subsections] (a)(1) or (a)(2) at the location named in such affidavit but has not been successful[.]” *Id.*

Luiza’s affidavit in support of her motion for substituted service does not comply with Rule 106’s requirements. First, the affidavit did not state the location of Dmitry’s usual place of business, usual place of abode, or any other place where Dmitry probably could be found. Although the affidavit identified Schlumberger as Dmitry’s employer and stated that a process server “was unable to even get into Schlumberger’s building,” the reference to “Schlumberger’s building” is not equivalent to an address for service and, even if that were sufficient, there was no statement included that “Schlumberger’s building” was Dmitry’s usual place of business or other place where he could probably be found. *Davis v. Martin*, No. 01-07-00831-CV, 2009 WL 350642, at \*5 (Tex. App.—Houston [1st Dist.] Feb. 12, 2009, no pet.) (mem. op.) (holding affidavit insufficient under Rule 106(b) because, although it contained address for service, affidavit did not state such address was defendants’ usual place of business, usual place of abode, or other place where they could be found). Moreover, Luiza states in her affidavit that she was unable to obtain information as to Dmitry’s current place of employment and current residential address from Schlumberger. This assertion, if true, would undermine any contention that “Schlumberger’s building” was Dmitry’s usual place of business.

Second, Luiza’s statement in the affidavit that her attorney hired a process server but “he was unable to

even get into Schlumberger’s building, much less find someone he could have served with the court documents” does not state at what address such service attempt was made, nor the date or time of such attempted service. *See Davis*, 2009 WL 350642, at \*5 (noting courts have held that affidavits lacking dates and times of attempted service did not contain sufficient facts to comply with Rule 106(b) requirements, and holding affidavit was insufficient, in part, because it failed to include such facts); *In re Sloan*, 214 S.W.3d 217, 222 (Tex. App.—Eastland 2007, no pet.) (holding affidavit insufficient under Rule 106(b) because it lacked details related to plaintiff’s attempted service, including dates or times when service was attempted and any other details showing address was defendant’s usual place of abode).

Because the affidavit supporting Luiza’s motion for substituted service was deficient, it could not support the trial court’s order for substitute service and the attempted service on Dmitry through his employer’s registered agent was “invalid and of no effect.” *See Wilson*, 800 S.W.2d at 836; *Davis*, 2009 WL 350642, at \*5. We conclude that the trial court lacked personal jurisdiction over Dmitry at the time the temporary orders were entered and therefore those orders are void. *See Wilson*, 800 S.W.2d at 838; *Davis*, 2009 WL 350642, at \*5. Because the trial court’s temporary orders were void, we vacate the arrearage judgments for unpaid child, spousal, and medical support that are based on those orders.

We sustain Dmitry’s third issue.

### **Award of Debts**

In his fourth issue, Dmitry contends there was factually insufficient evidence to support the trial court's recognition and award of debts. Specifically, Dmitry argues the trial court awarded the following "fictitious" debts to Luiza that were only supported by Luiza's (and her fiancé Richard Gomez's) self-serving testimony:

- \$11,000 payable to Nikolay Matusevich;
- \$3,500 payable to Louisa Khetagurova;
- \$6,350 payable Yulia Starkova; and
- \$190,177.53 to Richard Gomez.

#### **A. Standard of Review**

In a decree of divorce, the trial court is required to "order a division of the estate of the parties in a manner that the court deems just and right, having due regard for the rights of each party and any children of the marriage." TEX. FAM. CODE § 7.001; *Ayala v. Ayala*, 387 S.W.3d 721, 731 (Tex. App.—Houston [1st Dist.] 2011, no pet.). The trial court has broad discretion in making a "just and right" division of the community estate, and its discretion will not be disturbed on appeal absent a clear abuse of discretion. *Ayala*, 387 S.W.3d at 731; *see also Chafino v. Chafino*, 228 S.W.3d 467, 472 (Tex. App.—El Paso 2007, no pet.) ("It is the reviewing court's duty to presume that the trial court properly exercised its discretion in dividing the estate.").

In determining whether the trial court abused its discretion in making the property division, we look to whether the trial court acted arbitrarily or unreasonably, without reference to any guiding rules and principles. *Evans v. Evans*, 14 S.W.3d 343, 346 (Tex. App.—Houston [14th Dist.] 2000, no pet.) (citing *Worford v. Stamper*, 801 S.W.2d 108, 109 (Tex. 1990)). We must determine whether (1) the trial court had sufficient information upon which to exercise its discretion and (2) the trial court abused its discretion by causing the property division to be manifestly unjust or unfair. *Id.* “A trial court does not abuse its discretion when some evidence of a probative and substantive character exists to support the division.” *Ayala*, 387 S.W.3d at 731. “Under an abuse of discretion standard, legal and factual insufficiency are not independent reversible grounds of error but are rather relevant factors in assessing whether the trial court abused its discretion.” *Mai v. Mai*, 853 S.W.2d 615, 618 (Tex. App.—Houston [1st Dist.] 1993, no writ). A trial court does not abuse its discretion when there is some evidence of a substantive and probative character to support the trial court’s judgment. *Ayala*, 387 S.W.3d at 726. In a factual sufficiency review, the reviewing court must consider all evidence and may only reverse for insufficiency of the evidence if the ruling is so against the great weight and preponderance of the evidence as to render it manifestly unjust. *Id.*

## **B. Analysis**

At trial, Luiza's sworn inventory and proposed division of the marital estate was entered into evidence by stipulation, which contained the above-listed debts to Nikolay Matusevich, Louisa Khetagurova, Yulia Starkova, and Richard Gomez. Luiza testified about the contents of that inventory and asked that she be awarded the debts owed for money that she borrowed. Specifically, with reference to the debt she owed Gomez, Luiza testified that Gomez paid for medical insurance for one year for her and her children after Dmitry canceled their medical insurance. Luiza also testified Gomez paid for her legal expenses, food, and clothes and school lunches for the children. Gomez similarly testified that, to his knowledge, Dmitry had not made any contributions to the support of the children, and that he had been providing support for the children, including paying for "food, clothes, school activities, medical insurance, medical bills, everything that you need to live." Gomez also testified he provided the same support for Luiza and had paid over \$108,000 for Luiza's legal fees. Finally, Gomez testified that the amount listed on Luiza's inventory accurately represented what he had paid to support Luiza and her children, and that she owed that amount to him.

Dmitry contends this evidence is insufficient to support the trial court's award of these debts because Luiza and Gomez are interested witnesses. But, as Dmitry acknowledges, the absence of evidence corroborating testimony of an interested witness does not render that evidence "incompetent or of no evidentiary

value.” *Sheikh v. Sheikh*, No. 01-05-00218-CV, 2007 WL 3227683, at \*7 (Tex. App.—Houston [1st Dist.] Nov. 1, 2007, no pet.) (mem. op.). “Rather, the absence of such corroborating documentation [goes] instead to the [witness’s] credibility and the weight to be accorded it.” *Id.* at \*7-8. Credibility determinations are “for the trial court to make and not for this Court to second-guess.” *Id.* at \*8.

The trial court was within its discretion in believing Luiza’s and Gomez’s testimony on the existence and amount of the debts. The lack of corroborating evidence for their testimony went to the credibility and weight to be given their testimony, not the competency. *Id.* We hold that the evidence was factually sufficient to support the trial court’s award of the above-listed debts and the trial court did not abuse its discretion.

We overrule Dmitry’s fourth issue.

### **Possession and Access**

In his fifth issue, Dmitry argues there was factually insufficient evidence to support the possession and access order that was “less than a Standard Possession Order, subject to supervision at all times, and containing terms that rendered it impossible for Dmitry to ever exercise any periods of possession.”

#### **A. Standard of Review and Applicable Law**

A trial court’s determination of possession and access are reviewed for an abuse of discretion. *Moreno v.*

*Perez*, 363 S.W.3d 725, 737 (Tex. App.—Houston [1st Dist.] 2011, no pet.). To determine whether a trial court abused its discretion, we must decide whether the court acted without reference to any guiding rules or principles; in other words, we must decide whether the act was arbitrary or unreasonable. *Low v. Henry*, 221 S.W.3d 609, 614 (Tex. 2007); *Cire v. Cummings*, 134 S.W.3d 835, 838-39 (Tex. 2004). An appellate court cannot conclude that a trial court abused its discretion merely because the appellate court would have ruled differently in the same circumstances. *E.I. du Pont de Nemours & Co., Inc. v. Robinson*, 923 S.W.2d 549, 558 (Tex. 1995).

The Family Code provides guidelines for determining the periods of possession for a possessory conservator. TEX. FAM. CODE § 153.192(b). There is a rebuttable presumption that a standard possession order provides a possessory conservator reasonable minimum possession of the child and is in the best interest of the child. *Id.* § 153.252. A trial court has discretion to deviate from a standard possession order but must consider: “(1) the age, developmental status, circumstances, needs, and best interest of the child; (2) the circumstances of the managing conservator and of the parent named possessory conservator; and (3) any other relevant factor.” *Id.* § 153.256.

An order restricting a parent’s right to possession of or access to a child may not impose restrictions beyond those required to protect the child’s best interest. TEX. FAM. CODE § 153.193. Courts employ the non-exhaustive list of *Holley* factors to determine the child’s

best interests. *Holley v. Adams*, 544 S.W.2d 367, 371-72 (Tex. 1976); *see also In re Doe 2*, 19 S.W.3d 278, 300 n.20 (Tex. 2000). These factors include: (1) the desires of the child; (2) the emotional and physical needs of the child now and in the future; (3) the emotional and physical danger to the child now and in the future; (4) the parental abilities of the individuals seeking custody; (5) the programs available to assist these individuals to promote the best interest of the child; (6) the plans for the child by the individuals seeking custody; (7) the stability of the home or proposed placement; (8) the acts or omissions of the parent which may indicate that the existing parent-child relationship is not a proper one; and (9) any excuse for the acts or omissions of the parent. *Holley*, 544 S.W.2d at 371-72. A trial court does not abuse its discretion in restricting a parent's possession when the record contains some evidence to support a finding that such restrictions are in the child's best interest. *In re P.A.C.*, 498 S.W.3d at 219; *see also George v. Jeppeson*, 238 S.W.3d 463, 471 (Tex. App.—Houston [1st Dist.] 2007, no pet.).

## **B. Analysis**

Here, after finding there was credible evidence of a risk of international abduction, the trial court ordered that Dmitry's visitation periods were to be supervised by Guardians of Hope. The trial court also ordered Dmitry's visitation to be as follows:

Dmitry Nikolenko shall have the right to possession on the Saturday and Sunday immediately following the 1st, 3rd, a[nd] 5th

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Friday of each month, beginning at 10:00 a.m. and ending at 4:00 p.m. on Saturday and beginning at 10:00 a.m. and ending at 4:00 p.m. on Sunday, provided that Dmitry Nikolenko has given Luiza Nikolenko fourteen (14) days advance written notice of his intent to exercise each period of possession. If Dmitry Nikolenko fails to give Luiza Nikolenko fourteen (14) days advance written notice of a period of possession, that period of possession is waived.

Dmitry first contends there was no evidence that he had harmed the welfare of the children or posed a danger to them, and thus, no evidence supported supervised visitation or a deviation from the standard visitation schedule. We disagree. As noted by Luiza, the trial court specifically found that there was credible evidence of a risk of international abduction. Under Section 153.503, a trial court may order supervised visitation if it finds that there is a risk of international abduction. TEX. FAM. CODE § 153.503(2) (“If the court finds that it is necessary under Section 153.501 to take measures to protect a child from international abduction by a parent of the child, the court may . . . require supervised visitation of the parent by a visitation center or independent organization until the court finds under Section 153.501 that supervised visitation is no longer necessary.”).

Section 153.502 provides statutory “abduction risk factors” for a court to consider in determining whether there is a potential risk of international abduction. *See* TEX. FAM. CODE § 153.502. Subsection (a) provides a

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list of six preliminary factors the court “shall consider,” including whether the parent: (1) “has taken, enticed away, kept, withheld, or concealed” the child; (2) has threatened to do so; (3) “lacks financial reason to stay in the United States”; (4) “has recently engaged in planning activities that could facilitate the removal of the child from the United States”; (5) “has a history of domestic violence”; or (6) “has a criminal history or a history of violating court orders.” *Id.* § 153.502(a). If upon consideration of the factors in subsection (a) the court finds “credible evidence of a risk of abduction,” “the court shall also consider”:

- (1) whether the parent has strong familial, emotional, or cultural ties to another country, particularly a country that is not a signatory to or compliant with the Hague Convention on the Civil Aspects of International Child Abduction; and
- (2) whether the parent lacks strong ties to the United States, regardless of whether the parent is a citizen or permanent resident of the United States.

*Id.* § 153.502(b); *see also In re Sigmar*, 270 S.W.3d 289, 298 (Tex. App.—Waco 2008, orig. proceeding).

Here, the trial court made the following explicit findings:

- 1) Dmitry Nikolenko has strong familial, emotional, or cultural ties to another country, Russia, with which the Hague Convention on Civil Aspects of International

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Child Abduction is not in effect with the United States.

- 2) Dmitry Nikolenko lacks strong ties to the United States.
- 3) Dmitry Nikolenko has ties to countries that would present obstacles to the recovery and return of the children if abducted.
- 4) Dmitry Nikolenko has previously threatened to take, entice away, keep, withhold, or conceal the children in violation of Luiza Nikolenko's right of possession of or access to the children.
- 5) Dmitry Nikolenko lacks financial reason to stay in the United States and is able to work outside the United States.
- 6) Dmitry Nikolenko has recently engaged in planning activities that could facilitate the removal of the children from the United States by Dmitry Nikolenko, including: closing bank accounts, liquidating assets, and hiding or destroying documents, obtaining custody orders for the children in Russia without notice to Luiza Nikolenko and obtaining an order for her arrest.
- 7) Dmitry Nikolenko has a history of violating court orders.
- 8) Dmitry Nikolenko has ties to Russia;
  - a. Russia presents obstacles to the recovery and return of a child who is

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abducted to the country from the United States;

- b. Russia has no legal mechanisms for immediately and effectively enforcing an order regarding the possession of or access to the children issued by Texas;
- c. The Hague Convention on the Civil Aspects of International Child Abduction is not in effect between the United States and Russia.

Although Dmitry does not challenge these specific findings, they are supported by the following evidence:

- Luiza's testimony that Dmitry had threatened "almost three or five times a week" to take the children back to Russia "since [she] moved back to Houston" and tried to change their oldest daughter's passport.
- Luiza's testimony that Dmitry had worked outside the United States, including in Brunei.
- Luiza's testimony that Dmitry transferred money and other assets without her knowledge.
- Luiza's testimony that Dmitry refused to produce various financial documents to demonstrate where these assets had been transferred.
- Luiza's testimony that Dmitry purchased an apartment in Moscow as an investment property to "live in in the future."

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- The parties' agreement, which was the subject of judicial notice, that the Hague Abduction Convention to secure the return of abducted children is not in effect between Russia and the United States.
- The evidence related to Dmitry's efforts to obtain a divorce decree and child custody order in a Russian court, based on misrepresentations related to Luiza's whereabouts and without notice to Luiza.

In addition, the trial court heard testimony that supported its finding that deviation from the standard visitation, including requiring supervised visitation, was in the children's best interest. For instance, Luiza testified that after Dmitry learned she wanted a divorce, he cut off Luiza's access to money and credit while she and the children were traveling in a foreign country. She also testified that he canceled their health insurance policies. Dmitry testified in his deposition that the last time he saw his children was "for four minutes in August of 2018." Although he acknowledged that he could have traveled to the United States between August 2018 and May 2019 (when his visa expired), he stated that he did not do so because he "had been treated badly by Luiza's boyfriend."

As detailed above, the trial court also had evidence before it that Dmitry made misrepresentations to the Russian court to obtain a divorce and child custody order. This evidence was sufficient to support the trial court's finding that the provisions in the decree relating to possession and access were in the children's best

interest. *See In re Sigmar*, 270 S.W.3d at 305 (holding evidence father rarely spent time with child, traveled frequently for business, acted with deception in seeking divorce, and requested child’s passport be renewed was evidence of best-interest factors supporting trial court’s decision to impose abduction prevention measures, including supervised visitation).

Dmitry argues that by requiring him to visit the children in the United States, the trial court has “effectively denied possession of his children if the same immigration issues that followed him during the pendency of the case” persist. However, there is nothing in the record to indicate that Dmitry is unable to obtain a visa, just that he had not done so by the time of trial.

Finally, Dmitry contends that by finding he should be possessory conservator of the children, the trial court implicitly determined he would not endanger the physical or emotional wellbeing of the children. *See Roosth v. Roosth*, 889 S.W.2d 445, 451 (Tex. App.—Houston [14th Dist.] 1994, writ denied) (“Because the trial court granted the [father] status as a possessory conservator, the trial court must have implicitly found that [father’s] possession or access to the children would not endanger the physical or emotional welfare of the children. Limitations upon [father’s] right to possession of or access to the children may not exceed that required to protect the children’s best interest.”). But *Roosth* is factually distinguishable because, there, the judgment gave the wife “complete discretion to determine when, where, and if [the husband] may have possession of or access to the children.” *Id.* at 452. Thus,

the court concluded that “this absolute discretion and the lack of enforceability is effectively a denial of [the husband’s] right to visitation with his children.” *Id.* The decree at issue here does not contain any such language. Moreover, *Roosth* did not involve the risk of international abduction, which the trial court found existed here and supported the need for the deviation from standard visitation, including requiring supervised visitation.

For these reasons, we conclude that there is some evidence to support a finding that restrictions on Dmitry’s visitation, including requiring supervised visitation, were in the children’s best interest, and therefore, the trial court did not abuse its discretion. *In re P.A.C.*, 498 S.W.3d at 219; *see also George*, 238 S.W.3d at 471.

We overrule Dmitry’s fifth issue.

### **Conclusion**

Having found that the arrearage judgments are based on void temporary orders, we vacate the portion of the trial court’s final divorce decree ordering Dmitry to pay \$34,200 in child support arrearages, \$4,720 in medical support arrearages, and \$30,000 in spousal support arrearages. We affirm the remainder of the trial court’s final divorce decree.

Amparo Guerra  
Justice

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Panel consists of Justices Hightower, Countiss, and  
Guerra.

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[SEAL]

**COURT OF APPEALS FOR THE  
FIRST DISTRICT OF TEXAS AT HOUSTON**

**ORDER**

Appellate case name: *Dmitry Nikolenko v. Luiza Nikolenko*

Appellate case number: 01-20-00284-CV

Trial court case number: 18-DCV-251118

Trial court: 328th Judicial District Court  
of Fort Bend County, Texas

The en banc court has unanimously voted to deny  
appellee's motion for en banc reconsideration. It is or-  
dered that the motion is **DENIED**.

It is so ORDERED.

Judge's signature:

/s/ Amparo Guerra

Acting individually  Acting for the Court\*

\*En banc court consists of Chief Justice Radack and  
Justices Kelly, Goodman, Landau, Hightower, Countiss,  
Rivas-Molloy, Guerra, and Farris.

Date: June 30, 2022

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[SEAL]

**COURT OF APPEALS FOR THE  
FIRST DISTRICT OF TEXAS AT HOUSTON**

**ORDER**

Appellate case name: *Dmitry Nikolenko v. Luiza Nikolenko*

Appellate case number: 01-20-00284-CV

Trial court case number: 18-DCV-251118

Trial court: 328th Judicial District Court  
of Fort Bend County, Texas

Appellant's motion for rehearing is **denied**.

It is so ORDERED.

Judge's signature:

/s/ Amparo Guerra

Acting individually  Acting for the Court\*

\*Panel consists of Justices Hightower, Countiss, and Guerra.

Date: June 30, 2022

\_\_\_\_\_

**NOTICE: THIS DOCUMENT CONTAINS  
SENSITIVE DATA**

**NO. 18-DCV-251118**

<b>IN THE MATTER OF</b>	<b>§ IN THE DISTRICT</b>
<b>THE MARRIAGE OF</b>	<b>§ COURT</b>
<b>LUIZA NIKOLENKO</b>	<b>§ 328TH JUDICIAL</b>
<b>AND</b>	<b>§ DISTRICT</b>
<b>DMITRY NIKOLENKO</b>	<b>§ FORT BEND</b>
<b>AND IN THE INTEREST</b>	<b>§ COUNTY, TEXAS</b>
<b>OF S.N.</b>	<b>§</b>
<b>AND M.N.,</b>	<b>§</b>
<b>CHILDREN</b>	<b>§</b>

**FINAL DECREE OF DIVORCE**

On October 22, 2019 and October 23, 2019, the Court heard this case.

**1. Appearances**

Petitioner, Luiza Nikolenko, appeared in person and through attorney of record, Laura Dale & Associates, P.C., 1800 St. James Place, Ste. 620, Houston, Texas 77056, and announced ready for trial.

Respondent, Dmitry Nikolenko, appeared through attorney of record, Todd Frankfort, 917 Franklin, Suite 510, Houston, Texas 77002, and announced ready for trial. Mr. Robert Hoffman, Law Offices of Robert S. Hoffman, P.L.L.C., 2323 S. Shepherd Dr., Suite 1014, Houston, Texas 77019, made an appearance as co-counsel after the conclusion of trial.

**2. Record**

The record of testimony was duly reported by the court reporter for the 328th Judicial District Court.

**3. Jurisdiction and Domicile**

The Court finds that the pleadings of Petitioner are in due form and contain all the allegations, information, and prerequisites required by law. The Court, after receiving evidence, finds that it has jurisdiction of this case and of all the parties and that at least sixty days have elapsed since the date the suit was filed.

The Court further finds that, at the time this suit was filed, Petitioner had been a domiciliary of Texas for the preceding six-month period and a resident of the county in which this suit was filed for the preceding ninety-day period. All persons entitled to citation were properly cited.

**4. Jury**

A jury was waived, and questions of fact and of law were submitted to the Court.

**5. Divorce**

IT IS ORDERED AND DECREED that Luiza Nikolenko, Petitioner, and Dmitry Nikolenko, Respondent, are divorced and that the marriage between them is dissolved on the ground of insupportability.

**6. Children of the Marriage**

The Court finds that Petitioner and Respondent are the parents of the following children:

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Name:	S.N.
Sex:	Female
Birth date:	████████/2012
Home state:	Texas
Social Security number:	XXX-XX-X518
Driver's license number and issuing state:	NOT APPLICABLE
 Name:	M.N.
Sex:	Female
Birth date:	████████/2015
Home state:	Texas
Social Security number:	NOT APPLICABLE
Driver's license number and issuing state:	NOT APPLICABLE

The Court finds no other children of the marriage are expected.

## **7. Parenting Plan**

The Court finds that the provisions in this decree relating to the rights and duties of the parties with relation to the children, possession of and access to the children, child support, and optimizing the development of a close and continuing relationship between each party and the children constitute the parenting plan established by the Court.

### **7.1. Conservatorship**

The Court, having considered the circumstances of the parents and of the children, finds that the following orders are in the best interest of the children.

IT IS ORDERED that Luiza Nikolenko is appointed Sole Managing Conservator and Dmitry Nikolenko is

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appointed Possessory Conservator of the following children: S.N. and M.N.

### **7.2. Rights at All Times for Luiza Nikolenko**

IT IS ORDERED that, at all times, Luiza Nikolenko, as a parent sole managing conservator, shall have the following rights:

- 1) the right to receive information from any other conservator of the children concerning the health, education, and welfare of the children;
- 2) the right to confer with the other parent to the extent possible before making a decision concerning the health, education, and welfare of the children;
- 3) the right of access to medical, dental, psychological, and educational records of the children;
- 4) the right to consult with a physician, dentist, or psychologist of the children;
- 5) the right to consult with school officials concerning the children's welfare and educational status, including school activities;
- 6) the right to attend school activities, including school lunches, performances, and field trips;
- 7) the right to be designated on the children's records as a person to be notified in case of an emergency;
- 8) the right to consent to medical, dental, and surgical treatment during an emergency

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involving an immediate danger to the health and safety of the children; and

- 9) the right to manage the estates of the children to the extent the estates have been created by the parent or the parent's family.

### **7.3. Rights at All Times for Dmitry Nikolenko**

IT IS ORDERED that, at all times, Dmitry Nikolenko, as a parent possessory conservator, shall have the following rights:

- 1) the right to receive information from any other conservator of the children concerning the health, education, and welfare of the children;
- 2) the right to confer with the other parent to the extent possible before making a decision concerning the health, education, and welfare of the children;
- 3) the right of access to medical, dental, psychological, and educational records of the children;
- 4) the right to consult with a physician, dentist, or psychologist of the children;
- 5) the right to consult with school officials concerning the children's welfare and educational status, including school activities;
- 6) the right to attend school activities, including school lunches, performances, and field trips;

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- 7) the right to be designated on the children's records as a person to be notified in case of an emergency;
- 8) the right to consent to medical, dental, and surgical treatment during an emergency involving an immediate danger to the health and safety of the children; and
- 9) the right to manage the estates of the children to the extent the estates have been created by the parent or the parent's family.

**7.4. Duties at al Times for Luiza Nikolenko**

IT IS ORDERED that, at all times, Luiza Nikolenko, as a parent sole managing conservator shall have the following duties:

- 1) the duty to inform the other conservator of the children in a timely manner of significant information concerning the health, education, and welfare of the children;
- 2) the duty to inform the other conservator of the children if the conservator resides with for at least thirty days, marries, or intends to marry a person who the conservator knows is registered as a sex offender under chapter 62 of the Texas Code of Criminal Procedure or is currently charged with an offense for which on conviction the person would be required to register under that chapter. IT IS ORDERED that notice of this information shall be provided to the other conservator of the children as soon as practicable, but not later than the fortieth day after the date the conservator of

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the children begins to reside with the person or on the tenth day after the date the marriage occurs, as appropriate. IT IS ORDERED that the notice must include a description of the offense that is the basis of the person's requirement to register as a sex offender or of the offense with which the person is charged. WARNING: A CONSERVATOR COMMITS AN OFFENSE PUNISHABLE AS A CLASS C MISDEMEANOR IF THE CONSERVATOR FAILS TO PROVIDE THIS NOTICE;

- 3) the duty to inform the other conservator of the children if the conservator establishes a residence with a person who the conservator knows is the subject of a final protective order sought by an individual other than the conservator that is in effect on the date the residence with the person is established. IT IS ORDERED that notice of this information shall be provided to the other conservator of the children as soon as practicable, but not later than the thirtieth day after the date the conservator establishes residence with the person who is the subject of the final protective order. WARNING: A CONSERVATOR COMMITS AN OFFENSE PUNISHABLE AS A CLASS C MISDEMEANOR IF THE CONSERVATOR FAILS TO PROVIDE THIS NOTICE;
- 4) the duty to inform the other conservator of the children if the conservator resides with, or allows unsupervised access to a child by, a person who is the subject of a final protective order sought by the conservator after the

expiration of the sixty-day period following the date the final protective order is issued. IT IS ORDERED that notice of this information shall be provided to the other conservator of the children as soon as practicable, but not later than the ninetieth day after the date the final protective order was issued. WARNING: A CONSERVATOR COMMITS AN OFFENSE PUNISHABLE AS A CLASS C MISDEMEANOR IF THE CONSERVATOR FAILS TO PROVIDE THIS NOTICE; and

- 5) the duty to inform the other conservator of the children if the conservator is the subject of a final protective order issued after the date of the order establishing conservatorship. IT IS ORDERED that notice of this information shall be provided to the other conservator of the children as soon as practicable, but not later than the thirtieth day after the date the final protective order was issued. WARNING: A CONSERVATOR COMMITS AN OFFENSE PUNISHABLE AS A CLASS C MISDEMEANOR IF THE CONSERVATOR FAILS TO PROVIDE THIS NOTICE.

#### **7.5. Duties at All Times for Dmitry Nikolenko**

IT IS ORDERED that, at all times, Dmitry Nikolenko, as a parent possessory conservator, shall have the following duties:

- 1) the duty to inform the other conservator of the children in a timely manner of significant information concerning the health, education, and welfare of the children;

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- 2) the duty to inform the other conservator of the children if the conservator resides with for at least thirty days, marries, or intends to marry a person who the conservator knows is registered as a sex offender under chapter 62 of the Texas Code of Criminal Procedure or is currently charged with an offense for which on conviction the person would be required to register under that chapter. IT IS ORDERED that notice of this information shall be provided to the other conservator of the children as soon as practicable, but not later than the fortieth day after the date the conservator of the children begins to reside with the person or on the tenth day after the date the marriage occurs, as appropriate. IT IS ORDERED that the notice must include a description of the offense that is the basis of the person's requirement to register as a sex offender or of the offense with which the person is charged. **WARNING: A CONSERVATOR COMMITS AN OFFENSE PUNISHABLE AS A CLASS C MISDEMEANOR IF THE CONSERVATOR FAILS TO PROVIDE THIS NOTICE;**
- 3) the duty to inform the other conservator of the children if the conservator establishes a residence with a person who the conservator knows is the subject of a final protective order sought by an individual other than the conservator that is in effect on the date the residence with the person is established. IT IS ORDERED that notice of this information shall be provided to the other conservator of the children as soon as practicable, but not later than the thirtieth day after the date the

conservator establishes residence with the person who is the subject of the final protective order. **WARNING: A CONSERVATOR COMMITS AN OFFENSE PUNISHABLE AS A CLASS C MISDEMEANOR IF THE CONSERVATOR FAILS TO PROVIDE THIS NOTICE;**

- 4) the duty to inform the other conservator of the children if the conservator resides with, or allows unsupervised access to a child by, a person who is the subject of a final protective order sought by the conservator after the expiration of the sixty-day period following the date the final protective order is issued. **IT IS ORDERED that notice of this information shall be provided to the other conservator of the children as soon as practicable, but not later than the ninetieth day after the date the final protective order was issued. WARNING: A CONSERVATOR COMMITS AN OFFENSE PUNISHABLE AS A CLASS C MISDEMEANOR IF THE CONSERVATOR FAILS TO PROVIDE THIS NOTICE;** and
- 5) the duty to inform the other conservator of the children if the conservator is the subject of a final protective order issued after the date of the order establishing conservatorship. **IT IS ORDERED that notice of this information shall be provided to the other conservator of the children as soon as practicable, but not later than the thirtieth day after the date the final protective order was issued. WARNING: A CONSERVATOR COMMITS AN OFFENSE PUNISHABLE AS A CLASS C**

MISDEMEANOR IF THE CONSERVATOR FAILS TO PROVIDE THIS NOTICE.

**7.6. Rights and Duties During Periods of Possession for Luiza Nikolenko**

IT IS ORDERED that, during her periods of possession, Luiza Nikolenko, as a parent sole managing conservator, shall have the following rights and duties:

- 1) the duty of care, control, protection, and reasonable discipline of the children;
- 2) the duty to support the children, including providing the children with clothing, food, shelter, and medical and dental care not involving an invasive procedure;
- 3) the right to consent for the children to medical and dental care not involving an invasive procedure; and
- 4) the right to direct the moral and religious training of the children.

**7.7. Rights and Duties During Periods of Possession for Dmitry Nikolenko**

IT IS ORDERED that, during his periods of possession, Dmitry Nikolenko, as a parent possessory conservator, shall have the following rights and duties:

- 1) the duty of care, control, protection, and reasonable discipline of the children;
- 2) the duty to support the children, including providing the children with clothing, food, shelter, and medical and dental care not involving an invasive procedure;

- 3) the right to consent for the children to medical and dental care not involving an invasive procedure; and
- 4) the right to direct the moral and religious training of the children.

**7.8. Exclusive Rights and Duty for Luiza Nikolenko**

IT IS ORDERED that Luiza Nikolenko, as parent sole managing conservator, shall have the following exclusive rights and duty:

- 1) the right to designate the primary residence of the children;
- 2) the right to consent to medical, dental, and surgical treatment involving invasive procedures;
- 3) the right to consent to psychiatric and psychological treatment of the children;
- 4) the right to receive and give receipt for periodic payments for the support of the children and to hold or disburse these funds for the benefit of the children;
- 5) the right to represent the children in legal action and to make other decisions of substantial legal significance concerning the children;
- 6) the right to consent to marriage and to enlistment in the armed forces of the United States;
- 7) the right to make decisions concerning the children's education;

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- 8) except as provided by section 264.0111 of the Texas Family Code, the right to the services and earnings of the children;
- 9) except when a guardian of the children's estates or a guardian or attorney ad litem has been appointed for the children, the right to act as an agent of the children in relation to the children's estates if the children's action is required by a state, the United States, or a foreign government;
- 10) the right to apply for a passport for the children, renew the children's passport, and maintain possession of the children's passport; and
- 11) the duty to manage the estates of the children to the extent the estates have been created by community property or the joint property of the parents.

**7.9. Habitual Residence and Risk of Internal Abduction**

**7.9.1. Findings**

The Court finds that the United States is the country of habitual residence of S.N. and M.N.

The Court finds that credible evidence has been presented that there is a potential risk of the international abduction of S.N. and M.N. by Dmitry Nikolenko. The Court further finds that:

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- 1) Dmitry Nikolenko has strong familial, emotional, or cultural ties to another country, Russia, with which the Hague Convention on Civil Aspects of International Child Abduction is not in effect with the United States.
- 2) Dmitry Nikolenko lacks strong ties to the United States.
- 3) Dmitry Nikolenko has ties to countries that would present obstacles to the recovery and return of the children if abducted.
- 4) Dmitry Nikolenko has previously threatened to take, entice away, keep, withhold, or conceal the children in violation of Luiza Nikolenko's right of possession of or access to the children.
- 5) Dmitry Nikolenko lacks financial reason to stay in the United States and is able to work outside the United States.
- 6) Dmitry Nikolenko has recently engaged in planning activities that could facilitate the removal of the children from the United States by Dmitry Nikolenko, including: closing bank accounts, liquidating assets, and hiding or destroying documents, obtaining custody orders for the children in Russia without notice to Luiza Nikolenko and obtaining an order for her arrest.
- 7) Dmitry Nikolenko has a history of violating court orders.
- 8) Dmitry Nikolenko has ties to Russia;

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- a. Russia presents obstacles to the recovery and return of a child who is abducted to the country from the United States;
- b. Russia has no legal mechanisms for immediately and effectively enforcing an order regarding the possession of or access to the children issued by Texas;
- c. The Hague Convention on the Civil Aspects of International Child Abduction is not in effect between the United States and Russia.

**7.9.2. Orders for Prevention of International Child Abduction**

Based on the foregoing findings, the Court enters the following orders to prevent the abduction of the children:

- 1) IT IS ORDERED that Dmitry Nikolenko and any person acting on behalf of Dmitry Nikolenko is prohibited from removing S.N. and M.N. from Texas or the United States. IT IS FURTHER ORDERED that Dmitry Nikolenko shall surrender any passport issued in the names of S.N. and M.N., including any passport issued to Dmitry Nikolenko and S.N. and M.N., to Luiza Nikolenko on the date that this order is signed by the Court. IT IS FURTHER ORDERED that Dmitry Nikolenko is prohibited from applying on behalf of S.N. and M.N. for a new or replacement passport or international travel visa.

- 2) IT IS ORDERED that Dmitry Nikolenko shall provide to the United States Department of State's Office of Children's Issues and Russia's consulate or embassy written notice of the court-ordered passport and travel restrictions for S.N. and M.N. and a properly authenticated copy of this order[.] ~~and Dmitry Nikolenko's agreement thereto.~~ [WA] IT IS FURTHER ORDERED that Dmitry Nikolenko shall provide to the Court proof of receipt of this written notice by the United States Department of State's Office of Children's Issues and Russia's consulate or embassy.
- 3) IT IS ORDERED that Dmitry Nikolenko shall execute a bond or security in the amount of (\$10,000.00) to offset the cost of recovering S.N. and M.N. if S.N. and M.N. are abducted by Dmitry Nikolenko to a foreign country.
- 4) IT IS ORDERED that LUIZA NIKOLENKO is appointed as the sole managing conservator of the children.
- 5) IT IS ORDERED that LUIZA NIKOLENKO is the sole person authorized to apply for a passport for the children, S.N. and M.N.
- 6) IT IS ORDERED that Dmitry Nikolenko's visitation with the children shall be under the supervision of Guardians of Hope on the days and times allocated by any designated licensed supervisor with Guardians of Hope.

### **7.9.3. Permanent Injunction**

The Court finds that, because of the conduct of Dmitry Nikolenko, a permanent injunction against him should be granted as appropriate relief because there is no adequate remedy at law.

The permanent injunction granted below shall be effective immediately and shall be binding on Dmitry Nikolenko; on his agents, servants, employees, and attorneys; and on those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise.

IT IS ORDERED that Dmitry Nikolenko is permanently enjoined from:

Disrupting or removing S.N. and M.N. from the school or child care facility in which S.N. and M.N. are enrolled.

Approaching S.N. and M.N. at any location other than a site designated for supervised visitation.

### **7.10. Possession and Access**

IT IS ORDERED that Dmitry Nikolenko's shall have the right to possession of the children as follows:

- 1) All periods of possession shall be under the supervision of the licensed supervising agency known as Guardians of Hope;
- 2) Dmitry Nikolenko shall have the right to possession on the Saturday and Sunday immediately following the 1st, 3rd, at 5th Friday of

each month, beginning at 10:00 a.m. and ending at 4:00 p.m. on Saturday and beginning at 10:00 a.m. and ending at 4:00 p.m. on Sunday, provided that Dmitry Nikolenko has given Luiza Nikolenko fourteen (14) days advance written notice of his intent to exercise each period of possession. If Dmitry Nikolenko fails to give Luiza Nikolenko fourteen (14) days advance written notice of a period of possession, that period of possession is waived.

- 3) Dmitry Nikolenko shall pay 100% of all costs of supervised visitation.

IT IS ORDERED that LUIZA NIKOLENKO shall have a superior right of possession of the children at all other times.

#### **7.11. Duration**

The periods of possession ordered above apply to each child the subject of this suit while that child is under the age of eighteen years and not otherwise emancipated.

#### **7.12. Noninterference with Possession**

Except as expressly provided herein, IT IS ORDERED that neither conservator shall take possession of the children during the other conservator's period of possession unless there is a prior written agreement signed by both conservators or in case of an emergency.

#### **7.13. Termination of Orders**

The provisions of this decree relating to conservatorship, possession, or access terminate on the

remarriage of Luiza Nikolenko to Dmitry Nikolenko unless a nonparent or agency has been appointed conservator of the children under chapter 153 of the Texas Family Code.

## **8. Child Support**

### **8.1. Judgment for Retroactive Child Support**

IT IS ORDERED that Dmitry Nikolenko be ordered to pay retroactive child support in the amount of twenty-three thousand five hundred twelve dollars and 50/100 (\$23,512.50).

IT IS ORDERED that LUIZA NIKOLENKO is awarded a cumulative judgment for retroactive child support against DMITRY NIKOLENKO in the amount of twenty-three thousand five hundred twelve dollars and 50/100 (\$23,512.50), such judgment bearing interest at five percent (5%) simple interest per year from the date this order is signed, for which let execution issue. This judgment is cumulative.

To satisfy his retroactive child support obligation in the amount of twenty-three thousand five hundred twelve dollars and 50/100 (\$23,512.50), IT IS ORDERED that Dmitry Nikolenko is obligated to pay and shall pay to Luiza Nikolenko retroactive child support in the amount of two hundred fifty dollars and 00/100 (\$250.00) per month, with the first payment being due and payable on January 1, 2020, and a like payment being due and payable on the 1st day of each month thereafter until the judgment for retroactive child support has been satisfied in full.

IT IS ORDERED that all retroactive support enumerated above and all current child support amounts shall be payable through a wage withholding order and that the wage withholding order be binding on Respondent's employer and all subsequent employers.

IT IS ORDERED that the withholding from earnings for child support shall be binding on Respondent's present employer and all subsequent employers.

IT IS ORDERED that any employer begin withholding no later than the first pay period following the date on which the Income Withholding Order for Support and Order to Withhold are served on the employer and that the employer be ordered to continue to withhold income as long as Respondent remains in employment and child support are due and payable.

On this date, the Court authorized the issuance of a Income Withholding Order for Support, as set forth herein below. The amounts to be withheld from DMITRY NIKOLENKO's disposable earnings are stated in the Income Withholding for Support, which are wholly incorporated by reference into this Order.

IT IS ORDERED that all support not paid through wage withholding order shall be paid through the State Disbursement Unit as set forth herein below.

### **8.2. Judgment for Child and Medical Support Arrearages**

The Court finds that Temporary Orders were signed by this Court on June 6, 2018 and Dmitry Nikolenko was ordered to pay child support in the amount of two

thousand one hundred thirty-seven dollars and 50/100 (\$2,137.50) beginning on June 15, 2018 and continuing with a like payment of \$2,137.50 on the 15th day of each month thereafter until further court order. The Court further finds that Dmitry Nikolenko has failed to pay any child support payments as ordered and therefore should be found in arrears in the amount of thirty-four thousand two hundred dollars and No/100s (\$34,200.00) from June 15, 2018 through October 15, 2019.

The Court further finds that Dmitry Nikolenko was also ordered to pay medical support pursuant to the June 6, 2018, Temporary Orders. The Court further finds that Dmitry Nikolenko has failed to pay medical support from June 15, 2018, through October 15, 2019, as ordered, and therefore, should be found in arrears in the amount of four thousand seven hundred twenty dollars and No/100s (\$4,720.00).

IT IS THEREFORE ORDERED that LUIZA NIKOLENKO is awarded a cumulative judgment for child support arrearages, including accrued interest, against DMITRY NIKOLENKO in the amount of thirty-four thousand two hundred dollars and 00/100 (\$34,200.00), such judgment bearing interest at five percent (5%) simple interest per year from the date this order is signed, for which let execution issue. This judgment is cumulative and includes the unpaid balance owed under the prior orders of this Court in Cause No. 18-DCV-251118, styled In the Matter of the Marriage of Luiza Nikolenko and Dmitry Nikolenko

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and In the Interest of S.N. and M.N., Children, in the 328th District Court of Fort Bend County, Texas.

IT IS ORDERED that Dmitry Nikolenko is obligated to pay and shall pay to Luiza Nikolenko child support arrearages in the amount of five hundred dollars and 00/100 (\$500.00) per month, with the first payment in the amount of \$500.00 being due and payable on January 1, 2020, and a like payment being due and payable on the 15th day of each month thereafter until the judgment for retroactive child support has been satisfied.

IT IS FURTHER ORDERED that LUIZA NIKOLENKO is awarded a cumulative judgment for medical support arrearages, including accrued interest, against DMITRY NIKOLENKO in the amount of four thousand seven hundred twenty dollars and 00/100 (\$4,720.00), such judgment bearing interest at five percent (5%) simple interest per year from the date this order is signed, for which let execution issue. This judgment is cumulative and includes the unpaid balance owed under the prior orders of this Court in Cause No. 18-DCV-251118, styled In the Matter of the Marriage of Luiza Nikolenko and Dmitry Nikolenko and In the Interest of S.N. and M.N., Children, in the 328th District Court of Fort Bend County, Texas.

IT IS THREDORE ORDERED that Dmitry Nikolenko is obligated to pay and shall pay to Luiza Nikolenko medical support arrearages in the amount of one hundred dollars and 00/100 (\$100.00) per month, with the

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first payment being due and payable on January 15, 2020, and a like payment being due and payable on the 15th day of each month thereafter until the judgment for retroactive child support has been satisfied.

IT IS FURTHER ORDERED that all arrearages enumerated above and all current child support amounts shall be payable through a wage withholding order and that the wage withholding order be binding on Respondent's employer and all subsequent employers.

IT IS FURTHER [WA] ORDERED that the withholding from earnings for child support shall be binding on Respondent's present employer and all subsequent employers.

IT IS FURTHER [WA] ORDERED that any employer begin withholding no later than the first pay period following the date on which the Income Withholding Order for Support and Order to Withhold are served on the employer and that the employer be ordered to continue to withhold income as long as Respondent remains in employment and child support are due and payable.

On this date, the Court authorized the issuance of an Income Withholding Order for Support, as set forth herein below. The amounts to be withheld from DMITRY NIKOLENKO's disposable earnings are stated in the Income Withholding for Support, which are wholly incorporated by reference into this Order.

IT IS ORDERED that all support not paid through wage withholding order shall be paid through the State Disbursement Unit as set forth herein below.

**8.3. Child Support**

IT IS ORDERED that Dmitry Nikolenko is obligated to pay and shall pay to Luiza Nikolenko child support in the amount of two thousand three hundred dollars and no/100 (\$2300.00) per month in two equal installments per month in the amount of one thousand one hundred fifty dollars and no/100 (\$1,150.00), with the first such payment being due and payable on January 1, 2020, and with the second payment being due and payable on January 15, 2020, and with like payments being due and payable on the first and fifteenth day of each month thereafter until the first month following the date of the earliest occurrence of one of the events specified below:

- 1) any child reaches the age of eighteen years or graduates from high school, whichever occurs later, subject to the provisions for support beyond the age of eighteen years set out below;
- 2) any child marries;
- 3) any child dies;
- 4) any child enlists in the armed forces of the United States and begins active service as defined by section 101 of title 10 of the United States Code; or
- 5) any child's disabilities are otherwise removed for general purposes.

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Thereafter, Dmitry Nikolenko is ORDERED to pay to Luiza Nikolenko child support of \$1,840.00 per month in two equal installments per month in the amount of nine hundred twenty dollars and no/100 (\$920.00), due and payable on the first and fifteenth days of the first month immediately following the date of the earliest occurrence of one of the events specified above for that child and a like sum of nine hundred twenty dollars and no/100 (\$920.00) due and payable on the first and fifteenth day of each month thereafter until the next occurrence of one of the events specified above for the other child for whom Dmitry Nikolenko remained obligated to pay support under this plan.

If the child is eighteen years of age and has not graduated from high school and Dmitry Nikolenko's obligation to support the child has not already terminated, IT IS REQUESTED that Dmitry Nikolenko's obligation to pay child support to Luiza Nikolenko shall not terminate but shall continue for as long as the child is enrolled –

- 1) under chapter 25 of the Texas Education Code in an accredited secondary school in a program leading toward a high school diploma or under section 130.008 of the Education Code in courses for joint high school and junior college credit and is complying with the minimum attendance requirements of subchapter C of chapter 25 of the Education Code or
- 2) on a full-time basis in a private secondary school in a program leading toward a high school diploma and is complying with the

minimum attendance requirements imposed by that school.

#### **8.4. Statement on Guidelines**

In accordance with Texas Family Code section 154.130, the Court makes the following findings and conclusions regarding the child support plan made in open court in this case on November 13, 2019:

- 1) The amount of child support requested by the Court is in accordance with the percentage guidelines.
- 2) The net resources of Dmitry Nikolenko per month are \$15,904.16.
- 3) The net resources of Luiza Nikolenko per month are \$0.00.
- 4) The percentage applied to the first \$9,200 of Dmitry Nikolenko's net resources for child support is 25% percent.

#### **8.5. Withholding from Earnings**

IT IS ORDERED that any employer of Dmitry Nikolenko shall withhold the child support payments requested in this parenting plan from the disposable earnings of Dmitry Nikolenko for the support of S.N. and M.N.

IT IS FURTHER ORDERED that all amounts withheld from the disposable earnings of Dmitry Nikolenko by the employer and paid in accordance with the request to that employer shall constitute a credit against the child support obligation. Payment of the full amount of child support requested paid by this

parenting plan through the means of withholding from earnings shall discharge the child support obligation. If the amount withheld from earnings and credited against the child support obligation is less than 100 percent of the amount requested to be paid by this parenting plan, the balance due remains an obligation of Dmitry Nikolenko, and it is hereby REQUESTED that Dmitry Nikolenko pay the balance due directly as specified below.

#### **8.6. Payment**

IT IS ORDERED that all payments shall be made through the state disbursement unit at Texas Child Support Disbursement Unit, P.O. Box 659791, San Antonio, Texas 78265-9791, and thereafter promptly remitted to Luiza Nikolenko for the support of the children. IT IS REQUESTED that all payments shall be made payable to the Office of the Attorney General and include the ten-digit Office of the Attorney General case number (if available), the cause number of this suit, Dmitry Nikolenko's name as the name of the noncustodial parent (NCP), and Luiza Nikolenko's name as the name of the custodial parent (CP). Payment options are found on the Office of the Attorney General's website at <https://www.texasattorneygeneral.gov/cs/payment-options-and-types>.

IT IS ORDERED that each party shall pay, when due, all fees charged to that party by the state disbursement unit and any other agency statutorily authorized to charge a fee.

### **8.7. Change of Employment**

IT IS FURTHER ORDERED that Dmitry Nikolenko shall notify this Court and Luiza Nikolenko by U.S. certified mail, return receipt requested, of any change of address and of any termination of employment. This notice shall be given no later than seven days after the change of address or the termination of employment. This notice or a subsequent notice shall also provide the current address of Dmitry Nikolenko and the name and address of his current employer, whenever that information becomes available.

### **8.8. Clerk's Duties**

IT IS ORDERED that, on the request of a prosecuting attorney, the title IV-D agency, the friend of the Court, a domestic relations office, Luiza Nikolenko, Dmitry Nikolenko, or an attorney representing Luiza Nikolenko or Dmitry Nikolenko, the clerk of this Court shall cause a certified copy of the Income Withholding for Support to be delivered to any employer.

### **9. Medical and Dental Support**

IT IS ORDERED that Luiza Nikolenko and Dmitry Nikolenko shall each provide medical, vision and dental support for each child as set out in this plan as additional child support for as long as the Court may order Luiza Nikolenko and Dmitry Nikolenko to provide support for the child under sections 154.001 and 154.002 of the Texas Family Code. Beginning on the day Luiza Nikolenko and Dmitry Nikolenko's actual or potential obligation to support a child under sections 154.001 and 154.002 of the Family Code terminates, IT IS

ORDERED that Luiza Nikolenko and Dmitry Nikolenko are discharged from the obligations set forth in this medical support plan and dental support plan with respect to that child, except for any failure by a parent to fully comply with those obligations before that date. IT IS FURTHER ORDERED that the additional child support payments for costs of health and dental insurance requested below are payable through the state disbursement unit or as directed below and subject to the provisions for withholding from earnings provided above for other child support payments.

#### **9.1. Definitions**

“Health Insurance” means insurance coverage that provides basic health-care services, including usual physician services, office visits, hospitalization, and laboratory, X-ray, and emergency services, that may be provided through a health maintenance organization or other private or public organization, other than medical assistance under chapter 32 of the Texas Human Resources Code.

“Reasonable cost” means the total cost of health insurance coverage for all children for which Dmitry Nikolenko is responsible under a medical support plan that does not exceed 9 percent of Dmitry Nikolenko’s annual resources, as described by section 154.062(b) of the Texas Family Code.

“Dental insurance” means insurance coverage that provides preventive dental care and other dental services, including usual dentist services, office visits, examinations, X-rays, and emergency services, that may

be provided through a single service health maintenance organization or other private or public organization.

“Health-care expenses” include, without limitation, medical, surgical, prescription drug, mental health-care services, dental, eye care, ophthalmological, and orthodontic charges but do not include expenses for travel to and from the provider or for nonprescription medication.

“Health-care expenses that are not reimbursed by insurance” (“unreimbursed expenses”) include related co-payments and deductibles.

“Furnish” means –

- 1) to deliver the document to the recipient by first-class mail or by certified mail, return receipt requested, to the recipient’s last known mailing or residence address or
- 2) to deliver the document to the recipient at the recipient’s electronic mail address as follows:

Luiza Nikolenko: [luisa.nikolenko@gmail.com](mailto:luisa.nikolenko@gmail.com)  
Dmitry Nikolenko: [dnikolenko76@gmail.com](mailto:dnikolenko76@gmail.com)

and in the event of any change in either recipient’s electronic mail address, that recipient is ORDERED to notify the other recipient of such change in writing within twenty-four hours after the change.

**9.2. Findings on Availability of Health Insurance**

Having considered the cost, accessibility, and quality of health insurance coverage available to the parties, the Court finds:

Dmitry Nikolenko has health insurance through his employer and is able to carry the children on his policy at a reasonable monthly cost, and should be ordered to carry the children within 30 days from any order issued by the court.

IT IS FURTHER FOUND that the following plans regarding health-care coverage are in the best interest of the children.

**9.3. Provision of Health-Care Coverage**

Findings on Availability of Dental Insurance – Having considered the cost, accessibility, and quality of dental insurance coverage available to the parties, the Court finds:

Dmitry Nikolenko has dental insurance through his employer and is able to carry the children on his policy at a reasonable monthly cost, and should be ordered to carry the children within 30 days from any order issued by the court.

**9.4. Allocation of Unreimbursed Expenses**

Pursuant to section 154.183(c) of the Texas Family Code, the reasonable and necessary health-care expenses of the children that are not reimbursed by health insurance or dental insurance or are not

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otherwise covered by the amount of cash medical support ordered above are allocated as follows: Luiza Nikolenko is ORDERED to pay 50 percent and Dmitry Nikolenko is ORDERED to pay 50 percent of the unreimbursed health-care expenses that exceed the amount of cash medical support paid by Dmitry Nikolenko.

The conservator who incurs a health-care expense on behalf of a child is ORDERED to furnish to the other conservator all forms, receipts, bills, statements, and explanations of benefits reflecting the uninsured portion of the health-care expenses within thirty days after the incurring conservator receives them. If the incurring conservator furnishes to the nonincurring conservator the forms, receipts, bills, statements, and explanations of benefits reflecting the unreimbursed portion of the health-care expenses within thirty days after the incurring conservator receives them, the nonincurring conservator is ORDERED to pay the non-incurring conservator's percentage of the unreimbursed portion of the health-care expenses either by paying the health-care provider directly or by reimbursing the incurring conservator for any advance payment exceeding the incurring conservator's percentage of the unreimbursed portion of the health-care expenses within thirty days after the nonincurring conservator receives the forms, receipts, bills, statements, and/or explanations of benefits. If the incurring conservator fails to furnish to the nonincurring conservator the forms, receipts, bills, statements, and explanations of benefits reflecting the unreimbursed portion of the

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health-care expenses within thirty days after the incurring conservator receives them, the nonincurring conservator is ORDERED to pay the nonincurring conservator's percentage of the unreimbursed portion of the health-care expenses either by paying the health-care provider directly or by reimbursing the incurring conservator's percentage of the unreimbursed portion of the health-care expenses within 120 days after the nonincurring conservator receives the forms, receipts, bills, statements, and/or explanations of benefits.

### **9.5. WARNING**

A PARENT REQUESTED TO PROVIDE HEALTH INSURANCE OR DENTAL INSURANCE OR TO PAY THE OTHER PARENT ADDITIONAL CHILD SUPPORT FOR THE COST OF HEALTH INSURANCE OR DENTAL INSURANCE WHO FAILS TO DO SO IS LIABLE FOR NECESSARY MEDICAL EXPENSES OF THE CHILDREN, WITHOUT REGARD TO WHETHER THE EXPENSES WOULD HAVE BEEN PAID IF HEALTH INSURANCE OR DENTAL INSURANCE HAD BEEN PROVIDED, AND FOR THE COST OF HEALTH INSURANCE PREMIUMS, DENTAL INSURANCE PREMIUMS, OR CONTRIBUTIONS, IF ANY, PAID ON BEHALF OF THE CHILDREN.

## **10. Miscellaneous Child Support Provisions**

### **10.1. No Credit for Informal Payments**

IT IS ORDERED that the child support as prescribed in this parenting plan shall be exclusively discharged

in the manner requested and that any direct payments made by Dmitry Nikolenko to Luiza Nikolenko or any expenditures incurred by Dmitry Nikolenko during Dmitry Nikolenko's periods of possession of or access to the children, as prescribed in this parenting plan, for food, clothing, gifts, travel, shelter, or entertainment are deemed in addition to and not in lieu of the support requested in this parenting plan.

**10.2. Support as Obligation of Estate**

IT IS ORDERED that the provisions for child support in this parenting plan shall be an obligation of the estate of Dmitry Nikolenko and shall not terminate on the death of Dmitry Nikolenko. IT IS ORDERED that payment received by Luiza Nikolenko for the benefit of the children due to the death of Dmitry Nikolenko, including payments from the Social Security Administration, Department of Veterans Affairs or other governmental agency or life insurance proceeds, annuity payments, trust distributions, or retirement survivor benefits, shall be a credit against this obligation. Any remaining balance of the child support is an obligation of Dmitry Nikolenko's estate.

**10.3. Termination of Orders on Remarriage of Parties but Not on Death of Obligee**

The provisions of this parenting plan relating to current child support terminate on the remarriage of Luiza Nikolenko to Dmitry Nikolenko unless a non parent or agency has been appointed conservator of the children under chapter 153 of the Texas Family Code. An obligation to pay child support under this

parenting plan does not terminate on the death of Luiza Nikolenko but continues as an obligation to S.N. and M.N.

### **11. Judgment for Interim Support**

The Court finds that Temporary Orders were signed by this Court on June 6, 2018, and Dmitry Nikolenko was ordered to pay spousal support in the amount of \$2,000.00 per month beginning on July 1, 2018 and continuing with a like payment of \$2,000.00 on the 1st of each month thereafter until further court order.

The Court further finds that as of July 1, 2018, Dmitry Nikolenko has failed to pay any spousal support as ordered by this Court and therefore should be found in arrears and ordered to pay the amount of \$30,000.00 which is the amount owed in spousal support arrearages from July 1, 2018 through October 1, 2019.

IT IS THEREFORE ORDERED that LUIZA NIKOLENKO is awarded a cumulative judgment against DMITRY NIKOLENKO for spousal support arrearages in the amount of thirty thousand dollars and 00/100 (\$30,000.00) such judgment bearing interest at five percent (5%) interest per year from the date this order is signed, for which Jet execution issue. LUIZA NIKOLENKO may enforce this judgment in her own name by any means available for the enforcement of a judgment for debt.

IT IS FURTHER ORDERED that DMITRY NIKOLENKO shall pay LUIZA NIKOLENKO the sum of thirty thousand dollars (\$30,000.00) on or before 9:00

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a.m. on the date of entry of this order by cash, cashier's check or money order.

### **12. Information Regarding Parties**

The information required for each party by section 105.006(a) of the Texas Family Code is as follows:

Name:	Luiza Nikolenko
Social Security number:	XXX-XX-X319
Driver's license number:	XXXXX779
Issuing state:	Texas
Current residence address:	10406 Radcliff Lake Dr., Katy, Texas 77494
Mailing address:	10406 Radcliff Lake Dr., Katy, Texas 77494
Home telephone number:	(832) 580-0009
Name of employer:	Unemployed
Address of employment:	NA
Work telephone number:	NA
Name:	Dmitry Nikolenko
Social Security number:	XXX-XX-X564
Driver's license number:	NA
Current residence address:	Majkop, Chkalor St. 80, Apt 47, Russia
Mailing address:	Majkop, Chkalor St. 80, Apt 47, Russia
Home telephone number:	(____) ____-_____
Name of employer:	Schlumberger Technology Corporation
Address of employment:	300 Schlumberger Drive, Sugar Land, Texas 77478
Work telephone number:	(281) 285-8500

**12.1. Required Notices**

EACH PERSON WHO IS A PARTY TO THIS ORDER IS ORDERED TO NOTIFY EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY OF ANY CHANGE IN THE PARTY'S CURRENT RESIDENCE ADDRESS, MAILING ADDRESS, HOME TELEPHONE NUMBER, NAME OF EMPLOYER, ADDRESS OF EMPLOYMENT, DRIVER'S LICENSE NUMBER, AND WORK TELEPHONE NUMBER. THE PARTY IS ORDERED TO GIVE NOTICE OF AN INTENDED CHANGE IN ANY OF THE REQUIRED INFORMATION TO EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY ON OR BEFORE THE 60TH DAY BEFORE THE INTENDED CHANGE. IF THE PARTY DOES NOT KNOW OR COULD NOT HAVE KNOWN OF THE CHANGE IN SUFFICIENT TIME TO PROVIDE 60-DAY NOTICE, THE PARTY IS ORDERED TO GIVE NOTICE OF THE CHANGE ON OR BEFORE THE FIFTH DAY AFTER THE DATE THAT THE PARTY KNOWS OF THE CHANGE.

THE DUTY TO FURNISH THIS INFORMATION TO EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY CONTINUES AS LONG AS ANY PERSON, BY VIRTUE OF THIS ORDER, IS UNDER AN OBLIGATION TO PAY CHILD SUPPORT OR ENTITLED TO POSSESSION OF OR ACCESS TO A CHILD.

FAILURE BY A PARTY TO OBEY THE ORDER OF THIS COURT TO PROVIDE EACH OTHER PARTY,

THE COURT, AND THE STATE CASE REGISTRY WITH THE CHANGE IN THE REQUIRED INFORMATION MAY RESULT IN FURTHER LITIGATION TO ENFORCE THE ORDER, INCLUDING CONTEMPT OF COURT. A FINDING OF CONTEMPT MAY BE PUNISHED BY CONFINEMENT IN JAIL FOR UP TO SIX MONTHS, A FINE OF UP TO \$500 FOR EACH VIOLATION, AND A MONEY JUDGMENT FOR PAYMENT OF ATTORNEY'S FEES AND COURT COSTS.

Notice shall be given to the other party by delivering a copy of the notice to the party by registered or certified mail, return receipt requested. Notice shall be given to the Court by delivering a copy of the notice either in person to the clerk of this Court or by registered or certified mail addressed to the clerk at 201 Caroline St., Second Floor, Houston, Texas 77002. Notice shall be given to the state case registry by mailing a copy of the notice to State Case Registry, Contract Services Section, MC046S, P.O. Box 12017, Austin, Texas 78711-2017.

NOTICE TO ANY PEACE OFFICER OF THE STATE OF TEXAS: YOU MAY USE REASONABLE EFFORTS TO ENFORCE THE TERMS OF CHILD CUSTODY SPECIFIED IN THIS ORDER. A PEACE OFFICER WHO RELIES ON THE TERMS OF A COURT ORDER AND THE OFFICER'S AGENCY ARE ENTITLED TO THE APPLICABLE IMMUNITY AGAINST ANY CLAIM, CIVIL OR OTHERWISE, REGARDING THE OFFICER'S GOOD FAITH ACTS PERFORMED IN THE SCOPE OF THE OFFICER'S

DUTIES IN ENFORCING THE TERMS OF THE ORDER THAT RELATE TO CHILD CUSTODY. ANY PERSON WHO KNOWINGLY PRESENTS FOR ENFORCEMENT AN ORDER THAT IS INVALID OR NO LONGER IN EFFECT COMMITS AN OFFENSE THAT MAY BE PUNISHABLE BY CONFINEMENT IN JAIL FOR AS LONG AS TWO YEARS AND A FINE OF AS MUCH AS \$10,000.

THE COURT MAY MODIFY THIS ORDER THAT PROVIDES FOR THE SUPPORT OF A CHILD, IF:

- 1) THE CIRCUMSTANCES OF THE CHILD OR A PERSON AFFECTED BY THE ORDER HAVE MATERIALLY AND SUBSTANTIALLY CHANGED; OR
- 2) IT HAS BEEN THREE YEARS SINCE THE ORDER WAS RENDERED OR LAST MODIFIED AND THE MONTHLY AMOUNT OF THE CHILD SUPPORT AWARD UNDER THE ORDER DIFFERS BY EITHER 20 PERCENT OR \$100 FROM THE AMOUNT THAT WOULD BE AWARDED IN ACCORDANCE WITH THE CHILD SUPPORT GUIDELINES.

#### **12.2. Warnings to Parties**

WARNINGS TO PARTIES: FAILURE TO OBEY A COURT ORDER FOR CHILD SUPPORT OR FOR POSSESSION OF OR ACCESS TO A CHILD MAY RESULT IN FURTHER LITIGATION TO ENFORCE THE ORDER, INCLUDING CONTEMPT OF COURT. A FINDING OF CONTEMPT MAY BE PUNISHED BY CONFINEMENT IN JAIL FOR UP TO SIX

MONTHS, A FINE OF UP TO \$500 FOR EACH VIOLATION, AND A MONEY JUDGMENT FOR PAYMENT OF ATTORNEY'S FEES AND COURT COSTS.

FAILURE OF A PARTY TO MAKE A CHILD SUPPORT PAYMENT TO THE PLACE AND IN THE MANNER REQUIRED BY A COURT ORDER MAY RESULT IN THE PARTY'S NOT RECEIVING CREDIT FOR MAKING THE PAYMENT.

FAILURE OF A PARTY TO PAY CHILD SUPPORT DOES NOT JUSTIFY DENYING THAT PARTY COURT-ORDERED POSSESSION OF OR ACCESS TO A CHILD. REFUSAL BY A PARTY TO ALLOW POSSESSION OF OR ACCESS TO A CHILD DOES NOT JUSTIFY FAILURE TO PAY COURT-ORDERED CHILD SUPPORT TO THAT PARTY.

DMITRY NIKOLENKOIS VIOLATION OF THIS INTERNATIONAL ABDUCTION ORDER MAY SUBJECT DMITRY NIKOLENKO TO A CIVIL OR A CRIMINAL PENALTY OR TO BOTH CIVIL AND CRIMINAL PENALTIES.

**13. Paternity Adjudication of Child Born During the Marriage**

Luiza Nikolenko is the parent of the following child born during this marriage who is not under any continuing jurisdiction of any court:

Name:	O.G.
Sex:	Female
Birth date:	██████, 2019

The child has a presumed father, DMITRY NI-KOLENKO, but the presumed father and the mother of the child did not live together or engage in sexual intercourse with each other during the probable time of conception.

The alleged father is RICHARD GOMEZ.

Petitioner acknowledges that Respondent, DMITRY NIKOLENKO, is not the biological or presumed father of this child. A Paternity test taken August of 2019, confirmed the father of this child is RICHARD GOMEZ.

RICHARD GOMEZ is adjudicated as the father of the child, O.G.

#### **14. Division of Marital Estate**

The Court finds that the following is a just and right division of the parties' marital estate, having due regard for the rights of each party and the children of the marriage.

##### **14.1. Property to Petitioner**

IT IS ORDERED AND DECREED that Petitioner, Luiza Nikolenko, is awarded the following as her sole and separate property, and Respondent, Dmitry Nikolenko, is divested of all right, title, interest, and claim in and to that property:

- P-1. The following real property, including but not limited to any escrow funds, prepaid insurance, utility deposits, keys, house plans, home security access and code, garage door opener, warranties

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and service contracts, and title and closing documents:

LOT SEVEN (7), INBLOCK TWO (2), OF CINCO RANCH SOUTHWEST SECTION 58, A SUBDIVISION IN FORT BEND COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN PLAT NO. 20110091 OF THE PLAT RECORDS OF FORT BEND COUNTY, TEXAS, more commonly known as, 10406 Radcliff Lake Dr., Katy, Texas 77494.

- P-2. All household furniture, furnishings, fixtures, goods, art objects, collectibles, appliances, and equipment in the possession of Petitioner or subject to her sole control.
- P-3. The funds on deposit, together with accrued but unpaid interest, in the following banks, savings institutions, or other financial institutions:
  - 1) Wells Fargo Checking, Account number XXXX
  - 2) Chase Checking, Account number XXXX1738
  - 3) SECU Savings, Account number 88-00
  - 4) Balance as of 7131119: \$8,316.00
  - 5) SECU Checking, Account number 88-90
  - 6) Balance as of 7/31/19: \$10,866.33
- P-4. One hundred percent (100%) of Respondent's retirement benefits in Schlumberger 401(k) Savings Plan as of October 23, 2019 net of any loans or encumbrances, and any successor Plan thereof,

arising out of Respondent's past or present employment, by Schlumberger Technology Corporation, together with any interest, dividends, gains, or losses on that amount arising since that date, and more particularly defined in a Qualified Domestic Relations Order signed by the Court on or after the date this Final Decree of Divorce is signed. [REDACTED]

[WA]

- P-5. The 2014 Nissan Sentra motor vehicle, vehicle identification number 3N1AB7AP8EL689898 together with all prepaid insurance, keys, and title documents.
- P-6. One hundred percent (100%) of the Fidelity Investment Brokerage Account ending in -604441 and in the name of Dmitry Nikolenko, including stocks, mutual funds, money market accounts, and securities registered in the name of Dmitry Nikolenko, together with all dividends, splits, and other rights and privileges in connection with them.
- P-7. All sums, whether matured or unmatured, accrued or unaccrued, vested or otherwise, together with all increases thereof, the proceeds therefrom, and any other rights related to any employee stock option plan, including but not limited to the following:
  - 1) SLB Stock Options held in Fidelity Investment Account ending in -604441 and

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described as “Grant ID 2008 NO” totaling 1,000 options and expiring on January 21, 2020;

- 2) The balance of contributions to the Employee Stock Purchase Plan – SLB DSPP, held in Fidelity Investment Account ending in -604441 as of September 1, 2019;
- 3) SLB Restricted Stock Units held in Fidelity Investment Account ending in -604441, described as “Grant ID 2010 RSU” totaling 1,500 unvested units.

IT IS ORDERED that, in the event that the options cannot be held in the name of LUIZA NIKOLENKO, DMITRY NIKOLENKO is designated as a constructive trustee of the Restricted Stock Units described as “Grant ID 2010 RSU.” IT IS FURTHER ORDERED that DMITRY NIKOLENKO shall transfer one hundred percent (100%) of the vested shares to LUIZA NIKOLENKO (or, if cash is received in lieu of stock, 100% of the cash value received upon vesting), to a financial account designated by LUIZA NIKOLENKO in writing to counsel for Respondent, and Respondent shall make such transfer within fifteen (15) days of the end of each vesting cycle or on the date on which he receives payment for the cash value for any vested shares. IT IS FURTHER ORDERED that DMITRY NIKOLENKO shall remit each such payment or transfer such shares to LUIZA NIKOLENKO at the end of each vesting cycle or on the date on which he receives payment for the cash value for any vested shares, as Ordered. IT IS FURTHER

ORDERED that DMITRY NIKOLENKO shall furnish to LUIZA NIKOLENKO, within fifteen (15) days of receipt of the payment and/or end of vesting cycle, complete copies of all documentation concerning the vesting of shares and/or payment of cash value for such shares and any deductions from the gross amount received by DMITRY NIKOLENKO, by sending same to LUIZA NIKOLENKO at her last known address, via certified mail, return receipt requested, or by sending same to LUIZA NILOLENKO'S last known email address.

- P-8. All contents of the shipping container held at the Houston ship yard and otherwise in the name of Dmitry Nikolenko.
- P-9. An equalizing payment to be paid by DMITRY NIKOLENKO to LUIZA NIKOLENKO in the amount of one hundred twenty-six thousand two hundred forty-one dollars and 00/100 (\$126,241.00), by wire transfer to a financial account in the name of LUIZA NIKOLENKO to be designated by LUIZA NIKOLENKO and provided to counsel for DMITRY NIKOLENKO, and DMITRY NIKOLENKO is ORDERED to make such payment no later than 30 days of the date this order is signed.

IT IS FURTHER ORDERED that LUIZA NI-KOLENKO is awarded a cumulative judgment against DMITRY NIKOLENKO in the amount of one hundred twenty-six thousand two hundred forty-one dollars and 00/100 (\$126,241.00) such judgment bearing interest at five percent (5%) interest per year from the date this order is signed,

for which let execution issue. LUIZA NI-KOLENKO may enforce this judgment in her own name by any means available for the enforcement of a judgment for debt.

#### **14.2. Property to Respondent**

IT IS ORDERED AND DECREED that Respondent, Dmitry Nikolenko, is awarded the following as his sole and separate property, and Petitioner, Luiza Nikolenko, is divested of all right, title, interest, and claim in and to that property:

- R-1. All household furniture, furnishings, fixtures, goods, art objects, collectibles, appliances, and equipment in the possession of Respondent or subject to his sole control in Russia.
- R-2. The funds on deposit, together with accrued but unpaid interest, in the following banks, savings institutions, or other financial institutions:
  - 1) Cigna HRA, Account number XXXX\_\_\_\_\_  
Balance: \$2,971.00
  - 2) HSBC, Account number 7-050  
Balance: \$68.03
  - 3) HSBC, Account number 7-130  
Balance: \$12,153.00
  - 4) BIBD, Account number 1097  
Balance: \$42.64
  - 5) VTB, Account number 0626  
Balance: \$429.23
  - 6) VTB, Account number 0267  
Balance: \$1,694.70

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- 7) VTB, Account number 0467  
Balance: \$637.90
- 8) VTB, Account number 1303  
Balance: \$1,763.82
- 9) VTB Bank, Account number unknown  
Balance: \$54,000.00

- R-3. The Russian pension plan in the name of Dmitry Nikolenko.
- R-4. Five hundred two thousand six hundred seventy-one thousand dollars and no/100 (\$502,671.00) in funds transferred from the Schlumberger Employee Credit Union accounts ending in 88-00 and 88-90 by Respondent and unaccounted for by Respondent as reconstitution of the community estate.
- R-5. Forty-six thousand seven hundred thirty-three dollars and 38/100 (\$46,733.38) transferred by Respondent from the Schlumberger 401(k) Savings Plan in the name of Respondent and unaccounted for by Respondent as reconstitution of the community estate

**14.3. Debts to Petitioner**

IT IS ORDERED AND DECREED that Petitioner, Luiza Nikolenko, shall pay, as a part of the division of the estate of the parties, and shall indemnify and hold Respondent, Dmitry Nikolenko, and his property harmless from any failure to so discharge, these items:

- P-1. The following debts, charges, liabilities, and obligations:

- 1) Debt owed to Capitol One,  
Account number XXXX7022  
Balance: \$8,341.96;
- 2) Debt owed to Nikolay Matusevich  
Balance: \$11,000.00;
- 3) Debt owed to Louisa Khetagurova  
Balance: \$3,500.00;
- 4) Debt owed to Yulia Starkova  
Balance: \$6,350.00;
- 5) Debt owed to Richard Gomez  
Balance: \$190,177.53;
- 6) Monies for DNA Testing  
Balance: \$499.00;
- 7) Monies borrowed for children's health insurance  
Balance: \$1,397.60; and
- 8) Monies borrowed for dental work for children  
Balance: \$1,350.00.

#### **14.4. Debts to Respondent**

IT IS ORDERED AND DECREED that Respondent, Dmitry Nikolenko, shall pay, as a part of the division of the estate of the parties, and shall indemnify and hold Petitioner, Luiza Nikolenko, and her property harmless from any failure to so discharge, these items:

R-1. The following debts, charges, liabilities, and obligations:

- 1) Debt owed to SECU Visa,  
Account number XXXX88-74  
Balance: \$0;

- 2) Storage Fees for Container  
Balance: \$12,146.64; and
- 3) IRS Debt  
Balance: Unknown

IT IS ORDERED that DMITRY NIKOLENKO shall pay one hundred percent (100%) of the outstanding fees for the storage container by delivering certified funds to the creditor at the last known address of the creditor, by certified mail, return receipt requested, on or before 9:00 a.m. on the tenth (10th) days after this order is signed by the Court.

**15. Notice**

IT IS ORDERED AND DECREED that each party shall send to the other party, within three days of its receipt, a copy of any correspondence from a creditor or taxing authority concerning any potential liability of the other party.

**16. Attorney's Fees**

To effect an equitable division of the estate of the parties and as a part of the division, and for services rendered in connection with conservatorship and support of the children, each party shall be responsible for his or her own attorney's fees, expenses, and costs incurred as a result of legal representation in this case.

## **17. Taxes**

### **17.1. Liability for Federal Income Taxes for Prior Year**

IT IS ORDERED AND DECREED that Dmitry Nikolenko shall be solely responsible for all federal income tax liabilities of the parties allocable to the period from the date of marriage through December 31, 2018, and shall timely pay any taxes, penalties, and interest due thereon and shall indemnify and hold Luiza Nikolenko and Luiza Nikolenko's property harmless therefrom unless such additional tax, penalty, or interest resulted from Luiza Nikolenko's omission of income or claim of erroneous deduction, in which case Luiza Nikolenko shall pay, and hold Dmitry Nikolenko and Dmitry Nikolenko's property harmless from, the additional tax, penalty, and interest allocable to the omitted income or erroneous deduction.

### **17.2. Transfer and Delivery of Property**

Luiza Nikolenko is ORDERED to appear in the law offices of Laura Dale & Associates, P.C., 1800 St. James Place, Ste. 620, Houston, Texas 77056 by 5:00 p.m. on the day of entry of the final decree of divorce, and to execute, have acknowledged, and deliver to Dmitry Nikolenko these instruments:

- 1) Deed of Trust to Secure Assumption.

Dmitry Nikolenko is ORDERED to appear in the law offices of ~~Todd Frankfort, 917 Franklin, Suite 510, Houston, Texas 77002~~ [LDO] [Robert S. Hoffman, 2323 South Shepherd Drive, Suite 1014, Houston, TX 77019]

by 5:00 p.m. on ~~the date of entry of the final decree of divorce~~ [LDO] [02/06/20], and to execute, have acknowledged, and deliver to Luiza Nikolenko these instruments:

- 1) Special Warranty Deed.

**18. Muniment of Title**

This decree shall serve as a muniment of title to transfer ownership of all property awarded to any party in this Final Decree of Divorce.

**19. Service of Writ**

Petitioner and Respondent waive issuance and service of the writ of injunction, by stipulation or as evidenced by the signatures below. IT IS ORDERED that Petitioner and Respondent shall be deemed to be duly served with the writ of injunction.

**20. Court Costs**

IT IS ORDERED AND DECREED that costs of court are to be borne by the party who incurred them.

**21. Discharge from Discovery Retention Requirement**

IT IS ORDERED AND DECREED that the parties and their respective attorneys are discharged from the requirement of keeping and storing the documents produced in this case in accordance with rule 191.4(d) of the Texas Rules of Civil Procedure.

**22. Decree Acknowledgment**

Petitioner, Luiza Nikolenko, and Respondent, Dmitry Nikolenko, each acknowledge that before signing this Final Decree of Divorce they have read this Final Decree of Divorce fully and completely, have had the opportunity to ask any questions regarding the same, and fully understand that the contents of this Final Decree of Divorce constitute a full and complete resolution of this case. Petitioner and Respondent acknowledge that they have voluntarily affixed their signatures to this Final Decree of Divorce, believing this agreement to be a just and right division of the marital debt and assets, and state that they have not signed by virtue of any coercion, any duress, or any agreement other than those specifically set forth in this Final Decree of Divorce.

**23. Waiver of Waiting Period**

IT IS ORDERD that this court finds that there is good cause to waive the thirty-day waiting period before the parties may remarry.

**24. Clarifying Orders**

Without affecting the finality of this Final Decree of Divorce, this Court expressly reserves the right to make orders necessary to clarify and enforce this decree.

**25. Relief Not Granted**

IT IS ORDERED AND DECREED that all relief requested in this case and not expressly granted is denied. This is a final judgment, for which let execution

and all writs and processes necessary to enforce this judgment issue. This judgment finally disposes of all claims and all parties and is appealable.

**26. Date of Judgment**

This divorce judicially PRONOUNCED AND RENDERED in court at 328th Judicial District Court, Fort Bend County, Texas, on October 23, 2019, and further noted on the court's docket sheet on the same date, but signed on January 7, 2020 2019 [WA]

/s/ Walter Armatys  
JUDGE PRESIDING

**FILED**  
**JAN 07 2020**  
**AT 9:14 A.M.**

CLERK DISTRICT COURT, FORT BEND CO., TX

APPROVED AS TO FORM ONLY:

LAURA DALE & ASSOCIATES, P.C.

/s/ Laura D. Dale

LAURA D. DALE

State Bar No.: 24030270

ASHLEY V. TOMLINSON

State Bar No.: 24075170

1800 St James Place, Suite 620

Houston, Texas 77056

Tel: (713) 600-1717

Fax: (713) 600-1718

eserviceldd@dalefamiliaw.com

eserviceavt@dalefamiliaw.com

Attorneys for Luiza Nikolenko

LAW OFFICE OF TODD M. FRANKFORT

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TODD M. FRANKFORT  
State Bar No.: 00790711  
917 Franklin St., Suite  
510 Houston, Texas 77002  
Tel.: (713) 224-1800  
Fax: (713) 2224-1804  
[tmfservice@toddfrankfortlaw.com](mailto:tmfservice@toddfrankfortlaw.com)  
Attorney for Dmitry Nikolenko

LAW OFFICES OF ROBERT S. HOFFMAN, PLLC

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ROBERT S. HOFFMAN  
State Bar No.: 09788350  
WALTER J. SCHOUTEN, JR.  
State Bar No.: 24077168  
2323 South Shephard Dr., Suite 1014  
Houston, Texas 77019  
Tel: (713) 333-8353  
Fax: (713) 333-8359  
[eservice@rhoffman.com](mailto:eservice@rhoffman.com)  
Attorneys for Dmitry Nikolenko

APPROVED AND CONSENTED TO AS TO BOTH  
FORM AND SUBSTANCE:

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LUIZA NIKOLENKO, Petitioner

---

DMITRY NIKOLENKO, Respondent

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**NO. 18-DCV-25118**

IN THE MATTER OF	§	IN THE DISTRICT
THE MARRIAGE OF	§	COURT
LUIZA NIKOLENKO	§	OF FORT BEND
AND	§	COUNTY, TEXAS
DMITRY NIKOLENKO	§	328TH JUDICIAL
AND IN THE INTEREST OF	§	DISTRICT
S.N.	§	
AND M.N.,	§	
CHILDREN	§	

**FINDINGS OF FACT**

(Filed Feb. 13, 2020)

1. Any finding of fact that is a conclusion of law shall be deemed a conclusion of law.
2. Petitioner is Luiza Nikolenko; Respondent is Dmitry Nikolenko.
3. At least sixty days have elapsed since the date the suit was filed.
4. The parties ceased to live together as husband and wife on or about June 12, 2017.
5. The Respondent Dmitry Nikolenko was not present at trial, but appeared through his counsel Todd Frankfort.
6. Dmitry Nikolenko had the ability to attend trial and chose not to do so.
7. The Court considered the record, testimony, evidence and weighed the credibility of the parties.

*Jurisdiction*

8. The Court previously considered Respondent's Special Appearance, Plea to the Jurisdiction, Request to Decline Jurisdiction, and Alternatively, Plea in Abatement.
9. Respondent claimed that a divorce suit had already been filed and granted in Russia.
10. The Court declined Respondent's Special Appearance, Plea to the Jurisdiction, Request to Decline Jurisdiction and Plea in Abatement.
11. The Court subsequently considered Respondent's Motion for Bifurcated Trial which raised the affirmative defense of res judicata.
12. The Court declined the Motion for Bifurcated Trial.
13. The Court previously considered Respondent's Registration of Foreign Judgment.
14. The Court denied registration of the foreign judgment from Russia.
15. The Court has previously declined to extend comity to orders purportedly issued by a Russian Court.
16. The court has previously held that Russia has not exercise jurisdiction to make a child custody determination in substantial conformity with the UCCJEA.

*Conservatorship*

17. Petitioner and Respondent are the parents of the following children: S.N. and M.N.
18. The provisions in the decree relating to the rights and duties of the parties with relation to the children, possession of and access to the children, child support and optimizing the development of a close and continuing relationship between each party and the children constitute the parenting plan established by the Court and are in the best interest of the children.

*Risk of International Abduction*

19. United States is the country of habitual residence of S.N. and M.N.
20. There is credible evidence that there is a potential risk of international abduction of the children by Dmitry Nikolenko.
21. The Court further finds that:
  - a. Dmitry Nikolenko has strong familial, emotional or cultural ties to another country, Russia, with which the Hague Convention is not in effect with the United States.
  - b. Dmitry Nikolenko lacks strong ties with the United States.
  - c. Dmitry Nikolenko has ties to countries that would present obstacles to the recovery and return of the children if abducted.
  - d. Dmitry Nikolenko has previously threatened to take, entice away, keep, withhold or conceal

the children in violation of Luiza Nikolenko's right of possession of or access to the children.

- e. Dmitry Nikolenko lacks financial reason to stay in the United States and is able to work outside the United States.
- f. Dmitry Nikolenko has recently engaged in planning activities that could facilitate the removal of the children from the United States, including: closing bank accounts, liquidating assets, and hiding or destroying documents, obtaining custody orders for the children in Russia without notice to Luiza Nikolenko and obtaining an order for her arrest.
- g. Dmitry Nikolenko has a history of violating court orders.
- h. Dmitry Nikolenko has ties to Russia and Russia presents obstacles to the recovery and return of a child who is abducted to the country from the United States; Russia has no legal mechanism for immediately and effectively enforcing an order issued by Texas regarding the possession of or access to the children; The Hague Convention on the Civil Aspects of International Child Abduction is not in effect between the United States and Russia.

*Financial Support*

- 22. Temporary orders were entered on June 6, 2018 ordered Dmitry Nikolenko to pay child support and medical support, and spousal support.
- 23. Prior to the temporary orders entered in this case, Dmitry Nikolenko was not subject to an

earlier support order for the children, S.N. and M.N.

24. Dmitry Nikolenko has failed to pay support for the children, as ordered in the Temporary Orders entered June 6, 2018.
25. Dmitry has failed to pay spousal support in the amount of \$2,000.00 per month, as ordered in the Temporary Orders entered June 6, 2018.
26. Dmitry Nikolenko is found in arrears for interim spousal support under the temporary orders in the amount of \$30,000.00.
27. Dmitry Nikolenko is found in arrears for child support under the temporary orders in the amount of \$34,200.00.
28. Dmitry Nikolenko is found in arrears for medical support under the temporary orders in the amount of \$4,720.00.

Child Support

29. The amount of current child support ordered is in support with the percentage guidelines.
30. The net resources of Dmitry Nikolenko per month are \$15,904.16.
31. The net resources of Luiza Nikolenko per month are \$0
32. The percentage applied to the first \$9,200.00 of Dmitry Nikolenko's net resources for child support is 25% percent.

33. Dmitry has health insurance available through his employer and is able to carry the children on his policy at a reasonable monthly cost.
34. The orders for child support and medical support are in the best interest of the children.

*Adjudication of Parentage*

35. O.G. is the child of Luiza Nikolenko.
36. O.G. was born during the marriage of Luiza Nikolenko and Dmitry Nikolenko.
37. Dmitry Nikolenko and Luiza Nikolenko did not engage intercourse with each other during the probable time of conception.
38. The alleged father is Richard Gomez.
39. A paternity test taken in August 2019 confirmed the father of the child is Richard Gomez.

**CONCLUSIONS OF LAW**

40. Any conclusion of law that is a finding of fact shall be deemed a finding of fact.

*Jurisdiction*

41. The Court has jurisdiction of this case and of all parties.
42. At the time Petitioner filed her Petition for Divorce, Luiza Nikolenko was a domiciliary of Fort Bend County for preceding 90 days and a resident of Texas for the preceding 6 month period.
43. At the time Petitioner filed her Petition for Divorce, Texas was the home state of the children

and the court has jurisdiction to make a child custody determination.

44. The pleadings of Petitioner are in due form and contain all the allegations, information and prerequisites required by law.

*Dissolution of Marriage*

45. The parties are divorced.
46. The marriage between the parties is dissolved on the ground of insupportability.

*Conservatorship*

47. The following orders are in the best interest of the children:
  - a. Luiza Nikolenko shall be appointed Sole Managing Conservator of the children, S.N. and M.N.
  - b. Luiza Nikolenko shall have the rights at all times set forth in Section 153.073 of the Texas Family Code.
  - c. Dmitry Nikolenko shall have the rights at all times set forth in Section 153.073 of the Texas Family Code.
  - d. Luiza Nikolenko shall have the duties at all times as set forth in Section 153.076 of the Texas Family Code.
  - e. Dmitry Nikolenko shall have the duties at all times as set forth in Section 153.076 of the Texas Family Code.

- f. Luiza Nikolenko shall have the rights and duties during possession as set forth in Section 153.074 of the Texas Family Code.
- g. Dmitry Nikolenko shall have the rights and duties during possession as set forth in Section 153.074 of the Texas Family Code.
- h. Luiza Nikolenko, as parent sole managing conservator, shall have the following exclusive rights and duty:
  - i. the right to designate the primary residence of the children;
  - ii. the right to consent to medical, dental, and surgical treatment involving invasive procedures;
  - iii. the right to consent to psychiatric and psychological treatment of the children;
  - iv. the right to receive and give receipt for periodic payments for the support of the children and to hold or disburse these funds for the benefit of the children;
  - v. the right to represent the children in legal action and to make other decisions of substantial legal significance concerning the children;
  - vi. the right to consent to marriage and to enlistment in the armed forces of the United States;
  - vii. the right to make decisions concerning the children's education;

- viii. except as provided by section 264.0111 of the Texas Family Code, the right to the services and earnings of the children;
- ix. except when a guardian of the children's estates or a guardian or attorney ad litem has been appointed for the children, the right to act as an agent of the children in relation to the children's estates if the children's action is required by a state, the United States, or a foreign government;
- x. the right to apply for a passport for the children, renew the children's passport, and maintain possession of the children's passport; and
- xi. the duty to manage the estates of the children to the extent the estates have been created by community property or the joint property of the parents.

*Risk of International Abduction*

- 48. Dmitry Nikolenko and any person on his behalf are prohibited from removing M.N. and S.N. from the State of Texas or the United States. Dmitry Nikolenko shall surrender any passport issued in the names of S.N. and M.N., including any passport issued to Dmitry Nikolenko and S.N. and M.N., to Luiza Nikolenko on the date this order is signed by the Court. Dmitry Nikolenko is prohibited from applying on behalf of S.N. and M.N. for a new or replacement passport or international travel visa.

49. Dmitry Nikolenko shall provide to the U.S. State Department Office of Children's Issues and Russia's consulate or embassy written notice of the court-ordered passport and travel restrictions for S.N. and M.N. Dmitry Nikolenko shall provide to the Court proof of receipt of this written notice by the United States Department of State Office of Children's Issues and Russia's consulate or embassy.
50. Dmitry Nikolenko shall execute a bond or security in the amount of \$10,000,00 to offset the cost of recovering the children if they are abducted.
51. Luiza Nikolenko is appointed sole managing conservator.
52. Luiza Nikolenko is the sole person authorized to apply for a passport for the children, S.N. and M.N.
53. Dmitry Nikolenko's periods of visitation with the children shall be under the supervision of Guardians of Hope.

*Permanent Injunctions*

54. Because of the conduct of the conduct of Dmitry Nikolenko, a permanent injunction against him should be granted as appropriate relief because there is no adequate remedy at law.
55. Dmitry Nikolenko is permanently enjoined from:
  - i. Disrupting or removing S.N. and M.N. from the school or child care facility in which S.N. and M.N. are enrolled.

- j. Approaching S.N. and M.N. at any location other than a site designated for supervised visitation.

Visitation

56. All periods of possession shall be under the supervision of the licensed supervising agency known as Guardians of Hope;
57. Dmitry Nikolenko shall have the right to possession of the children on Saturday and Sunday immediately following the 1st, 3rd and 5th Friday of each month, beginning at 10 a.m. and ending at 4 p.m. on Saturday and beginning at 10 a.m. and ending at 4 p.m. on Sunday, provided that Dmitry Nikolenko has given Luiza Nikolenko fourteen days advance written notice of his intent to exercise each period of possession. If Dmitry Nikolenko fails to give Luiza Nikolenko fourteen days advance written notice of a period of possession, that period of possession is waived.

Retroactive Child Support

58. Dmitry Nikolenko is ordered to pay retroactive child support in the amount of \$23,512.50 in the amount of \$2,137.50 per month for the months of July 2017 through May 2018.
59. The percentage applied to the first \$8,550.00 of Dmitry Nikolenko's net resources for child support is 25%.
60. His monthly retroactive child support obligation is \$2137.50.

61. The amount of retroactive child support is in accordance with the percentage guidelines.
62. Luiza Nikolenko is awarded a cumulative judgment for retroactive child support against Dmitry Nikolenko in the amount of \$23,512.50, such judgment bearing interest at five percent simple interest per year from the date this order is signed.
63. To satisfy the retroactive child support obligation, Dmitry Nikolenko is obligated to pay Luiza Nikolenko retroactive child support in the amount of \$250.00/month with the first payment being due and payable on January 1, 2020 and a like payment being due and payable on the 1st day of each month thereafter until the judgment for retroactive child support has been satisfied in full.

*Child and Medical Support Arrearages*

64. Luiza Nikolenko is awarded a cumulative judgment for child support arrearages against Dmitry Nikolenko in the amount of \$34,000.00, such judgment bearing interest at 5 percent per year.
65. Dmitry Nikolenko is ordered to pay \$500 per month to Luiza Nikolenko for child support arrearages beginning January 1, 2020 and a like payment being due and payable on the first day of each month there after until the judgment for arrearages has been satisfied.
66. Luiza Nikolenko is awarded a cumulative judgment for medical support arrearages against Dmitry Nikolenko in the amount of \$4,720.00, such judgment bearing interest at 5 percent per year.

67. Dmitry Nikolenko is ordered to pay \$100 per month to Luiza Nikolenko for medical support arrearages beginning January 15, 2020 and a like payment being due and payable on the 15th day of each month thereafter until the judgment for arrearages has been satisfied.

*Current Child Support and Medical Support*

68. Dmitry Nikolenko is ordered to pay Luiza Nikolenko \$2,300.00 per month in child support.
69. Dmitry Nikolenko is ordered to carry the children on his policy within 30 days of the order issued by the court.

*Interim Spousal Support*

70. Luiza Nikolenko is awarded a cumulative judgment against Dmitry Nikolenko for spousal support arrearages in the amount of \$30,000.00, such judgment bearing interest at 5% per year.
71. Dmitry Nikolenko is ordered to pay the sum of \$30,000 on or before 9 a.m. on the date of entry of the Final Decree of Divorce.

*Adjudication of Parentage*

72. O.G. is the child of Luiza Nikolenko;
73. O.G. was born during the marriage of Luiza Nikolenko and Dmitry Nikolenko
74. Dmitry Nikolenko is the presumed father.
75. Richard Gomez is adjudicated as the father of the child, O.G.

*Division of Marital Estate*

76. The following division of the marital estate is a just and right division of the parties' marital estate, having due regard for the rights of each party and the children of the marriage.
77. Luiza Nikolenko is entitled to a disproportionate division of the marital estate for the following reasons:
  - a. Fault in the breakup of the marriage;
  - b. Disparity of earning power of the spouses and their ability to support themselves;
  - c. The spouse to whom conservatorship of the children is granted;
  - d. Education and future employability of the spouses;
  - e. Earning power, business opportunities, capacities and abilities of the spouses;
  - f. Need for future support;
  - g. Nature of the property involved in the division;
  - h. Wasting of community assets;
  - i. The size and nature of the separate estates of the spouses;
  - j. Constructive fraud committed by a spouse.
78. Luiza Nikolenko is awarded the following as her sole and separate property:

P-1. The following real property, including but not limited to any escrow funds, prepaid insurance, utility deposits, keys, house plans, home security access and code, garage door opener, warranties and service contracts, and title and closing documents:

LOT SEVEN (7), INBLOCK TWO (2), OF CINCO RANCH SOUTHWEST SECTION 58, A SUBDIVISION IN FORT BEND COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN PLAT NO. 20110091 OF THE PLAT RECORDS OF FORT BEND COUNTY, TEXAS, more commonly known as, 10406 Radcliff Lake Dr., Katy, Texas 77494.

P-2. All household furniture, furnishings, fixtures, goods, art objects, collectibles, appliances, and equipment in the possession of Petitioner or subject to her sole control.

P-3. The funds on deposit, together with accrued but unpaid interest, in the following banks, savings institutions, or other financial institutions:

- 1) Wells Fargo Checking, Account number XXXX
- 2) Chase Checking, Account number XXXX1738
- 3) SECU Savings, Account number 88-00
- 4) Balance as of 7/31/19: \$8,316.00
- 5) SECU Checking, Account number 88-90

6) Balance as of 7/31/19: \$10,866.33

- P-4. One hundred percent (100%) of Respondent's retirement benefits in Schlumberger 401(k) Savings Plan as of October 23, 2019 net of any loans or encumbrances, and any successor Plan thereof, arising out of Respondent's past or present employment, by Schlumberger Technology Corporation, together with any interest, dividends, gains, or losses on that amount arising since that date, and more particularly defined in a Qualified Domestic Relations Order signed by the Court on or after the date this Final Decree of Divorce is signed. IT IS ORDERED that Petitioner's award shall be transferred proportionally from all subaccounts and plan investment options in which Respondent's benefits are invested as of the date of account segregation. IT IS FURTHER ORDERED that Respondent shall remain solely responsible for the repayment of each loan outstanding against Respondent's benefits in the Plan. IT IS ORDERED that Petitioner shall be responsible for zero percent (0%) and Respondent shall be responsible for one hundred percent (100%) percent of any fees charged by the plan administrator for review of the Qualified Domestic Relations Order.
- P-5. The 2014 Nissan Sentra motor vehicle, vehicle identification number 3N1AB7AP8EL 689898 together with all prepaid insurance, keys, and title documents.

P-6. One hundred percent (100%) of the Fidelity Investment Brokerage Account ending in -604441 and in the name of Dmitry Nikolenko, including stocks, mutual funds, money market accounts, and securities registered in the name of Dmitry Nikolenko, together with all dividends, splits, and other rights and privileges in connection with them.

P-7. All sums, whether matured or unmatured, accrued or unaccrued, vested or otherwise, together with all increases thereof, the proceeds therefrom, and any other rights related to any employee stock option plan, including but not limited to the following:

- 1) SLB Stock Options held in Fidelity Investment Account ending in -604441 and described as "Grant ID 2008 NQ" totaling 1,000 options and expiring on January 21, 2020;
- 2) The balance of contributions to the Employee Stock Purchase Plan – SLB DSPP, held in Fidelity Investment Account ending in -604441 as of September 1, 2019;
- 3) SLB Restricted Stock Units held in Fidelity Investment Account ending in -604441, described as "Grant ID 2010 RSU" totaling 1,500 unvested units.

IT IS ORDERED that, in the event that the options cannot be held in the name of LUIZA NIKOLENKO, DMITRY NIKOLENKO is

designated as a constructive trustee of the Restricted Stock Units described as "Grant ID 2010 RSU." IT IS FURTHER ORDERED that DMITRY NIKOLENKO shall transfer one hundred percent (100%) of the vested shares to LUIZA NIKOLENKO (or, if cash is received in lieu of stock, 100% of the cash value received upon vesting), to a financial account designated by LUIZA NIKOLENKO in writing to counsel for Respondent, and Respondent shall make such transfer within fifteen (15) days of the end of each vesting cycle or on the date on which he receives payment for the cash value for any vested shares. IT IS FURTHER ORDERED that DMITRY NIKOLENKO shall remit each such payment or transfer such shares to LUIZA NIKOLENKO at the end of each vesting cycle or on the date on which he receives payment for the cash value for any vested shares, as Ordered. IT IS FURTHER ORDERED that DMITRY NIKOLENKO shall furnish to LUIZA NIKOLENKO, within fifteen (15) days of receipt of the payment and/or end of vesting cycle, complete copies of all documentation concerning the vesting of shares and/or payment of cash value for such shares and any deductions from the gross amount received by DMITRY NIKOLENKO, by sending same to LUIZA NIKOLENKO at her last known address, via certified mail, return receipt requested, or by sending same to LUIZA NILOLENKO'S last known email address.

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- P-8. All contents of the shipping container held at the Houston ship yard and otherwise in the name of Dmitry Nikolenko.
- P-9. An equalizing payment to be paid by DMITRY NIKOLENKO to LUIZA NIKOLENKO in the amount of one hundred twenty-six thousand two hundred forty-one dollars and 00/100 (\$126,241.00), by wire transfer to a financial account in the name of LUIZA NIKOLENKO to be designated by LUIZA NIKOLENKO and provided to counsel for DMITRY NIKOLENKO, and DMITRY NIKOLENKO is ORDERED to make such payment no later than 30 days of the date this order is signed.

IT IS FURTHER ORDERED that LUIZA NIKOLENKO is awarded a cumulative judgment against DMITRY NIKOLENKO in the amount of one hundred twenty-six thousand two hundred forty-one dollars and 00/100 (\$126,241.00) such judgment bearing interest at five percent (5%) interest per year from the date this order is signed, for which let execution issue. LUIZA NIKOLENKO may enforce this judgment in her own name by any means available for the enforcement of a judgment for debt.

- 79. Dmitry Nikolenko is awarded the following as his sole and separate property:
  - R-1. All household furniture, furnishings, fixtures, goods, art objects, collectibles, appliances, and equipment in the possession of Respondent or subject to his sole control in Russia.

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R-2. The funds on deposit, together with accrued but unpaid interest, in the following banks, savings institutions, or other financial institutions:

- 1) Cigna HRA, Account number XXXX  
Balance: \$2,971.00
- 2) HSBC, Account number 7-050  
Balance: \$68.03
- 3) HSBC, Account number 7-130  
Balance: \$12,153.00
- 4) BIBD, Account number 1097  
Balance: \$42.64
- 5) VTB, Account number 0626  
Balance: \$429.23
- 6) VTB, Account number 0267  
Balance: \$1,694.70
- 7) VTB, Account number 0467  
Balance: \$637.90
- 8) VTB, Account number 1303  
Balance: \$1,763.82
- 9) VTB Bank, Account number unknown  
Balance: \$54,000.00

R-3. The Russian pension plan in the name of Dmitry Nikolenko.

R-4. Five hundred two thousand six hundred seventy-one thousand dollars and no/100 (\$502,671.00) in funds transferred from the Schlumberger Employee Credit Union accounts ending in 88-00 and 88-90 by Respondent

and unaccounted for by Respondent as reconstitution of the community estate.

R-5. Forty-six thousand seven hundred thirty-three dollars and 38/100 (\$46,733.38) transferred by Respondent from the Schlumberger 401(k) Savings Plan in the name of Respondent and unaccounted for by Respondent as reconstitution of the community estate,

80. Luiza Nikolenko shall pay, as part of the division of the estate of the parties, the following items;

P-1. The following debts, charges, liabilities, and obligations:

- 1) Debt owed to Capitol One, Account number XXXX7022  
Balance: \$8,341.96;
- 2) Debt owed to Nikolay Matusevich  
Balance: \$11,000.00;
- 3) Debt owed to Louisa Khetagurova  
Balance: \$3,500.00;
- 4) Debt owed to Yulia Starkova  
Balance: \$6,350.00;
- 5) Debt owed to Richard Gomez  
Balance: \$190,177.53;
- 6) Monies for DNA Testing  
Balance: \$499.00;
- 7) Monies borrowed for children's health insurance  
Balance: \$1,397.60; and

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- 8) Monies borrowed for dental work for children  
Balance; \$1,350.00.
81. Dmitry Nikolenko shall pay, as part of the division of the estate of the parties, the following items:
  - R-1. The following debts, charges, liabilities, and obligations:
    - 1) Debt owed to SECU Visa,  
Account number XXXX88-74  
Balance: \$0;
    - 2) Storage Fees for Container  
Balance: \$12,146.64; and
    - 3) IRS Debt  
Balance: Unknown
- IT IS ORDERED that DMITRY NIKOLENKO shall pay one hundred percent (100%) of the outstanding fees for the storage container by delivering certified funds to the creditor at the last known address of the creditor, by certified mail, return receipt requested, on or before 9:00 a.m. on the tenth (10th) days after this order is signed by the Court.
82. Dmitry Nikolenko shall be solely responsible for all federal income tax liabilities of the parties allocable to the period from the date of the marriage through December 31, 2018, and shall timely pay any taxes, penalties and interest due thereon and shall indemnify and hold Luiza Nikolenko and Luiza Nikolenko's property harmless therefrom unless such additional tax, penalty, or interest

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resulted from Luiza Nikolenko's omission of income or claim of erroneous deduction, in which case Luiza Nikolenko shall pay, and hold Dmitry Nikolenko and Dmitry Nikolenko's property harmless from, the additional tax, penalty, and interest allocable to the omitted income or erroneous deduction.

83. Dmitry Nikolenko disposed of community property in his control at a time when the spouses were fiduciaries and without Luiza Nikolenko's knowledge or consent.
84. Therefore, there is a presumption of constructive fraud by Dmitry Nikolenko.
85. Dmitry Nikolenko has failed to rebut the presumption of constructive fraud.
86. Dmitry Nikolenko has failed to account for community property that was in his control and was transferred out of accounts held in his name.
87. Dmitry Nikolenko's acts of fraud depleted the community estate by the amounts listed in R-4 and R-5 of assets awarded to Dmitry Nikolenko.
88. The estate should be reconstituted in the amounts listed in R-4 and R-5 of the assets awarded to Dmitry Nikolenko.

February 13, 2020

/s/ Walter G. Armatys  
Walter Armatys  
Presiding Judge

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*Translated from Russian*

**COPY to** case No. 2-127/5-2018

**DECISION  
In the Name of the Russian Federation**

March 15, 2018

Maykop

Justice of the Peace of Judicial District No. 5 of Maykop, S. I. Imgrunt, with participation of the representative of the plaintiff N. N. Makeeva, acting on the basis of Power of Attorney No. 78 AB 4451237 dated 13.02.2018,

the representative of the defendant - lawyer S. N. Sheudzhen, who produced certificate No. 547 and order No. 025250,

with support of Secretary of session of court B. V. Tuko,

having considered in the open session of court the civil case initiated due to the claim filed by Dmitry Vladimirovich Nikolenko against Luiza Shukhratovna Nikolenko /maiden name Mirzababaeva/ for dissolution of marriage,

**ESTABLISHED:**

The plaintiff D. V. Nikolenko has filed a claim against L. Sh. Nikolenko, requesting to dissolve the marriage which was registered between them on March 15, 2011 by Civil Registry Office of Mirzo Umrbeksky district of Tashkent, vital record No. 181.

To substantiate his claims, he specified in the claim that he entered into marriage with the defendant on 15.03.2011, as registered by Civil Registry Office of Mirzo Umrbeksky district of Tashkent. They have two minor children of the marriage [REDACTED] born on [REDACTED] and [REDACTED] [REDACTED] and Marital relationship between him and the defendant were terminated due to lack of mutual understanding. They have maintained no common household. Further family relationship with the defendant is deemed impossible. For quite a long time, there has been no mutual understanding, respect. For a long period of time they have had separate budgets, but he has supported the children financially. Moreover, at the beginning of 2017, he revealed the defendant's adultery that lead to his severe emotional distress and hard feelings. During the marriage, he tried to keep the family together, the children were brought up in love and harmony, the children were supported financially, but the defendant's misconduct ruined everything. Immediately after her adultery was revealed, she took the children secretly and left, her whereabouts being unknown. There has been no dispute concerning the division of jointly acquired property.

The plaintiff's representative supported the arguments of the claim in the session of court, and asked to satisfy the claim, and to dissolve the marriage.

The defendant L. Sh. Nikolenko did not appear in the session of court, did not ask to consider the case in her absence, her place of residence is unknown.

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In accordance with Article 119 of the Civil Procedure Code of the Russian Federation, when the place of residence of the defendant is unknown, the court proceeds with consideration of the case as soon as the court has received the information about the last known place of residence of the defendant.

In accordance with Article 50 of the Civil Procedure Code of the Russian Federation, the court appoints a lawyer to act as a representative in case of absence of the defendant's representative, whose place of residence is unknown.

According to Article 50 of the Civil Procedure Code of the Russian Federation, the court involved the lawyer S. N. Sheudzhen into the proceedings, to act as the representative of the defendant L. Sh. Nikolenko, who asked to dismiss the claim, referring to the fact that the defendant's opinion on the claim is unknown, there is no reliable information about her desire to dissolve the marriage.

Having heard the representatives of the parties to the case, having studied the case materials, the court considers the claim to be eligible for satisfaction, due to the following reasons.

As it was established at the session of court, the parties to the case have been married since 15.03.2011, the marriage was registered by Civil Registry Office of Mirzo Umrbeksky district of Tashkent, vital record No. 181, as evidence by the Marriage Registration Certificate (case sheet 4). They have two common minor

children of the marriage [REDACTED] born on [REDACTED] and [REDACTED] born on [REDACTED] (case sheets 12-14).

However, the Nikolenko spouses appeared to be unable to carry on their living together, in this regard, the plaintiff D. V. Nikolenko has filed the above claim.

In accordance with Article 21 of the Family Code of the Russian Federation, a marriage is to be dissolved in the courts if the spouses have common minor children, except for the cases provided for by Paragraph 2 of Article 19 of this Code, or if one of spouses does not agree to dissolve the marriage.

As provided for by the norms of Article 22 of the Family Code of the Russian Federation, dissolution of marriage in the courts is made if the court establishes that the spouses further living together and family preservation are impossible.

In the proceedings for dissolution of marriage if one of spouses does not agree to dissolve the marriage, the court is entitled to apply measures aimed at reconciliation between the spouses, and has the right to postpone the proceedings of the case, having appointed a three months term for reconciliation between the spouses.

According to Article 1 of the Family Code of the Russian Federation, the family relations are regulated in accordance with the principles of a voluntary marital union of a man and a woman, equality of rights of

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spouses in a family, settlement of family issues by means of mutual agreement.

The defendant L. Sh. Nikolenko did not appear in the session of court, not having received legal notice, left with the minor children, her whereabouts are unknown, thus she has exercised her right to participate in this case.

In turn, the court has not applied any measures for possible reconciliation between the spouses, as the representative of the plaintiff insisted on dissolution of marriage, and the defendant has not presented her opinion on dissolution of the marriage and reconciliation with the plaintiff, to the court.

Otherwise the plaintiffs rights arising in terms of the voluntary marital union of a man and a woman would have been violated.

Under the above circumstances, the claim shall be eligible for satisfaction.

Guided by Articles 194-198 of the Civil Procedure Code of the Russian Federation, the court

**RESOLVED:**

to satisfy the claims filed by Dmitry Vladimirovich Nikolenko against Luiza Shukhratovna Nikolenko for dissolution of marriage.

Marriage between Dmitry Vladimirovich Nikolenko and Luiza Shukhratovna Nikolenko /maiden name Mirzababaeva/, which was registered on March

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15, 2011 by the Civil Registry Office of Mirzo Umrbek-sky district of Tashkent, vital record No. 181, is to be dissolved.

The court's decision can be appealed to Maykop City Court of the Republic of Adygea via Justice of the Peace of Judicial District No. 5 of Maykop, Republic of Adygea within a month's term.

The reasoned decision was issued on 16.03.2018.

Justice of the Peace:      signature      S.I. Imgrunt

True copy:

Justice of the Peace,      */signature/*      S.I. Imgrunt  
Judicial District No. 5,  
Maykop

*Official seal: /JUSTICE OF THE PEACE \* REPUBLIC OF ADYGEA \* JUDICIAL DISTRICT NO. 5 \* MAYKOP/*

This Decision contains  
2 sheets bound together and numbered  
Justice of the Peace  
of the Judicial District, Maykop  
*/signature/*  
S.I. Imgrunt

Secretary  
*/signature/* B.V. Tuko

*Official seal: /JUSTICE OF THE PEACE \* REPUBLIC OF ADYGEA \* JUDICIAL DISTRICT NO. 5 \* MAYKOP/*

-----End of translated document-----  
-----конец переведенного документа-----

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I, the undersigned certified translator Yulia Valentinovna Yakovleva, fluent in both Russian and English languages, confirm that the above is a true, accurate and complete translation of the attached document.

Я, нижеподписавшийся дипломированный переводчик Яковлева Юлия Валентиновна, свободно владеющая русским и английским языками, подтверждаю, что вышеизложенное является верным, точным и полным переводом прилагаемого документа.

Translator Yulia Valentinovna Yakovleva  
Переводчик Яковлева Юлия Валентиновна

/s/ [Illegible]

**SAINT  
САНКТ-**

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RE: Case No. 22-0747                    DATE: 6/16/2023  
COA #: 01-20-00284-CV    TC#: 18-DCV-251118  
STYLE: NIKOLENKO v. NIKOLENKO

Today the Supreme Court of Texas denied the petition for review in the above-referenced case.

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RE: Case No. 22-0747                    DATE: 9/8/2023  
COA #: 01-20-00284-CV    TC#: 18-DCV-251118  
STYLE: NIKOLENKO v. NIKOLENKO

Today the Supreme Court of Texas denied the motion for rehearing of the above-referenced petition for review.

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