INDEX TO APPENDICES

COURT OF APPEALS DECISION DATED AND FILED

May 29, 2024

Samuel A. Christensen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2023AP611 **Cir. Ct. No. 2021FA564**

STATE OF WISCONSIN **IN COURT OF APPEALS DISTRICT II**

IN RE THE MARRIAGE OF:

ELIZABETH ANNE FITZGIBBON,

PETITIONER-APPELLANT,

V.

ADAM PAUL FITZGIBBON,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Winnebago County: BRYAN D. KEBERLEIN, Judge. *Affirmed.*

Before Neubauer, Grogan and Lazar, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

OFFICE OF THE CLERK

Supreme Court of Wisconsin

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December 10, 2024

To:

Hon. Bryan D. Keberlein
Circuit Court Judge
Electronic Notice

Tara Berry
Clerk of Circuit Court
Winnebago County Courthouse
Electronic Notice

Lawrence G. Vesely
Electronic Notice

Adam Paul Fitzgibbon
451 Lowell Place
Neenah, WI 54956

You are hereby notified that the Court has entered the following order:

No. 2023AP611 Fitzgibbon v. Fitzgibbon, L.C. 2021FA564

A petition for review pursuant to Wis. Stat. § 808.10 having been filed on behalf of petitioner-appellant-petitioner, Elizabeth Anne Fitzgibbon, and considered by this court;

IT IS ORDERED that the petition for review is denied, without costs.

Samuel A. Christensen
Clerk of Supreme Court

¶1 PER CURIAM. Elizabeth Anne Fitzgibbon appeals from an order of the circuit court denying relief from a judgment of divorce and ordering certain changes to the parties' marital settlement agreement. Based upon our review of the briefs and Record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).[1] For the following reasons, we affirm.

Background

¶2 Elizabeth filed for divorce from Adam Paul Fitzgibbon in September 2021 after approximately eight years of marriage. Elizabeth and Adam share one minor child. According to the original marital settlement agreement (Original MSA) that they signed in December 2021 and filed (albeit with two missing pages) on January 21, 2022, Elizabeth and Adam agreed to joint custody of their child with "Elizabeth having approximately 60% of the overnights and Adam having approximately 40% of the overnights" ("60/40 child placement"). The Original MSA also reflects an agreed division of certain marital property and accounts, including "Etrade and Voya accounts" (which were to be awarded to Elizabeth) and a payment of $54,406 from Adam to Elizabeth "to equalize the marital property division."

¶3 In her initial brief to this court, Elizabeth asserts that she "realized how inequitable the Original MSA was" shortly after filing it with the circuit court, so she "requested updating it with Adam." Adam agreed to renegotiate the Original MSA. Elizabeth and Adam used an updated draft prepared by

[1] All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

Elizabeth's attorney—the "Amended MSA"—as a starting point. The Amended MSA again provided for 60/40 child placement and for Elizabeth's ownership of the Etrade and Voya accounts. It also provided for monthly child support payments of $765[2] and an increased equalization payment of $77,000,[3] both from Adam to Elizabeth. Elizabeth and Adam made handwritten edits to the Amended MSA, reaching a final agreement on January 28, 2022. They both signed this "Hand-Edited Amended MSA," and Elizabeth delivered it, along with three photocopies, to the court for filing; neither party, however, prudently kept a copy for their own records.

¶4 The parties attended their stipulated divorce hearing before a family court commissioner on February 7, 2022. The commissioner referred to the parties' MSA "approved by the Court on January 21, '22" and confirmed that each party agreed to 60/40 child placement, $765 monthly child support payments from Adam to Elizabeth, and waiver of spousal support. Each party also testified that the agreement reflected "approximately equal" property division. After this testimony, the commissioner found the marriage "irretrievably broken" and granted a divorce—incorporating the "fair and reasonable" MSA into the judgment—which was "final" as of the hearing date (February 7, 2022).

¶5 The next month, Adam told Elizabeth that he had received the wrong MSA from the circuit court. She had not received the Hand-Edited Amended

[2] The provision for child support payments was on one of the missing pages of the court-filed Original MSA, but the parties later testified that the missing pages three and four from the Original MSA were identical to typed pages three and four of the Amended MSA; the same child support payment was included in the Original MSA.

[3] The listed values of the Fitzgibbons' two pieces of real estate had been increased in the Amended MSA.

MSA either, and it became clear to both parties that the commissioner had incorporated the Original MSA into their judgment of divorce rather than the Hand-Edited Amended MSA. The Hand-Edited Amended MSA had somehow been lost by the clerk of courts' office or the family court commissioner.[4] When the Fitzgibbons brought this to the court's attention, they were ordered to "reconfigure" the Hand-Edited Amended MSA within ten days of the April 26, 2022 hearing on the matter.

¶6 Adam and Elizabeth did not re-create the Hand-Edited Amended MSA through the rest of 2022. By that point, they had each filed multiple motions, including Adam's motion for "50/50" child placement and reduced child support and Elizabeth's motion to, among other things, reopen the judgment of divorce and declare the marital settlement agreement void. In response to the latter motion, Adam sought to enforce the Original MSA, arguing that it was a "complete agreement" and that the issue of the two missing pages would be resolved by issuing a subpoena to Elizabeth's former attorney for production of the full agreement. Elizabeth stated that she could not remember the terms of the Hand-Edited Amended MSA, which she now deemed "more financially inequitable than [she] had believed it to be on January 28," and—though she "regard[ed] [her]self as divorced"—attempted multiple times to come up with a new deal that would be, in her view, more equitable. While she wanted to preserve the 60/40 child placement and "child support numbers that [the family

[4] As noted above, the Original MSA (filed on January 21, 2022) had two missing pages. The Record does not reflect who was responsible for that error. But the circuit court made the determination that the responsibility for the loss of the Hand-Edited Amended MSA and three photocopies thereof (also filed in January 2022) rested with the clerk of courts or the family court commissioner's office, which is regrettable and has led to over a year of litigation and the expenditure of significant judicial resources.

court commissioner] validated" when she and Adam "were divorced ... on February 7," she took issue with the diminishing value of the accounts that were to be awarded to her and with the fact that many of the Fitzgibbons' assets were not listed in any previous MSA.[5] She sought a "cash settlement baselined to the asset valuations on February 7" with a "compensatory amount ... for Adam's ... past-due child support ... and financial malfeasance."

¶7 At a hearing on January 26, 2023, the circuit court reviewed the procedural history of the case, and both Adam and Elizabeth confirmed the facts set forth above regarding what had happened with the various versions of their MSA. Based primarily on its review of the transcript from the February 7 divorce hearing, the court held unequivocally that there was a "meeting of the minds" as to the stipulated terms of divorce and a valid judgment of divorce issued on that date. Therefore, according to the court, the question to be answered at this hearing was not *whether* there was an agreement but *what*, exactly, the agreement was. Noting the "multitude of motions" and "hundreds of documents" already filed by the parties, the court "anticipate[d] ... more litigation coming out of the case" but stressed that it was necessary to determine, as a factual matter, "what the original agreement was." The court pointed out that it could not begin to assess the fairness of an agreement, for example, without determining the terms of the agreement—and that any question regarding misrepresentation, fraud, duress, or the like in the context of the property division would be "a separate motion." Ultimately, the court stated, "[T]his is not a family issue right now; this is a

[5] These were the assets sometimes characterized as the "basement assets" of the parties, consisting of an "extensive weapons collection, tools, machinery, a safes [sic] full of precious metals and cash, food processing and canning equipment, and perishable foodstuffs among other items."

contract issue," and all the court needed to determine at this stage was "what did they agree to in February."

¶8 The circuit court then employed a procedure to determine the terms of the Hand-Edited Amended MSA to which Adam and Elizabeth agreed on February 7, 2022. Without objection from either party, and as the parties had done, the court used the Amended MSA as a starting point, giving each party a copy of that document and asking them to separately write in the changes they believed were made to that document with handwritten edits on January 28, 2022. After comparing the parties' notations, the court asked further questions and made "credibility determinations" to re-create the agreement reached by the parties immediately before the February 7 divorce hearing.

¶9 Adam testified to his belief that he and Elizabeth had agreed to a handwritten edit providing that half of one account (either the Etrade or Voya account, he could not remember which) was to go to him. He further testified that the Etrade account was worth approximately $29,000 while the Voya account was worth approximately $11,000. Elizabeth corrected the name of their child (which had been mistyped as "Adam"), testified that she was confident no custodial or placement matters were amended, and reiterated multiple times that she couldn't remember anything else.[6] When questioned by the court, Adam testified that the $77,000 payout in the agreement was meant to reflect half of the value of the couple's real estate plus "$5,000 … to cover for guns and miscellaneous things in

[6] Indeed, when asked by the circuit court whether she could recall if the value of the Etrade account was "$1 million or $10" when the parties reached their agreement, she stated, "I do not recall." She did eventually testify that her records indicated the value of the Etrade and Voya accounts together was $44,952.

the basement." Elizabeth—who, like Adam, had not made any notation to the $77,000 equalization payment in the Amended MSA—stated that that "would not have been the final equalization payment" but could not recall what had changed. She did not "recall exactly what the changes were" or "exactly what [change], if anything, was made to the number 77,000."

¶10 After considering the "entirety of the sworn testimony" and the credibility of the witnesses—and questioning on the record "how there could be no recollection of what was in there"—the circuit court ultimately determined that the Amended MSA had been altered by the parties in two ways: to correct the name of their child and to award half of the Voya account to Adam. All other provisions, including the $77,000 equalization payment, 60/40 child placement, $765 per month in monthly child support payments from Adam to Elizabeth, and other property division[7] remained as written in the Amended MSA. This MSA—the "January 6 MSA"—was entered into the Record and ordered retroactive to the date of divorce, which was February 7, 2022. Elizabeth appeals, asserting that the judgment of divorce was invalid and should have been declared void, attacking the January 6 MSA on both procedural and equitable grounds, and seeking her attorney's fees.

[7] In response to Elizabeth's stated concern regarding certain assets including "metals and cash that were in [the Fitzgibbons'] safe, workshops and tools, [and their] weapons collection," the circuit court asked whether Elizabeth knew about those assets at the time of the agreement, to which Elizabeth responded affirmatively, and then questioned why that property would not be included in the MSA provision stating that Adam was awarded "any other disclosed asset in his possession at the time of the final hearing." As discussed more fully below, because construction of the terms of the MSA is not within the scope of this appeal seeking to void it, we do not consider the issue of whether these assets were encompassed in those provisions or equitably divided.

Discussion

¶11 Elizabeth's first argument is that the February 7, 2022 judgment of divorce was invalid and should have been declared void for failure to satisfy the statutory requirements of a stipulated divorce. *See* WIS. STAT. § 767.34. She contends that "[n]o written, mutually-agreed MSA existed" on February 7 that complied with WIS. STAT. § 241.02(1), that no MSA constituting a "meeting of the minds" was approved by the parties, that any agreement was not binding under WIS. STAT. § 807.05, and that neither the family court commissioner nor the circuit court approved an MSA that resolved all material issues as required by WIS. STAT. § 757.69(1)(p)1. and Winnebago County Circuit Court Rule 3.11.B.[8]

¶12 Pursuant to WIS. STAT. § 767.34, "parties in an action for ... divorce ... may, subject to the approval of the court, stipulate for a division of property, for maintenance payments, for the support of children, or for legal custody and physical placement, in case a divorce ... is granted." Here, neither party disputes that a document reflecting the parties' stipulated agreement existed as of February 7 or criticizes the circuit court's conclusion, based on their consistent testimony, that it did; however, Elizabeth argues that there were defects in this document making it unenforceable and void.

¶13 First, Elizabeth cites the statute of frauds, which requires certain agreements to be in writing. She does not develop any argument or cite any

[8] Elizabeth cites the 2020 version of Rule 3.11.B, which was in effect at the relevant time and can be found at: https://www.co.winnebago.wi.us/sites/default/files/uploaded-files/winnebagocountylocalcourtrules2020.pdf. In the 2023 version of the rules, this rule was amended and renumbered to Rule 3.05, available at: https://www.wisbar.org/Directories/CourtRules/Wisconsin%20Circuit%20Court%20Rules/Winnebago%20County%20Circuit%20Court%20Rules.pdf.

authority to support her apparent contention that it applies to divorce stipulations as well as to "[e]very agreement, promise or undertaking made upon consideration of marriage, except mutual promises to marry." *See* WIS. STAT. § 241.02(1)(c). Given the concession in her opening brief that "on January 28 ..., Adam and Elizabeth completed negotiations, hand-editing a printed copy of the Amended MSA"—in other words, that the Hand-Edited Amended MSA (to which she and Adam agreed immediately before their divorce hearing) was in writing—it does not matter. There is no merit to Elizabeth's statute of frauds argument. Elizabeth also concedes that "both [Adam and Elizabeth] signed"—in other words, approved—this MSA. WISCONSIN STAT. § 807.05 explicitly recognizes as binding stipulations "made in court ... and entered in the minutes or recorded by the reporter, *or made in writing and subscribed by the party to be bound thereby.*" (Emphasis added.)

¶14 From there, Elizabeth argues that "no MSA was approved by all parties" and asserts that the divorce required approval from the family court commissioner pursuant to WIS. STAT. § 757.69(1)(p)1. and then from a judge pursuant to Winnebago County Court Rule 3.11(B)). Application of a statute to the facts is a legal question that we review de novo. ***Xerox Corp. v. DOR***, 2009 WI App 113, ¶46, 321 Wis. 2d 181, 772 N.W.2d 677. Again, Elizabeth fails to develop the argument except to say that "[n]o Judge was involved before hearing Elizabeth's Motion to Declare as Void ... on November 16." We see no merit to her argument such as it is. The statute in question states that a court commissioner may

> [p]reside at any hearing held to determine whether a judgment of divorce ... shall be granted if both parties to a divorce action state that the marriage is irretrievably broken ... and that all material issues, including but not limited to division of property or estate, legal custody, physical

> placement, child support, spousal maintenance and family support, are resolved.... A circuit court commissioner may grant and enter judgment in any action over which he or she presides under this subdivision unless the judgment modifies an agreement between the parties on material issues.

WIS. STAT. § 757.69(1)(p)1.

¶15 The parties testified under oath on February 7, 2022, that their marriage was irretrievably broken and that they had resolved all of the enumerated material issues. The commissioner explicitly confirmed important terms in the Hand-Edited MSA, including custody, placement, child support (which he noted "exceeds standards"), and maintenance. He confirmed that each party believed their agreed upon property division was approximately equal. He then granted and entered a judgment of divorce. *See* WIS. STAT. § 757.69(1)(p)1.

¶16 On its face, the local rule Elizabeth cites does not provide for independent approval by a circuit court judge; it states that an agreement "intended to be binding" "shall be submitted to the Family Court Commissioner for approval prior to submission to the presiding Circuit Court Judge" and that "[i]f the agreement is approved by the Family Court Commissioner, it will be forwarded to the presiding Circuit Court Judge for signature and entry." Winnebago Cnty. Court Rule 3.11 B.2. To the extent it can be interpreted to require an additional level of approval beyond the commissioner before a judgment of divorce can be entered, we note that "local rules may not be inconsistent with state rules or statutes." *See* ***Hefty v. Strickhouser***, 2008 WI 96, ¶59, 312 Wis. 2d 530, 752 N.W.2d 820 (citing WIS. STAT. § 753.35(1); emphasis removed).

¶17 This brings us to Elizabeth's final contention supporting her argument that the February 7 judgment of divorce should have been deemed void:

she asserts that a family court commissioner "can only grant divorces if 'all material issues … are resolved'" and that there were multiple material issues unresolved between Adam and Elizabeth after February 7, 2022. *See* WIS. STAT. § 757.69(1)(p)1. In support, she points out that following their divorce hearing, she and Adam disputed financial issues, custody, child support, placement schedules, and many other issues such that "even if there had ever been a 'meeting of the minds' … by the February 7 divorce hearing, the terms were misunderstood or forgotten." This is a legal issue involving application of a statute to facts which we review independently. *See* ***Xerox Corp.***, 321 Wis. 2d 181, ¶46.

¶18 Crucially, Elizabeth does not make any effort to point out a particular "material issue" that was missing from the Hand-Edited Amended MSA. It would be hard for her to do so given her sworn testimony at the divorce hearing that issues including child custody and placement were agreed and "in [her] child's best interest" and that property division was "approximately equal." While Elizabeth may have after-the-fact misgivings, she has not identified any basis for this court to determine that the MSA was invalid, that the requirements of WIS. STAT. § 757.69(1)(p)1. were not fulfilled at the time of divorce, or that the divorce should later be deemed void.

¶19 In this case, the Record reflects efforts by both parties to *change* the terms of their MSA more than it reflects a *lack* of material terms. Elizabeth admitted in one of the affidavits she submitted to the circuit court that in January 2022—before the February 7 divorce hearing—she sought to split the marital assets in a way that would provide "sufficient start-up funding for [her] post-marriage life," but that after the hearing, in April-June 2022, she sought to change the financial terms of the Hand-Edited Amended MSA due to the falling value of some of the assets she had been awarded and her "much greater need for

cash," among other reasons. She sought (and still seeks) to preserve the parts of the Hand-Edited Amended MSA that she preferred: the 60/40 child placement and monthly child support payment "exceed[ing] standards" that Adam was trying to change via his motion in April 2022. On this Record, we cannot determine that the circuit court's determination "that there was an agreement, a meeting of the minds, a contractual agreement" as to all the material terms necessary for a judgment of divorce was in error, even as we acknowledge that court's prediction that the January 6 MSA is "a starting point to what ... is probably going to be more litigation."

¶20 Second, Elizabeth attacks the January 6 MSA on procedural grounds, arguing that it was the result of an improper and unfair procedure and should not have been applied retroactively to the date of divorce. This argument rests almost entirely on her contention that the parties were not properly divorced and that there was "no MSA before January 6, 2023" so that the January 6 hearing constituted "forc[ing] terms" on the parties. As we have already discussed, this contention is incorrect. The circuit court articulated at the January 6, 2023 hearing that it was granting Elizabeth's motion for relief from the February 7, 2022 judgment of divorce due to its finding of a "very unique, exceptional" circumstance—the court's loss of the Hand-Edited Amended MSA—that justified reopening the judgment of divorce to "clarify" it pursuant to WIS. STAT. § 806.07(1)(h). Although it should be used "sparingly," a circuit court has discretion to grant relief from a final judgment under "extraordinary circumstances." ***State ex rel. M.L.B. v. D.G.H.***, 122 Wis. 2d 536, 541, 549-50, 363 N.W.2d 419 (1985); *see also* ***Thoma v. Village of Slinger***, 2018 WI 45, ¶30, 381 Wis. 2d 311, 912 N.W.2d 56. "[U]pon consideration of any other factors bearing upon the equities of the case, the court shall decide what relief if any

should be granted the claimant and upon what terms." ***M.L.B.***, 122 Wis. 2d at 557.

¶21 Here, the parties seem to agree, correctly, that the circuit court's loss of the Hand-Edited Amended MSA (and incorporation of the Original MSA into the original judgment of divorce) was an extraordinary circumstance that justified relief from that original judgment. Indeed, it was Elizabeth who moved for relief from judgment under WIS. STAT. § 806.07(1)(h). "Once [Elizabeth] invoked the [circuit] court's discretion under sec. 806.07 to amend the decision, the court had the power to correct it to the disadvantage of [Elizabeth] as well as to [her] advantage." *See* ***Anchor Sav. & Loan Ass'n v. Coyle***, 148 Wis. 2d 94, 106, 435 N.W.2d 727 (1989). This court will uphold the circuit court's ruling and grant of relief unless there has been an erroneous exercise of discretion. *See* ***id.*** at 106-07 (holding that trial court's decision to grant relief under § 806.07 and to conduct a hearing to gather evidence necessary to correct the original judgment was not an erroneous exercise of discretion).

¶22 We conclude that the circuit court's procedure for determining the appropriate relief from the original judgment of divorce—conducting a hearing to reconstruct the Hand-Edited Amended MSA with the benefit of oral testimony and the ability to assess the credibility of the witnesses—constituted an appropriate exercise of the court's discretionary ability to decide what relief should be granted. "The loss or destruction of a memorandum does not deprive it of its effect … and oral evidence of the making and contents of the memorandum is admissible." RESTATEMENT (FIRST) OF CONTRACTS § 216 (1932); *see also* ***Mitchell Bank v. Schanke***, 2004 WI 13, ¶¶7, 42, 268 Wis. 2d 571, 676 N.W.2d 849 (holding, when a bank sought to enforce a note that was memorialized in a document destroyed in a flood, that "the Bank was not required to produce the Note in physical form, if it

could establish the Note's existence, terms, and conditions through other evidence"). Importantly, although she uses the term "due process" in her brief, Elizabeth does not identify any "unfairness" in the court's procedure except to say that she did not agree to the terms of the January 6 MSA—*at that time in 2023*—and to suggest that the court was therefore "forcing terms" on her. Elizabeth is missing the point that the court found there was an agreement as of the February 7, 2022 hearing and that she had every opportunity to disclose her version of the terms of that agreement. Although she insists that the January 6 MSA is a "lost MSA counterfeit[]" and not a "facsimile" of the Hand-Edited Amended MSA, she does not identify a single term that she believes was different in the Hand-Edited MSA; she only says she cannot remember what was in the latter document. We find, in this unique and rather unusual circumstance, no erroneous exercise of discretion in the procedure employed in granting relief from the original judgment of divorce and to amend that judgment with a corrected MSA.

¶23 This leads to Elizabeth's third argument: that the January 6 MSA is inequitable and should be invalidated for that reason even if it is deemed procedurally correct. She cites ***Button v. Button***, 131 Wis. 2d 84, 89, 388 N.W.2d 546 (1986), which states "that an agreement is inequitable" unless "each spouse has made fair and reasonable disclosure to the other of his or her financial status; each spouse has entered into the agreement voluntarily and freely; and the substantive provisions of the agreement dividing the property upon divorce are fair to each spouse."

¶24 Elizabeth moved the circuit court for relief from the January 6 MSA on these grounds on February 16, 2023. There is no decision on that motion in the Record, and the order from which she appeals—entered on January 11, 2023—does not address this issue. Thus, this issue is beyond the scope of appeal and is,

as the circuit court said in January, "a separate motion." *See* ***Gruber v. Village of N. Fond du Lac***, 2003 WI App 217, ¶27, 267 Wis. 2d 368, 671 N.W.2d 692 ("We are loath to reverse a trial court on an issue that the trial court never had the opportunity to address.").

¶25 Finally, Elizabeth seeks attorney fees and other costs associated with her January 6 MSA-related litigation. Pursuant to WIS. STAT. § 767.241(1)(a), the circuit court may, in its discretion, "[o]rder either party to pay a reasonable amount for the cost to the other party of maintaining or responding to an action affecting the family and for attorney fees to either party." ***Id.***; *see also* ***Johnson v. Johnson***, 199 Wis. 2d 367, 377, 545 N.W.2d 239 (Ct. App. 1996).

¶26 Elizabeth states that the circuit court "made no evaluation or award of fees/costs[,] erroneously disregarding her need, fee/cost reasonableness … and parties' ability to pay." However, she points to only one line in the Record—a line in her motion to reopen the original divorce judgment—where she made any attempt to recover fees; in that line, she asked for an award of "all costs and attorney fees incurred in having to bring this Motion." She points us to nothing in the Record where she submitted the evidence necessary to decide an award of fees, and, when asked if there were any other issues that needed to be addressed "regarding the creation of the MSA" at the January 6, 2023 hearing, her counsel did not bring up attorney fees. We decline to reach this issue absent any attempt to seek relevant factual findings supporting the litigant's position in the circuit court.

¶27 For the foregoing reasons, we affirm the order of the circuit court incorporating the January 6 MSA into the parties' judgment of divorce.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

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DISTRICT II

June 19, 2024

To:

Hon. Bryan D. Keberlein
Circuit Court Judge
Electronic Notice

Tara Berry
Clerk of Circuit Court
Winnebago County Courthouse
Electronic Notice

Lawrence G. Vesely
Electronic Notice

Adam Paul Fitzgibbon
451 Lowell Place
Neenah, WI 54956

You are hereby notified that the Court has entered the following order:

2023AP611 In re the marriage of: Elizabeth Anne Fitzgibbon v. Adam Paul Fitzgibbon (L.C. # 2021FA564)

Before Neubauer, Grogan and Lazar, JJ.

The appellant moves for reconsideration of the opinion entered on May 29, 2024. WIS. STAT. RULE 809.24(1). The motion does not persuade us that reconsideration is warranted. Therefore,

IT IS ORDERED that the motion for reconsideration is denied. WIS. STAT. RULE 809.24(2).

Samuel A. Christensen
Clerk of Court of Appeals

FILED
01-11-2023
Clerk of Circuit Court
Winnebago County, WI
2021FA000564

BY THE COURT:

DATE SIGNED: January 11, 2023

Electronically signed by Bryan D. Keberlein
Circuit Court Judge

STATE OF WISCONSIN **CIRCUIT COURT BRANCH 3** **WINNEBAGO COUNTY**

ELIZABETH ANNE FITZGIBBON,

Petitioner,

ORDER FROM 1/6/23 HEARING

vs.

Case No.: 21FA564

ADAM FITZGIBBON,

Respondent,

Elizabeth Fitzgibbon, petitioner, appeared in court with attorney Lawrence Gerard Vesely. Adam Fitzbgibbon, respondent, appeared in court without counsel, before the Honorable Bryan D. Keberlein, Circuit Court Branch 3, on January 6, 2023 for a Motion Hearing.

WHEREAS the petitioner filed a Notice of Motion and Motion for declaratory order, to reopen judgment as to any invalid, unenforceable, or void/voidable provision, to hold in abeyance respondent's motion, and for temporary order pending declaratory order and final orders.

WHEREAS this case was sent to Judge Keberlein from Court Commissioner Rust to address the Motion to Reopen Judgment.

WHEREAS the parties were ordered, by Court Commissioner Bermingham, on April 26, 2022 to reconfigure the Marital Settlement Agreement within ten (10) days.

WHEREAS the parties did not reconfigure the Marital Settlement Agreement.

WHEREAS the parties were ordered, in court, on November 16, 2022 to exchange their issues with the unsigned, filed, Marital Settlement Agreement by November 30, 2022.

WHEREAS the parties did not exchange issues.

WHEREAS the parties were ordered, in court, on December 20, 2022 to write what they believe were the hand written changes on the lost Marital Settlement Agreement and file it with

the Court prior to the next hearing. Both parties were given a copy of the Marital Settlement Agreement (document 22) to do this on.

WHEREAS the parties were told at the December 20, 2022 hearing, the Court would make a final decision on the Motion to Reopen at the January 6, 2023 hearing.

WHEREAS neither party filed the copy of the Marital Settlement Agreement they were provided in court on December 20, 2022 with what they believe to be the hand written corrections to the lost Marital Settlement Agreement.

WHEREAS the Court did take sworn testimony at the January 6, 2023.

THE COURT WILL DENY the Motion to Reopen.

THE COURT FINDS that the parties' intent was to get divorced on February 7, 2022 and that the parties did come to an agreement on the terms of Marital Settlement Agreement independently prior to the February 7th, 2022 court date.

THE COURT FINDS that the amended handwritten and agreed upon Marital Settlement Agreement was filed with the Clerk of Courts and was lost by a Court entity.

THE COURT FINDS a need to clarify the terms in the interest of justice, but the Court will not find the terms void or unenforceable.

THE COURT ORDERS the following changes to the Marital Settlement Agreement (Document 22). On page 2, the first paragraph, the child's name will be changed from "Adam" to A.J.F. On page 6, A, #4 will read: "Etrade and ½ of Voya account." On page 7, #5 will read: "Computer share, share owner, CSX, Norfolk Southern, Gold IRA shares securities and ½ of Voya account".

cc: Elizabeth Fitzgibbon (mail)
Adam Fitzgibbon (mail)
Lawrence Vesely (efile)
Trista Moffat (efile)

DDST 2-7-22

Marital Settlement Agreement Checklist

JAN 21 2022

Date: 1/24/22

Case No: 21FA564

Case Name: Elizabeth A Fitzgibbon & Adam Paul Fitzgibbon

DOM: 9-21-13 **Kids:** 1

Service: 9-15-21 adm

Property Division:

W 1200 Land 40K H 4500

4700 .160 -106 3300

Custody/ Placement Pt 60 Mom 40 Dad

Child Support (guidelines?) 566 agreed 705

1200x17%x150%x40% 122.4

4500x17%x150%x60% 688.5

566.10

Notes:

____ **Approved and file**

____ **Not approved** _____ **Letter to parties (review at final hg)**

Other docs needed:

FILED
02-17-2022
Clerk of Circuit Court
Winnebago County, WI
2021FA000564

BY THE COURT:

DATE SIGNED: February 16, 2022

Electronically signed by John E. Bermingham
Court Commissioner

Petitioner/Joint Petitioner A: Elizabeth Fitzgibbon
Respondent/Joint Petitioner B: Adam Fitzgibbon

Enter the name of the county in which this case is filed.	**STATE OF WISCONSIN, CIRCUIT COURT,** Winnebago **COUNTY**
Enter the name of the petitioner/joint petitioner A.	IN RE: THE MARRIAGE OF **Petitioner/Joint Petitioner A** Elizabeth Anne Fitzgibbon Name (First, Middle and Last)
Enter the name of the respondent/joint petitioner B.	and **Respondent/Joint Petitioner B** Adam Paul Fitzgibbon Name (First, Middle and Last)
Check divorce or legal separation.	☐ Amended **Findings of Fact, Conclusions of Law, and Judgment With Minor Children** ☒ **Divorce** - 40101 ☐ **Legal Separation** - 40201
Enter the case number.	Case No. 2021FA000564

FINAL HEARING

A final hearing was conducted in this matter as follows:

In 1, enter the name of the court official who granted the judgment and the address and date [Month, Day, Year] on which it was granted.

1. Before John Bermingham
   Circuit Court Judge/Circuit Court Commissioner
2. Location Oshkosh, WI
   415 Jackson St.
3. Date 2/7/22 Time 9:15 ☒ a.m. ☐ p.m.

APPEARANCES

In 1, check how the party appeared.
If b, enter the name of the attorney.

1. **Petitioner/Joint Petitioner A**
   ☒ appeared **in person** ☐ appeared **by phone** ☐ **did not** appear **AND**
   ☒ a. was self-represented.
   ☐ b. was represented by Attorney _____.

In 2, check how the party appeared.
If b, enter the name of the attorney.

2. **Respondent/Joint Petitioner B**
   ☒ appeared **in person** ☐ appeared **by phone** ☐ **did not** appear **AND**
   ☒ a. was self-represented.
   ☐ b. was represented by Attorney _____.

In 3, check a, b, c, or d. If b, c, or d, enter the name of the individual who appeared.

3. Others appearing at the hearing:
   ☒ a. None.
   ☐ b. Child Support Agency by _____.
   ☐ c. Guardian ad Litem (GAL) _____.
   ☐ d. Other: _____

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Petitioner/Joint Petitioner A: _____
Respondent/Joint Petitioner B: _____

FINDINGS OF FACT

A. Jurisdiction

1. All necessary parties were properly served and 120 days have lapsed since filing the joint petition or the date of service of the summons and petition, whichever applies.
2. At the time of the final hearing, the parties requested a

In 2, check a or b.

- [x] a. **Divorce.** The court finds the marriage is irretrievably broken.
- [ ] b. **Legal Separation.** The court finds the marital relationship is broken and acceptable reasons have been given to the court for the request.

3. All jurisdictional requirements for a judgment have been met.

B. Parties (As of the date of the final hearing)

In B.1, enter the requested information about Petitioner/Joint Petitioner A.

If you do not know an answer, enter "unknown" in the blank.

1. The Petitioner/Joint Petitioner A in this action is:
   Name Elizabeth Fitzgibbon
   Address 308 Oak St
   Address
   City Neenah State WI Zip 54956
   Date of birth 3/27/87
   Gross monthly income $ 800

In 2, enter the requested information about Respondent/Joint Petitioner B.

If you do not know an answer, enter "unknown" in the blank.

2. The Respondent/Joint Petitioner B in this action is:
   Name Adam Fitzgibbon
   Address 48 Lowell Place
   Address Apt
   City Neenah State WI Zip 54956
   Date of birth 11/4/79
   Gross monthly income $_____

C. Children

In C, enter the name and date of birth [month, day, year] for each **minor** child.

If there are no minor children, check None.

1. The minor children (age 17 or younger) born to or adopted by the parties before or during the marriage are as follows:
   - [ ] **None**

Name of Minor Child	Date of Birth
A.J.F.	7/15

In 2, enter the name and date of birth for each **adult** child.

If you and the other party have no adult children, check None.

2. The adult children (age 18 or older) born to or adopted by the parties before or during the marriage are as follows:
   - [ ] **None**

Name of Adult Child	Date of Birth

In 3, enter the name and date of birth for any child born to a female party during the marriage that is not the other party's. Enter the county, state and case number in which paternity has been addressed.

3. Other children born to a female party during the marriage are as follows:
   - [ ] **None**

The Court makes a finding that this child:

Name of Child	Date of Birth	IS NOT	Basis for Finding (State, County, Case Number for Paternity Case, if any)
		☐ Petitioner/Joint Petitioner A's ☐ Respondent/Joint Petitioner B's	
		☐ Petitioner/Joint Petitioner A's ☐ Respondent/Joint Petitioner B's	

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Petitioner/Joint Petitioner A: _____
Respondent/Joint Petitioner B: _____

			☐ Petitioner/Joint Petitioner A's ☐ Respondent/Joint Petitioner B's	

In 4, check a or b and check which party is the father.

4. ☐ a. Neither party is currently pregnant.
   ☐ b. [Name of Party] _____ is currently pregnant and
   ☐ Petitioner/Joint Petitioner A
   ☐ Respondent/Joint Petitioner B
   is found to be the father.
5. The present best interests of the minor children are best served by awarding legal custody and physical placement as set forth in the attached Marital Settlement Agreement or Proposed Marital Settlement.

D. The parties' assets, their interests, values and their encumbrances and debts are found to be as stated in the Financial Disclosure Statements, which were updated as required by statute on the record at the time of trial and are on file.

E. A Marital Settlement Agreement or Proposed Marital Settlement has been submitted, the party(s) have asked that it be approved by the Court. All parties present have been informed of the legal consequences if the court approves the document in whole or in part.

In F1, check a, b or c. If c, enter the amount and interest rate and check 1 or 2. If 1, enter the date. If 2, enter payment amount, the frequency of the payment, and the date payments begin.

F. **Arrearages**

1. **Past Due Maintenance.**
   The amount of the past due arrearages for maintenance at the time of the final hearing is
   ☒ a. none (zero).
   ☐ b. as agreed in the Marital Settlement Agreement or Proposed Marital Settlement.
   ☐ c. $_____ which shall earn interest at the rate of _____% per year and shall be paid as
      ☐ (1) a one-time payment to the WI SCTF made by [Date] _____, 20_____.
      ☐ (2) through monthly income withholding by the WI SCTF in the amount of $_____beginning _____, 20 ____ until the arrearages are paid in full.

   Pursuant to §767.58(1)(c), Wis. Stats., a party receiving maintenance must notify the court and the payer within ten (10) days of remarriage.

In 2, check a, b or c. If c, enter the amount and check 1 or 2. If 1, enter the date. If 2, enter payment amount, the frequency of the payment, and the date the payments shall begin.

2. **Past Due Child Support.**
   The amount of the past due arrearages for child support at the time of the final hearing is
   ☒ a. none (zero).
   ☐ b. as agreed in the Marital Settlement Agreement or Proposed Marital Settlement.
   ☐ c. $_____ which shall earn interest at the rate of _____% per year and shall be paid as
      ☐ (1) a one-time payment to the WI SCTF made by [Date] _____, 20_____.
      ☐ (2) through monthly income withholding by the WI SCTF in the amount of $_____beginning _____, 20 ____ until the arrearages are paid in full.

In G, enter any other findings.

G. Other Findings: _____

CONCLUSIONS OF LAW AND JUDGMENT

In A, check 1 or 2. If 1, enter the effective date.

A. **The Court grants a judgment of**
   ☑ 1. Divorce. The marriage between the parties is dissolved and the parties are divorced effective on ☑ date of hearing. ☐ other date: _____

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The parties are informed by the court that under §765.03(2), Wis. Stats.: It is unlawful for any person who is or has been a party to an action of divorce in any court in this state, or elsewhere, to marry again until six months after judgment of divorce is granted, and the marriage of any such person solemnized before the expiration of six months from the date of the granting of judgment of divorce shall be void.

If 2, enter the effective date.

☐ 2. Legal Separation. The marital relationship is broken and the parties are granted a judgment of legal separation effective on ☐ date of hearing. ☐ other date: _____.

The parties are informed by the court that under §767.35, Wis. Stats.:

- In case of reconciliation, at any time, the parties may apply for a revocation of the judgment of legal separation.
- The court shall convert the decree to a decree of divorce:
  - by stipulation of both parties at any time, OR
  - upon motion of either party not earlier than one year after entry of a decree of legal separation.

In B.1, check the appropriate boxes and enter the date [month, day, year] that the party(s) signed the checked document and attach the document. If the court made changes, write them in the space provided.

If checked, enter reasons.

Check if attachments.

If 1 does not apply, check 2.

B. **Final Orders**

1. ☒ **Marital Settlement Agreement** dated 1/24/22 Amended MSA OR
   ☐ **Proposed Marital Settlement** dated _____ of the
   ☐ Petitioner/Joint Petitioner A
   ☐ Respondent/Joint Petitioner B

   is approved and made the judgment of the court except as changed below:

   _____

   _____

   ☐ if either parent is receiving less than 25% placement with the minor child(ren), the specific reasons more placement with that parent is not in the child(ren)'s best interest is as follows:

   _____.

   ☐ **See attached**

☐ 2. No **Marital Settlement Agreement** or **Proposed Marital Settlement** was approved by the court. A **Divorce Judgment Addendum** has been prepared to reflect the Judges' order and is made the judgment of the court.

C. **Lis Pendens**

Any Lis Pendens filed in this action is released.

In D, check 1, 2, or 3.

If 2 or 3, enter the former legal surname.

D. **Legal Name Restoration**

☒ 1. Neither party is awarded the right to use a former legal surname.
☐ 2. Petitioner/Joint Petitioner A is awarded the right to use a former legal surname of _____.
☐ 3. Respondent/Joint Petitioner B is awarded the right to use a former legal surname of _____.

Note: If this is an action for legal separation, the court cannot allow either party to resume a former legal surname unless and until the judgment is converted to a divorce.

E. **Child Legal Custody and Physical Placement**

1. A person who is awarded periods of physical placement, a child of such a person a person with visitation rights, or a person with physical custody of a child may notify the Circuit Court Commissioner of any problem he or she has relating to any of these matters. Upon notification, the Circuit Court Commissioner may refer any person involved in the matter to the Director of Circuit Court Counseling Services for mediation to assist in resolving the problem.
2. In a sole legal custody arrangement, the parent not granted sole legal custody shall file a medical history form with the court in compliance with §767.41(7m), Wis. Stats.
3. Both parties shall have access to the minor child(ren's) educational records pursuant to §118.125, Wis. Stats.
4. Change of Residence of Children. You are informed of the following:

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Petitioner/Joint Petitioner A: _____
Respondent/Joint Petitioner B: _____

- Each parent must notify the other parent, the child support agency, and the clerk of court of the address at which they may be served within 10 business days of moving to that address. The address may be a street or post office address.
- The address provided to the court is the address on which the other parties may rely for service of any motion relating to modification of legal custody or physical placement or to relocating the child's residence.
- A parent granted periods of physical placement with the child must obtain a court order before relocating with the child 100 miles or more from the other parent if the other parent also has court-ordered periods of physical placement with the child.

5. Parties are notified of the provisions of §948.31, Wis. Stats., as follows:

§948.31 Interference with custody by parent or others.

(1) (a) In this subsection, "legal custodian of a child" means:

1. A parent or other person having legal custody of the child under an order or judgment in an action for divorce, legal separation, annulment, child custody, paternity, guardianship or habeas corpus.
2. The department of children and families or the department of corrections or any person, county department under s. 46.215, 46.22 or 46.23 or licensed child welfare agency, if custody or supervision of the child has been transferred under ch. 48 or 938 to that department, person or agency.

(b) Except as provided under chs. 48 and 938, whoever intentionally causes a child to leave, takes a child away or withholds a child for more than 12 hours beyond the court-approved period of physical placement or visitation period from a legal custodian with intent to deprive the custodian of his or her custody rights without the consent of the custodian is guilty of a Class F felony. This paragraph is not applicable if the Court has entered an order authorizing the person to so take or withhold the child. The fact that joint legal custody has been awarded to both parents by a court does not preclude a court from finding that one parent has committed a violation of this paragraph.

(2) Whoever causes a child to leave, takes a child away or withholds a child for more than 12 hours from the child's parents or, in the case of a nonmarital child whose parents do not subsequently intermarry under s. 767.803, from the child's mother or, if he has been granted legal custody, the child's father, without the consent of the parents, the mother or the father with legal custody, is guilty of a Class I felony. This subsection is not applicable if the legal custody has been granted by court order to the person taking or withholding the child.

(3) Any parent, or any person acting pursuant to directions from the parent, who does any of the following is guilty of a Class F felony:

(a) Intentionally conceals a child from the child's other parent.

(b) After being served with process in an action affecting the family but prior to the issuance of a temporary or final order determining child custody rights, takes the child or causes the child to leave with intent to deprive the other parent of physical custody as defined in s. 822.02(9).

(c) After issuance of a temporary or final order specifying joint legal custody rights and periods of physical placement, takes a child from or causes a child to leave the other parent in violation of the order or withholds a child for more than 12 hours beyond the court-approved period of physical placement or visitation period.

(4) (a) It is an affirmative defense to prosecution for violation of this section if the action:

1. Is taken by a parent or by a person authorized by a parent to protect his or her child in a situation in which the parent or authorized person reasonably believes that there is a threat of physical harm or sexual assault to the child;

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Petitioner/Joint Petitioner A: _____
Respondent/Joint Petitioner B: _____

2. Is taken by a parent fleeing in a situation in which the parent reasonably believes that there is a threat of physical harm or sexual assault to himself or herself;
3. Is consented to by the other parent or any other person or agency having legal custody of the child; or
4. Is otherwise authorized by law.

(b) A defendant who raises an affirmative defense has the burden of proving the defense by a preponderance of the evidence.

(5) The venue of an action under this section is prescribed in s. 971.19(18), which incurred the expense on a prorated basis. Upon the application of any interested party, the court shall hold an evidentiary hearing to determine the amount of reasonable expenses.

(6) In addition to any other penalties provided for violation of this section, a court may order a violator to pay restitution, regardless of whether the violator is placed on probation under s.973.09, to provide reimbursement for any reasonable expenses incurred by any person or any governmental entity locating and returning the child. Any such amounts paid by the violator shall be paid to the person or governmental entity which incurred the expense on a prorated basis. Upon the application of any interested party, the court shall hold an evidentiary hearing to determine the amount of reasonable expenses.

F. Child Support/Maintenance

1. Pursuant to §767.75, Wis. Stats., this judgment constitutes an immediate assignment of all commissions, earnings, salaries, wages, pension benefits, benefits under Chapter 102 or 108, and other money due or to be due in the future, to the WI SCTF. The assignment shall be for an amount sufficient to ensure payment under this judgment, so long as the addition of the amount toward arrears does not leave the party at an income below the poverty line established under 42 USC 9902(2).
2. Pursuant to §767.57(1)(a), Wis. Stats., all payments for child support and/or maintenance ordered shall note the case number and the names of the parties on the face of the check, should be made payable to WI SCTF, and sent to:

   Wisconsin Support Collections Trust Fund
   Box 74200
   Milwaukee, WI 53274-0200.

   The WI SCTF will transmit the payments to the proper persons entitled to them.

   Failure of an employer to pay the proper amount shall not be a defense for failure to pay the proper amount. If an employer fails to take out the correct amount for child support and/or maintenance, the party paying is responsible for paying the full and correct amount directly to WI SCTF.

   Pursuant to §767.57(1e), Wis. Stats., the party making payment for child support and/or maintenance is responsible for payment of the annual receiving and disbursing fee to WI SCTF.

   Pursuant to §767.57(1e)(c), Wis. Stats., an annual fee will be deducted by WI SCTF from payments to recipients of child support.
3. Both parties shall notify, in writing, the other party and the Clerk of Court and the Child Support Agency of the county in which this action is filed, within 10 business days, of any change of employer and employer's address, and of any substantial change in the amount of his/her income, including receipt of bonus compensation, such that his/her ability to pay support is affected. Notification of any substantial change in the amount of the payer's income will not result in a change in the order unless a revision or adjustment of the order is sought.
4. A party ordered to pay child support shall pay simple interest rate according to statutory rate on any amount in arrears that is equal to or greater than the amount of support due in 1 month. If there is no current order, interest shall accrue on the balances due.

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5. Pursuant to §767.75, Wis. Stats., a withholding assignment or order under this section has priority over any other assignment, garnishment, or similar legal process under Wisconsin law. The employer shall not withhold more of the employee's disposable income than allowed pursuant to the Federal Consumer Credit Protection Act unless the employee agrees to have the full amount withheld. No employer may use an assignment under this section to deny employment, or to discharge or take disciplinary action against an employee.
6. Pursuant to §767.54, Wis. Stats., if the court orders child support the parties shall annually exchange financial information. A party who fails to furnish the information as required by the court under this subsection may be proceeded against for contempt of court under ch. 785, Wis. Stats. If the court finds that a party has failed to furnish the information required under this subsection, the court may award to the party bringing the action costs and, notwithstanding §814.04(1), Wis. Stats., reasonable attorney fees. Failure by a party to timely file a complete disclosure statement as required hereunder shall authorize the court to accept as accurate any information provided in the statement of the other party or obtained under §49.22(2m), Wis. Stats., by WI SCTF or the county child support agency under §59.53(5), Wis. Stats.
7. **Property Division**
   Notice is given of the provisions of §767.61 (5) (a) and (b) and §767.61(6), Wis. Stats. The parties shall transfer title to property of the parties as necessary, in accordance with the division of property set forth in the judgment.
   The parties are notified that
   a. it may be necessary for the parties to take additional actions in order to transfer interests in their property in accordance with the division of property set forth in the judgment, including such interests as interests in real property, interests in retirement benefits, and contractual interests.
   b. the judgment does not necessarily affect the ability of a creditor to proceed against a party or against that party's property even though the party is not responsible for the debt under the terms of the judgment.
   c. an instrument executed by a party before the judgment naming the other party as a beneficiary is not necessarily affected by the judgment and it may be necessary to revise the instrument if a change in beneficiary is desired.
   d. a deed consistent with the judgment or a certified copy of the portion of the judgment affecting title to real property shall be recorded in the office of the register of deeds of the county in which the real property is located.

G. **Court Ordered Fees**
All payments of attorney fees shall be paid directly to the attorney or to the agency providing services which may enforce the order in its name.

All payment of Guardian ad Litem (GAL) fees or fees for family court services shall be paid directly to the GAL or the agency which may enforce the order.

H. **Restraining Order**
Both parties are restrained from interfering with the personal liberty of the other.

I. **Non-Compliance**
Disobedience of the court orders is punishable under ch. 785 Wis. Stats., by commitment to the county jail until the judgment is complied with and the costs and expense of the proceedings are paid or until the party committed is otherwise discharged, according to law.

J. **Entry of Judgment**
The Clerk of Court's office, per §806.06(1)(2), Wis. Stats., shall enter this judgment by affixing a file stamp that is dated.

THIS IS A FINAL ORDER FOR THE PURPOSE OF APPEAL IF SIGNED BY A CIRCUIT COURT JUDGE.

ADDENDUM TO JUDGMENT OF DIVORCE

Pursuant to Section 767.54, when the Court orders a party to pay child support or family support, the parties are required to exchange financial information annually. Therefore, the parties shall exchange copies of W-2 forms for all sources of income, and a copy of income tax returns by April 15 of each year.

If the person paying child support under this Judgment or any subsequent order amending this Judgment is or becomes unemployed, then such person thereafter shall immediately be under a duty to seek employment at 20 places of employment each month actually hiring employees and shall file on the first day of each month an affidavit with the Winnebago County Child Support Agency verifying such employment search. The affidavit shall be on the form prescribed by the Winnebago County Child Support Agency.

Pursuant to 767.58, when the Court orders maintenance or family support, the person receiving payments is required to provide notice of remarriage. Therefore, the payee shall notify the Court and the payer within 10 business days of the payee's remarriage. Further, unless already terminated for another reason, maintenance terminates upon the death of the payee or the payer, whichever occurs first.

Effective April 1, 2014, interest charged on support related debts is reduced from 12% to 6% per year (1% to .5% per month).

STATE OF WISCONSIN CIRCUIT COURT WINNEBAGO COUNTY

In re the Marriage of:

Elizabeth Anne Fitzgibbon,

Petitioner,

Case No. 21FA564

JAN 21 2022

and

Case Code: 40101

Adam Paul Fitzgibbon,

Respondent.

MARITAL SETTLEMENT AGREEMENT

This Marital Settlement Agreement is between Elizabeth Anne Fitzgibbon, Petitioner, and Adam Paul Fitzgibbon, Respondent.

In consideration of the mutual terms and provisions contained herein, both parties agree that the following marital settlement agreement may be incorporated by the Court in the Conclusions of Law and Divorce Judgment to be entered in this action. The parties agree, however, that this settlement agreement shall independently survive their divorce judgment. The parties agree as follows:

I. LEGAL CUSTODY

A. CUSTODY

It is in the present best interest of the minor child of the marriage for the parents to have joint legal custody. Both are fit and proper persons to have joint legal custody.

Pursuant to Wis. Stat. §767.001(1s), "joint custody" means the condition under which both parties share legal custody and where neither parent's legal custody rights are superior. The parties shall consult and attempt to reach agreement with respect to major decisions affecting the lives of the minor child. Each of the parties shall provide advance notice to the other regarding these major decisions so as to facilitate co-parenting communication, cooperation, and mediation if necessary.

II. PHYSICAL PLACEMENT

A. PLACEMENT

Both parents shall have periods of physical placement with the minor child.

Pursuant to Wis. Stat. § 767.001(5), "physical placement" means the condition under which a parent has the right to have a child physically placed with that parent.

The parties shall share physical placement of the minor child with Elizabeth having approximately 60% of the overnights and Adam having approximately 40% of the overnights. The parties intend to cooperate in formulating Adam's schedule on an ongoing basis.

B. VACATION

Each parent shall have the option of having the child for two one-week periods of uninterrupted vacation time each year, with sixty days written notice provided to the other parent specifying the time of the scheduled vacation.

Each parent shall provide the other parent with an address and telephone number of where the child will be staying so that the parent or child can be contacted in the event of an emergency while the child is on vacation.

C. HOLIDAYS

The parties have agreed to the following holiday placement schedule as set forth in the attached Exhibit. The holiday schedule takes precedence over the regular placement schedule.

D. TRANSPORTATION

For all transfers of placement, the parent initiating placement shall be responsible for transportation.

E. RELOCATION

The parties agree that Section 767.481 of the Wisconsin Statutes, and all amendments, shall control should either party seek to relocate with the child at any location more than 100 miles from the other parent.

F. MEDIATION

In the event any dispute or disagreement arises regarding the terms and conditions of custody or placement, the parents shall seek jointly the assistance of a mutually agreed-upon mediator or the court's mediation service for resolution of the conflict.

Pursuant to section 802.12(e), mediation means a cooperative process involving the parties and a mediator, the purpose of which is to help the parties, by applying communication and dispute resolution skills, define and resolve their own disagreements, with the best interest of the children as the paramount consideration.

Neither parent may seek or institute proceedings for modification or enforcement of the custody or placement provisions of this agreement by litigation without first having sought and attempting to resolve any conflict through mediation.

Any required fees for the assistance of a mediator shall be shared equally by the parents.

III. FINANCIAL SUPPORT

The parent carrying the child on his or her policy shall provide an insurance summary and provider card to the other parent and shall notify the other parent of any changes in coverage or providers.

C. CHILD'S UNINSURED MEDICAL EXPENSES

Both parties agree to follow insurance guidelines for coverage and cooperate, as necessary, to assure maximum utilization of insurance benefits. Neither party shall be obligated for uninsured expenses incurred by the other if said guidelines and provisions for coverage are not followed.

The parties agree to share, equally, the child's ordinary uninsured or non-reimbursed medical and dental expenses, and co-insurance (if any) including any insurance deductibles. "Ordinary" expenses include items such as routine medical checkups and treatment, examinations required by school authorities, treatment of minor ailments and prescriptions incidental thereto, and other health care ~~expenses necessarily incurred to protect or maintain a child's health~~.

The party incurring the expense shall submit verification of the sum owed to the other party within 30 days of ascertaining the amount of the uninsured portion. The other party shall then reimburse the paying party for one-half of the sum within 15 days of presentment of verification, unless there is a reasonable objection to payment. Failure to adhere to these terms may subject a parent to contempt proceedings in which actual attorney's fees may be awarded.

The parties expressly intend that uninsured expenses, under this provision, be dealt with promptly and that neither will withhold reimbursement from the other. Although the parties do not anticipate problems in this regard, if this matter is brought to court in the future, they desire that the Court shall impose appropriate sanctions on an offending party to ensure compliance with this provision.

"Extraordinary" expenses shall include, without limitation, chiropractic care, orthodontia, and psychiatric or other mental health care expenses. Neither party shall incur any extraordinary expenses for the child, except in the case of emergency, without prior notice to, and the consent ~~from, the other party. Provided notice is given, and consent is not unreasonably withheld,~~ extraordinary expenses shall also be shared, equally, by the parties.

V. OTHER INSURANCE

Effective as of the time of the final hearing, each party shall be individually responsible for and pay premiums on his or her own health, accident, disability, vehicle, homeowners or renters, personal property and personal liability umbrella insurance to the extent that he or she desires to maintain such coverage.

VI. PROPERTY DIVISION

As a full, final, complete, and equitable property division, each party is awarded the following property:

A. PROPERTY AWARDED TO WIFE

1. All household items and personal effects, including clothing and jewelry, in her possession at the time of the final hearing or as agreed to between the parties.

2. 2007 Lexus IS 250.

3. Any and all life insurance policies in her name or possession at the time of divorce.

4. Etrade and Voya accounts.

5. Any and all checking and savings accounts in her name.

6. 50% of the Community First Credit Union Checking and Savings accounts (approximately $25,000 total).

7. Any other disclosed asset in her possession at the time of the final hearing.

B. PROPERTY AWARDED TO HUSBAND

1. All household items and personal effects, including clothing and jewelry, in his possession at the time of the final hearing or as agreed to between the parties.

2. 2005 Nissan Xterra.

3. Any and all life insurance policies in his name or possession at the time of divorce.

4. Any and all checking and savings accounts in his name.

5. Computer share, share owner, CSX, Norfolk Southern, Gold IRA shares/securities.

6. 50% of the Community First Credit Union Checking and Savings accounts (approximately $25,000 total).

7. Any other disclosed asset in his possession at the time of the final hearing.

C. DISPOSITION OF REAL ESTATE

Adam shall be awarded all right, title and interest in the parties' residence located at 451 Lowell Place in Neenah, WI with an agreed value of $175,000. Adam shall be responsible for the

outstanding mortgage thereon owing to Community First Credit Union in the current approximate total amount of $106,187, property taxes, homeowner's insurance, utilities, and any costs related to the residence. Adam shall refinance the mortgage on the above-described residence within 90 days from the date of divorce. Elizabeth shall execute all real estate closing documents including Quit Claim Deed and Wisconsin Real Estate Transfer Return and said documents shall be held in trust until refinancing.

Both parties understand that this marital settlement agreement alone will not transfer title to one party or the other, but such a transfer requires a fully executed Quit Claim Deed and a Wisconsin Real Estate Transfer Return signed by the parties. The party awarded a parcel of real estate shall be responsible for having the necessary documents prepared.

In the event Adam has not closed on the refinancing of the parties' residence within 90 days of the date of divorce, the residence shall be immediately placed on the market for sale with a mutually agreed real estate broker. Adam shall continue to be responsible for the outstanding mortgage thereon, homeowner's insurance, utilities, and any mutually agreed costs related to the residence until the date of sale.

Adam shall be awarded all right, title and interest in the parties' land located at Deerlake Road #2 in Marinette, WI with an agreed value of $40,000. Adam shall be responsible for property taxes, homeowner's insurance, utilities, and any costs related to the residence.

D. EQUALIZATION OF MARITAL PROPERTY DIVISION

A payment of $54,406 is required to equalize the marital property division. This payment shall be made by Adam to Elizabeth. This payment shall be within 90 days of the date of divorce.

VII. DEBTS AND LIABILITIES

Each party is responsible for any debt or liability, including personal charge cards, incurred by him or her after the date of filing, with each party holding the other harmless for its payment.

Each party assigned a debt shall be fully responsible for that obligation and shall not make any demands upon the other party concerning that debt.

Each party warrants that he or she has not incurred any debts or liabilities that are unpaid other than those listed on his or her financial statement. Any debt not listed shall be the responsibility of the party who incurred it and that party shall not make any demands upon the other party concerning that debt.

Adam shall be solely responsible for the Mortgage owing on the marital residence in the amount of $106,187 owing to Community First Credit Union.

Creditors are not bound by this agreement and each party may remain liable to creditors for all marital debts. Any party who suffers a loss because of a failure of the other party to pay an assigned debt may enforce that obligation by a motion for contempt of court.

With respect to each party's responsibility for the payment of certain debts and liabilities and their obligations to hold the other harmless for the payment thereof, the parties understand and intend that these obligations are domestic support obligations as defined in 11 U.S.C. § 101(14A) and non-dischargeable under 11 U.S.C. § 523 (a)(5) of the Bankruptcy Code, this obligation being part of the final financial support settlement for both parties. This understanding is set forth in detail here so as to clarify the intention of the parties with respect to the hold harmless provision.

VIII. TAXES

A. YEAR OF THE DIVORCE

The parties agree to file their income tax returns for the year of the divorce consistent with the rules of the IRS, Wisconsin Department of Revenue, and Wisconsin's Marital Property law. The parties understand that their marital status on the last day of the year determines their filing status for that year, whether married or single. The parties acknowledge that each are responsible for seeking tax advice from a tax professional with regard to issues of this divorce.

B. YEARS PRIOR TO THE DIVORCE

As to any taxes found to be due or refunds made for prior taxable years, the parties shall share equally any such refunds and contribute equally to any assessments for additional taxes, penalties and interest unless it can be demonstrated that the refund or additional obligation, or any distinct portion thereof, is due to the conduct or status of only one of the parties. In that event, the refund or additional obligation shall be allocated between the parties accordingly.

C. DEPENDENTS AND EXEMPTIONS

Elizabeth shall have the right to claim the child as a dependent for federal and state income tax purposes in even years and Adam shall have the same right in odd years. The parties shall equally divide any stimulus funds received attributable to the minor child.

Each party shall sign IRS Form 8332, Release of Claim to Exemption for Child of Divorced or Separated Parents for the child for each applicable tax year. If claiming a child as a dependent and exemption for tax purposes results in a special tax credit as the result of something paid by both parties throughout the year, the party receiving same shall split equally with the other party any tax credit received.

IX. ATTORNEY ADVICES AND FEES

Each party acknowledges that he or she has been advised to have this Agreement reviewed by his or her individual attorney and that individually each has had an opportunity to do so. The parties understand and agree that Attorney Jeff Morrell is solely representing Elizabeth in this matter and Adam has been so advised of Attorney Jeff Morrell's exclusive representation of Elizabeth relative to the drafting and execution of this Agreement.

Each of the parties shall be responsible for his or her own attorney fees, no contribution being made by either party.

X. LEGAL SURNAME RESTORATION

Elizabeth does not wish to resume the use of her former legal surname of Adler.

XI. EXECUTION OF DOCUMENTS

The parties shall execute and deliver any and all documents necessary to carry out the terms and conditions of this Agreement.

XII. VOLUNTARY EXECUTION

Each party has entered into this Agreement voluntarily, with full information, including information as to tax consequences. Each assumes equal responsibility for the entire contents of the Agreement, and each believes the terms and conditions to constitute a fair and reasonable compromise of disputed issues. No coercion or undue influence has been used by or against either party in making this Agreement.

XIII. NATURE OF THE AGREEMENT

This Agreement is binding upon the parties, and their respective heirs, beneficiaries, legatees, personal representatives, agents and assigns.

Each party acknowledges that no representations of any kind have been made to him or her as an inducement to enter into this Agreement, other than the representations set forth herein.

This document is the product of give and take negotiations and some portions of the language are that of counsel for the husband, some portions are language of counsel for the wife, and some portions are language of both counsel. Accordingly, the common law presumption of resolving ambiguities and omissions against the drafter shall not apply as there is no one drafter of this document and we declare that it is impossible to accurately determine who drafted which clauses.

XIV. DIVESTING OF PROPERTY RIGHTS

Except as otherwise provided for in this agreement, each party shall be divested of and each party waives pursuant to §767.61 of the Wisconsin Statutes, all right, title, and interest in and to the property awarded to the other in this Agreement. Each party shall have the right to deal with the property awarded to him or her as fully as if the parties had never been married.

XV. MUTUAL RELEASE

Neither party may sue the other, nor his or her heirs, personal representatives or assigns, to enforce any of the rights relinquished or waived under this Agreement.

XVI. FULL DISCLOSURE AND RELIANCE

Each party warrants that there has been an accurate and current disclosure of income, assets, and debts and liabilities, and that the property disclosed in his or her financial statements constitutes all the property in which he or she has any interest. Each party is aware that he or she was entitled to obtain appraisals of all assets owned by the parties. To the extent that any asset was not appraised, the parties freely and voluntarily waived the right to an appraisal.

XVII. SURVIVAL OF AGREEMENT AFTER JUDGMENT

The provisions of this Agreement shall be incorporated into the Findings of Fact, Conclusions of Law and Judgment of Divorce; however, this Agreement shall survive the Judgment and have independent legal significance. This Agreement is a legally binding contract which either party may enforce in this or any other court of competent jurisdiction.

Dated: 12/7, 2021.

Elizabeth Fitzgibbon, Petitioner

Dated: 12/20/21, 2021.

Adam Fitzgibbon, Respondent

Drafted with the assistance of an Attorney:
Attorney Jeff Morrell
State Bar Number: 1096451
STERLING LAW OFFICES, S.C.
N56 W13405 Silver Spring Drive
Menomonee Falls, WI 53051
Phone: (920) 517-5497
Fax: (414) 255-2214

APPROVED 1-21-22
DATE

FAMILY COURT COMMISSIONER

CSA
☑ NOT REQUIRED (NIVD)
Devin Suess
Devin Suess- Financial
1/12/22

App. F-16
Page 038

ATTN: John Bermingham, Circuit Court Commissioner

RE: Marriage Settlement Agreement (MSA), Case # 21FA564

Context: At the request of Tara Berry, I'm offering a brief overview of a situation involving my recent divorce (Feb 7, 2022).

- On January 28, I hand-delivered an amended MSA (and three copies) to Winnebago County's Clerk of Court's office, complete with handwritten edits made by my (now) ex-husband, Adam Paul Fitzgibbon. This revised MSA was created and submitted for the purposes of replacing our original MSA.
- Attached is an **unedited**, unsigned copy of the amended MSA that attorney Jeff Morrell provided my ex-husband and me.
- The WCCA website confirmed that the MSA had been accepted prior to the Feb 7 hearing.
- It is my understanding that the Court lost all four sets of documents (one original and three copies) of our hand-edited, signed, and dated amended MSA.
- In late March, my ex-husband shared in writing his unwillingness to attempt to reconstruct our amended MSA, which the Court misplaced. This isn't surprising, given that the revised MSA was more equitable (accounting for the family home revaluation, among other things).
- **I am unwilling to accept the usage of the original MSA, as is evidenced by the submission of an amended version, and would not have provided my agreement at the hearing had the Court been clear of its use of the original MSA. I regard myself as divorced, but do not regard the original MSA as having my consent.**

Request: My request of you (or more broadly, the Court), in writing:

- That the revised MSA is unable to be found and should be regarded as irretrievable.
- What terms or contract (ie. MSA) presently governs our divorce?
- What process the Court prefers that my ex-husband and I follow to correct the situation?
- What relief from additional costs can the Court offer to facilitate the its preferred process?
- What will happen to me, my ex-husband, and our child, should we be unable (or unwilling, as in the case of my ex-husband) to complete the Court's preferred process?

I wish to have this problem resolved as soon as possible.

Elizabeth Fitzgibbon

(920) 450-9277

CC Adam Fitzgibbon

STATE OF WISCONSIN CIRCUIT COURT WINNEBAGO COUNTY

In re the Marriage of:

Elizabeth Anne Fitzgibbon,

Petitioner,

Case No. 21FA564

and

Case Code: 40101

Adam Paul Fitzgibbon,

Respondent.

AMENDED MARITAL SETTLEMENT AGREEMENT

This Marital Settlement Agreement is between Elizabeth Anne Fitzgibbon, Petitioner, and Adam Paul Fitzgibbon, Respondent.

In consideration of the mutual terms and provisions contained herein, both parties agree that the following marital settlement agreement may be incorporated by the Court in the Conclusions of Law and Divorce Judgment to be entered in this action. The parties agree, however, that this settlement agreement shall independently survive their divorce judgment. The parties agree as follows:

I. LEGAL CUSTODY

A. CUSTODY

It is in the present best interest of the minor child of the marriage for the parents to have joint legal custody. Both are fit and proper persons to have joint legal custody.

Pursuant to Wis. Stat. §767.001(1s), "joint custody" means the condition under which both parties share legal custody and where neither parent's legal custody rights are superior. The parties shall consult and attempt to reach agreement with respect to major decisions affecting the lives of the minor child. Each of the parties shall provide advance notice to the other regarding these major decisions so as to facilitate co-parenting communication, cooperation, and mediation if necessary.

II. PHYSICAL PLACEMENT

A. PLACEMENT

Both parents shall have periods of physical placement with the minor child.

Pursuant to Wis. Stat. § 767.001(5), "physical placement" means the condition under which a parent has the right to have a child physically placed with that parent.

The parties shall share physical placement of the minor child with Elizabeth having approximately 60% of the overnights and Adam having approximately 40% of the overnights. The parties intend to cooperate in formulating Adam's schedule on an ongoing basis.

B. VACATION

Each parent shall have the option of having the child for two one-week periods of uninterrupted vacation time each year, with sixty days written notice provided to the other parent specifying the time of the scheduled vacation.

Each parent shall provide the other parent with an address and telephone number of where the child will be staying so that the parent or child can be contacted in the event of an emergency while the child is on vacation.

C. HOLIDAYS

The parties have agreed to the following holiday placement schedule as set forth in the attached Exhibit. The holiday schedule takes precedence over the regular placement schedule.

D. TRANSPORTATION

For all transfers of placement, the parent initiating placement shall be responsible for transportation.

E. RELOCATION

The parties agree that Section 767.481 of the Wisconsin Statutes, and all amendments, shall control should either party seek to relocate with the child at any location more than 100 miles from the other parent.

F. MEDIATION

In the event any dispute or disagreement arises regarding the terms and conditions of custody or placement, the parents shall seek jointly the assistance of a mutually agreed-upon mediator or the court's mediation service for resolution of the conflict.

Pursuant to section 802.12(e), mediation means a cooperative process involving the parties and a mediator, the purpose of which is to help the parties, by applying communication and dispute resolution skills, define and resolve their own disagreements, with the best interest of the children as the paramount consideration.

Neither parent may seek or institute proceedings for modification or enforcement of the custody or placement provisions of this agreement by litigation without first having sought and attempting to resolve any conflict through mediation.

Any required fees for the assistance of a mediator shall be shared equally by the parents.

III. FINANCIAL SUPPORT

A. CHILD SUPPORT

The parties agree that Adam shall pay child support to Elizabeth in the amount of $765 per month commencing the date of divorce.

Child support is based on the shared placement formula pursuant to DCF 150 Child Support Percentages of Income Standard, including an adjustment for Elizabeth pursuant to the Low Income guidelines and includes an upward deviation to account for one-half portion of the health insurance for the minor children (currently provided by Elizabeth).

1. Payments

All payments shall be made by income assignment. Adam's employer shall be ordered to withhold $765 of Adam's gross income and send the payment to Wisconsin Support Collections Trust Fund, Box 74400, Milwaukee, Wisconsin, 53274-0400.

If for any reason the payment is not withheld from Adam's income as provided herein, Adam shall be responsible for making such payments directly to Wisconsin Support Collections Trust Fund, Box 74200, Milwaukee, Wisconsin, 53274-0200.

All moneys received or disbursed hereunder shall be entered in a record and kept by the WI SCTF that shall be open to inspection by the parties to the action, their attorneys, and the Family Court Commissioner.

Payor shall be responsible for initial and annual receiving and disbursing fees, pursuant to section 814.61(12)(b) of the Wisconsin Statutes.

2. Notice of Changes

Each party shall notify the Clerk of Court and the other party, in writing, of any and all of the following:

1. Any change in address.
2. Any change of employer.
3. Any substantial change in the amount of his or her income such that his or her ability to pay child support is affected.

Notice shall be given within ten (10) days of such change occurring.

Notification of a substantial change in a party's income under this paragraph will not result in any change in the Court's Judgment unless revision of the Judgment is sought and granted.

3. Interest

Payor shall pay simple interest at the rate of 0.5% per month on any amount of unpaid child support commencing on the first day of the second month after the month in which the amount was due.

4. Income

Both parents shall provide a copy to each other of their complete tax returns by April 16th of each year a child support obligation remains in effect.

B. VARIABLE EXPENSES

The parties agree to share equally in the children's variable expenses. Variable expenses are defined as stated in DCF 150.02(29) as the reasonable costs above basic support costs incurred by or on behalf of a child, including but not limited to, the cost of child care, tuition, a child's special needs, and other activities that involve substantial cost.

C. MAINTENANCE

Both parties waive their right to receive maintenance. Pursuant to sections 767.56 and 767.59 of the Wisconsin Statutes, both understand that by giving up maintenance at this time, neither may ever ask for maintenance in the future.

D. LIFE INSURANCE

Effective as of the time of final hearing, each party shall continue to name the minor child, or a trust for the benefit of the minor child, as beneficiary on the life insurance available through their employment.

IV. MEDICAL INSURANCE

A. MEDICAL INSURANCE FOR THE PARTIES

Both parties have been informed of the right of one former spouse to purchase continued health insurance from the other spouse's group health insurance carrier. Each understands that it is the obligation of the spouse wishing to continue group coverage to pay for that coverage.

Each party shall be fully responsible for the cost and securing his or her own medical insurance and uninsured medical expenses.

B. MEDICAL INSURANCE FOR THE CHILD

Elizabeth shall maintain the minor child on her comprehensive medical and hospitalization insurance policy, or obtain a comparable policy, and shall maintain the same until the youngest child reaches age eighteen or is earlier emancipated, or until the youngest child reaches nineteen, if he is pursuing an accredited course of instruction leading to the acquisition of a high school diploma or its equivalent. Elizabeth shall promptly make all necessary premium payments.

If insurance for the minor child is no longer available through Elizabeth's employment, or if the cost of the insurance is no longer reasonable, both parties shall share the responsibility of naming and maintaining the child as a covered dependent.

The parent carrying the child on his or her policy shall provide an insurance summary and provider card to the other parent and shall notify the other parent of any changes in coverage or providers.

C. CHILD'S UNINSURED MEDICAL EXPENSES

Both parties agree to follow insurance guidelines for coverage and cooperate, as necessary, to assure maximum utilization of insurance benefits. Neither party shall be obligated for uninsured expenses incurred by the other if said guidelines and provisions for coverage are not followed.

The parties agree to share, equally, the child's ordinary uninsured or non-reimbursed medical and dental expenses, and co-insurance (if any) including any insurance deductibles. "Ordinary" expenses include items such as routine medical checkups and treatment, examinations required by school authorities, treatment of minor ailments and prescriptions incidental thereto, and other health care expenses necessarily incurred to protect or maintain a child's health.

The party incurring the expense shall submit verification of the sum owed to the other party within 30 days of ascertaining the amount of the uninsured portion. The other party shall then reimburse the paying party for one-half of the sum within 15 days of presentment of verification, unless there is a reasonable objection to payment. Failure to adhere to these terms may subject a parent to contempt proceedings in which actual attorney's fees may be awarded.

The parties expressly intend that uninsured expenses, under this provision, be dealt with promptly and that neither will withhold reimbursement from the other. Although the parties do not anticipate problems in this regard, if this matter is brought to court in the future, they desire that the Court shall impose appropriate sanctions on an offending party to ensure compliance with this provision.

"Extraordinary" expenses shall include, without limitation, chiropractic care, orthodontia, and psychiatric or other mental health care expenses. Neither party shall incur any extraordinary expenses for the child, except in the case of emergency, without prior notice to, and the consent from, the other party. Provided notice is given, and consent is not unreasonably withheld, extraordinary expenses shall also be shared, equally, by the parties.

V. OTHER INSURANCE

Effective as of the time of the final hearing, each party shall be individually responsible for and pay premiums on his or her own health, accident, disability, vehicle, homeowners or renters, personal property and personal liability umbrella insurance to the extent that he or she desires to maintain such coverage.

VI. PROPERTY DIVISION

As a full, final, complete, and equitable property division, each party is awarded the following property:

A. PROPERTY AWARDED TO WIFE

1. All household items and personal effects, including clothing and jewelry, in her possession at the time of the final hearing or as agreed to between the parties.

2. 2007 Lexus IS 250.

3. Any and all life insurance policies in her name or possession at the time of divorce.

4. Etrade and Voya accounts.

5. Any and all checking and savings accounts in her name.

6. 50% of the Community First Credit Union Checking and Savings accounts (approximately $25,000 total).

7. Any other disclosed asset in her possession at the time of the final hearing.

B. PROPERTY AWARDED TO HUSBAND

1. All household items and personal effects, including clothing and jewelry, in his possession at the time of the final hearing or as agreed to between the parties.

2. 2005 Nissan Xterra.

3. Any and all life insurance policies in his name or possession at the time of divorce.

4. Any and all checking and savings accounts in his name.

5. Computer share, share owner, CSX, Norfolk Southern, Gold IRA shares/securities.

6. 50% of the Community First Credit Union Checking and Savings accounts (approximately $25,000 total).

7. Any other disclosed asset in his possession at the time of the final hearing.

C. DISPOSITION OF REAL ESTATE

Adam shall be awarded all right, title and interest in the parties' residence located at 451 Lowell Place in Neenah, WI with an agreed value of $210,000. Adam shall be responsible for the

outstanding mortgage thereon owing to Community First Credit Union in the current approximate total amount of $106,187, property taxes, homeowner's insurance, utilities, and any costs related to the residence. Adam shall refinance the mortgage on the above-described residence within 90 days from the date of divorce. Elizabeth shall execute all real estate closing documents including Quit Claim Deed and Wisconsin Real Estate Transfer Return and said documents shall be held in trust until refinancing.

Both parties understand that this marital settlement agreement alone will not transfer title to one party or the other, but such a transfer requires a fully executed Quit Claim Deed and a Wisconsin Real Estate Transfer Return signed by the parties. The party awarded a parcel of real estate shall be responsible for having the necessary documents prepared.

In the event Adam has not closed on the refinancing of the parties' residence within 90 days of the date of divorce, the residence shall be immediately placed on the market for sale with a mutually agreed real estate broker. Adam shall continue to be responsible for the outstanding mortgage thereon, homeowner's insurance, utilities, and any mutually agreed costs related to the residence until the date of sale.

Adam shall be awarded all right, title and interest in the parties' land located at Deerlake Road #2 in Marinette, WI with an agreed value of $50,000. Adam shall be responsible for property taxes, homeowner's insurance, utilities, and any costs related to the residence.

D. EQUALIZATION OF MARITAL PROPERTY DIVISION

A payment of $77,000 is required to equalize the marital property division. This payment shall be made by Adam to Elizabeth. This payment shall be within 90 days of the date of divorce.

VII. DEBTS AND LIABILITIES

Each party is responsible for any debt or liability, including personal charge cards, incurred by him or her after the date of filing, with each party holding the other harmless for its payment.

Each party assigned a debt shall be fully responsible for that obligation and shall not make any demands upon the other party concerning that debt.

Each party warrants that he or she has not incurred any debts or liabilities that are unpaid other than those listed on his or her financial statement. Any debt not listed shall be the responsibility of the party who incurred it and that party shall not make any demands upon the other party concerning that debt.

Adam shall be solely responsible for the Mortgage owing on the marital residence in the amount of $106,187 owing to Community First Credit Union.

Creditors are not bound by this agreement and each party may remain liable to creditors for all marital debts. Any party who suffers a loss because of a failure of the other party to pay an assigned debt may enforce that obligation by a motion for contempt of court.

With respect to each party's responsibility for the payment of certain debts and liabilities and their obligations to hold the other harmless for the payment thereof, the parties understand and intend that these obligations are domestic support obligations as defined in 11 U.S.C. § 101(14A) and non-dischargeable under 11 U.S.C. § 523 (a)(5) of the Bankruptcy Code, this obligation being part of the final financial support settlement for both parties. This understanding is set forth in detail here so as to clarify the intention of the parties with respect to the hold harmless provision.

VIII. TAXES

A. YEAR OF THE DIVORCE

The parties agree to file their income tax returns for the year of the divorce consistent with the rules of the IRS, Wisconsin Department of Revenue, and Wisconsin's Marital Property law. The parties understand that their marital status on the last day of the year determines their filing status for that year, whether married or single. The parties acknowledge that each are responsible for seeking tax advice from a tax professional with regard to issues of this divorce.

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As to any taxes found to be due or refunds made for prior taxable years, the parties shall share equally any such refunds and contribute equally to any assessments for additional taxes, penalties and interest unless it can be demonstrated that the refund or additional obligation, or any distinct portion thereof, is due to the conduct or status of only one of the parties. In that event, the refund or additional obligation shall be allocated between the parties accordingly.

C. DEPENDENTS AND EXEMPTIONS

Elizabeth shall have the right to claim the child as a dependent for federal and state income tax purposes in even years and Adam shall have the same right in odd years. The parties shall equally divide any stimulus funds received attributable to the minor child.

Each party shall sign IRS Form 8332, Release of Claim to Exemption for Child of Divorced or Separated Parents for the child for each applicable tax year. If claiming a child as a dependent and exemption for tax purposes results in a special tax credit as the result of something paid by both parties throughout the year, the party receiving same shall split equally with the other party any tax credit received.

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Each party acknowledges that he or she has been advised to have this Agreement reviewed by his or her individual attorney and that individually each has had an opportunity to do so. The parties understand and agree that Attorney Jeff Morrell is solely representing Elizabeth in this matter and Adam has been so advised of Attorney Jeff Morrell's exclusive representation of Elizabeth relative to the drafting and execution of this Agreement.

Each of the parties shall be responsible for his or her own attorney fees, no contribution being made by either party.

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Elizabeth does not wish to resume the use of her former legal surname of Adler.

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The parties shall execute and deliver any and all documents necessary to carry out the terms and conditions of this Agreement.

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Each party has entered into this Agreement voluntarily, with full information, including information as to tax consequences. Each assumes equal responsibility for the entire contents of the Agreement, and each believes the terms and conditions to constitute a fair and reasonable compromise of disputed issues. No coercion or undue influence has been used by or against either party in making this Agreement.

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This Agreement is binding upon the parties, and their respective heirs, beneficiaries, legatees, personal representatives, agents and assigns.

Each party acknowledges that no representations of any kind have been made to him or her as an inducement to enter into this Agreement, other than the representations set forth herein.

This document is the product of give and take negotiations and some portions of the language are that of counsel for the husband, some portions are language of counsel for the wife, and some portions are language of both counsel. Accordingly, the common law presumption of resolving ambiguities and omissions against the drafter shall not apply as there is no one drafter of this document and we declare that it is impossible to accurately determine who drafted which clauses.

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Each party warrants that there has been an accurate and current disclosure of income, assets, and debts and liabilities, and that the property disclosed in his or her financial statements constitutes all the property in which he or she has any interest. Each party is aware that he or she was entitled to obtain appraisals of all assets owned by the parties. To the extent that any asset was not appraised, the parties freely and voluntarily waived the right to an appraisal.

XVII. SURVIVAL OF AGREEMENT AFTER JUDGMENT

The provisions of this Agreement shall be incorporated into the Findings of Fact, Conclusions of Law and Judgment of Divorce; however, this Agreement shall survive the Judgment and have independent legal significance. This Agreement is a legally binding contract which either party may enforce in this or any other court of competent jurisdiction.

Dated:_____, 2022.

_____
Elizabeth Fitzgibbon, Petitioner

Dated:_____, 2022.

_____
Adam Fitzgibbon, Respondent

Drafted with the assistance of an Attorney:
Attorney Jeff Morrell
State Bar Number: 1096451
STERLING LAW OFFICES, S.C.
N56 W13405 Silver Spring Drive
Menomonee Falls, WI 53051
Phone: (920) 517-5497
Fax: (414) 255-2214

FILED
04-27-2022
Clerk of Circuit Court
Winnebago County, WI
2021FA000564

STATE OF WISCONSIN **CIRCUIT COURT** **WINNEBAGO COUNTY**

In RE the marriage of Elizabeth Anne Fitzgibbon and Adam Paul Fitzgibbon

Notice of Hearing

Case No: 2021FA000564

COURT ORIGINAL

This case is scheduled for: **Default divorce**

Date	Time	Location
05-23-2022	10:30 am	1st Floor, Room 141 P O Box 2808 415 Jackson Street Oshkosh WI 54903-2808
Circuit Court Judge/Circuit Court Commissioner John Bermingham		
Re Divorce		

This matter will not be adjourned by the court except upon formal motion for good cause or with the specific approval of the court upon stipulation by all parties.

Default Divorce Hearing

If you require reasonable accommodations due to a disability to participate in the court process, please call 920-236-4791 prior to the scheduled court date. Please note that the court does not provide transportation.

Winnebago County Circuit Court
Date: April 27, 2022

DISTRIBUTION	Address	Service Type
Court Original		
Elizabeth Anne Fitzgibbon	308 Oak St, Neenah, WI 54956	Mail Notice
Peter J. Culp		Electronic Notice
Adam Paul Fitzgibbon	451 Lowell Place, Neenah, WI 54956	Mail Notice

STATE OF WISCONSIN **CIRCUIT COURT** **WINNEBAGO COUNTY**

In RE the marriage of Elizabeth Anne Fitzgibbon and Adam Paul Fitzgibbon **Minutes**

Case No.: 2021FA000564

Clerk: pe
Date: 04-26-2022
Reporter

Activity: Telephone conference
Time: 11:30 am
Court Official: John Bermingham, Court Commissioner
Interpreter

WINNEBAGO COUNTY CLERK OF COURTS FILED APR 26 2022 FAMILY DIVISION FILED

Appearances

☒ Elizabeth Anne Fitzgibbon, Petitioner
☒ Adam Paul Fitzgibbon, Respondent
} By phone

☐
☐
☒ Atty Peter Culp for Pet By phone
☐

☐ Other

Change Placement & Child Support / MSA
CC: 11:31AM
Court addresses) orders), MSA, and MSA.
Court listened to DAR recordings. Addresses) value of land - $40,000 vs $50,000. Parties agreed to $765/mth CS.

Atty Culp for Pet was told by Atty Morrell he was obligated to pay 17% for CS.

Pet - Addresses concern of CS. Atty Morrell hired

Court -
1) Parties have 10 days to file Re-configured MSA.

2) Scheduled DD - 5/23/2022 10:30AM
Mtt to be heard 5/23/2022 10:30AM

App. J-01
Page 051

GF-130(CCAP), 10/2010 Minutes

This form shall not be modified. It may be supplemented with additional material.

CULP LAW FIRM
LLC

Office Location:
6991 State Road 76
Neenah, WI 54956

(Office) 920.472.4600
(Fax) 920.472.4266
(Cell) 920.205.0971

www.Culp.law

peterc@culp.law

May 23, 2022

VIA E-FILE ONLY

Honorable John E. Bermingham
Winnebago County Circuit Court
415 Jackson Street
PO Box 2808
Oshkosh, WI 54903-2808

Re: **In RE the marriage of:**
Elizabeth Anne Fitzgibbon and Adam Paul Fitzgibbon
Winnebago County Case Number 2021FA000564

Dear Commissioner Bermingham:

This matter is set for a hearing today at 10:30 a.m. I have been in communication with Attorney Joseph Putzstuck who represents the Petitioner. I am authorized to communicate that we have jointly agreed to request an adjournment of this matter for sixty (60) days to permit the parties and counsel to negotiate a global resolution of this matter. At your first opportunity, please advise if this request is acceptable to the Court. Thank you.

Sincerely,

CULP LAW FIRM, LLC

Electronically signed by Peter J. Culp

Peter J. Culp
Attorney/Member

PJC:hs

c: Client - via email only
Joseph Putzstuck, Esq.- via efile only

FILED
07-12-2022
Clerk of Circuit Court
Winnebago County, WI
2021FA000564

STATE OF WISCONSIN CIRCUIT COURT WINNEBAGO COUNTY

In Re the Marriage of:
ELIZABETH FITZGIBBON,
Petitioner,

-and- Case No.: 2021FA564

ADAM FITZGIBBON,
Respondent.

AFFIDAVIT OF ELIZABETH FITZGIBBON

STATE OF WISCONSIN)
) ss.
OUTAGAMIE COUNTY)

Elizabeth Fitzgibbon, being first duly sworn on oath deposes and states as follows:

1. I am the Petitioner in the above-captioned action. This action came on for final hearing on February 7, 2022 before the Honorable John E. Bermingham, Family Court Commissioner for Winnebago County, Wisconsin.

2. Prior to the final hearing, the Respondent and I entered into a Marital Settlement Agreement. That Marital Settlement Agreement was filed with the Court on January 21, 2022.

3. Later, the Respondent and I entered into an Amended Marital Settlement Agreement that included hand-written amendments to the Amended Marital Settlement Agreement. I filed that document with the Clerk of Courts on January 28, 2022.

4. Somehow, the Amended Marital settlement Agreement with hand-written amendments was lost between the Clerk of Courts office and the Family Court Commissioner's Office.

5. On February 7, 2022 the Respondent attended the Stipulated Final Divorce Hearing, assuming we were agreeing to enter the Amended Marital Settlement Agreement with hand-written amendments as part of the Judgment of Divorce.

6. Later, I realized that the Family Court Commissioner was actually utilizing the original Marital Settlement Agreement, not the Amended Marital Settlement Agreement, and not the Amended Marital Settlement Agreement with hand-written notes.

7. The original Marital Settlement Agreement is missing pages 3 and 4, does not include any of the amendments the Respondent and I agreed to both in the Amended Marital Settlement Agreement, the Amended Marital Settlement Agreement with the hand-written amendments, and does not include a holiday schedule that is alluded to in the Marital Settlement Agreement.

8. Both Respondent and I agree that the Amended Marital Settlement Agreement with hand-written notes was supposed to be entered as part of the Judgment of Divorce. However, neither of us have a copy of that document any longer, and neither of us can specifically remember the exact revisions made by hand-writing them in, which we confirmed at a hearing in front of Family Court Commissioner Bermingham, and included the Respondent and his Attorney on April 26, 2022.

9. The Respondent has now filed a Motion requesting, among other issues, modifications of the current Judgment of Divorce on physical placement, vacation, out-of-state travel, holidays, choice of school, activities, responsibility for the health insurance premium, uninsured costs, variable expenses, and an issue regarding a life insurance policy.

10. It is quite clear that, at the time of the stipulated final divorce hearing, the Respondent and I had not resolved all material issues.

11. Upon information and belief, a Family Court Commissioner may only preside over a final divorce hearing if all material issues are resolved. See Wis. Stat. § 757.69(1)(p)1..

12. Upon information and belief, given the above, I believe the Judgment of Divorce is either invalid, unenforceable, void, or voidable, and all provisions of the Marital Settlement Agreement are also invalid, unenforceable, void, or voidable.

13. Upon information and belief, the Family Court Commissioner does not have the power to deem a judgment invalid, unenforceable, void, or voidable, so this matter will need to be referred to the Circuit Court for decision.

14. Given the above, I respectfully request the Court grant me the relief requested in the attached Notice of Motion and Motion.

Dated at Appleton, Wisconsin this 11 day of July, 2022.

ELIZABETH FITZGIBBON,
Petitioner.

Subscribed and sworn to before me

This 11 day of July, 2022.

Notary Public,
Appleton, Wisconsin. exp 02/21/2024

BECKY A KNEIP
Notary Public
State of Wisconsin

FILED
07-12-2022
Clerk of Circuit Court
Winnebago County, WI
2021FA000564

STATE OF WISCONSIN CIRCUIT COURT WINNEBAGO COUNTY

In Re the Marriage of:
ELIZABETH FITZGIBBON,
Petitioner,

-and- Case No.: 2021FA564

ADAM FITZGIBBON,
Respondent.

NOTICE OF MOTION AND MOTION FOR DECLARATORY ORDER, TO REOPEN JUDGMENT AS TO ANY INVALID, UNENFORCEABLE, OR VOID/VOIDABLE PROVISIONS, TO HOLD IN ABEYANCE RESPONDENT'S MOTION, AND FOR TEMPORARY ORDER PENDING DECLARATORY ORDER AND FINAL ORDERS

TO: Adam Fitzgibbon
c/o Atty. Peter J. Culp
Culp Law Firm, LLC
6991 State Road 76
Neenah, WI 54956-9631

PLEASE TAKE NOTICE that on Monday, July 25, 2022, at 10:30am, or as soon thereafter as counsel can be heard, the undersigned will appear before the Honorable Michael Rust, Family Court Commissioner for Winnebago County, Wisconsin, at the Winnebago County Circuit Court of 415 Jackson Street, Oshkosh, WI 54901, Room 141, and based upon the file and papers therein, and the Affidavit attached hereto, the undersigned will then and there move the Court for an Order in this action as follows:

1. Declaring the validity, enforceability, voidability, or lack thereof, of the parties' Judgment of Divorce and Marital Settlement Agreement, as well as all related provisions, pursuant to Wis. Stat. § 806.04;

2. Reopening the Judgment of Divorce, Marital Settlement Agreement, and any provisions therein deemed to be invalid, unenforceable, or void/voidable, pursuant to Wis. Stat. § 806.07(a), (d), and (h);

3. Holding in abeyance all of Respondent's requests for relief in his Motion filed on April 18, 2022;

4. Entering a Temporary Order, pending resolution of requests 1-2 above, on the issues of:

    a. legal custody;
    b. physical placement;
    c. child support;
    d. variable expenses, including uninsured expenses;
    e. reimbursement of variable expenses and uninsured expenses;

f. insurance responsibility;
g. use of property; and
h. payment of debts and other obligations.

5. Awarding Petitioner all costs and attorney fees incurred in having to bring this Motion; and

6. Such other and further relief as the Court deems just and equitable under these circumstances.

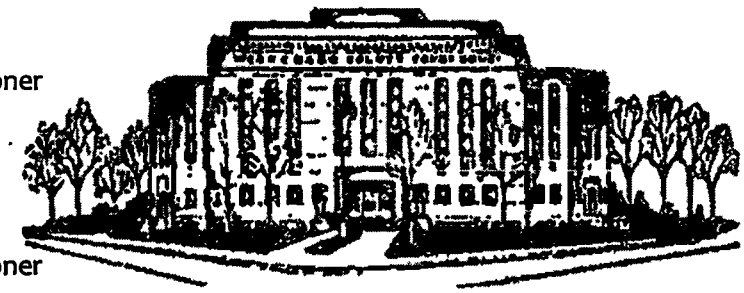
DATED at Appleton, Wisconsin this 12th day of July, 2022.

FOZARD LAW OFFICE, LLC

STEPHEN J. FOZARD
Attorney for Petitioner
4650 W. Spencer Street, Suite 2
Appleton, WI 54914
Telephone: (920) 560-4647
State Bar No.: 1095419

Lisa M. Krueger
Family Court Commissioner

Michael D. Rust
Circuit Court Commissioner



Winnebago County Courthouse
415 Jackson Street
PO Box 2808
Phone: Oshkosh (920) 236-4791
Neenah (920) 727-2880
Ext. 4791
Fax: (920) 424-7779

Family Court Commissioner's Office

Winnebago County, Wisconsin

July 21, 2022

Attorney Stephen J. Fozard
4650 W. Spencer Street, Suite 2
Appleton, WI 54914

Attorney Peter J. Culp
6991 State Road 76
Neenah, WI 54956

Re: In RE the marriage of Elizabeth Anne Fitzgibbon and Adam Paul Fitzgibbon
2021FA000564

Dear Counsel:

The Family Court Commissioner's office is in receipt of several letters in connection with this case. Please accept this letter as my response. As you know, Commissioner Bermingham retired in June. I have been managing the caseload in Family Court since that time. This case was brought to my attention based on an issue with regard to the parties' final hearing and final paperwork. I am reviewing the file to get up to speed.

First, it appears the Motion filed by Respondent regarding placement was originally scheduled to be heard on May 5th, but was rescheduled to May 23rd at the April 26th hearing. Since that time, it was again rescheduled to July 25, 2022. As you may know, Commissioner Bermingham's replacement is out of the office; therefore, that hearing was rescheduled at the Court's request. The motion, along with Petitioner's Motion, is now scheduled to be heard on September 9, 2022. (Note: The Court calendar also shows a "Default Divorce" hearing scheduled for that same date and time. I am not sure how this is scheduled for a Default Divorce since these parties are in fact divorced.)

The current correspondence addresses the request and objection to an emergency hearing for placement. The original motion regarding placement has not yet been heard; therefore, the Court is not in a position to address any modifications on an emergency basis. Further, there is no Motion for Contempt or Motion to Enforce on file. As a result, **no emergency hearing is being scheduled.**

Sincerely,

Electronically signed by Lisa M Krueger

Lisa M Krueger
Family / Court Commissioner

cc: Petitioner, Respondent

FILED
09-09-2022
Clerk of Circuit Court
Winnebago County, WI
2021FA000564

STATE OF WISCONSIN **CIRCUIT COURT** **WINNEBAGO COUNTY**

In RE the marriage of Elizabeth Anne Fitzgibbon and Adam Paul Fitzgibbon

Notice of Hearing

Case No: 2021FA000564

COURT ORIGINAL

This case is scheduled for: **Motion hearing**

Date	Time	Location
11-16-2022	02:00 pm	Branch 3, 2nd Floor, Room 240 P O Box 2808 415 Jackson Street Oshkosh WI 54903-2808
Circuit Court Judge/Circuit Court Commissioner Bryan D. Keberlein		
Re Divorce		

This matter will not be adjourned by the court except upon formal motion for good cause or with the specific approval of the court upon stipulation by all parties.

Hearing on motion to reopen

If you require reasonable accommodations due to a disability to participate in the court process, please call 920-236-4791 prior to the scheduled court date. Please note that the court does not provide transportation.

Winnebago County Circuit Court
Date: September 9, 2022

DISTRIBUTION	Address	Service Type
Court Original		
Lawrence Gerard Vesely		Electronic Notice
Elizabeth Anne Fitzgibbon	308 Oak St, Neenah, WI 54956	Mail Notice
Peter J. Culp		Electronic Notice
Adam Paul Fitzgibbon	451 Lowell Place, Neenah, WI 54956	Mail Notice

STATE OF WISCONSIN WINNEBAGO COUNTY
COURT COMMISSIONER

In RE the marriage of
Elizabeth Anne Fitzgibbon and
Adam Paul Fitzgibbon

Case No. 21 FA 564

PROCEEDINGS: DEFAULT DIVORCE

DATE: FEBRUARY 7, 2022

BEFORE: The Honorable JOHN BERMINGHAM,
COURT COMMISSIONER

APPEARANCES: The Petitioner present with no counsel

The Respondent present with no counsel

JESSICA S. MEINEN
Official Court Reporter

THE COURT: This is in the matter of Elizabeth Ann Fitzgibbon and Adam Paul Fitzgibbon, Case No. 21 FA 564. Are you Elizabeth?

MS. FITZGIBBON: Mm-hm.

THE COURT: And you're Adam?

MR. FITZGIBBON: Correct.

THE COURT: We are here today for a final hearing in your divorce action. I'll note a couple of things for the record. Number one, the parties' marital settlement agreement was approved by the Court on January 21, '22. Both parties have filed the requisite financial disclosure statements, and we're ready to proceed today.

A couple of things you need to know. When the shot clock is running, that means that we're on the record so everything is being recorded verbatim. Ask you to speak loudly and clearly, make a special effort not to speak over or interrupt anybody.

Since I need to take testimony from both of you this morning, I am going to ask you both, if you would please, to raise your right hands.

ELIZABETH FITZGIBBON and ADAM FITZGIBBON, called as a witness, being first duly sworn in the above cause, testified under oath as follows:

THE COURT: Elizabeth?

MS. FITZGIBBON: Yes, I do.

THE COURT: And Adam?

MR. FITZGIBBON: Yes, I do.

THE COURT: Thank you. Because Elizabeth's name appears first, I will begin with her. Would you state your name and address for the record, please?

MS. FITZGIBBON: Elizabeth Ann Fitzgibbon, and 308 Oak Street, Neenah, Wisconsin.

THE COURT: That's in Winnebago County?

MS. FITZGIBBON: Correct.

THE COURT: Were you a resident of Winnebago County, Wisconsin, for six months prior to September 8, 2021?

MS. FITZGIBBON: Yes.

THE COURT: And what is your date of birth?

MS. FITZGIBBON: [redacted]-87.

THE COURT: Was your social security number correctly submitted with the original paperwork?

MS. FITZGIBBON: As far as -- yes.

THE COURT: And what is your occupation?

MS. FITZGIBBON: Phlebotomy.

THE COURT: Have you made a full disclosure of your income, your expenses, your assets, and your liabilities to Adam?

MS. FITZGIBBON: Yes.

THE COURT: And do you believe that he has to you?

MS. FITZGIBBON: Yes.

THE COURT: On what date were the two of you married to each other?

MS. FITZGIBBON: September 21, 2013.

THE COURT: And the two of you have had children; is that correct?

MS. FITZGIBBON: Yes.

THE COURT: And names and dates of birth -- I can't tell whether it's child or children. At any rate, names and dates of birth.

MS. FITZGIBBON: A.J.F., and it was 9/10/15 for his birth date. Is that --

THE COURT: His birth date.

MS. FITZGIBBON: Yeah, 9/10/15, September 10.

THE COURT: Okay. Is that your only child?

MS. FITZGIBBON: He's our only living child, yes.

THE COURT: Are you pregnant today?

MS. FITZGIBBON: No.

THE COURT: Have you started any other action for divorce, legal separation, annulment, or custody of your child before this or any other court?

MS. FITZGIBBON: No.

THE COURT: Have you been previously married?

MS. FITZGIBBON: Yes.

THE COURT: And how did that marriage end?

MS. FITZGIBBON: Divorce.

THE COURT: Was that divorce at least six months prior to your marrying Adam?

MS. FITZGIBBON: Yes.

THE COURT: Do you believe this marriage is irretrievably broken?

MS. FITZGIBBON: Yes.

THE COURT: Other than your marital settlement agreement, do you and Adam have any other written agreements which would affect what I would do today such as a pre- or a postnuptial agreement?

MS. FITZGIBBON: No.

THE COURT: How is your health?

MS. FITZGIBBON: Good.

THE COURT: Is your employment secure?

MS. FITZGIBBON: Yes.

THE COURT: What's the highest level of education that you attained?

MS. FITZGIBBON: Bachelor's.

THE COURT: Have you had an obligation to the U.S. Armed Services since September 8, 2021?

MS. FITZGIBBON: No.

THE COURT: Are you asking to resume the use of a former surname?

MS. FITZGIBBON: No.

THE COURT: Have you received any form of public benefit during the pendency of this action?

MS. FITZGIBBON: No.

THE COURT: Do you believe that the provision -- provisions in your marital settlement agreement for custody and physical placement are in your child's best interest?

MS. FITZGIBBON: Yes.

THE COURT: I'm looking at the marital settlement agreement in terms of child support. You understand that the child support has been set pursuant to statute in that -- in your agreement?

MS. FITZGIBBON: Um, what does that mean?

THE COURT: Let me take a look at it here. Just a moment. What provision do you have in your marital settlement agreement for child support?

MS. FITZGIBBON: Um, it said -- it was something Jeff put in there.

THE COURT: I'm just going through it right now. Um --

MS. FITZGIBBON: It was -- well --

THE COURT: I understand that you will be

equally responsible for the child's uninsured health-related expenses?

MS. FITZGIBBON: Right. When he and I spoke, he as in Jeff, the attorney who filed that, he said it was 765 per month so I had written it down, and then at one point I had seen it in here so I don't know --

THE COURT: Well, that's what I'm looking for. Again, I'm not sure where I saw it or whether there were two pieces of this agreement. Let me look. What I did find was that the placement is about 60 percent of the time with mom, 40 percent of the time with dad. But that the two of you had agreed to $765 which exceeds --

MS. FITZGIBBON: Oh, you found it? Okay.

THE COURT: Which exceeds standards. You understand that? It's higher than what -- than what would ordinarily be ordered.

MS. FITZGIBBON: Oh, okay.

THE COURT: Um, on a 60/40 placement given your financial information that you have disclosed.

MS. FITZGIBBON: Okay. I --

MR. FITZGIBBON: (Inaudible.)

THE COURT: So is the 765 in agreement between the two of you?

MR. FITZGIBBON: I guess.

MS. FITZGIBBON: I'm sorry, what did you say?

THE COURT: So the 765 that you agreed to is pursuant to the agreement that you have reached with Adam?

MS. FITZGIBBON: Well, that's what he and I had agreed to so --

THE COURT: Okay. And I will note that is slightly above the standards. You understand obligations that both of you have to provide health insurance for the child if it's available to you at a reasonable cost?

MS. FITZGIBBON: I know that I carry it for him. Does that mean that he has to also?

THE COURT: So as long as one party is carrying it, that's fine, but you both always have the obligation to provide it if it's available to you at reasonable cost. And reasonable cost is defined administratively as ten percent or less of your gross income.

MS. FITZGIBBON: Okay.

THE COURT: You're always going to be equally responsible for the uninsured, health-related expenses for the child?

MS. FITZGIBBON: Okay.

THE COURT: Correct?

MS. FITZGIBBON: Yes.

THE COURT: And maintenance apparently has been

waived in this case. That means that both of you are forever waiving the right to receive and eliminating the obligation to pay spousal support; is that correct?

MS. FITZGIBBON: I guess, because I thought that it's a ten-year thing anyway. I think we were only married for eight or nine so I don't think I would have even qualified in having considered it.

THE COURT: So do you understand that that waiver is permanent?

MS. FITZGIBBON: Mm-hm.

THE COURT: And you can't change --

MS. FITZGIBBON: Yeah.

THE COURT: -- regardless of what might happen after this hearing today?

MS. FITZGIBBON: Yeah.

THE COURT: Do you think your property division is approximately equal?

MS. FITZGIBBON: Yes.

THE COURT: And you signed that agreement voluntarily?

MS. FITZGIBBON: Yes.

THE COURT: And you used the services of a mediator in this matter, but you are considered to be unrepresented. Do you understand that?

MS. FITZGIBBON: Right. Mm-hm.

THE COURT: You are wishing to proceed on that basis?

MS. FITZGIBBON: Correct.

THE COURT: Do you have any questions for me?

MS. FITZGIBBON: No.

THE COURT: Mr. Fitzgibbon, do you have any questions for the Petitioner?

MR. FITZGIBBON: No.

THE COURT: Based on that, I will turn to you. Would you state your name and address, please?

MR. FITZGIBBON: Adam P. Fitzgibbon, 451 Lowell Place, Neenah, Wisconsin.

THE COURT: Were you present in court this morning when I questioned Elizabeth concerning a number of factors about this marriage?

MR. FITZGIBBON: Yes.

THE COURT: Was her testimony correct?

MR. FITZGIBBON: Yes.

THE COURT: What is your date of birth?

MR. FITZGIBBON: [redacted]-79.

THE COURT: Was your social security number correctly submitted with the original paperwork in this action?

MR. FITZGIBBON: Yes.

THE COURT: And what is your occupation?

MR. FITZGIBBON: I work at AP Nonweiler.

THE COURT: And have you made a full disclosure of your income, your expenses, your assets, and your liabilities to your wife?

MR. FITZGIBBON: Correct.

THE COURT: And do you believe that she has to you?

MR. FITZGIBBON: Correct.

THE COURT: Have you started any other action for divorce, legal separation, annulment, or custody before this or any other court?

MR. FITZGIBBON: No.

THE COURT: Have you been previously married?

MR. FITZGIBBON: No.

THE COURT: Do you believe this marriage is irretrievably broken?

MR. FITZGIBBON: Yes.

THE COURT: How is your health?

MR. FITZGIBBON: Good.

THE COURT: Is your employment secure?

MR. FITZGIBBON: Yes.

THE COURT: And how far did you go in school?

MR. FITZGIBBON: High school.

THE COURT: Have you had an obligation to the Armed Services of the United States since September 8,

2021?

MR. FITZGIBBON: No.

THE COURT: Have you received any form of public benefit during the pendency of this action?

MR. FITZGIBBON: No.

THE COURT: And do you believe the provisions in your marital settlement agreement concerning custody and placement of your child is in the child's best interest?

MR. FITZGIBBON: Yes.

THE COURT: You understand the obligation to pay child support that we discussed earlier?

MR. FITZGIBBON: Yes.

THE COURT: As well as your obligation to pay 50 percent of the child's uninsured, unreimbursed health care expenses?

MR. FITZGIBBON: Yes.

THE COURT: You understand that maintenance is permanently waived by both of you, that neither of you will ever be entitled to spousal support from the other ever if this agreement is approved?

MR. FITZGIBBON: Yes.

THE COURT: Do you think your property division is essentially equal?

MR. FITZGIBBON: Yep.

THE COURT: And you signed this voluntarily?

MR. FITZGIBBON: Yes.

THE COURT: And you are proceeding without an attorney voluntarily; is that correct?

MR. FITZGIBBON: That is correct.

THE COURT: Do you have any questions for the Court?

MR. FITZGIBBON: No.

THE COURT: Elizabeth, do you have any questions for him?

MS. FITZGIBBON: No.

THE COURT: Based upon that, I will grant an absolute divorce as of today's date. The jurisdictional and residency requirements of the statutes have been met and more than 120 days have elapsed since the service of the documents in this case took place, and that was on September 13th of 2021. Based upon the testimony of the parties, I will find that the facts alleged in your petition for divorce are true and correct. I will find that your marriage is irretrievably broken based upon your testimony. I will find that both of you are proceeding without counsel today and that you have both filed the requisite financial disclosure statements.

So specifically, I will find that custody and placement arrangements are in the best interest of your child, that child support is pursuant to statute, to

guidelines, that maintenance has been waived by both of you, that your property division is essentially equal, and that neither of you have requested to resume the use of a former surname.

So I will find your marital settlement agreement to be fair and reasonable. I will direct that it be incorporated into your findings of fact, conclusions of law, and judgment.

Understand that there is a receiving and disbursing fee associated with the payment of child support, $65 a month for the payor and -- a month, excuse me, a year for the payor and $35 a year for the payee. It generally comes out of the first support that you receive after it's billed, but you get a separate bill for the payment of that from the Support Collections Trust Fund. Understand that you have a child and as long as there is a potential child support obligation, you need to exchange your financial information every year. That would be copies of your W-2 forms and your complete income tax returns with all schedules attached. It's exchanged both ways between the two of you every year.

Lastly, you need to know that your divorce is final today, but neither of you can remarry for a period of six months. Any remarriage within that period would

not be recognized by the State of Wisconsin or elsewhere.

So this divorce is granted to the Petitioner in this case, and I'll direct the Petitioner to submit the findings of fact, conclusions of law, and judgment to the Court within 30 days. What I have received so far is the agreement that the two of you have reached that indicates what you have agreed to. Okay? And what we need is your judgment of divorce. Let me look in here and see if by any chance it's one of the -- it's not one of the ones that I have in my signed pile today. So can I have the sheet? I will show you what forms to grab off the internet. And your maiden name?

MS. FITZGIBBON: Adler.

THE COURT: H-A --

MS. FITZGIBBON: A-D-L-E-R.

THE COURT: A-D-L-E-R. Okay. Here's a sheet that I'm handing you. Here's the sheet that will show you what forms and where to go online to get them.

STATE OF WISCONSIN)
) SS
COUNTY OF WINNEBAGO)

I, JESSICA S. MEINEN, hereby certify that I am the official court reporter for the Circuit Court, Branch 5, Winnebago County, Wisconsin, that I have carefully compared the foregoing 16 pages with my stenographic notes, and that the same is a true and correct transcript.

Dated at Oshkosh, Wisconsin, this 15th day of September, 2022.

Electronically signed by Jessica S. Meinen
JESSICA S. MEINEN
Official Court Reporter

STATE OF WISCONSIN | **CIRCUIT COURT FAMILY COURT BRANCH 3** | **WINNEBAGO COUNTY**

In re the marriage of:

ELIZABETH ANNE FITZGIBBON,
Petitioner,
and

CASE NO. 21 FA 564

ADAM PAUL FITZGIBBON,
Respondent.

SUPPLEMENTAL AFFIDAVIT

STATE OF WISCONSIN)
)ss.
COUNTY OF WINNEBAGO)

Elizabeth A. Fitzgibbon, after being duly sworn on oath states as follows:

1. I am the Petitioner in the above action.

2. I make this Affidavit to demonstrate that the Respondent failed to co-create with me a new Marital Settlement Agreement (MSA), per the Court's direction provided on April 26, 2022.

Summary:

3. The Respondent has repeatedly demonstrated awareness of Commissioner Bermingham's April 26 direction that remains merely overdue, but has not expired. Had the Respondent not taken (without my consent) our son **A.J.F.** from our son's agreed placement with me and withheld him for nearly a quarter of a year (and unilaterally enrolling him in a school) in defiance of both of our Court-ordered mediation impasses, the status of our new MSA would have been the focus of the September 9 hearing, rather than the release of our son from his father's and grandparents' withholding.

4. The Respondent has reiterated his unwillingness to agree with any MSA that does not award him 50% placement with **A.J.F.** This is a stipulation which he acknowledges has never been acceptable to me and is protected by a two year truce via WI § 767.451(1)(a). He knew that his insistence on this provision would obstruct creating another MSA to fulfill the Court's direction.

5. The Respondent was not merely negligent, but willful in his intentions to obstruct progress toward a new MSA. The Respondent has benefitted greatly from blocking the creation of a new MSA. He lives in the house that I still predominantly own and enjoys the use of the land we co-own without consideration for my equity stake. He has failed to withdraw himself from my bank account, which remains open due to his unwillingness to refinance our mortgage, and has used my bank account to pay for the 2022 year's home insurance, refusing to reimburse me. He has withheld virtually all assets owed to me from the marital asset division, which now well exceed $100,000, excluding child support, which he refuses to pay. He has leveraged my financial credit, home equity, and other assets to purchase an RV and treat our son to countless experiences. He is well aware that delaying agreement on a new MSA affords him an unusually

fine lifestyle while he suppresses mine, a fact which he has highlighted for our son, who finds my humble rental home and lifestyle "boring". If it were not for copious loans from friends and family, I would have been financially insolvent by June, 2022, incapable of both suitable shelter and legal counsel, facts of which he is well aware of and which he has used to pressure me into accepting an inequitable MSA. Further, for 79+ days (ended only by the Court's September 9 direction), he used his kidnapping and withholding of our only child as an additional lever of control to force me to accept an inequitable MSA.

6. In stark contrast, I have proactively and respectfully engaged the Respondent after our April 26 conference in an attempt to resolve the MSA problems, just as I had before the conference. Despite his demands stymieing our progress, I persisted seeking agreement on any portion of our MSA that could help us and the Court in the future. For example, I initiated mediation for us, drafted and shared more than a dozen proposals for co-parenting principles, placement schedules, and financial settlements (seeking feedback to incorporate and build consensus between us), all of which were routinely rejected and often mocked (e.g. "Go get a hobby"). Unabated, I continued to uphold my commitment to our April 26 direction even after the Respondent repeatedly took (without my consent) our son from our son's agreed placement with me ("kidnapping") on multiple, multiple occasions. For another two months, I continued my efforts even after September 9, when the Court ended the Respondent's 79+ days of withholding our son from me. I posit that I have exceeded any reasonable expectation in attempting to resolve the primary problem caused by one or more clerical errors within the Winnebago Court system that led to our hand-edited, Amended MSA being lost and the resulting, predatory actions caused by the Respondent.

7. A.J.F. and I have suffered tremendous emotional and financial harm resulting from the Respondent's unwillingness to co-create another MSA:

   a. Barely 7 years old and challenged to contextualize the events and behaviors surrounding him, A.J.F. has suffered the most, demonstrated by his radically-altered worldview, diminished academic work, and behavior (particularly toward his maternal family).

   b. Having suffered through 4 miscarriages and the loss of our 2-month-old son, Max, who died in my arms, the Respondent's actions have distanced me from our only remaining child. Further, the Respondent has limited my mobility (stuck renting in a poor neighborhood with few children for A.J.F.), my career (due to the uncertainty of schedules and the non-stop, urgent work in resolving the divorce problems the Respondent either exasperates or outright creates), and even my access to counsel due to the financial hardship that the Respondent has inflicted upon me. The emotional toil have been immense, leading me to source support beyond friends and family to include personal counseling for me and due to the severity of A.J.F. condition, reunification counseling and Harbor House (for survivors of domestic abuse) for both A.J.F. and me.

<u>Context and Details: The Court's Direction Established April 26, 2022</u>

8. On January 7, 2022, I submitted our original MSA to Winnebago County's Clerk of Court's office. On January 20, upon learning of the original MSA's financially inequitable nature (highly in favor of the Respondent), I attempted a conversation with the Respondent regarding amending the original MSA. On January 20, this led to a highly inflammatory and threatening domestic incident with the Respondent, who:

a. Communicated his intention to conceal marital assets (guns and weaponry) by gifting them to his father, should I continue pursuing a more equitable MSA – thereby creating a template to use for any asset, ensuring I'm punished for my efforts.

b. Threw kitchen items at me and chased me out of our home, through the garage, and into my car, while he screamed, "You are a liar and fucking whore! You know what, on top of that, fuck you!...Get the fuck off my property you fucking gold-digging bitch!"

Fortunately, I had pre-positioned my car for a possible rapid exit, as once triggered, the Respondent knows few boundaries for his violence, as evidenced by a police report filed, following my complaint of his domestic abuse.

9. Days later, with the February 7 divorce hearing in jeopardy (I'd begun preparing my rejection of the original MSA, given the additional information I had gleaned about our marital assets), the Respondent became slightly more receptive to amending our original MSA. Attorney Jeff Morrell of Sterling Law Offices, who had assisted with the creation of our original MSA, adjusted the original MSA to align with the Respondent's and my new categorical agreements, though neither the Respondent nor I were yet comfortable with the specifics. This document would become known as the draft Amended MSA (only well after our February 7, 2022 hearing did the Court ever see this interim document that lacked both my and his agreement).

10. On January 28, I went to the Respondent's and my home (where the Respondent still resides) at my usual 4:30AM to babysit our minor child, A.J.F.. I brought the draft Amended MSA to review, revise, and co-sign with the Respondent. Upon review of the document amidst considerable tension, the Respondent and I made hand-written edits to it. This hand-edited, Amended MSA was signed by both the Respondent and me and then hand-delivered by me to the Clerk of Court's office on the morning of January 28, along with 3 copies, as confirmed on WCCA.

11. The Respondent and I were divorced on February 7, 2022 by Court Commissioner John Bermingham. As would become crucial 3 months later, during this brief hearing, Commissioner Bermingham verbally confirmed the Respondent's and my agreement to 60/40 placement as well as the Respondent's agreed upon obligation to pay $765 per month in child support.

12. By late March, it became clear that there were clerical errors regarding our MSAs. First, the original MSA (which the Respondent and I understood had been nullified upon receipt of the hand-edited, Amended MSA) was missing two pages pertaining to child support. Second, the Clerk of Court's office apparently never scanned our hand-edited, Amended MSA into their system and shredded all hard copies that I had given them on January 28.

13. Upon learning of this, I approached the Respondent and attempted to recreate the lost document, as I was instructed to do so by Tara Berry of the Clerk of Court's office. The Respondent, however, refused such efforts, for he knew the original MSA was far more financially beneficial for him than the mildy more equitable hand-edited, Amended MSA we had created, signed, and submitted on January 28. I learned in the months that followed that the hand-edited, Amended MSA was more financially inequitable than I had believed it to be on January 28, as following the Respondent's submission of our 2021 taxes (without my review and explicitly against my consent), I discovered financial information missing from both the Respondent's taxes as well as the Financial Disclosure Form submitted to the Court for our divorce.

14. On April 5, as a result of the ongoing MSA re-creation resistance I received from the Respondent, I filed a letter to Court Commissioner Bermingham requesting assistance with the matter. The next day, the Court arranged a conference call for April 26 to discuss the MSA issues and determine the proper course of action. Even so, I continued my efforts to recreate our MSA, as it was the only logical path forward. However, the Respondent was altogether comfortable with the lopsided asset division within the original MSA and his claimed inability to ever pay child support as a result of the missing pages within the Court's scanned and electronically-accessible version of our original MSA. I notified the Respondent of the hardship he was inflicting upon me though his withholding of our marital assets and child support. The Respondent replied that he would pursue a restraining order for my continued pursuit of an MSA, despite him having paid no child support, nor completed any of the agreed-upon asset transfers resulting from our marital asset division, including even token amounts that were directionally correct and would show a good faith effort on his part. Specifically:

    a. April 6 at 10:49PM, I wrote to the Respondent via Yahoo email: "Your cancelling of my checking account last week, rather than simply removing yourself from it as I requested [and agreed-upon in our MSA], was a surprise, as it effectively ended my multi-decade relationship with my bank and adversely impacted my credit history at a time that I'm shopping for a house, which you probably know about, since I've taken AJJF to a handful of home showings in recent weeks…I spoke again with State Farm and Community First's mortgage department regarding your use of our escrow account to effectively prepay the $522 for your home insurance for this year. This is clearly your charge, and I expect reimbursement… I am assembling a list of extraordinary costs, as well as child support and other periodic costs you've accrued. As I noted yesterday, I had to withdraw my financial support of karate and any other non-essential expenses for which I've previously accepted. (This isn't being a bad mother/woman, as you insinuated in your text, but instead, this cessation is the result of the financial burdens you're inflicting upon me.) Anyway, you can either pay for these yourself without splitting the expense, or simply drop the activities. Last week, I took AJJF to a community chess club meeting, complete with free training; there are many other zero-cost activities that we can explore for now. Regardless, I'm happy to take him to it again this week, complementing your support of his karate."

    b. April 7, the Respondent replied via Yahoo email: "I'm asking once, our conversations shall only revolve around our son… The marriage is over with, the divorce is settled. **There is nothing else you will get from me that isn't stated in court paper work. And that's final, thank you. If you don't oblige to this request I will be pursuing a restraining order against you.** I'm tired of you wasting my time with this nonsense."

    As neither the Respondent nor I were represented by counsel at this time, we could only communicate directly on these matters. Though we had a divorce hearing on February 7, the matter was far from over given the MSA issues we faced. The divorce had not been settled, as I had received no settlement, but he now attempted to prevent me from pursuing the issue with him.

15. In the April 26 meeting, where Commissioner Bermingham, the Respondent (and his new attorney, Peter Culp), and I were present, Commissioner Bermingham successfully provided a thorough and accurate overview of the MSA situation. Commissioner Bermingham admitted that he was unclear as to which MSA he had used in the hearing or what any of our divorce

terms had been except for two items: $765/month in child support and 60/40 placement, as from his review of the Court's recording of our February 7 hearing, he had specifically gained the Respondent's and my mutual, verbal agreement on these two matters as part of the divorce he granted us.

16. Commissioner Bermingham then directly asked me how I wished to proceed with establishing all other remaining terms of a complete MSA. I stated that my desire was for the original MSA to act as the temporary governing document until a new MSA was created by the Respondent and me. He approved my request, thereby ordering the Respondent to comply with the only known MSA terms ($765 per month in child support as well as our 60/40 placement). Finally, **Commissioner Bermingham ordered the Respondent and me to create a new MSA, giving us 10 days to do so, to which we both verbally agreed.** A follow-up meeting was scheduled for May 23 to review and approve our new MSA.

Context and Details: The Respondent Willfully Defied the Court

17. The same day, and almost immediately following the April 26 conference call, the Respondent notified me that he required 50/50 placement as part of any future MSA.

    a. April 26, the Respondent wrote via text message: "As long as there isn't any bickering about my request of 50/50 placement...it [a new MSA] should be pretty easy to do!" He later added that to MSA progress, "Obviously my desire for 50/50 placement and child support reduction will be the big obstacles".

    b. April 27, the Respondent wrote via Yahoo email: "I do need to be crystal clear with you though the A.J.F. element of the msa will be different. It'll be 50/50 down the line this time. I will not sign anything unless that is met"

    c. May 5, the Respondent wrote via Yahoo email: "I want 50/50 placement and joint legal custody. If those conditions are not met we'll be going to the circuit courts."

    d. May 6, I replied to the Respondent via Yahoo email: "I've struggled to figure out how best to proceed with the MSA we were charged by the Court to complete. Upon receiving our assignment, I promptly began working on it, but within hours of our meeting with the Court, you insisted upon custody changes that I simply will not accept – you'll recall that I didn't (twice) in January... Besides, what benefit would such a change offer you, given that you've already had more than 50% time with A.J.F. since we divorced, due to my generosity and the restrictions that you have imposed upon his life? Even if you were awarded a 50/50 split, do you understand that you would see A.J.F. less in the future than you have these past three months? Regardless, it's my hope that next week's Court-assisted mediation work, which you forced me to initiate, will help us come to terms with the parenting plan and placement schedule that I've again begged you for months to co-create and that these documents can supplement our next MSA. Otherwise, I don't know how to overcome the non-starter you've since repeatedly insisted upon. And this is before we work through the details of the tens of thousands of additional dollars I expect you to honor paying me... I've still received nothing from you financially. In fact, is there anything that you have done to satisfy our MSA? [You're] now another month late in child support"

18. As a result of requiring this non-starter (50/50 placement) and allowing our time to expire in complying with the Court's direction, the Respondent had already defied the Court's April 26 direction and breached our agreement to co-create (or at least re-create) a new MSA, as the Respondent insisted on terms that countered those that the Court had already granted and which I thought were protected by WI § 767.451(1)(a). I did not feel it was sensible to submit an MSA to the Court without his agreement, so I did not. Besides, I had already arranged for Court-ordered mediation to begin shortly afterward in an effort to cement the custody and placement terms and allow us to develop the other portions of our MSA.

Context and Details: The Respondent Relentlessly Pressured Me to Accept an Inequitable MSA

19. On May 9, the Respondent's time (90 days post-divorce, per all of our MSA versions) had expired to refinance our house (under his name alone, releasing me from the mortgage so I could pursue my own), transfer our marital assets, and exit our shared bank accounts. He had failed to complete any of these, choosing instead to withhold virtually all marital assets from me as well as all child support, and live (without consideration for my capital and credit) in the home I predominantly still own. He proceeded to use my checking account to pay for the annual home insurance, then closed my checking account without my knowledge or permission, damaging my credit history and my longstanding relationship with my bank. Through the insolvency he imposed on me, my rental home was sparsely furnished and deemed "boring" for A.J.F.. Further, A.J.F. experiences with me have necessarily diminished through my attempt to conserve money. I was compassionately lent money by friends and family to keep me financially afloat while I fixed our MSA and divorce, which remained anything but settled.

20. With mediation now well underway in pursuit of resolving custody and placement concerns, I continued to pursue my obligation to the Court by focusing on the remainder of the MSA with the Respondent. On June 12, I emailed the Respondent an overview of the MSA that I had created the day we received the Court's April 26 direction, which incorporated the terms that Commissioner Bermingham had reaffirmed (60/40 placement and $765/month). The Respondent replied via Yahoo email with:

    a. June 12 at 10:11PM: "Lol is this a joke?

    b. June 12 at 10:26PM: "Omg You've literally lost your mind" and "I will send this to my lawyer for a good laugh"

21. Afterward, I urged feedback and reconciliation.

    a. June 13, I wrote the Respondent via Yahoo email: "A joke? No, but thanks for asking for confirmation…your objection was a surprise. Until Friday, I welcome constructive feedback on it, but otherwise, after 3 months of trying to get a resolution with you (remember your comment, "get a hobby"?), it's time to move forward. Let's make it a productive week."

    b. June 14, the Respondent replied via Yahoo email: "I'm not doing it so drop it."

22. On June 22, one day before mediation concluded with an impasse, on both school choice and placement schedules, the Respondent (along with his mother, Sally Fitzgibbon) derailed my MSA pursuit by coming to my home and taking our 6-year old son, A.J.F., from my proper

placement and did so without my consent ("kidnapping"). This led to A.J.F. being withheld from me for 79+ days. On June 23, the Respondent rejected the final proposal offered by our mediator for the placement schedule of our child, because with A.J.F. by the Respondent's side and no police in sight, the Respondent no longer required my agreement to acquire the MSA placement terms he desired, and without a prescribed placement schedule (as our MSA required we co-create one), the police felt that they lacked the authority to intervene.

23. In the days, weeks, and months that followed, the Respondent (supported almost daily by his parents as well as my father, who babysat and cared for A.J.F. as they prevented me from doing so) continued to withhold our son from me. In addition, he continued using my bank savings account, kept me on our home mortgage (despite his obligation to refinance under his name only), and also continued to withhold all the same marital assets still owed to me, thereby preventing me from purchasing a house and relocating to a neighborhood better suited for our son while interest rates were low and a home affordable. With nothing for the Respondent to gain and everything for him to lose, he continued to show no interest in even discussing the MSA, except when he felt he might make permanent any terms he preferred.

24. By July 11, after having sought police assistance for my child's return (to no avail) and lacking clear options to enforce virtually any portion of our temporarily-ordered original MSA, I chose a new attorney, whose plan to split this disastrous situation into two paths (financial and custodial) seemed well-poised to accelerate a resolution.

25. First, my new attorney immediately contacted the Respondent's attorney, reiterating my demands for A.J.F.s return and for the Respondent to begin co-parenting, particularly during the sensitive time in which we awaited our July 25 hearing for the Court to break our impasses on placement schedules, school, and peripheral custodial disagreements, all of which we were very well prepared to argue. With this, I had hoped that A.J.F.s withholding (now 19 days) seemed to finally be reaching an end.

26. Second, after having prioritized A.J.F.'s return and a resolution for placement and custody, my attorney and I next focused on fixing the MSA's financial portions. The next day (July 12), my attorney filed a motion for a Declaratory Order as a way of compelling the Respondent's participation in negotiating an enforceable MSA so I could gain relief from the financially impossible situation that the Respondent continued to impose upon me.

    Note: More recent counsel has expanded and improved the options through which to remedy the MSA's clerical errors, though this is the subject of an upcoming hearing.

27. Unfortunately, that same day (July 12), the Court delayed our July 25 hearing by nearly 7 weeks to September 9. In response, my attorney and I promptly filed a request for an emergency hearing with the Court, which was denied after Attorney Culp undermined the severity of the situation and attempted to shift the blame away from his client's role in causing it. The opposite was true: my financial desperation was growing by the day, as was my despair for being unable to see A.J.F. solely due to the Respondent's continued withholding of both.

28. Now that I was not only in dire need of seeing my son, but also of financial support, the Respondent used my weakened condition (that he had manufactured) as a weapon against my negotiating a fair and equitable MSA. By negotiating while continuing to withhold A.J.F. from A.J.F.'s rightful placement, the Respondent had transformed honest MSA negotiations into

outright blackmail. It was at this time that he pressed me to permanently accept the highly inequitable (in his favor) and temporary original MSA, partnered with his required 50/50 placement and that unless I accepted his demands, he intended to punish me until September 9, some 9 weeks away. Per OFW messages between July 12 and July 14:

a. "A few things... A.J.F. .. I thought It would reasonable imo to basically rotate one week on one week off." (50/50 placement)

b. "This could've been over done with if you had been semi reasonable and now this will drag on until September 9th."

c. "We could have completed the msa that's already in the system. Then the financial assets you're so desperate for could've been split."

d. "Three strikes and you're out as the old expression goes."

29. Approaching four weeks of withholding A.J.F. from me after my near-daily demands for A.J.F.'s immediate return, the Respondent began attempting in earnest to shift the blame to me for his failure to co-create a new MSA.

a. July 17, the Respondent wrote via OFW: "I find it bothersome that the day after our teleconference call... in which **we were given 10 days to come up with a new msa** you went another vacation."

b. July 19, I replied via OFW: "Travel didn't impede our progress on the MSA; your insistence on 50/50 placement did. Re-read the emails from 4/26 and 5/5-5/6 to refresh your memory. I do appreciate positive experiences and am glad to offer them to our son when I can. Just as you have with A.J.F., you continue to withhold my assets. Cash-strapped, I've been forced to do much of the legal legwork, but I'm certainly saving bundle while learning a lot."

Note: All of my vacations this year were kindly paid for by friends or family, including the one the Respondent cited, which included A.J.F., who adored his first plane flight.

30. Meanwhile, having successfully blocked the emergency hearing request and retained control over our child and assets, the Respondent again ignored our joint custody and shared decision-making, as well as the mediation impasse, by making the unilateral decision to enroll A.J.F. at a school, for which I had long since explicitly refused to offer my consent. He knowingly added another pressure point, for if I failed to reach agreement with the Respondent on a new MSA prior to the start of school, the Respondent knew I would face an exponentially more difficult time reversing his improper decision, as the Court would likely keep A.J.F. in the selected school for stability.

a. July 17, the Respondent wrote via OFW: "He is enrolled at trinity... school starts 8/23"

Note: the Respondent clearly viewed my interest in returning A.J.F. to full time homeschooling as merely a bargaining chip for gaining other concessions on placement percentages and schedules, as confirmed in the next (albeit chronologically earlier) quote:

b. June 17, the Respondent wrote via OFW: "The schedule will be changed no matter what when I'm awarded 50/50 placement in the future.... A 2-2-5-5 schedule that you have rejected would give you the ability to home school..."

31. Even as late as September 8, one day before our long-awaited hearing, the Respondent shamelessly sought to use A.J.F.'s 78-day withholding, as well as his financial surplus from withholding all child support and virtually all marital assets, as leverage to gain concessions under the immense pressure of the possibility that the status quo would continue for multiple, multiple more months. This threat was credible, given his attorney's insistence on delaying the September 9 hearing and charging me fees for the mistaken assumptions that he had made in deposing me. Regardless, rather than returning A.J.F. to me or initiating any transfer of financial assets or child support, the Respondent chose this time to demand:

a. 50/50 placement and the Respondent's choice of prescribed placement schedules, vacation periods he would permit me, and right of first refusal for A.J.F.'s care

b. The Respondent's choice of custodial matters, spanning the Respondent's pre-selected school and extracurricular activities

c. The Respondent's choice of expense reimbursements and tax credits

d. Retroactive waiver of the Respondent's >90 days of usurped A.J.F. placement (implied)

e. I either accept by the Respondent's deadline set for that September 8 evening or face additional court hearings and expenses if I failed to comply with his demands

32. Even after the Court ordered A.J.F.'s immediate return to me, having lost exclusive control of our son (after 79+ consecutive days of withholding), the Respondent continued to pressure me to accept our original MSA. This blackmail stems from his continuing to withhold child support along with all the same marital assets he still owes me. Regardless, as his negotiating power had waned with A.J.F.'s release, the Respondent began attempting to rewrite history via OFW:

a. September 23 at 7:18PM via OFW, the Respondent wrote: "**We had 10 days after our session with bermingham to come up with a new msa**... I don't remember what exactly was in the lost was msa but... There's one on record I suggest we use that one and try to move on with our lives."

b. September 23 at 8:17PM via OFW, the Respondent wrote: "**To be clear the original msa favors you not me.** It's 50/50 with the marital assets... The child support payment that is not accurate.... Whether that was an oversight or intentional I'll never know."

Quite clearly, as simple excerpts of 8 months of documentation reveals, I went through considerable effort to secure a more equitable MSA (including enduring explosive domestic incidents such as the one shared on January 20). As such, the original favoring me is an obvious lie. We never agreed to the MSA being 50/50 for marital asset division; I only agreed that I was in an untenable position to negotiate for more and lacked the will to initiate a contested divorce, until I was forced, and the resources, until a few of my friends and select family members stepped up to support me.

With regards to the child support payments, the Respondent has misrepresented his financial status to me, the Court, and also the Wisconsin and Federal tax authorities, but this will be detailed in another affidavit (pending).

33. The Respondent's insistence to getting his own way on placement did not end there, but lead to the October 7 incident (Neenah Police Report 22-018879). To rationalize precisely how the Court must have sided with his "right" for 50% placement, in under 4 weeks, the Respondent had shared at least 10 interpretations of the placement schedule provided by the Court at the September 9 hearing, rejecting my and my attorney's repeated explanations and draft order (please see the affidavit filed on November 3, 2022 for details). The Respondent's final self-generated interpretation fed his belief that he had finally been awarded 50% placement, and with this belief, justified his taking A.J.F. from school that 10/7 afternoon, courtesy of his parents' shuttle service. Since the Respondent and his attorney had withheld their agreement with the September 9 order drafted by my attorney, I had no prescriptive schedule for the Neenah Police to enforce, so the Respondent kept A.J.F. for yet another overnight without my consent. This led us to return to Court on November 14 simply to correct the Respondent's and his attorney's misunderstandings and gain final release of the order. This behavior mirrors the Respondent's unwillingness to co-create a MSA, making the half-day exercise a half-year overdue, as doing so merely disadvantages him.

34. Even today, the Respondent continues to withhold all child support and virtually all marital assets from me, totaling well in excess of $100,000, yet he continues to press for 50% placement and an ever-changing contrivance of placement rules he seeks to impose on A.J.F. through which to control me and my life. Until I comply, he will continue inflicting his financial punishment.

    a. November 6, via OFW, the Respondent wrote: "...that msa that you constantly use as the basis for your arguments... You seem to believe that the 60/40 is written in stone"

35. While his lies are too numerous to count, and his stories as varied and vacillating as Wisconsin weather, at times the Respondent does commit himself to a goal, just as he did earlier this year:

    a. May 17, via Yahoo email, the Respondent wrote: **"if I don't get 50/50 placement this time I will get it next time. We'll be doing the whole court bs again in 2 years and I'll win....<u>unless I'm in prison</u>."**

Elizabeth Fitzgibbon

Subscribed and sworn to before me this
__14__ day of _____November_____, 2022.

Lawrence G. Vesely
Notary Public, Brown County, WI
My commission is permanent.

LAWRENCE G. VESELY

OLSON, KULKOSKI,
GALLOWAY & VESELY, S.C.
Attorneys

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December 31, 2022

E-File

The Honorable Bryan D. Keberlein
Winnebago County Courthouse, Br. III
415 Jackson Street
Oshkosh, WI 54901

RE: In re the Marriage of Elizabeth Fitzgibbon and Adam Fitzgibbon
Winnebago County Case No. 21 FA 564

Dear Judge Keberlein:

Please accept this letter as Elizabeth Fitzgibbon's response to your order for her best recollection of the terms of that comprised the "lost" Marital Settlement Agreement with the hand-written changes.

Elizabeth's response is contained in the attached document which she prepared. That documents contains the same information that she is prepared to testify to on January 6, 2023.

Sincerely,

Olson, Kulkoski, Galloway & Vesely, S.C.

Lawrence G. Vesely

LGV/lm

cc: Adam Fitzgibbon via first-class mail and e-mail
Elizabeth Fitzgibbon via e-mail

2022-12-30

Hon. Keberlein,

This letter is my response to the homework you assigned on December 20, 2022. I've included:

1. My statement on what I believe were the changes that Adam and I made to the Amended MSA (CCAP Document #22) the morning of January 28 to create the Hand-Edited, Amended MSA.
2. My brief comments on Adam's misinformed and misleading recent communications to you.
    - His December 19 letter (CCAP Document #101)
    - His December 26 letter (CCAP Document #106)
3. My brief explanation of my simple but equitable approach to creating MSAs and why my approach changed after May 8, 2022, as this helps to substantiate the above points.

First and foremost: I do not accurately recall what Adam and I changed on the Amended MSA (CCAP Document #22) the morning of January 28 to create the Hand-Edited, Amended MSA. As such, few specifics that I could offer as "best recollection" are truly defensible, and I prefer my credibility to remain unchallenged. I have consistently stated this to the Court at least 5 times:

- Letters to the Court (e.g. Document #20, filed April 5),
- Affidavits (e.g. Document #91, filed November 15), and
- Court meetings (e.g. April 26, September 9, and November 16)

That said, the Amended MSA (CCAP Document #22) is the closest document to what was ultimately signed (after our handwritten edits) and submitted to the Court on January 28, 2022 (then misplaced). As such, with regard to the Amended MSA (CCAP Document #22), the following about the Hand-Edited, Amended MSA should benefit the Court:

- I believe Custody and Placement was materially the same (if not entirely unchanged)
- I believe the home ($210,000) and land ($50,000) values remained unchanged and reasonable
- I believe all significant changes were made to the marital asset division (asset division)
- I believe I made a few minor vernacular edits to the Amended MSA, which was not well written by Sterling Law (example: Adam and I were to create the placement schedule for A.J.F., not Adam as stated on page #2)
- I initiated creating the Amended MSA (CCAP Document #22), as throughout January, I learned much more about our family's assets, their valuations, and my rights to them through my own research and realized how lopsided the Original MSA (CCAP Document #15) actually was. I received very little support from Sterling Law, who primarily provided templates for me to complete and for them to synthesize into MSAs, but Adam largely controlled the initial data that I had access to and made available to Sterling Law. My independent research and due diligence drove my discovery. Adam was extremely displeased that I sought a more equitable distribution (one that more or less doubled that assets I would receive from the Original MSA).

From the above statements, the Court should understand that while the Amended MSA (CCAP Document #22) was directionally improved from the Original MSA (CCAP Document #15), the Hand-Edited Amended MSA continued this trend. If this were not true, I would have continued negotiations. Further, the Court should understand that this logical progression completely contradicts what Adam

claims in his December 26 letter (CCAP Document #106) that he understood the final MSA to include at our February 7 hearing as his statements suggest a downward trend.

Second, in his December 19 letter (CCAP Document #101), Adam claims I have withheld the missing pages that he could have used to complete and implement the Original MSA. This is inaccurate and misleading. After weeks of Adam refusing to assist in reconstructing the Hand-Edited, Amended MSA, I filed my April 5 letter (CCAP Document #20) with the Court, requesting the Court's assistance. A few days later (April 11), I filed the Amended MSA (CCAP Document #22) to aid the April 26 conference with CC Bermingham, during which I thoroughly explained the evolution of Adam's and my MSAs that concluded with the submission of our Hand-Edited, Amended MSA on January 28, 2022.

Therefore, both the Original MSA and the unsigned, unapproved Amended MSA have been available to the Court, Adam, and his former attorney, Peter Culp, for more than 8 months. This opposes the entirety of Adam's December 19 letter (CCAP Document #101), which claims that neither he nor his attorney had these documents and that they have been withheld by me and Jeff Morrell at Sterling Law. Page #2 of Adam's letter demonstrates just one of my attempts to explain this to Adam, which he ignored. I have attached the entirety of my letter (that Adam truncated in providing you) as well as my explanation to Adam that he can acquire these documents from the Clerk of Courts Office (Exhibit I), which he also ignored. Had Adam not ignored the past 8 months of communications, hearings, and filings, Adam's December 19 letter (CCAP Document #101) might not have contained the misleading and inaccurate information that underscored his nonsensical claim.

The next of Adam's misinformed and misleading recent communications to the Court was his December 26 letter (CCAP Document #106). In stark contrast to the claims in this letter, Adam has repeatedly presented conflicting information or otherwise acknowledged:

- Adam is aware of his obligation to co-create a new MSA with me as directed by CC Bermingham on April 26 and that it was due May 6 (Exhibit A)
- Adam is aware that he alone obstructed its creation by insisting on changes to placement (and resulting child support reductions) he knew were unacceptable to me, so much so that he even referred to his own demands as "the big obstacles" (Exhibit B) to reaching agreement on a new MSA, as CC Bermingham had directed us to create. This is key; I will later explain its significance to timing (before May 8 and after May 8, such as the MSA highlights I shared with him on June 12), but that while Adam has never been generous, the financials were not expected to be a problem. Adam even complimented my consistent, historical desire for evenly splitting the marital assets.
- Adam does not accurately recall what changes were made in the Hand-Edited MSA (example: on September 23, 2022, via Our Family Wizard, he reaffirmed, "I don't remember what exactly was in the lost msa..." – top of Exhibit A, Sept. 23 email). **As such, the numbers that Adam provided as "the MSA that [he] agreed to on 2/7/2021 (sic)" in his December 26 letter to you (CCAP Document #106) are not only grossly inaccurate, they are contextually misleading.**
- Adam is aware that he benefitted greatly by obstructing creation of a new MSA, since he has withheld nearly all of my assets and all child support and lived a low-cost life, enriched with the liquidity that the free use of my assets (house, $, land) and financial credit propped up for him. He was so perturbed with me for contacting the Court on April 5 for help with the missing MSA that he threatened to file a Restraining Order against me if I persisted discussing it further (Exhibit L).

- Adam further knew that I suffered immensely from his choice to obstruct the creation of a new MSA (bottom of Exhibit A, July 12 emails). This was his way of punishing me for not conceding to his placement demands and is additional evidence that had the Original MSA (CCAP Document #15) been anything other than predatory in nature, I would have accepted it, at least to regain my solvency and ensure I could continue paying for legal counsel that I needed to regain access to our child that Adam kidnapped on June 22 and withheld for 79 days until the Court ordered our son's return to me on September 9. During this dark and distressful period, I managed to avoid providing my consent under duress only via the financial generosity of friends and family.
- **Unless facing clear and imminent consequences (e.g. a contested divorce, jail, the loss of joint custody), he will never compromise and often shamelessly contradicts himself.**
    - On May 17, 11 days after our May 6 deadline, Adam stated, *"If I don't get 50/50 placement this time I will get it next time. We'll be doing the whole court bs again in 2 years and I'll win...unless I'm in prison."* (Exhibit C) This should not be regarded as hyperbole; Adam followed up on December 8, stating, "767.44 regarding today that's assuming we had an intact msa to even amend." (Exhibit D) **I hope that the Court would appropriately discount the credibility of any MSA financial numbers provided by Adam, as his misrepresentations of financial figures are trivial to openly discussing his placement rights after going to prison in the next year for murdering me if he doesn't get the MSA placement terms he wants.**
    - Also on December 8, he brazenly stated that once he receives from me (rather than visiting the Clerk of Courts and paying $2.50 in printing fees) copies of the "missing" 2 pages from the partly-scanned Original MSA (CCAP Document #15), he will sign it. (Exhibit E) He ignores that I rejected this MSA but knows that after 10 months of withholding virtually all assets and child support, I am even more financially desperate than I was when he called attention to my plight 5 months earlier. Regardless, I did not request and will not agree to his "offer", which he incorrectly views to be a solution to a problem that never existed, as the problem was always in recreating or negotiating anew the terms within the Hand-Edited, Amended MSA. In making his offer, he again inconsistently dismisses his obligation to co-create a new MSA (not fix the Original MSA -- CCAP Document #15) following the April 26 conference.
- In his Court-accessible and auditable Our Family Wizard messages, Adam has often contradicted the numbers and claims he provided you. For example, as recently as December 8, he stated that he knew the Voya and E*Trade were always to be my assets. (Exhibit F) **This again contradicts his December 26 letter (CCAP Document #106) in which he carves out a $5500 portion for himself in the MSA he "believes" he agreed to on February 7**. His beliefs have often changed, have rarely aligned with Court directions, and never favor me.
- **Not all assets were disclosed on the Financial Disclosure Forms.** Adam and I had agreed to split the assets excluded from the forms. These included assets that Adam deemed "sensitive", such as our extensive weapons collection, tools, machinery, a safes full of precious metals and cash, food processing and canning equipment, and perishable foodstuffs among other items that individually were not expensive, but collectively, approximated $40,000-$45,000 in value. In total, at the time of our divorce, **I claim that our combined net worth was approximately $285,000-$295,000. This is an approximate $85k-$103k difference in total assets compared to Adam's $191,500 (or $199,500 including the ever-shrinking additional cash Adam committed**

to giving me). I only seriously began inventorying these assets after signing the Original MSA, which is why I insisted on a new MSA, or Adam knew that I would not provide my consent at the February 7 hearing. Even so, upon my exposing this, Adam chased me from our home as he screamed at me and threw kitchen items as I fled. This occurred mere moments before he confidently shared how he would gift our guns to his father, so as to remove them from divisible marital assets. I had the good sense to record this anticipated volatile interaction with the help of a friend, who was rightfully concerned for my safety for attempting to negotiate with Adam. I was surprised I later managed to acquire Adam's consent with the Hand-Edited, Amended MSA, but as I explained to Tara Berry in the Clerk of Courts Office, it would be impossible to recreate that document once Adam sensed that the Court might enforce the Original MSA, and Adam's actions proved me correct. While I openly admit that my estimates of our financial assets are inaccurate, **I can provide substantial, incontrovertible evidence in support of my claims, which I have summarized in Exhibit G. Conversely, Adam has yet to provide any supporting documentation** and **Adam's numbers do not align with our Financial Disclosure Forms** (nor mine, which copied his, replacing only his income information with mine), as these FDFs were never updated and the data was provided largely by Adam, who managed virtually all of our household finances and investments; I heavily relied upon Adam's under-oath asset transparency and valuations. The increase of our land (19% from $42,000 to $50,000) and home (31% from $160,000 to $210,000) valuations between our FDFs and our Amended MSA several weeks later, reflect part of my growing understanding of our financial status and my unwillingness to accept Adam's word. Adam tried to lump other concerns into the land value, which I disagreed with, though I cared less for how Adam justified his numbers so long as I was comfortable with the final division I would receive.

- If we proceed with a contested divorce, I feel confident that the asset division and MSA will approximate what I have summarized (Exhibit G). I believe my numbers are reasonably accurate, but I do not know what I do not know, and many estimates rely upon information Adam has provided rather than information I have access to personally verify. Conversely, since Adam has withheld and enjoyed the use of nearly all of my assets, Adam has everything to lose and nothing to gain by offering transparency, accuracy, and expediency. This is the core reason, beyond placement allocations, that explains his unwillingness to co-create an MSA as ordered by CC John Bermingham on April 26.

Regardless, Adam and I agreed to allow the Court to govern our divorce with the Original MSA only until we could co-create a new MSA and resubmit it to the Court, with a May 6 deadline. I began work immediately and completed an MSA on time. Adam has yet to complete (or at least share any portion) of any MSA in response to the April 26 conference. More importantly, Adam blocked any chance of agreement, as on April 26, he announced his requirement of changing the 60/40 placement terms (Exhibit B), which CC Bermingham had validated and which I understood were protected by WI 767.451(1)(a). Adam reiterated his deal-breaking demands on April 27 (Exhibit J) and countless times since. I was well prepared to explain this (and even offer my MSA if desired) at the May 23 hearing until it was delayed until July 25 (and then again to September 9). **Adam's demands, to his own admission, were "the big obstacles" that have (for 8 months) obstructed progress to creating and implementing a new MSA, not my demands, including financials.**

Third, in every MSA I worked with, my focus has been on the difference between Adam's and my asset splits. I cared much less about specific valuations than whether or not I felt that I was:

- Adequately unwinding the large, traceable assets that I brought into the marriage.
- Receiving sufficient start-up funding for my post-marriage life, having given up my progressing career to focus on raising and homeschooling our son.

To do so, my approach in January was simple:

1. Ensure accurate valuation of large financial assets, either through independent research, or when necessary, rely on Adam's under-oath provided FDF information.
2. Enumerate and estimate the assets that Adam and I solely brought into the marriage and remove those from the assets to split between Adam and me, such as:
    a. Small items (e.g. my treadmill, patio set, kitchenware),
    b. Larger items (e.g. my car, my starting bank balance at the time of my divorce), and
    c. Personal gifts (e.g. jewelry, checks from my parents to me personally that I cashed into my checking account, to help buy a home and furnishings with Adam – Exhibit H).
3. Split the remaining assets, as these were born of our marriage.
    a. Publicly, the larger items (e.g. home/land equity, electronic accounts).
    b. Privately, smaller items and all that Adam insisted remain private (e.g. guns, gold, cash).
4. In lieu of monthly maintenance, acquire a reasonable one-time overpayment to kick-start my independent life.

This led me to target a favorable difference between our asset allocations divisions, rather than valuing hundreds of specific assets, gaining Adam's agreement on each, and thereby quantifying the total; I just focused on my own perspective. Further, to me, it did not matter what the cash, gold, precious metals, and smaller items were worth, as long as I received half (one American Gold Eagle for him, one for me, repeat). As such, while this may have been narrow thinking, this freed me to focus on negotiating the difference in divided assets and moving forward with my life rather than becoming an accountant.

After May 8, when it became clear that Adam was stuck on upending everything with new placement, custody, and child support amounts and had defaulted on even directionally-correct asset transfers to me or paying any child support (I offered a temporary solution that he rejected), I had a new problem. Securities markets were falling (undoubtedly along with the values of my Voya and E*Trade accounts) yet both home prices and interest rates were continuing to rise, so buying a home and moving forward with my life was becoming more difficult with each passing week. Even if Adam provided me with the Voya and E*Trade accounts, their decreased values were due to Adam's delays and were not my fault, so I began shifting my focus towards a cash settlement baselined to the asset valuations on February 7. I was hopeful that this would help the Court at the May 23 hearing and speed any steps that followed.

After the May 23 hearing was rescheduled to July 25, my need for cash were growing daily. On June 10, Adam and I completed our second Court-ordered mediation session for placement schedule and school selection matters. The session went poorly for Adam. I immediately saw this as an opportunity to re-start our MSA discussion, as I felt that Adam might finally have given up his demands for placement and resulting child support changes. Further, Adam had committed a number of financial wrongdoings that likely required litigation, but I had hoped to instead simply integrate into the next MSA as an additional adjustment of marital assets, saving time for everyone and attorney fees. So on June 12, I shared a new set of MSA highlights with Adam (Exhibit K). The goals were simple:

1. **Carry over the agreed-upon placement and child support numbers that CC Bermingham validated** that Adam and I were divorced under on February 7 (60/40 placement, $765/month).

2. **Replicate and request the cash-value of the February 7 MSA.** I was certain that the various assets (securities, precious metals, etc.) had significantly dropped in value from 4+ months prior. Further, I had a much greater need for cash (I was still trying to buy a house before their prices and interest rates increased further) than I did on February 7 and to raise cash, I had less time to sell illiquid assets, undoubtedly diminishing their resale value.
3. **Wipe the slate clean, by adding a compensatory amount to the MSA for Adam's 4 months' past-due child support** (~$3k for Feb-May) **and financial malfeasance** (~$20k for irretrievably closing my bank account (Exhibit M) against MSA terms and blaming me for it (Exhibit L), failing to remove himself from our shared accounts, misusing our shared funds to pay for 451 Lowell home expenses, money I wasted continuing to rent, raising my mortgage borrowing costs, submitting erroneous federal and Wisconsin taxes as well as FDF data to the Court to suppress the child support he owed, continued use of my assets without my consent or compensation...).

Indeed, the new MSA highlights I emailed to Adam on June 12 specifically offered to release Adam from his past liabilities in exchange for a moderate increase in my MSA asset allocation (higher than I had drafted during the April 26-May 6 period when I was still obliged to accept the E*Trade and Voya accounts, even if devalued to no fault of my own).

Adam rejected and mocked my effort (Exhibit K), never inquired about the differences between the June 12 highlights and the April/May MSA I had prepared, and still offered none of his own. He was still under the delusion that he could force me to accept the Original MSA (and still was as recently as December 8 – Exhibit E), despite reiterating his demands for his preferred placement and custody terms. He then began escalating his aggressions, stalking me at Washington Park, and finally kidnapping our son for 79+ days until the Court ended his withholding of our son from both me and our son's counseling. During this period, he pressured me to accept the Original MSA that grossly favored him financially, as I had informed him that I was effectively insolvent without the assets promised to me no later than May 8, 2022. I would not accept his extortion, though my priorities shifted from completing a new MSA to simply regaining access to my son and helping him overcome the trauma and trust issues that resulted from Adam's withholding.

On November 16, I felt we had restarted the process that CC Bermingham had begun, so I was quite unprepared for direction the Court moved on December 20 to effectively "guess at and then defend" the changes made to the Amended MSA 11 months prior at 4:30AM.

It is my sincerest hope that while lengthy, my letter and supporting information aids the Court in helping both Adam and me rapidly close out our MSA challenges, just as I sought on April 5 when I began the process of correcting this rather unique, if not unprecedented, misplaced MSA situation. Following Adam's unwillingness to comply with CC Bermingham's April 26 direction, I felt that pursuing a contested divorce process was the only sound approach to ensuring accurate and complete information, but I remain open to faster and less cumbersome approaches.

I hope this satisfies the Court's request, and I look forward to a speedy conclusion, as I remain in dire need of the finances that Adam has continued to withhold for nearly a year.

Elizabeth Fitzgibbon

FILED
01-11-2023
Clerk of Circuit Court
Winnebago County, WI
2021FA000564

DATE SIGNED: January 11, 2023

Electronically signed by Bryan D. Keberlein
Circuit Court Judge

STATE OF WISCONSIN, CIRCUIT COURT
WINNEBAGO COUNTY
FAMILY COURT BRANCH 3

In re the marriage of:

ELIZABETH ANNE FITZGIBBON,
Petitioner,
and CASE NO. 21 FA 564

ADAM PAUL FITZGIBBON,
Respondent.

ORDER

BASED UPON the hearing held before the Honorable Bryan D. Keberlein;

THE APPEARANCES being the Petitioner, Elizabeth A. Fitzgibbon, in person, and by her attorney, Lawrence G. Vesely. The Respondent, Adam P. Fitzgibbon, in person, and by his attorney, Peter Culp;

BASED UPON the records and files hearing;

IT IS HEREBY ORDERED AS FOLLOWS:

1. The parties shall exchange a complete list of issues to be heard by the Court no later than November 30, 2022.

2. The Depositions of the parties will take place on December 7, 2022, commencing at 1:00 p.m. at the offices of Olson, Kulkoski, Galloway & Vesely, S.C., located at 416 So. Monroe Avenue, Green Bay, Wisconsin, 54301.

3. This matter is set for a status conference before the Court on December 20, 2022, at 10:00 a.m.

FILED
01-11-2023
Clerk of Circuit Court
Winnebago County, WI
2021FA000564

BY THE COURT:

DATE SIGNED: January 11, 2023

Electronically signed by Bryan D. Keberlein
Circuit Court Judge

STATE OF WISCONSIN **CIRCUIT COURT BRANCH 3** **WINNEBAGO COUNTY**

ELIZABETH ANNE FITZGIBBON,

Petitioner,

ORDER FROM 1/6/23 HEARING

vs.

Case No.: 21FA564

ADAM FITZGIBBON,

Respondent,

Elizabeth Fitzgibbon, petitioner, appeared in court with attorney Lawrence Gerard Vesely. Adam Fitzbgibbon, respondent, appeared in court without counsel, before the Honorable Bryan D. Keberlein, Circuit Court Branch 3, on January 6, 2023 for a Motion Hearing.

WHEREAS the petitioner filed a Notice of Motion and Motion for declaratory order, to reopen judgment as to any invalid, unenforceable, or void/voidable provision, to hold in abeyance respondent's motion, and for temporary order pending declaratory order and final orders.

WHEREAS this case was sent to Judge Keberlein from Court Commissioner Rust to address the Motion to Reopen Judgment.

WHEREAS the parties were ordered, by Court Commissioner Bermingham, on April 26, 2022 to reconfigure the Marital Settlement Agreement within ten (10) days.

WHEREAS the parties did not reconfigure the Marital Settlement Agreement.

WHEREAS the parties were ordered, in court, on November 16, 2022 to exchange their issues with the unsigned, filed, Marital Settlement Agreement by November 30, 2022.

WHEREAS the parties did not exchange issues.

WHEREAS the parties were ordered, in court, on December 20, 2022 to write what they believe were the hand written changes on the lost Marital Settlement Agreement and file it with

the Court prior to the next hearing. Both parties were given a copy of the Marital Settlement Agreement (document 22) to do this on.

WHEREAS the parties were told at the December 20, 2022 hearing, the Court would make a final decision on the Motion to Reopen at the January 6, 2023 hearing.

WHEREAS neither party filed the copy of the Marital Settlement Agreement they were provided in court on December 20, 2022 with what they believe to be the hand written corrections to the lost Marital Settlement Agreement.

WHEREAS the Court did take sworn testimony at the January 6, 2023.

THE COURT WILL DENY the Motion to Reopen.

THE COURT FINDS that the parties' intent was to get divorced on February 7, 2022 and that the parties did come to an agreement on the terms of Marital Settlement Agreement independently prior to the February 7th, 2022 court date.

THE COURT FINDS that the amended handwritten and agreed upon Marital Settlement Agreement was filed with the Clerk of Courts and was lost by a Court entity.

THE COURT FINDS a need to clarify the terms in the interest of justice, but the Court will not find the terms void or unenforceable.

THE COURT ORDERS the following changes to the Marital Settlement Agreement (Document 22). On page 2, the first paragraph, the child's name will be changed from "Adam" to "A.J.F.". On page 6, A, #4 will read: "Etrade and ½ of Voya account." On page 7, #5 will read: "Computer share, share owner, CSX, Norfolk Southern, Gold IRA shares securities and ½ of Voya account".

cc: Elizabeth Fitzgibbon (mail)
Adam Fitzgibbon (mail)
Lawrence Vesely (efile)
Trista Moffat (efile)

FILED
01-12-2023
Clerk of Circuit Court
Winnebago County, WI
2021FA000564

BY THE COURT:

DATE SIGNED: January 12, 2023

Electronically signed by Bryan D. Keberlein
Circuit Court Judge

Petitioner/Joint Petitioner A: Elizabeth Anne Fitzgibbon
Respondent/Joint Petitioner B: Adam Paul Fitzgibbon

Enter the name of the county in which this case is filed.	**STATE OF WISCONSIN, CIRCUIT COURT, WINNEBAGO COUNTY**
Enter the name of the petitioner/joint petitioner A.	IN RE. THE MARRIAGE OF **Petitioner/Joint Petitioner A** Elizabeth Anne Fitzgibbon Name (First, Middle and Last)
Enter the name of the respondent/joint petitioner B.	and **Respondent/Joint Petitioner B** Adam Paul Fitzgibbon Name (First, Middle and Last)
Check divorce or legal separation.	☒ Amended **Findings of Fact, Conclusions of Law, and Judgment with Minor Children** ☒ **Divorce** - 40101 ☐ **Legal Separation** - 40201
Enter the case number.	Case No. 2021FA000564

This form is available in Spanish. https://www.wicourts.gov/forms1/circuit/index.htm
Este formulario está disponible en español.

FINAL HEARING

A final hearing was conducted in this matter as follows:

In 1, enter the name of the court official who granted the judgment and the address and date [Month, Day, Year] on which it was granted.

1. Before John Bermingham, Circuit Court Commissioner
   Circuit Court Judge/Circuit Court Commissioner
2. Location Winnebago County Courthouse
   415 Jackson St., Oshkosh, WI 54901
3. Date February 7, 2022 Time 9:15 ☒ a.m. ☐ p.m.

APPEARANCES

In 1, check how the party appeared.
If b, enter the name of the attorney.

1. **Petitioner/Joint Petitioner A**
   ☒ appeared ☒ **in person** ☐ **by phone** ☐ **by video**
   ☐ **did not** appear **AND**
   ☒ a. was self-represented.
   ☐ b. was represented by Attorney _____

In 2, check how the party appeared.
If b, enter the name of the attorney.

2. **Respondent/Joint Petitioner B**
   ☒ appeared ☒ **in person** ☐ **by phone** ☐ **by video**
   ☐ **did not** appear **AND**
   ☒ a. was self-represented.
   ☐ b. was represented by Attorney _____

In 3, check a, b, c, or d.

3. Others appearing at the hearing:
   ☒ a. None.
   ☐ b. Child Support Agency by _____

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If b, c, or d, enter the name of the individual who appeared.

☐ c. Guardian ad Litem (GAL) _____
☐ d. Other: _____

FINDINGS OF FACT

A. **Jurisdiction**

1. All necessary parties were properly served and 120 days have lapsed since filing the joint petition or the date of service of the summons and petition, whichever applies.
2. At the time of the final hearing, the parties requested a

In 2. check a or b.

☒ a. **Divorce.** The court finds the marriage is irretrievably broken.
☐ b. **Legal Separation.** The court finds the marital relationship is broken and acceptable reasons have been given to the court for the request.

3. All jurisdictional requirements for a judgment have been met.

B. Parties (As of the date of the final hearing)

In B.1. enter the requested information about Petitioner/Joint Petitioner A.

If you do not know an answer, enter "unknown" in the blank.

1. The Petitioner/Joint Petitioner A in this action is:

Name Elizabeth Fitzgibbon
Address 308 Oak Street
Address
City Neenah State WI Zip 54956
Date of birth [redacted]1987
Gross monthly income $800.00

In 2. enter the requested information about Respondent/Joint Petitioner B.

If you do not know an answer, enter "unknown" in the blank.

2. The Respondent/Joint Petitioner B in this action is:

Name Adam Fitzgibbon
Address 451 Lowell Place
Address
City Neenah State WI Zip 54956
Date of birth [redacted]1979
Gross monthly income $_____

C. Children

In C. enter the name and date of birth [month, day, year] for each **minor** child.

If there are no minor children, check None.

1. The minor children (age 17 or younger) born to or adopted by the parties before or during the marriage are as follows:

☐ **None**

Name of Minor Child	Date of Birth
A.J.F.	2015

In 2. enter the name and date of birth for each **adult** child.

If you and the other party have no adult children, check None.

2. The adult children (age 18 or older) born to or adopted by the parties before or during the marriage are as follows:

☐ **None**

Name of Adult Child	Date of Birth

3. Other children born to a female party during the marriage are as follows:

☐ **None**

The Court makes a finding that this child:

Name of Child	Date of Birth	IS NOT	Basis for Finding (State, County, Case Number for Paternity Case, if any)

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Petitioner/Joint Petitioner A: Elizabeth Anne Fitzgibbon
Respondent/Joint Petitioner B: Adam Paul Fitzgibbon

In 3, enter the name and date of birth for any child born to a female party during the marriage that is not the other party's. Enter the county, state and case number in which paternity has been addressed.			☐ Petitioner/Joint Petitioner A's ☐ Respondent/Joint Petitioner B's	
			☐ Petitioner/Joint Petitioner A's ☐ Respondent/Joint Petitioner B's	
			☐ Petitioner/Joint Petitioner A's ☐ Respondent/Joint Petitioner B's	

In 4, check a or b and check which party is the father.

4. ☐ a. Neither party is currently pregnant.
   ☐ b. [Name of Party] _____ is currently pregnant and
   ☐ Petitioner/Joint Petitioner A
   ☐ Respondent/Joint Petitioner B
   is found to be the father.

5 The present best interests of the minor children are best served by awarding legal custody and physical placement as set forth in the attached Marital Settlement Agreement or Proposed Marital Settlement.

D. The parties' assets, their interests, values and their encumbrances and debts are found to be as stated in the Financial Disclosure Statements, which were updated as required by statute on the record at the time of trial and are on file.

E. A Marital Settlement Agreement or Proposed Marital Settlement has been submitted, the party(s) have asked that it be approved by the Court. All parties present have been informed of the legal consequences if the court approves the document in whole or in part.

In F1, check a, b or c. If c, enter the amount and interest rate and check 1 or 2. If 1, enter the date. If 2, enter payment amount, the frequency of the payment, and the date payments begin.

F. **Arrearages**

1. **Past Due Maintenance.**
   The amount of the past due arrearages for maintenance at the time of the final hearing is
   ☒ a. none (zero).
   ☐ b. as agreed in the Marital Settlement Agreement or Proposed Marital Settlement.
   ☐ c. $_____ which shall earn interest at the rate of _____% per year and shall be paid as
   ☐ (1) a one-time payment to the WI SCTF made by [Date] _____, 20_____.
   ☐ (2) through monthly income withholding by the WI SCTF in the amount of $_____beginning _____, 20 ____ until the arrearages are paid in full.

   Pursuant to §767.58(1)(c), Wis. Stats., a party receiving maintenance must notify the court and the payer within ten (10) days of remarriage.

In 2, check a, b or c. If c, enter the amount and check 1 or 2. If 1, enter the date. If 2, enter payment amount, the frequency of the payment, and the date the payments shall begin.

2. **Past Due Child Support.**
   The amount of the past due arrearages for child support at the time of the final hearing is
   ☒ a. none (zero).
   ☐ b. as agreed in the Marital Settlement Agreement or Proposed Marital Settlement.
   ☐ c. $_____ which shall earn interest at the rate of _____% per year and shall be paid as
   ☐ (1) a one-time payment to the WI SCTF made by [Date] _____, 20_____.
   ☐ (2) through monthly income withholding by the WI SCTF in the amount of $_____beginning _____, 20 ____ until the arrearages are paid in full.

In G, enter any other findings.

G. Other Findings: _____

CONCLUSIONS OF LAW AND JUDGMENT

In A, check 1 or 2.

A. **The Court grants a judgment of**

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If 1, enter the effective date.

☒ 1. Divorce. The marriage between the parties is dissolved and the parties are divorced effective on ☒ date of hearing. ☐ other date: _____
The parties are informed by the court that under §765.03(2), Wis. Stats.:
It is unlawful for any person who is or has been a party to an action of divorce in any court in this state, or elsewhere, to marry again until six months after judgment of divorce is granted, and the marriage of any such person solemnized before the expiration of six months from the date of the granting of judgment of divorce shall be void.

If 2, enter the effective date.

☐ 2. Legal Separation. The marital relationship is broken and the parties are granted a judgment of legal separation effective on
☐ date of hearing. ☐ other date: _____.

The parties are informed by the court that under §767.35, Wis. Stats.:
- In case of reconciliation, at any time, the parties may apply for a revocation of the judgment of legal separation.
- The court shall convert the decree to a decree of divorce:
  - by stipulation of both parties at any time, OR
  - upon motion of either party not earlier than one year after entry of a decree of legal separation.

In B.1, check the appropriate boxes and enter the date [month, day, year] that the party(s) signed the checked document and attach the document. If the court made changes, write them in the space provided.

If checked, enter reasons.

Check if attachments.

If 1 does not apply, check 2.

B. Final Orders

1. ☒ **Marital Settlement Agreement** filed 01/10/2023 (Second Amended) *OR*
☐ **Proposed Marital Settlement** filed _____ of the
☐ Petitioner/Joint Petitioner A
☐ Respondent/Joint Petitioner B
is approved and made the judgment of the court except as changed below:

_____

☐ if either parent is receiving less than 25% placement with the minor child(ren), the specific reasons more placement with that parent is not in the child(ren)'s best interest is as follows:

_____

☐ **See attached**

☐ 2. No **Marital Settlement Agreement** or **Proposed Marital Settlement** was approved by the court. A **Divorce Judgment Addendum** has been prepared to reflect the Judges' order and is made the judgment of the court.

C. Lis Pendens

Any Lis Pendens filed in this action is released.

In D, check 1, 2, or 3.

If 2 or 3, enter the former legal surname.

D. Legal Name Restoration

☒ 1. Neither party is awarded the right to use a former legal surname.
☐ 2. Petitioner/Joint Petitioner A is awarded the right to use a former legal surname of _____.
☐ 3. Respondent/Joint Petitioner B is awarded the right to use a former legal surname of _____.

Note: If this is an action for legal separation, the court cannot allow either party to resume a former legal surname unless and until the judgment is converted to a divorce.

E. Child Legal Custody and Physical Placement

1. A person who is awarded periods of physical placement, a child of such a person, a person with visitation rights, or a person with physical custody of a child may notify the Circuit Court Commissioner of any problem he or she has relating to any of these matters. Upon notification, the Circuit Court Commissioner may refer any person involved in the matter to the Director of Circuit Court Counseling Services for mediation to assist in resolving the problem.

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2. In a sole legal custody arrangement, the parent not granted sole legal custody shall file a medical history form with the court in compliance with §767.41(7m), Wis. Stats.
3. Both parties shall have access to the minor child(ren's) educational records pursuant to §118.125, Wis. Stats.
4. Change of Residence of Children. You are informed of the following:
   - Each parent must notify the other parent, the child support agency, and the clerk of court of the address at which they may be served within 10 business days of moving to that address. The address may be a street or post office address.
   - The address provided to the court is the address on which the other parties may rely for service of any motion relating to modification of legal custody or physical placement or to relocating the child's residence.
   - A parent granted periods of physical placement with the child must obtain a court order before relocating with the child 100 miles or more from the other parent if the other parent also has court-ordered periods of physical placement with the child.
5. Parties are notified of the provisions of §948.31, Wis. Stats., as follows:

§948.31 Interference with custody by parent or others.

(1) (a) In this subsection, "legal custodian of a child" means:
   1. A parent or other person having legal custody of the child under an order or judgment in an action for divorce, legal separation, annulment, child custody, paternity, guardianship or habeas corpus.
   2. The department of children and families or the department of corrections or any person, county department under s. 46.215, 46.22 or 46.23 or licensed child welfare agency, if custody or supervision of the child has been transferred under ch. 48 or 938 to that department, person or agency.

(b) Except as provided under chs. 48 and 938, whoever intentionally causes a child to leave, takes a child away or withholds a child for more than 12 hours beyond the court-approved period of physical placement or visitation period from a legal custodian with intent to deprive the custodian of his or her custody rights without the consent of the custodian is guilty of a Class F felony. This paragraph is not applicable if the Court has entered an order authorizing the person to so take or withhold the child. The fact that joint legal custody has been awarded to both parents by a court does not preclude a court from finding that one parent has committed a violation of this paragraph.

(2) Whoever causes a child to leave, takes a child away or withholds a child for more than 12 hours from the child's parents or, in the case of a nonmarital child whose parents do not subsequently intermarry under s. 767.803, from the child's mother or, if he has been granted legal custody, the child's father, without the consent of the parents, the mother or the father with legal custody, is guilty of a Class I felony. This subsection is not applicable if the legal custody has been granted by court order to the person taking or withholding the child.

(3) Any parent, or any person acting pursuant to directions from the parent, who does any of the following is guilty of a Class F felony:
   (a) Intentionally conceals a child from the child's other parent.
   (b) After being served with process in an action affecting the family but prior to the issuance of a temporary or final order determining child custody rights, takes the child or causes the child to leave with intent to deprive the other parent of physical custody as defined in s. 822.02(9).
   (c) After issuance of a temporary or final order specifying joint legal custody rights and periods of physical placement, takes a child from or causes a child to leave the other parent in violation of the order or withholds a child for more than 12 hours beyond the court-approved period of physical placement or visitation period.

(4) (a) It is an affirmative defense to prosecution for violation of this section if the action:

1. Is taken by a parent or by a person authorized by a parent to protect his or her child in a situation in which the parent or authorized person reasonably believes that there is a threat of physical harm or sexual assault to the child;
2. Is taken by a parent fleeing in a situation in which the parent reasonably believes that there is a threat of physical harm or sexual assault to himself or herself;
3. Is consented to by the other parent or any other person or agency having legal custody of the child; or
4. Is otherwise authorized by law.

(b) A defendant who raises an affirmative defense has the burden of proving the defense by a preponderance of the evidence.

(5) The venue of an action under this section is prescribed in s. 971.19(18), which incurred the expense on a prorated basis. Upon the application of any interested party, the court shall hold an evidentiary hearing to determine the amount of reasonable expenses.

(6) In addition to any other penalties provided for violation of this section, a court may order a violator to pay restitution, regardless of whether the violator is placed on probation under s.973.09, to provide reimbursement for any reasonable expenses incurred by any person or any governmental entity locating and returning the child. Any such amounts paid by the violator shall be paid to the person or governmental entity which incurred the expense on a prorated basis. Upon the application of any interested party, the court shall hold an evidentiary hearing to determine the amount of reasonable expenses.

F. Child Support/Maintenance

1. Pursuant to §767.75, Wis. Stats., this judgment constitutes an immediate assignment of all commissions, earnings, salaries, wages, pension benefits, benefits under Chapter 102 or 108, and other money due or to be due in the future, to the WI SCTF. The assignment shall be for an amount sufficient to ensure payment under this judgment, so long as the addition of the amount toward arrears does not leave the party at an income below the poverty line established under 42 USC 9902(2).
2. Pursuant to §767.57(1)(a), Wis. Stats., all payments for child support and/or maintenance ordered shall note the case number and the names of the parties on the face of the check, should be made payable to WI SCTF, and sent to:

   Wisconsin Support Collections Trust Fund
   Box 74200
   Milwaukee, WI 53274-0200.

   The WI SCTF will transmit the payments to the proper persons entitled to them.

   Failure of an employer to pay the proper amount shall not be a defense for failure to pay the proper amount. If an employer fails to take out the correct amount for child support and/or maintenance, the party paying is responsible for paying the full and correct amount directly to WI SCTF.

   Pursuant to §767.57(1e), Wis. Stats., the party making payment for child support and/or maintenance is responsible for payment of the annual receiving and disbursing fee to WI SCTF.

   Pursuant to §767.57(1e)(c), Wis. Stats., an annual fee will be deducted by WI SCTF from payments to recipients of child support.

3 Both parties shall notify, in writing, the other party and the Clerk of Court and the Child Support Agency of the county in which this action is filed, within 10 business days, of any change of employer and employer's address, and of any substantial change in the amount of his/her income, including receipt of bonus compensation, such that his/her ability to pay support is affected. Notification of any substantial change in the amount of the payer's income will not result in a change in the order unless a revision or adjustment of the order is sought.

If the child support order includes more than one child, child support does not automatically adjust when a child reaches the age of majority and is no longer eligible for child support.

4. A party ordered to pay child support shall pay simple interest rate according to statutory rate on any amount in arrears that is equal to or greater than the amount of support due in 1 month. If there is no current order, interest shall accrue on the balances due.

5. Pursuant to §767.75, Wis. Stats., a withholding assignment or order under this section has priority over any other assignment, garnishment, or similar legal process under Wisconsin law. The employer shall not withhold more of the employee's disposable income than allowed pursuant to the Federal Consumer Credit Protection Act unless the employee agrees to have the full amount withheld. No employer may use an assignment under this section to deny employment, or to discharge or take disciplinary action against an employee.

Enter the date by which you will exchange financial information each year if other than May 1.

6. If the court orders child support or maintenance, the parties shall annually exchange financial information no later than May 1 or ☐ Other: [Date] _____ of each year including all of the following:
   - A complete copy of the party's federal and state income tax return for the prior calendar year, including all W-2 forms and 1099 forms.
   - A year-end paycheck stub from all sources of employment for the prior calendar year.
   - The party's most recent paycheck stub from all sources of employment showing year-to-date gross and net income.
   - Any other documentation of the party's income from all sources for the 12-month period preceding the exchange of information.

   A party who fails to furnish the information as required by the court under this subsection may be proceeded against for contempt of court under ch. 785, Wis. Stats. If the court finds that a party has failed to furnish the information required under this subsection, the court may award to the party bringing the action costs and, notwithstanding §814.04(1), Wis. Stats., reasonable attorney fees. Failure by a party to timely file a complete disclosure statement as required hereunder shall authorize the court to accept as accurate any information provided in the statement of the other party or obtained under §49.22(2m), Wis. Stats., by WI SCTF or the county child support agency under §59.53(5), Wis. Stats.

7. **Property Division**
   Notice is given of the provisions of §767.61 (5) (a) and (b) and §767.61(6), Wis. Stats. The parties shall transfer title to property of the parties as necessary, in accordance with the division of property set forth in the judgment.
   The parties are notified that
   a. it may be necessary for the parties to take additional actions in order to transfer interests in their property in accordance with the division of property set forth in the judgment, including such interests as interests in real property, interests in retirement benefits, and contractual interests.
   b. the judgment does not necessarily affect the ability of a creditor to proceed against a party or against that party's property even though the party is not responsible for the debt under the terms of the judgment.

c. an instrument executed by a party before the judgment naming the other party as a beneficiary is not necessarily affected by the judgment and it may be necessary to revise the instrument if a change in beneficiary is desired.

d. a deed consistent with the judgment or a certified copy of the portion of the judgment affecting title to real property shall be recorded in the office of the register of deeds of the county in which the real property is located.

G. **Court Ordered Fees**
All payments of attorney fees shall be paid directly to the attorney or to the agency providing services which may enforce the order in its name.

All payment of Guardian ad Litem (GAL) fees or fees for family court services shall be paid directly to the GAL or the agency which may enforce the order.

H. **Restraining Order**
Both parties are restrained from interfering with the personal liberty of the other.

I. **Non-Compliance**
Disobedience of the court orders is punishable under ch. 785 Wis. Stats., by commitment to the county jail until the judgment is complied with and the costs and expense of the proceedings are paid or until the party committed is otherwise discharged, according to law.

J. **Entry of Judgment**
The Clerk of Court's office, per §806.06(1)(2), Wis. Stats., shall enter this judgment by affixing a file stamp that is dated.

THIS IS A FINAL ORDER FOR THE PURPOSE OF APPEAL IF SIGNED BY A CIRCUIT COURT JUDGE.

ADDENDUM TO JUDGMENT OF DIVORCE

Pursuant to Section 767.54, when the Court orders a party to pay child support or family support, the parties are required to exchange financial information annually. Therefore, the parties shall exchange copies of W-2 forms for all sources of income, and a copy of income tax returns by April 15 of each year.

If the person paying child support under this Judgment or any subsequent order amending this Judgment is or becomes unemployed, then such person thereafter shall immediately be under a duty to seek employment at 20 places of employment each month actually hiring employees and shall file on the first day of each month an affidavit with the Winnebago County Child Support Agency verifying such employment search. The affidavit shall be on the form prescribed by the Winnebago County Child Support Agency.

Pursuant to 767.58, when the Court orders maintenance or family support, the person receiving payments is required to provide notice of remarriage. Therefore, the payee shall notify the Court and the payer within 10 business days of the payee's remarriage. Further, unless already terminated for another reason, maintenance terminates upon the death of the payee or the payer, whichever occurs first.

Effective April 1, 2014, interest charged on support related debts is reduced from 12% to 6% per year (1% to .5% per month).

BY THE COURT:

DATE SIGNED: January 11, 2023

Electronically signed by Bryan D. Keberlein
Circuit Court Judge

STATE OF WISCONSIN CIRCUIT COURT WINNEBAGO COUNTY
IN RE THE MARRIAGE OF:

Elizabeth Anne Fitzgibbon,

Petitioner,

Case No. 21FA564

and

Case Code: 40101

Adam Paul Fitzgibbon,

Respondent.

THIRD AMENDED MARTIAL SETTLEMENT AGREEMENT

This Martial Settlement Agreement is between Elizabeth Anne Fitzgibbon, Petitioner, and Adam Paul Fitzgibbon, Respondent.

In consideration of the mutual terms and provisions contained herein, both parties agree that the following Marital Settlement Agreement may be incorporated by the Court in the Conclusions of Law and Divorce Judgment to be entered in this action. The parties agree, however, that this settlement agreement shall independently survive their divorce judgment. The parties agree as follows:

I. LEGAL CUSTODY

A. CUSTODY

It is in the present best interest of the minor child of the marriage for the parents to have joint legal custody. Both are fit and proper person to have joint legal custody.

Pursuant to Wis. Stat. §767.001(1s), "joint custody" means the condition under which both parties share legal custody and where neither parent's legal custody rights are superior. The parties shall consult and attempt to reach agreement with respect to major decisions affecting the lives of the minor child. Each of the parties shall provide advance notice to the other regarding these major decisions so as to facilitate co-parenting communication, cooperation, and mediation if necessary.

II. PHYSICAL PLACEMENT

A. PLACEMENT

Both parents shall have periods of physical placement with the minor child.
Pursuant to Wis. Stat. §767.001(5), "physical placement" means the condition under which a parent has the right to have a child physically placed with that parent.

The parties shall share physical placement of the minor child with Elizabeth having approximately 60% of the overnights and Adam having approximately 40% of the overnights. The parties intend to cooperate in formulating A.J.F. schedule on an ongoing basis.

B. VACATION

Each parent shall have the option of having the child for two one-week periods of uninterrupted vacation time each year, with sixty days written notice provided to the other parent specifying the time of the scheduled vacation.

Each parent shall provide the other parent with an address and telephone number of where the child will be staying so that the parent or child can be contacted in the event of an emergency while the child is on vacation.

C. HOLIDAYS

The parties have agreed to the following holiday placement schedule as set forth in the attached Exhibit. The holiday schedule takes precedence over the regular placement schedule.

D. TRANSPORTATION

For all transfers of placement, the parent initiating placement shall be responsible for transportation.

E. RELOCATION

The parties agree that Section 767.481 of the Wisconsin Statutes, and all amendments, shall control should either party seek to relocate with the child at any location more than 100 miles from the other parent.

F. MEDIATION

In the event any dispute or disagreement arises regarding the terms and conditions of custody or placement, the parents shall seek jointly the assistance of a mutually agreed-upon mediator or the court's mediation service for resolution of the conflict.
Pursuant to section 802.12(e), mediation means a cooperative process involving the parties and a mediator, the purpose of which is to help the parties, by applying communication and dispute resolution skills, define and resolve their own disagreements, with the best interest of the children as the paramount consideration.

Neither parent may seek or institute proceedings for modification or enforcement of the custody or placement provisions of this agreement by litigation without first having sought and attempting to resolve any conflict through mediation.

Any required fees for the assistance of a mediator shall be shared equally by the parents.

III. FINANCIAL SUPPORT

A. CHILD SUPPORT

The parties agree that Adam shall pay child support to Elizabeth in the amount of $765 per month commencing the date of divorce.

Child support is based on the shared placement formula pursuant to DCF 150 Child Support Percentages of Income Standard, including an adjustment for Elizabeth pursuant to the Low Income guidelines and includes an upward deviation to account for one-half portion of the health insurance for the minor children (currently provided by Elizabeth).

1. Payments

All payments shall be made by income assignment. Adam's employer shall be ordered to withhold $765 of Adam's gross income and send the payment to Wisconsin Support Collections Trust Fund, Box 74400, Milwaukee, Wisconsin, 53274-0400.

If for any reason the payment is not withheld from Adam's income as provided herein, Adam shall be responsible for making such payments directly to Wisconsin Support Collections Trust Fund, Box 74200, Milwaukee, Wisconsin, 53274-0200.

All moneys received or disbursed hereunder shall be entered in a record and kept by the WI SCTF that shall be open to inspection by the parties to the action, their attorneys, and the Family Court Commissioner.

Payor shall be responsible for initial and annual receiving and disbursing fees, pursuant to section 814.61(12)(b) of die Wisconsin Statutes.

2. Notice of Change

Each party shall notify the Clerk of Court and the other party, in writing, of any and all of the following:

a. Any change in address.

b. Any change of employer.

c. Any substantial change in the amount of his or her income such that his or her ability to pay child support is affected.

Notice shall be given within ten (10) days of such change occurring.
Notification of substantial change in a party's income under this paragraph will not result in any change in the Court's Judgment unless revision of the Judgment is sought and granted.

3. Interest

Payor shall pay simple interest at the rate of 0.5% per month on any amount of unpaid child support commencing on die first day of the second month after the month in which the amount was due.

4. Income

Both parents shall provide a copy to each other of their complete tax returns by April 16th of each year a child support obligation remains in effect.

B. VARIABLE EXPENSES

The parties agree to share equally in the children's variable expenses. Variable expenses are defined as stated in DCF 150.02(29) as the reasonable costs above basic support costs incurred by or on behalf of a child, including but not limited to, the cost of child care, tuition, a child's special needs, and other activities that involve substantial cost.

C. MAINTENANCE

Both parties waive their right to receive maintenance. Pursuant to sections 767.56 and 767.59 of the Wisconsin Statutes, both understand that by giving up maintenance at this time, neither may ever ask for maintenance in the future.

D. LIFE INSURANCE

Effective as of the time of final hearing, each party shall continue to name the minor child. or a trust for the benefit of the minor child, as beneficiary on the life insurance available through their employment.

IV. MEDICAL INSURANCE

A. MEDICAL INSURARNCE FOR THE PARTIES

Both parties have been informed of the right of one former spouse to purchase continued health insurance from the other spouse's group health insurance carrier. Each understands that it is the obligation of the spouse wishing to continue group coverage to pay for that coverage.

Each party shall be fully responsible for the cost and securing his or her own medical insurance and uninsured medical expenses.

B. MEDICAL INSURANCE FOR THE CHILD

Elizabeth shall maintain the minor child on her comprehensive medical and hospitalization insurance policy, or obtain a comparable policy, and shall maintain the same until the youngest child reaches age eighteen or is earlier emancipated, or until the youngest child reaches nineteen, if he is pursuing an accredited course of instruction leading to the acquisition of a high school diploma or its equivalent. Elizabeth shall promptly make all necessary premium payments.

If insurance for the minor child is no longer available through Elizabeth's employment, or if the cost of the insurance is no longer reasonable, both parties shall share the responsibility of naming and maintaining the child as a covered dependent.

The parent carrying the child on his or her policy shall provide an insurance summary and provider card to the other parent and shall notify the other parent of any changes in coverage or providers.

C. CHILD'S UNINSURED MEDICAL EXPENSES

Both parties agree to follow insurance guidelines for coverage and cooperate, as necessary, to assure maximum utilization of insurance benefits. Neither party shall be obligated for uninsured expenses incurred by the other if said guidelines and provisions for coverage are not followed.

The parties agree to share, equally, the child's ordinary uninsured or non-reimbursed medical and dental expenses, and co-insurance (if any) including any insurance deductibles. "Ordinary" expenses include items such as routine medical checkups and treatment, examinations required by school authorities, treatment of minor ailments and prescriptions incidental thereto, and other health care expenses necessarily incurred to protect or maintain a child's health.

The party incurring the expense shall submit verification of the sum owed to the other party within 30 days of ascertaining the amount of the uninsured portion. The other party shall then reimburse the paying party for one-half of the sum within 15 days of presentment of verification, unless there is a reasonable objection to payment. Failure to adhere to these terms may subject a parent to contempt proceedings in which actual attorney's fees may be awarded.

The parties expressly intend that uninsured expenses, under this provision, be dealt with promptly and that neither will withhold reimbursement from the other. Although the parties do not anticipate problems in this regard, if this matter is brought to court in the future, they desire

that the Court shall impose appropriate sanctions on an offending party to ensure compliance with this provision.
"Extraordinary" expenses shall include, without limitation, chiropractic care, orthodontia, and psychiatric or other mental health care expenses. Neither party shall incur any extraordinary expenses for the child, except in the case of emergency, without prior notice to, and the consent from, the other party. Provided notice is given, and consent is not unreasonably withheld, extraordinary expenses shall also be shared, equally, by the parties.

V. OTHER INSURANCE

Effective as of the time of the final hearing, each party shall be individually responsible for and pay premiums on his or her own health, accident, disability, vehicle, homeowners or renters, personal property and personal liability umbrella insurance to the extent that he or she desires to maintain such coverage.

VI. PROPERTY DIVISION

As a full, final, complete, and equitable property division, each party is awarded the following property:

A. PROPERTY AWARDED TO WIFE

1. All household items and personal effects, including clothing and jewelry, in her possession at the time of the final hearing or as agreed to between the parties.

2. 2007 Lexus IS 250.

3. Any and all life insurance policies in her name or possession at the time of divorce.

4. Etrade account and ½ of the Voya account.

5. Any and all checking and savings accounts in her name.

6. 50% of the Community First Credit Union Checking and Savings accounts (approximately $25,000 total).

7. Any other disclosed asset in her possession at the time of the final hearing.

B. PROPERTY AWARDED TO HUSBAND

1. All household items and personal effects, including clothing and jewelry, in his possession at the time of the final hearing or as agreed to between the parties.

2. 2005 Nissan Xterra.

3. Any and all life insurance policies in his name or possession at the time of divorce.

4. Any and all checking and savings accounts in his name.

5. Computer share, share owner, CSX, Norfolk Southern, Gold IRA shares securities and ½ of the Voya account.

6. 50% of the Community First Credit Union Checking and Savings accounts (approximately $25,000 total).

7. Any other disclosed assets in his possession at the time of the final hearing.

C. DISPOSITION OF REAL ESTATE

Adam shall be awarded all right, title and interest in the parties' residence located at 451 Lowell Place in Neenah, WI with an agreed value of $210,000. Adam shall be responsible for the outstanding mortgage thereon owing to Community First Credit Union in the current approximate total amount of $106,187, property taxes, homeowner's insurance, utilities, and any costs related to the residence. Adam shall refinance the mortgage on the above-described residence within 90 days from the date of divorce. Elizabeth shall execute all real estate closing documents including Quit Claim Deed and Wisconsin Real Estate Transfer Return and said documents shall be held in trust until refinancing.

Both parties understand that this Marital Settlement Agreement alone will not transfer title to one party or the other, but such a transfer requires a fully executed Quit Claim Deed and a Wisconsin Real Estate Transfer Return signed by the parties. The party awarded a parcel of real estate shall be responsible for having the necessary documents prepared.

In the event Adam has not closed on the refinancing of the parties' residence within 90 days of the date of divorce, the residence shall be immediately placed on the market for sale with a mutually agreed real estate broker. Adam shall continue to be responsible for the outstanding mortgage thereon, homeowner's insurance, utilities, and any mutually agreed costs related to the residence until the date of sale.

Adam shall be awarded all right, title and interest in the parties' land located at Deerlake Road #2 in Marinette, WI with an agreed value of $50,000. Adam shall be responsible for property taxes, homeowner's insurance, utilities, and any costs related to the residence.

D. EQUALIZATION OF MARITAL PROPERTY DIVISION

A payment of $77,000 is required to equalize the marital property division. This payment shall be made by Adam to Elizabeth. This payment shall be within 90 days of the date of divorce.

VII. DEBTS AND LIABILITIES

Each party is responsible for any debt or liability, including personal charge cards, incurred by him or her after the date of filing, with each party holding the other harmless for its payment.

Each party assigned a debt shall be fully responsible for that obligation and shall not make any demands upon the other party concerning that debt.

Each party warrants that he or she has not incurred any debts or liabilities that are unpaid other than those listed on his or her financial statement. Any debt not listed shall be the responsibility of the party who incurred it and that party shall not make any demands upon the other party concerning that debt.

Adam shall be solely responsible for the mortgage owing on the marital residence in the amount of $106,187 owing to Community First Credit Union.

Creditors are not bound by this agreement and each party may remain liable to creditors for all marital debts. Any party who suffers a loss because of a failure of the other party to pay an assigned debt may enforce that obligation by a motion for contempt of court.

With respect to each party's responsibility for the payment of certain debts and liabilities and their obligations to hold the other harmless for the payment thereof, the parties understand and intend that these obligations are domestic support obligations as defined in 11 U.S.C. § 101 (14A) and non-dischargeable under 11 U.S.C. § 523 (a)(5) of the Bankruptcy Code, this obligation being part of the final financial support settlement for both parties. This understanding is set forth in detail here so as to clarify the intention of the parties with respect to the hold harmless provision.

VIII. TAXES

A. YEAR OF THE DIVORCE

The parties agree to file their income tax returns for the year of the divorce consistent with the rules of the IRS, Wisconsin Department of Revenue, and Wisconsin's Marital Property law. The parties understand that their marital status on the last day of the year determines their filing status for that year, whether married or single. The parties acknowledge that each are responsible for seeking tax advice from a tax professional with regard to issues of this divorce.

B. YEARS PRIOR TO THE DIVORCE

As to any taxes found to be due or refunds made for prior taxable years, the parties shall share equally any such refunds and contribute equally to any assessments for additional taxes, penalties and interest, unless it can be demonstrated that the refund or additional obligation, or any distinct portion thereof, is due to the conduct or status of only one of the parties. In that event, the refund or additional obligation shall be allocated between the parties accordingly.

C. DEPENDENTS AND EXEMPTIONS

Elizabeth shall have the right to claim the child as a dependent for federal and state income tax purposes in even years and Adam shall have the same right in odd years. The parties shall equally divide any stimulus funds received attributable to the minor child.

Each party shall sign IRS Form 8332, Release of Claim to Exemption for Child of Divorced or Separated Parents for the child for each applicable tax year. If claiming a child as a dependent and exemption for tax purposes results in a special tax credit as the result of something paid by both parties throughout the year, the party receiving same shall split equally with the other party any tax credit received.

IX. ATTORNEY ADVICES AND FEES

Each party acknowledges that he or she has been advised to have this Agreement reviewed by his or her individual attorney and that individually each has had an opportunity to do so. The parties understand and agree that Attorney Jeff Morrell is solely representing Elizabeth in this matter and Adam has been so advised of Attorney Jeff Morrell's exclusive representation of Elizabeth relative to the drafting and execution of this Agreement.

Each of the parties shall be responsible for his or her own attorney fees, no contribution being made by either party.

X. LEGAL SURNAME RESOTRATION

Elizabeth does not wish to resume the use of her former legal surname of Adler.

XI. EXECUTION OF DOCUMENTS

The parties shall execute and deliver any and all documents necessary to carry out the terms and conditions of this Agreement.

XII. VOLUNTARY EXECUTION

Each party has entered into this Agreement voluntarily, with full information, including information as to tax consequences. Each assumes equal responsibility for the entire contents of the Agreement and each believes the terms and conditions to constitute a fair and reasonable compromise of disputed issues. No coercion or undue influence has been used by or against either party in making this Agreement.

XIII. NATURE OF THE AGREEMENT

This Agreement is binding upon the parties, and their respective heirs, beneficiaries, legatees, personal representatives, agents and assigns.

Each party acknowledges that no representations of any kind have been made to him or her as an inducement to enter into this Agreement, other than the representations set forth herein.

This document is the product of give and take negotiations and some portions of the language are that of counsel for the husband, some portions are language of counsel for die wife, and some portions are language of both counsel. Accordingly, the common law presumption of resolving ambiguities and omissions against the drafter shall not apply as there is no one drafter of this document and we declare that it is impossible to accurately determine who drafted which clauses.

XIV. DIVESTING OF PROPERTY RIGHTS

Except as otherwise provided for in this agreement, each party shall be divested of and each party waives pursuant to §767.61 of the Wisconsin Statutes, all right, title, and interest in and to the property awarded to the other in this Agreement. Each party shall have the right to deal with the property awarded to him or her as fully as if the parties had never been married.

XV. MUTUAL RELEASE

Neither party may sue the other, nor his or her heirs, personal representatives or assigns, to enforce any of the rights relinquished or waived under this Agreement.

XVI. FULL DISCLOSURE AND RELIANCE

Each party warrants that there has been an accurate and current disclosure of income, assets, and debts and liabilities, and that the property disclosed in his or her financial statements constitutes all the property in which he or she has any interest. Each party is aware that he or she was entitled to obtain appraisals of all assets owned by the parties. To the extent that any asset was not appraised, the parties freely and voluntarily waived the right to an appraisal.

XVII. SURVIVAL OF AGREEMENT AFTER JUDGMENT

The provisions of this Agreement shall be incorporated into the Findings of Fact, Conclusions of Law and Judgment of Divorce; however, this Agreement shall survive the Judgment and have independent legal significance. This Agreement is a legally binding contract which either party may enforce in this or any other court of competent jurisdiction.

As ordered by the Court to reconstruct the Marital Settlement Agreement that was lost after filing with the Clerk of Courts. Hearing held on January 6, 2023.

FILED
01-13-2023
Clerk of Circuit Court
Winnebago County, WI
2021FA000564

DATE SIGNED: January 13, 2023

Electronically signed by Michael D. Rust
Court Commissioner

STATE OF WISCONSIN **CIRCUIT COURT BRANCH III (bk)** **WINNEBAGO COUNTY**

In Re the Marriage of:

ELIZABETH ANNE FITZGIBBON;

Petitioner,

---and---

Case No. **21-FA-564**
Classification Code No. **40101**

ADAM PAUL FITZGIBBON;

Respondent.

ORDER ON MOTIONS

THIS MATTER having come on for hearing before the Circuit Court for Winnebago County, the Honorable Michael D. Rust presiding, on September 9, 2022 and on November 14, 2022 on the following matters:

1. Motion to Change Physical Placement and Child Support (Doc. No. 26) filed by the Respondent;

2. Motion for Declaratory Order, to Reopen Judgment as to any Invalid, Unenforceable or Void/Voidable Provisions, to Hold in Abeyance Respondent's Motion, and for Temporary Order pending Declaratory Order and Final Orders (Doc. No. 40) filed by the Petitioner;

3. Motion for an Emergency Hearing Regarding Legal Custody and Physical Placement (Doc. No. 55) filed by the Petitioner; and

4. Respondent's Notice and Motion to Compel Deposition, for Stay of Motion Proceedings, and for Sanctions (Doc. No. 55) filed by the Respondent.

5. Petitioner's Motion to Clarify Order from September 9, 2022 hearing before Family Court Commissioner Rust (Doc. No. 53)

THE APPEARANCES were the Petitioner, Elizabeth Fitzgibbon, in person, and with her attorney, Lawrence G. Vesely; and the Respondent, Adam Fitzgibbon, in person and with his attorney, Peter J. Culp;

BASED UPON the Motions and supporting papers, the information, arguments, and positions taken by the Parties, and the entire file herein, the Court hereby enters the following orders:

1. The Motion to Change Physical Placement and Child Support (Doc. No. 26) filed by the Respondent is withdrawn by the Respondent without prejudice.

2. The Motion for Declaratory Order, to Reopen Judgment as to any Invalid, Unenforceable or Void/Voidable Provisions, to Hold in Abeyance Respondent's Motion, and for Temporary Order pending Declaratory Order and Final Orders (Doc. No. 40) filed by the Petitioner shall be certified for hearing and decision to the Honorable Bryan Keberlein.

3. Both parties' oral depositions shall be taken on the same date.

4. As and for a temporary physical placement schedule, the Parties shall have a 60/40 physical placement schedule with Petitioner having 60% and Respondent having 40%. This placement schedule will be facilitated by using a 28-day placement cycle. Respondent shall have physical placement of the minor child every Monday (beginning at 3:15 P.M.) and Tuesday (ending Wednesday at 3:15 p.m.). On the second week of the 28-day repeating cycle, Respondent shall have physical placement of the minor child from Friday (at 3:15 P.M.) to Wednesday (at 3:15 P.M.) All other physical placement of the minor child is with the Petitioner. Pickups and exchanges of the minor child shall be at his school and, if not in school, at the Neenah Public Library at 3:15 P.M.. Petitioner's placement shall begin on September 9, 2022, with the Respondent exchanging the minor child at the Petitioner's home at 4:00 P.M. This temporary physical placement order is made without prejudice to the rights of either party at the time of any final hearing.

5. Counseling for the minor child shall continue and appointments shall be coordinated by both parents prior to scheduling. Both parties shall agree to any change in the present counselor.

6. Attorney Trista Lee Moffat is hereby appointed as Guardian ad Litem for the minor child. Each party shall make a $500.00 deposit directly with Attorney Moffat. The Guardian ad Litem's appointment is limited to the issue of withholding placement prior to September 9, 2022, unless the circuit court reopens the divorce based on the pending motions certified.

7. The Motion for an Emergency Hearing Regarding Legal Custody and Physical Placement (Doc. No. 55) filed by the Petitioner shall be held open until after the Honorable Bryan Keberlein hears and decides the certified motions.

8. Motion to Compel Deposition, for Stay of Motion Proceedings, and for Sanctions (Doc. No. 55) filed by the Respondent shall be held open until after the Honorable Bryan Keberlein hears and decides the certified motions.

9. By stipulation of the Parties, neither Party shall speak to the minor child about this court case, or say any disparaging comments to the minor child about the other party.

10. All other provisions of the Judgment of Divorce, not affected herein, shall remain in full force and effect.

STATE OF WISCONSIN WINNEBAGO COUNTY CIRCUIT COURT
BRANCH NO. 3

In re the marriage of:

ELIZABETH ANNE FITZGIBBON,

Petitioner,

and Case No. 21-FA-564

ADAM PAUL FITZGIBBON,

Respondent.

MOTION HEARING

BEFORE: The HONORABLE BRYAN D. KEBERLEIN
Circuit Court Judge, presiding

DATE: January 6, 2023

APPEARANCES: Attorney Lawrence G. Vesely
Appearing in person on behalf of the
Petitioner; Petitioner appearing in person.

Adam Paul Fitzgibbon
Appearing pro se in person.

Stenographically reported by:
Stephanie Koenigs, RPR
Official Court Reporter

I N D E X

PAGE:

TRANSCRIPT OF PROCEEDINGS

THE CLERK: In re the marriage of Elizabeth Anne Fitzgibbon and Adam Paul Fitzgibbon. 21-FA-564.

THE COURT: Appearances, please.

ATTORNEY VESELY: Your Honor, the petitioner, Elizabeth Anne Fitzgibbon, appears in person along with her attorney, Larry Vesely.

MR. FITZGIBBON: Adam Fitzgibbon appears by himself.

THE COURT: All right. And we had covered the attorney issue before. Mr. Fitzgibbon had an attorney, doesn't have one any longer. We set this hearing as a motion hearing. I noted we had at least three hours, but we have the whole afternoon and evening if we need. We -- I had requested -- perhaps I should have been more specific about what I ordered, but I'd requested a list of what we thought the changes to the MSA were.

I'm just going to go through a brief history so the record is very, very clear. There is a divorce that Commissioner Bermingham, a default divorce, that had both Adam and Elizabeth back February 7, 2022. I got a transcript, and from that, there was a reference to an MSA that had been filed.

Again, so the record is clear, there was an

MSA that I believe was drafted either through mediation or with the help of an attorney that Elizabeth and Adam participated in, and that subsequent, after that, they made handwritten amendments.

Adam, that's your understanding?

MR. FITZGIBBON: Uh-huh.

THE COURT: Elizabeth, that's your understanding?

MS. FITZGIBBON: Yes.

THE COURT: And that they filed that, one of them filed that with the clerk of courts. It was lost between the clerk of courts and family court -- family court commissioners or in one of those places, but that when they had the default divorce on February 7, 2022, that's what they thought they were referring to when the MSA was referenced.

Adam, that's your understanding?

MR. FITZGIBBON: Correct.

THE COURT: Elizabeth, that's your understanding?

MS. FITZGIBBON: Correct.

THE COURT: Now, that paperwork with the handwritten notes is gone and lost. There are other MSAs that were filed; one without two pages, Pages 3 and 4.

Adam, that's your understanding?

MR. FITZGIBBON: Correct.

THE COURT: Elizabeth, that's your understanding?

MS. FITZGIBBON: Correct.

THE COURT: But again, before that, there was an MSA that did have an intact Page 3 and 4. What I'd note is that the one filed January 21, 2022, looks very similar to the one from April that has the two pages, 3 and 4, in it, which references the child support, variable expenses, things of that nature.

Is that the same MSA that you folks were working off of, Adam?

MR. FITZGIBBON: To my understanding, both MSAs -- and I hope I'm answering your question correctly -- both MSAs are different, but Pages 3 and 4 of both of them are identical.

THE COURT: That's my understanding, what I'm looking at.

MR. FITZGIBBON: Okay. Yeah. That is correct.

MS. FITZGIBBON: Right. So the original one that I submitted on October 7th, which was filed on the 21st, is incomplete, missing Pages 3 and 4. Correct.

THE COURT: Right.

MS. FITZGIBBON: Yes.

THE COURT: So from the MSA that is missing Pages 3 and 4, what was listed on them -- again, because the Pages 2 and 5 are identical, what's missing from the 3 and 4 was child support payments, notice of changes, interest, income, variable expenses, maintenance, life insurance, medical, insurance for parties, medical insurance for child. And then in both MSAs, Page 5 has number C, child's uninsured expenses.

Adam --

MR. FITZGIBBON: Yeah.

THE COURT: -- make sense?

MR. FITZGIBBON: Yeah.

THE COURT: Elizabeth, make sense?

MS. FITZGIBBON: Correct.

THE COURT: Now, from all of this, where I'm going is there was a divorce that occurred. It occurred February 7, 2022. The parties were sworn in. That's noted on the transcript, Page 2. They're identified as Adam and Elizabeth, also on Page 2.

Page 3, the Court asked Elizabeth if they made a full disclosure of income, expenses, assets to Adam. Yes. Same question was asked of Adam. Page 5, the Court says other marital settlement -- other than the marital settlement agreement, do you have any other

written agreements. Both answered no.

Page 7, they get into the child support, where Elizabeth says 765 a month, so I had it written down, and then at one point, I see in here I don't know. The Court goes on then to talk about, given their circumstances, that 765 is actually -- it says it's higher than what -- than what would ordinarily be ordered.

Page 9, the Court says -- and this would be, again, to Elizabeth -- do you think your property division is approximately equal? Elizabeth answers yes. The Court asked: Did you sign the agreement voluntarily? Again, Elizabeth answers yes.

The Court asks: Do you understand the obligation to pay child support? And this is to Adam. He says yes, agreeing to the 765 that was discussed. The Court says: Do you think you have property division equally -- essentially equal?
Mr. Fitzgibbon's answer is yep.

The Court ends with asking Elizabeth if she has any questions, because Elizabeth testified before Adam, and she says no. And then the Court says: Based on that, I'll grant an absolute divorce as of today's date.

From this, what I see is that in July --

well, after that -- I'll get the date here -- April 26, 2022, at 11:31 a.m., this is called before Court Commissioner Bermingham, presumably to advise that this MSA is either incomplete, missing, or otherwise, and the Court orders parties have ten days to reconfigure an MSA. Now we're at January 6, 2023, and I still don't have that.

And there's a motion filed by Attorney Fozard, notice of motion -- and this is July 12, 2022. Notice of motion and motion for declaratory order to reopen judgment as to any invalid, unenforceable, or void or voidable provisions, to hold in abeyance respondent's motion for temporary order pending declaratory order and final orders.

I went through that statute, which is 806.07(a), (d), and (h), which are (a): Mistake -- and this is relief from judgment or order, 806.07: Mistake, inadvertence, surprise, or excusable neglect. Here, again, I don't think the mistakes of the clerk of the courts or court commissioner, family court commissioner, losing the MSA with the highlights or the handwritten notes as filed is what the statute contemplates.

(d) is: The judgment is void. Well, I still don't even know what the judgment is because we don't

have a written memorialization of it. We have a divorce, but not a memorialization of what essentially was a stipulated contract.

And (h): Any other reasons justifying relief from the operation of the judgment. Which gets me to where we are today. What I feel like I'm getting from at least the parties or a party is that we need to reopen this and relitigate it, but I think that there's another solution, and that's what I've been trying to push the parties toward, is to what Court Commissioner Bermingham ordered many, many months ago, to re-create the MSA that the two parties drafted or had drafted and then made notes to and that they agreed to on February 7, 2022.

So I would just note as well, I read some cases trying to find anything else similar. I'll cite Ronald J.R. vs. Alexis A.L. [sic], 2013 WI App 79. The Court held or it's noted: The fact that a party later regretted a stipulated bargain because the appellate attorney through arguments neither her or the trial attorney considered before the stipulation was signed is not a mistake. If anything, it's hindsight, but hindsight does not make a stipulation invalid.

Also note Thoma vs. Village of Slinger, 2018 WI 45: In deciding the motion under 1(h), the

circuit court should examine allegations accompanying the motion, assume they are true, and determine whether they present extraordinary or unique facts justifying relief under 1(h). The circuit court should consider whether a unique or extraordinary fact exists that are relevant to the competing interest of finality of judgments and relief from unjust judgments. If the circuit court finds extraordinary or unique facts from the court's review of the motion materials, the Court should hold a hearing to decide the truth or falsity of the allegations.

Here, we clearly have unique and extraordinary facts. The difference is, though, I don't have a memorialization of what was agreed to, that the parties swore that they reviewed, that they agreed to, that they drafted. So to me, this is not a family issue right now; this is a contract issue.

There was a contract that occurred. There was a meeting of the minds when the two drafted with handwritten notes on an MSA and what they thought submitted it, and it should have been taken care of by the clerk of courts/family court commissioner, but it wasn't. So where we're left then is I don't know that I need to reopen the entirety of -- to relitigate whether something is fair. I need to find out what was

agreed to.

So what I'm going to do today is I'm going to swear the two parties in. I've got a copy of the MSA; you're going to sit up here in the witness stand and I'm going to have you draft or make what handwritten notes you think you had. I'm going to ask you some questions. I'm going to determine what our MSA is going forward.

I'm doing this because from my first hearing, I've tried to position the parties to identify for me what the issues in contest might be, what the MSA might be, and I don't have it and I still haven't gotten it. So we're going to use the afternoon to go forward in that fashion.

Mr. Fitzgibbon, come forward, please. Be sworn.

ADAM PAUL FITZGIBBON, called as a witness herein, having been first duly sworn on oath, was examined and testified as follows:

EXAMINATION

BY THE COURT:

Q Mr. Fitzgibbon, you heard what I recited as far as the history of the case. Is it pretty much what you understand that I just delineated?

A Yes.

Q Do you agree that you had an MSA that you worked through and had drafted with now your ex-spouse, Elizabeth?
A Yes.
Q I'm going to show you an MSA that was filed January 21, 2022 -- excuse me, April 11, 2022, which is ten pages long. Can you look at it, please?
A Yeah.
Q Please look at all ten pages.

ATTORNEY VESELY: What's the docket number of that, your Honor?

THE COURT: Docket number for that one is Document 22.

ATTORNEY VESELY: Thank you. Yeah, got it. Thank you.

BY THE COURT:

Q So what I want you to just first look at, please, is just whether that is the same MSA structure that you used in all the MSAs that were submitted as far as you're aware.
A Yeah. It looks to be about the same.
Q Okay. Now, at some point, there were handwritten notations that somebody put on an MSA that you and Elizabeth agreed to, correct?
A Correct.

Q Who wrote on the MSA that you guys submitted?
A I -- well, we both did.
Q Okay. Who submitted it to the clerk of courts?
A I would guess Elizabeth did.
Q Okay. When you both put handwritten notes on it, were you in each other's presence or were you separate?
A We were in each other's presence.
Q Okay. So did you see everything she wrote?
A Yes.
Q Did she see everything you wrote, as far as you're aware?
A I'm -- as far as I'm aware.
Q So what I'd like you to do now, and you don't have to do it out loud, but I'm going to give you a pen, and I want you to write on the MSA where you think the notes were and what you think the notes said. Take your time and let me know when you're done. We've got all afternoon.
A All right.
Q All right. So Mr. Fitzgibbon, you've handed me back -- let me make sure I have all the pages. All right. You've handed me back ten pages. They appear to be the same ten pages I gave you, but they have notes on them now. What I'm going to do is I'm going to turn that over; I'm not looking at it. I'm not going to show

Elizabeth. Do you believe you've encompassed everything in the ten pages you gave me that you think you had in the original handwritten notes that included both yours and Elizabeth's when it was first turned into the clerk of courts?

A Yes. The -- yes. The amended one. The handwritten amended one.

THE COURT: All right. Thank you. You can step down.

Elizabeth, please come forward and be sworn.

ELIZABETH ANNE FITZGIBBON, called as a witness herein, having been first duly sworn on oath, was examined and testified as follows:

EXAMINATION

BY THE COURT:

Q All right. Again, Elizabeth, you heard me go through the history of the case as I understood it, correct?

A Correct.

Q You were in the courtroom with Court Commissioner Bermingham and Adam Fitzgibbon on February 7, 2022?

A Correct.

Q And you agree that you were sworn in and you asked a number of questions about the default divorce?

A Correct.

Q And I'm holding up an MSA. Would you please take a

look at the ten pages. They're blank. They don't have Adam's notes on them. It's a separate ten pages. Once you've looked at all ten pages generally, just let me know.

A Okay.

Q That is, again, Document 22, correct? At the top.

A Correct.

Q Is that generally the form of the MSA that you used as far as you're aware in this case?

A As far as I'm aware.

Q Okay. Now, you heard Adam testify, but I'm going to ask you. You and Adam, at some point, were together and made handwritten changes to an MSA that looked like that, is that correct?

A Correct.

Q And did you write the notes or did Adam?

A Both.

Q Do you believe he saw the notes you wrote?

A I believe so.

Q Do you -- did you see the notes he wrote?

A I believe I saw all of them.

Q And did you submit it to the clerk of courts or did Adam?

A I did.

Q Okay. Now, I guess I should have asked Adam this too,

but you folks didn't make an extra copy of the handwritten notes?
A No.
Q Did you photocopy it?
A Yes. So I did make three copies because the court commissioner's office required the one -- the original, so to speak, and then three additional copies, so I went with four.
Q And they all got turned over to clerk of courts, correct?
A Yes. Correct.
Q Now, you and Adam didn't keep an extra set for yourselves?
A No, we did not.
Q Did you take any pictures with your phone?
A No.
Q I'm going to give you a pen.
A There's one here.
Q Please then go through those ten pages. Take as much time as you need. Make the changes as you remember them the best you can where you think the handwritten notes were.
A I -- I guess per what we had been talking about, my attorney and I, I've been consistent in the fact that I don't recall exactly what the handwritten edits were to

said document.
Q And I understand that. And if you don't remember any of it, then I'll have a colloquy with you about that.
A You'll have a what?
Q A colloquy. A discussion.
A Okay.
Q But this is a -- there's a history and a document, that being the transcript, that says you -- the two parties agreed to something.
A Uh-huh.
Q The two parties have both told me that they were together when they made changes to a document that they agreed to and then they were sworn under oath and said that that agreement was fair. So I'm not relitigating it right now because what I have is a contract that was agreed to by the parties, and now the Court -- the need here is, because there's so much litigation, is to find out what that original agreement from February 7, 2022, was.

So write down what you can remember. If there's something you can't remember, we'll address it. But right now, I've got to find a spot for this to jump off of.

You know, I'd just note that there's affidavits that were filed, there were motions that

were filed suggesting that things weren't fair, but if I don't know what the original agreement is, how can I possibly judge whether it's fair? So do your best. Write down what you can remember from the MSA, and if there's something you don't recall, we'll talk about it.

ATTORNEY VESELY: Could I interject, your Honor?

THE COURT: Sure.

ATTORNEY VESELY: I think Exhibit G that we filed in anticipation of the hearing today lists the assets that the parties owned at the time of the divorce, and that a number of those were not included. And my client and I have talked about this, that, you know, she honestly doesn't recall the exact terms that they put in there, but the terms do include, you know, dealing with those assets that are not mentioned in the written document. And those items are listed on Exhibit G.

THE CLERK: Do you want me to pull it in and mark Exhibit G, Judge?

THE COURT: So you're saying there's something they own that wasn't encompassed in the MSA?

ATTORNEY VESELY: In -- that was -- clearly, I think my client believed that, you know, these

assets, these assets need to be dealt with and that they have not been dealt with in the written documents that are part of the court file.

THE COURT: So give me one example.

ATTORNEY VESELY: Well, the guns. You know, there's a substantial number of guns that weren't specifically mentioned in this, and, you know, what -- there's also -- there were precious metals, there were brokerage accounts.

THE COURT: Well, the brokerage accounts are on Page --

ATTORNEY VESELY: Well, there's Voya and E-Trade that were being allocated to my client in the marital settlement agreement, you know, because what I think --

THE COURT: So I guess I don't know if I agree because this is what I'm reading. I read: Property awarded to wife: all household items, personal effects, including clothing and jewelery, in possession at the time of the final hearing and agreed to the parties.

I -- that's a separate motion. I think this, because Document 103, filed December 20th, and this was I think from you, Attorney Vesely, number 4 for petitioner's list of issues that we needed to address

was: What is fair and equitable division of parties' property?

That's not the question. The question is what did they agree to in February. Because if I'm going to find -- because I've heard words like fair, I've heard words like negotiate. They had an agreement. I need to figure out what the agreement is because if there was undue duress, if there was fraud, if there was misrepresentation, how can I possibly make that determination without knowing what they originally agreed to?

If I say to somebody, how do you know something's unfair? Well, I just know. That doesn't -- that's not a legal argument. I don't see how I can possibly get to misrepresentation. I think I saw that word in one of the hundreds of documents. How would I know that? What did you agree to; I don't know. Well, how do I know there was a misrepresentation then?

So I think this is one specific issue we need to address as far as a contract, what did they agree to, what did they think they were agreeing to that the Court had but the Court didn't have the document. From that document, you folks can file anything you want. I mean, there's already, as I said, hundreds of

documents. There's already a multitude of motions. I don't think I can make any of those determinations without an understanding of what they agreed to.

ATTORNEY VESELY: You know, and I understand what your concern is. However, I think both parties in the record of this case have stated they don't recall, including Mr. Fitzgibbon, and, you know, that -- and particularly he mentioned they both appeared with Court Commissioner Bermingham, you know, in March -- or in April.

THE COURT: Uh-huh. February 7th.

ATTORNEY VESELY: They both said at that point they didn't recall, he ordered them to reconfigure it, and that's where they have been treading -- you know, basically spinning the wheels since that time --

THE COURT: Correct. And that's what I'm doing here today.

ATTORNEY VESELY: -- trying to do that. And, you know, I think it's an impossible task to try to reconstruct what happened, what was in that handwritten version of the marital settlement agreement that got lost. I think, on the credibility of both parties, they said they don't recall. And that's part of the record in this case from both parties. And, you know,

I don't know how we can, at this juncture, force terms on them when they both have said earlier they don't recall.

And, you know, I do think that we are in the situation with were the parties divorced? Well, they think they were with the court commissioner divorcing them, but were they -- they didn't really have a meeting of the minds. I think what the record shows, they didn't have a meeting of the minds in terms of what statutes that settlement, what that marital settlement agreement was.

THE COURT: Well, what's the proof that they didn't have a meeting of the minds? They both said they were in the same place, that they made handwritten notes, and that they made changes, and that they looked at it, and that they filed it in triplicate. So what's the proof that they didn't have a meeting of the minds?

ATTORNEY VESELY: I think the proof is in the record starting, you know, with the meeting with Commissioner Bermingham. One of the documents that we submitted is April -- or Exhibit A. You know, it's an OurFamilyWizard message from Mr. Fitzgibbon to his wife. He states: I don't exactly remember what was in the lost MSA.

My client has said the same statement on, you

know, several occasions on this record, and, you know, so the difficulty that my client and I have trying to reconstruct that handwritten, how do you reconstruct it and say with any degree of certainty these are the terms, but yet I didn't recall them earlier without perjuring yourself?

THE COURT: If a Court sentences someone to jail and there's a judgment of conviction that comes from it that says -- let's say it's silent as to any jail, but in court, the Court sentenced someone to 83 days' jail. That, in fact, happened. Now, if the judgment of conviction has to be re-created through all sorts of different means, that's what has to happen.

This question that I'm looking at is only what is the MSA. And if the parties don't agree, if they can't remember, I'm going to take the pieces that I have, which, again, is structured as the MSA that they had been using as a jumping off point, so it tailors it; it narrows it. It's a contract issue.

This is -- they agreed to something. I have a transcript that tells me they did. Is it a fair, accurate representation of your agreement? Yes. How can they say it's not?

ATTORNEY VESELY: I agree with your -- obviously the record from the final hearing on

February 7th is the record. However, I think the subsequent record that has been developed in this case is that they both thought they were testifying, when they said that, to an agreement that wasn't in the record.

THE COURT: Correct. Right. But it existed. It was somewhere. It just wasn't in our system.

ATTORNEY VESELY: Right.

THE COURT: It was lost in the clerk of courts, it was lost in the family court commissioner.

They sat down, they made changes to a document that they both now have testified they saw, they think the other one saw, they had handwritten notes, and then they went into court and they testified. And they were talking about two MSAs, right? Because the circuit court is looking at one that is filed or the Court Commissioner Bermingham has one presumably in front of him, but what he's looking at is not what they remembered handwritten notes, right?

So when he's asking them the questions and he's looking at one that doesn't have the handwritten notes, they're answering yes to what they believed were their handwritten notes.

ATTORNEY VESELY: Right.

THE COURT: So we have an agreement. Now we have to figure out what that agreement was. Now, I'm not forcing terms on anyone because -- this is the point I wanted to address earlier and I forgot -- this happened in February, it came to light, they were ordered to re-create, we had a file -- a motion -- a document filed by Attorney Fozard in July, I believe this is at least our third meeting, and I've been telling everyone the whole time what I wanted; I want this MSA re-created. That's the only issue.

And I say that because we had a list of issues that included marital settlement agreement, custody and placement, child support, property division. We can't even get to any of that until we know what the original agreement was.

Now, I've got sworn testimony that they had an agreement, we're going to create an agreement today, and then if there are motions that are going to come for it, so be it, but at least we have something to work off of.

That's where I'm at. We're doing only the MSA that they agreed to from February 7, 2022. Not if it's fair. We're looking at it -- and I've got more detail that I'll allude to in a minute. But we're looking at it just through the lens of what do they

think they agreed to, and then the Court has to make a determination.

Am I forcing terms on them? No. Because they've had since July to come up with any terms they wanted, and nobody's done anything. And I keep setting hearings and I offered to let the parties and their attorneys go in the back and come up and exchange ideas of what we might have for issues, what was missing from the MSA, and that was declined.

I gave the parties a certain period of time to show up, to submit to the Court, and I got nine or ten pages of written "this is why this person's not being truthful." It doesn't matter. I need to know what the MSA said so I can determine whether there's an issue with them not being truthful.

BY THE COURT:

Q So write down what you remember. If there's something you don't remember or there's a spot where you think something was written but you're not sure, make some type of note and we'll have a discussion about it.

A The only thing that I'm confident about is one particular thing.

Q What I'd like you to do is write it down because I'm going to take them both in back and I'm going to look at them both to determine -- to make my credibility

determinations, probably with additional questions coming, and then I'm going to create what is the MSA that I think they agreed to.

A May I --

Q Take your time.

A I'm not confident in anything else except this one particular nuance change, so --

Q So if -- here's what I want: If you think -- you guys made handwritten notes.

A Correct.

Q Even if you don't remember what the note is, if you remember there was something by a letter C or something, I want you to note what you think it might have been.

A I mean, I don't recall the specifics. I know that they were noncustodial and placement related, but I don't know how much more specific I can be than that.

Q Okay. I'm going to give you as much time as you want. I mean, the workday is 4:30, but I'm willing to stay late if we need to. If you need to sit there and think, you can. If you're ready, then let me know when you're done.

All right. So you've had enough time? I would give you more time if you think you need more time.

A There's nothing that more time will change. I've had -- to your point, I've had since April to --

Q Okay. You can step down.

THE COURT: All right. Let me take a moment. I will be back.

(Recess taken from 2:12 p.m. to 2:24 p.m.)

THE CLERK: Recalling in re the marriage of Elizabeth Fitzgibbon and Adam Fitzgibbon. 21-FA-564.

THE COURT: All right. Same appearances as previously noted. The Court did take time to, first, make sure that the ten pages that I gave both Adam and Elizabeth were both Document 22, all the same ten pages. I did have them individually write any notes that they thought pertained to the MSA.

I'd just note Elizabeth noted that there was a misspelling or a misstatement of the child's name. It had said Adam; it was A.J.F. That was on Page 2, Line 3. Elizabeth did note, on Page 5, right by property division, that any notable changes would have been only to the property division.

And that Adam, on Page 6, which falls under property division, noted that property award to wife, Line 4, E-Trade was crossed out and "half" was written, and Voya account was crossed out and "half of account" was written. It was one of these -- it was half of one

of these accounts. He didn't seem to recall which one.

Elizabeth, understanding that Adam believed one of those was to go half to him, do you have any thoughts on what that one was? And noting that you're under oath right now.

MS. FITZGIBBON: No. As I said, I don't recall what changes were made to the property division.

THE COURT: Adam, do you recall if there was any substantial change -- or difference in value between the two accounts at the time?

MR. FITZGIBBON: The E-Trade was worth more than the Voya account.

THE COURT: How much more?

MR. FITZGIBBON: At that particular moment in time in January, probably roughly three times more.

THE COURT: So what dollar figure are we talking, generally?

MR. FITZGIBBON: The E-Trade account, in January of last year, was worth probably about $29,000. The Voya account was worth about 11,000.

THE COURT: Elizabeth, having heard Adam's testimony, and you, yourself, under oath, is that your recollection regarding what the value of the E-Trade and the Voya might have been at the time? You can adjust that microphone. It will be easier for you.

MS. FITZGIBBON: Thank you. I do not recall.

THE COURT: You don't recall in any way, shape, or form how much might have been in the E-Trade account?

MS. FITZGIBBON: No.

THE COURT: You don't know if it was $1 million or $10?

MS. FITZGIBBON: I do not recall. I would have to look into my records.

THE COURT: I understand that. But ballpark figure, what do you think might have been in that?

And I say that with this thought process: My parents have been married over 50 years; they can tell you what they paid for their first house of $16,500. You may not recall at all in any way, shape, or form, but I guess I would be surprised if you didn't have some semblance of an idea of what might have been the value of one of those accounts.

MS. FITZGIBBON: I have written here for Voya and E-Trade, so how it's broken, I don't know, but I have 44,952.

THE COURT: Okay. So Adam's figure would have been 40,000, and you're saying 44,092.

MS. FITZGIBBON: 44,952 for E-Trade and Voya. How it's distributed, I don't know.

THE COURT: Right. So what I'm saying is the difference between what he thought they were worth is about $4,000. Because he told me 29,000 and 11,000, which when you add them up is 40,000, which is substantially close to what you just told me of 42?

MS. FITZGIBBON: 44,952.

THE COURT: Now, do you agree that E-Trade was likely more than Voya?

MS. FITZGIBBON: I don't have any understanding -- any knowledge of that. Adam predominantly handled our finances, so in large part, my asset groupings that I have on this sheet here were the result of what Adam has told me in the past.

THE COURT: Adam, there was a very specific provision on Page 7, number D, equalization of marital property, that the payment of $77,000 was required. It would be made by you to Elizabeth. Do you remember why $77,000 was chosen? It's on Page 7 for anyone that wants to look.

MR. FITZGIBBON: The 77,000 includes the home equity payout and half the land payout. The land was valued at 20 -- or 40, and then we added $5,000 on to cover for guns and miscellaneous things in the basement. That's why I have it in here land and other items.

THE COURT: So I'm just asking if you -- what your independent recollection is of why that $77,000 number was chosen.

MR. FITZGIBBON: Yeah. Because -- let's see here. So it will be just 25,000, plus the 52,000. That gives you the 77,000.

THE COURT: And that was from the Marinette land and something else? The home equity?

MR. FITZGIBBON: Yeah. The Marinette land, we bought for 40. We kept it valued at 40. Then we added miscellaneous things in the basement, like a couple guns and a couple other random things, and that was it. So that was -- basically that's covering it.

THE COURT: Elizabeth, do you have any recollection of why the number 77,000 was chosen as an equalization payment?

MS. FITZGIBBON: That, to my knowledge, would not have been the final equalization payment. However, again, I don't recall exactly what changed. Having said --

THE COURT: So why -- let me ask you this then: If you got divorced on February 7th, why do you think it was not the final number?

MS. FITZGIBBON: Can I address one thing that he said that you took note of though? Because he said

that our land was valued at 40; our land was 50. So I just wanted to clarify for the record that it was not 50 in the amended.

THE COURT: Okay. Why do you believe this was not the entirety of the agreement?

MS. FITZGIBBON: Because --

THE COURT: Or the equalization payment?

MS. FITZGIBBON: Because the -- in this document, Exhibit G, number 1, that had the -- what I understood to be our total collective family assets at the time, and that those numbers -- well, I'll wait for you to find it.

THE CLERK: Judge, just so you're aware, they're talking about Exhibit G. He filed exhibits, but until they're marked and offered, they're just sitting in a queue that you cannot see.

THE COURT: That's okay. I don't need to right now.

Back on February 7th, Elizabeth, Commissioner Bermingham asked you about child support and you folks talked through that.

MS. FITZGIBBON: Correct.

THE COURT: You talked about health-related expenses, the health insurance.

MS. FITZGIBBON: Correct.

THE COURT: You talked about maintenance and that that was waived, and you placed on the record because you thought it was a ten-year thing so it didn't apply. And the Court went on to ask you: Do you think your property division is approximately equal? And your response was yes.

Why did you respond yes there?

MS. FITZGIBBON: That what?

THE COURT: Do you think your property division is approximately equal?

MS. FITZGIBBON: Because I was satisfied with what the agreement was that Adam and I had made on January 28th. That's why I answered the question the way that I had answered it.

THE COURT: Now, when I gave you the marital settlement agreement, it had Page 7 with the $77,000 equalization in it --

MS. FITZGIBBON: Okay.

THE COURT: -- and you just told me you didn't think that that was the entirety of the equalization.

MS. FITZGIBBON: Well, what I said, if I remember correctly, is that I don't recall all of the changes that were made, and that could have been one of the numbers that had been changed. And then, if I

remember correctly, you asked why I believed that, and I referenced this Exhibit G, number 1 --

THE COURT: But you said to that, though, you didn't think that this was the totality of the equalization payment. Why? You said to Commissioner Bermingham it was.

MS. FITZGIBBON: Because -- well, you're talking about 2/7, not 4/26, so -- or wait.

THE COURT: Yeah, 2/7.

MS. FITZGIBBON: Yeah.

THE COURT: He said: Do you think -- there were a number of things asked that are standard in any divorce. You can take a moment with Attorney Vesely, but I -- you had a chance to mark 77, and you didn't. You told Commissioner Bermingham --

MS. FITZGIBBON: Right. Because I don't know. As far as I understood, you were --

ATTORNEY VESELY: Can I just have a minute, your Honor?

THE COURT: You may.

ATTORNEY VESELY: Do you want to see this, your Honor?

THE COURT: I don't. What I want is what's independent in their brains so I can ascertain what I think was agreed to.

MS. FITZGIBBON: I don't recall exactly what the changes were. Having said that, I also can't testify to exactly what, if anything, was made to the number 77,000.

Having said that, the Document G, Exhibit G, where it talks about my understanding of our collective family assets at the time of the divorce, we had home equity, land equity, E-Trade and Voya, brokerage accounts, our 25,000 bank account, metals, metals and cash that were in our safe, workshops and tools, our weapons collection, et cetera, and a lot of that was not indicated on the marriage settlement agreement.

So I don't recall exactly, regarding property division, what was changed. However, I know at the time, I was using this 288,765 number as what I believe to be the sum of both Adam's and my individual contributions into the marriage and then what Adam and I collectively developed in our marriage.

THE COURT: So tools, you said?

MS. FITZGIBBON: Correct.

THE COURT: Did you know he had tools?

MS. FITZGIBBON: Yes.

THE COURT: So in the marital settlement agreement, when it says under property award to husband, any other disclosed asset in his possession at

the time of the final hearing, you don't believe that covers that?

MS. FITZGIBBON: I suppose. But we didn't -- again, we didn't disclose many other high-valued items.

THE COURT: Which one?

MS. FITZGIBBON: We had our -- or his, rather, weapons collection.

THE COURT: Did you know he had them?

MS. FITZGIBBON: Yes.

THE COURT: Were they in his possession?

MS. FITZGIBBON: They were in our possession, but yes.

THE COURT: Whose possession --

MS. FITZGIBBON: Well --

THE COURT: Whose possession were they in at the time of the final hearing?

MS. FITZGIBBON: Adam's.

THE COURT: So you don't think that falls under "any other personal property in his possession?"

MS. FITZGIBBON: Well, it hadn't been equally distributed at that point.

THE COURT: Okay. What else?

MS. FITZGIBBON: And then the weapons collection, which the same is for -- holds true for that.

THE COURT: But you knew he had it?

MS. FITZGIBBON: Yes.

THE COURT: Okay.

MS. FITZGIBBON: And I have an inventory list of it as well.

THE COURT: On February 7th?

MS. FITZGIBBON: Now. Yeah. But yes. Yes.

THE COURT: All right. Again, the Court has gone through the history of this case. Would note that there is ongoing litigation. I do think it is extremely important to have an understanding of what, in fact, was agreed to on February 7, 2022.

I do find, given the sworn testimony from the transcript of Commissioner Bermingham from February 7, 2022, as well as the sworn testimony of Adam and Elizabeth here today, that the intent was that they were going to get divorced, that the intent was, with the use of an attorney, they had drafted at least a skeleton of an MSA, which again Document 22 is the one I'm working off of, as it includes what were the missing Pages 3 and 4 from a later MSA. The skeleton appears to be identical to that other MSA with the missing pages. I would note for the record that neither party made any changes to Page 3 or 4, so I don't find those missing pages substantial.

I do think that the interest of justice requires that there be some determination of what the agreed-to MSA was by the parties. And I think that because if there was an argument for mistake, as was noted by Attorney Fozard, the Court would have to know what the mistake was, not just that we think there's a mistake.

If the parties agreed to $100,000, and inadvertently wrote $10,000, the Court would have to know that $100,000 was the first thing written. Here, what I've been -- what's been produced for me is a substantial amount of "I'm not sure" or "I don't know."

I would note that we are, boy, eight-plus months probably from when Commissioner Bermingham was originally alerted to the issue and ordered the parties to reconfigure within ten days, and so I don't have a lot of empathy for the inability to remember what should have been done, I don't know, seven months ago.

So there is a passage of time, but I also think this regarding credibility, that when people make life-changing decisions, when they make large commitments regarding money or other things, they have a tendency to recall some of those facts. Parties might recall what they paid for a home 17 years ago. People in a divorce or that have been divorced might

recall what the terms of the divorce were. So it seems difficult for the Court to understand how, if there was an MSA that everybody was working off of and there were changes that were made that were handwritten that were done together, how there could be no recollection of what was in there.

And the Court weighs credibility in trying to determine what the -- again, because there was a contract. I think there was -- I find there was a meeting of the mind because both parties testified they sat down together, they used some type of instrument to write on a document, they made changes, they submitted it to the Court in triplicate. Now, they didn't take pictures, they didn't photocopy it, they didn't make any other notes that we're aware of. But unfortunately, it was lost in the clerk of courts or the family court commissioner office.

So the only question here before the Court then is how to re-create the agreement that should have been memorialized on paperwork. So what I, again, did was give both parties the opportunity to look at that same structure that they agreed they had been using. It's ten pages. I gave them the opportunity to write on it perhaps where they had made their original handwritten notes. I noted what those changes were.

Adam, again, thought that there was either a half of the E-Trade or a half of the Voya that would go to him. I would note that there was an equalization payment paid or to be paid by Adam to Elizabeth in a very exact amount of $77,000. I have a note that all the property values of the land in the marital settlement agreement was very, very specific. The numbers were like, for instance, the 451 Lowell Place, $210,000; a Community First Credit Union had a total amount of 106,187; that a Deerlake Road, Number 2, in Marinette had a value of agreed $50,000; the equalization payment was $77,000. I don't take this to be such standard language that the parties were not aware. I think that they made thoughtful agreements because the dollar amounts are so specific.

So then the only real question for the Court then is, at that time, Adam believed the E-Trade account was about 29,000, the Voya was about 11,000. Elizabeth believes her records indicate that the total value of the two accounts was 44,952, which again we're off by about $4,000, so I give them -- I think that there's some credibility to what both of them thought. The question then is how the Court would divide half of one of those in favor of Adam.

And again, I note that in the transcript from

the default divorce on February 7, 2022, when Commissioner Bermingham addressed child support, Page 6 starts, it says: Let me take a look here. Just a moment. What provision do you have in your marital settlement agreement for child support? It goes on to Page 7. Ms. Fitzgibbon jumps in: Right. When he and I spoke, he, as in Jeff, the attorney who filed that, he said it was 765 a month, so I had written that down, and then at one point, I had seen it in here, so I don't know.

And the Court goes on to say, at Line 11 beginning: But that two of you had agreed to 765, which exceeds -- there cut off by Ms. Fitzgibbon. Line 14, the Court goes on to say: Which exceeds the standards. You understand that, question mark. It's higher than what would ordinarily be ordered.

I take from that that there was, again, just like the very specific numbers used in the marital settlement agreement, that there was an agreement by the parties that child support would be increased in favor of Elizabeth, to the detriment of Adam.

The Court has to make a determination as to the drafting. I'm going to find that this Document 22 would encapsulate the agreement. On Page 2, we'll change the name Adam to A.J.F. On Page 6, the parties

agree there was some type of change to financial award or financial division of property. Under A, awarded -- one moment. Awarded to wife, Adam noted half of either E-Trade or Voya. Elizabeth's testimony was that Adam was the primary one that took care of finances. Adam noted that there was a change there; Elizabeth didn't know which one. I'm going change number 4 to, instead of E-Trade and Voya, weighing credibility of the witnesses and what I think I have here before me, I'm going to eliminate the word "E-Trade" and add "half of the Voya account."

There were no other substantive changes that either party made to the remainder of the MSA. At this point, that will be the MSA that the parties will work off of going forward.

THE CLERK: Can I just clarify one thing for my notes? So number 4, you want E-Trade scratched off. Do you want that put anywhere else in there?

THE COURT: No. Well --

THE CLERK: Number 4, you want to say half of Voya account. Where do you want the E-Trade language to go?

THE COURT: Excuse me. E-Trade will stay. I apologize. So E-Trade stays, and then it will say "and half of Voya," meaning one-half of Voya will be added

to husband Adam.

THE CLERK: Thank you. And then I'm going to just reject all of these exhibits since none of them were offered or received, correct?

THE COURT: Okay.

THE CLERK: And then is Attorney Vesely going to draft a new updated MSA?

THE COURT: We're going to draft it and we're going to create it. All right. That's what we had on the calendar for today.

Adam, regarding just the creation of the MSA, anything else that we need to address?

MR. FITZGIBBON: No. I think that covers everything.

THE COURT: Attorney Vesely, regarding the creation of the MSA, anything else we need to address?

ATTORNEY VESELY: You know, the one thing I would like to address is I know one of the findings that you made were with respect to credibility, and --

THE COURT: Regarding? I'm sorry.

ATTORNEY VESELY: Credibility.

THE COURT: Yeah.

ATTORNEY VESELY: And that, you know, your comment that if there's important matters, people are going to recall.

THE COURT: Uh-huh.

ATTORNEY VESELY: I have not had the opportunity to question my client, and the Court didn't either, as to why her recollection is -- why she doesn't recall, and I think that, frankly, I want the record to reflect the circumstances that which form the basis for her non -- her inability to recall the exact provisions of the amended marital settlement agreement.

THE COURT: Could you repeat the last sentence one more time? I know you said you wanted to -- you didn't get a chance to question her about why she didn't recall, and then what else did you say?

ATTORNEY VESELY: Well, I think it's important, especially with respect to your finding of credibility --

THE COURT: Yeah.

ATTORNEY VESELY: -- that the Court would have -- there would be a record as to my -- why my client can't have a more clear recollection of what's in the handwritten amended marital settlement agreement. And, you know, frankly, I think that her credibility -- clearly, that finding I think is directed towards her is inappropriate given what I understand. And I think there is part of affidavits that she's filed in this case.

But, you know, her inability, this was done at 4:30 in the morning in the home of Mr. Fitzgibbon when she was going over there to watch their child before Mr. Fitzgibbon -- or when Mr. Fitzgibbon was going to work. And there has been a very volatile relationship between the two of them that still exists, and I guess I'm very concerned about somehow the Court imposing, you know, or inferring that my client somehow is not believable because of that.

THE COURT: So I'm not saying she's not believable. It goes to credibility. I find it less credible, but also more importantly, I find more -- I take issue with the belief that that wasn't -- her comment to me was that that wasn't the entirety of the equalization payment; she thought there was more coming. Now, that directly contradicts anything that she said under sworn testimony on February 7th to Court Commissioner Bermingham because there were multiple questions about whether this was the entirety of the agreement, whether there was any other agreement out there that they had. Those answers were, no, there was not.

So I'm basing it on the entirety of it, not just the one piece that she can't recall, but on the entirety of the sworn testimony that I took today. But

we can note that you didn't get a chance to rehabilitate her or to cross-examine her. I'm going to note, though, that you also had since July to talk to her about it.

ATTORNEY VESELY: Well, and we did, your Honor, and she's being honest in every assertion she's made. I find it difficult -- you know, as far as credibility, I think Mr. Fitzgibbon's credibility is also in question because now if he's recalling something that he previously said he didn't recall, I don't understand how that can occur either.

THE COURT: I hold that against both of them, to be honest. It's which one I find more credible.

ATTORNEY VESELY: You know, and the other thing, your Honor, I just can't help but saying. You know, the transcript from February 7th, you know, is very poor in that at that time, there's no reference to any of the personal property. I mean, that's I think contrary to every final hearing I've ever had where there's no reference that, you are getting this amount from bank account, you're getting this piece of property at this value.

And, you know, the confusion, you know, may start there. And are you denying then the motions that -- what I call the Attorney Fozard motions?

THE COURT: Yes. Well, granted as to (h), but then my -- as to (h), I'm granting it, but that was the purpose of the hearing today. (h) was -- so I find that there is a need to clarify, but I'm not finding any of the provisions void. I'm not finding it unenforceable, again, because I'm attempting, through contract law, to reconstruct what the parties agreed to.

I think that given the very unique, exceptional, in that I've never heard of it happening before, MSA being lost by the family court commissioner/clerk of courts, that there had to be some type of extraordinary step taken. I anticipate there's more litigation coming out of this case, as there have been already hearings in front of the court commissioner.

I think that the parties -- and I think that there's a need for finality to whatever the agreement was because I still firmly believe and hold that there was an agreement, a meeting of the minds, a contractual agreement between the parties. So the only question is not if there's an agreement, but what was the memorialization of that agreement, and so that is what I accomplished today.

ATTORNEY VESELY: So do I understand that

what you're doing is you are denying the motion to reopen under 806.07(a) and (d), but are utilizing today under (h)? Is that what you had said?

THE COURT: Correct. I'm denying the motion to reopen because I think it's already had its day in court. I think that there was an agreement. I -- if there is some other motion that's going to come out of it saying that there was -- it wasn't valid, for instance, which is declaring it invalid, the first part of Attorney Fozard's motion on number 1, I think that there has to be an understanding of what the agreement was.

There's so many documents that have been filed with references to fairness, with references to someone being dishonest, not being truthful, not being up front. How can I possibly make any of those determinations without a starting point? So today, we have a starting point to what I assume is probably going to be more litigation.

ATTORNEY VESELY: Thank you, your Honor.

THE COURT: With that, we'll close the record.

MR. FITZGIBBON: Thank you.

(Proceedings concluded at 2:57 p.m.)

STATE OF WISCONSIN)
)
COUNTY OF WINNEBAGO)

I, Stephanie Koenigs, Registered Professional Reporter, certify that I am the Official Court Reporter for Branch 3, Winnebago County Circuit Court, and that the foregoing is a true and correct transcription of my stenographic notes, taken to the best of my ability in this proceeding on the 6th day of January, 2023.

Dated this 25th day of January, 2023.

Stephanie Koenigs, RPR

[Electronically signed by Stephanie Koenigs]

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FILED
01-31-2023
Clerk of Circuit Court
Winnebago County, WI
2021FA000564

STATE OF WISCONSIN, CIRCUIT COURT
WINNEBAGO COUNTY
FAMILY COURT BRANCH 3

In re the marriage of:

ELIZABETH ANNE FITZGIBBON,
Petitioner,
and

CASE NO. 21 FA 564

ADAM PAUL FITZGIBBON,
Respondent.

MOTION TO RECONSIDER

The Petitioner, Elizabeth A. Fitzgibbon, brings this motion to reconsider the Court's January 11, 2023 Order due to the unfair manner in which it has chosen to divide the assets of the parties, and the error of law in attempting to force a marital settlement agreement on the parties after they could not agree to its terms for over 9 months.

The Petitioner was prepared to advise the Court all of the marital assets of the parties as of the date of divorce on February 7, 2022 not included in the Marital Settlement Agreements. She was precluded from doing so by the Court. Referenced and read from during the hearing, Exhibit G lists those assets and this (along with the other exhibits attached hereto and fully incorporated herein) was somehow excluded from Document 112 submitted electronically on December 30, 2022. Note that all subsequent citations to transcripts reference Document 135 (page# [line #]).

The Petitioner is requesting the Court to find that the Family Court Commissioner's granting of a Judgment of Divorce to be invalid due to the parties' lack of agreement as to the terms of the Marital Settlement Agreement. If there was not a meeting of the minds of the parties themselves, the Family Court Commissioner lacked the legal authority to grant them a judgment of divorce. The record reveals there was a complete mis-understanding between the Court and the parties as to which marital settlement agreement was being referenced.

In submitting this motion to reconsider, the Petitioner requests the Court to consider the following:

1 Beyond their personal statements and submissions, the actions of both the Petitioner and Respondent demonstrate that there had been no "meeting of the minds" between them on and immediately following February 7.

2. A "meeting of the minds" at the February 7 divorce hearing must include the Court as a third party to the contract (on behalf of the State of Wisconsin), yet Family Court Commissioner Bermingham stated on April 26 that he did not know which Marital Settlement Agreement he had reviewed or used during the hearing, despite his preparation and judgment notes.

3. If the Petitioner and the Respondent couldn't accurately recall what was written in their hand-edited Amended Marital Settlement Agreement, it is doubtful that there was a "meeting of the minds". Further, if the Petitioner and the Respondent couldn't recall what the Marital Settlement Agreement changes were, any party who claims they later remembered should not be considered credible, and their testimony is useless in reconstructing the lost Marital Settlement Agreement. In the 10 days leading up to their divorce hearing, neither party had seen nor received copies of their Marital Settlement Agreement, which concluded negotiations on January 28 at 4:30AM. In their February 7 approval of their Marital Settlement Agreement, both relied on their memory of (and beliefs about) the document. They did not testify at the February 7, 2022 divorce hearing while having the Marital Settlement Agreement in front of them. In fact, the transcript of that hearing reveals that they never once were questioned about anything specific about the Marital Settlement Agreement they were allegedly agreeing to. If this had been done, it may have alerted them that the Court was relying on the wrong document. Both parties later stated to the Court on April 26 and November 16 (among other times) that they did not recall the terms in the lost hand-edited Amended Marital Settlement Agreement. One or both parties' inability to recall the details well enough to uniformly implement them immediately after the divorce hearing (as demonstrated by their diverging, if not outright opposing actions) simply erodes confidence that there was never a "meeting of the minds" at the time of the divorce, or possibly ever. The Court acknowledged both parties' prior "I do not recall" testimony but chose to accept such unworthy information under the guise of whichever party was least incredible (47 [8-13]):

> Vesely: "I think Mr. Fitzgibbon's credibility is also in question because now if he's recalling something that he previously said he didn't recall, I don't understand how that can occur either."
>
> COURT: "I hold that against both of them, to be honest."

4. Family Court Commissioner Bermingham could only preside over a stipulated divorce hearing if there was a "meeting of the minds" between all three parties with all material issues resolved, Wis. Stats. 757.69(1)(p)(1) and 767.61. Clearly, statements, submissions, and actions across the divorcing parties demonstrate that material issues

remained, as does disagreement over property and other terms. Further, no manufactured (coerced) consent will generate a "meeting of the minds", as appears to have been the case of January 6, 2023. At the time of the divorce, there was no written memorialization of the parties' agreement in an Marital Settlement Agreement, because the Clerk of Court's Office lost the signed hand-edited Marital Settlement Agreement (which the Court acknowledged (8 [24-25] and 9 [1-3])). This remains true today, as there is no current Marital Settlement Agreement (or other document containing mutually accepted terms) bearing the signatures of both parties.

5. Only if all three parties could agree that a Marital Settlement Agreement (e.g. the Third Amended Marital Settlement Agreement) was a facsimile of the lost Marital Settlement Agreement (and that it was what each had originally agreed upon) could a "meeting of the minds" be made retroactive to and validate the February 7 divorce. The burden of proof (22 [12-13]) that the Third Amended Marital Settlement Agreement is a facsimile of the lost Marital Settlement Agreement falls upon the Court as both a party to and the responsible steward of the lost Marital Settlement Agreement, not the Petitioner nor the Respondent. There is no reason to believe the Third Amended Marital Settlement Agreement is such a facsimile, and there certainly is not agreement that it is. Without this, the divorce is invalid. Further, all parties, including Family Court Commissioner Bermingham, have stated that they do not recall all the specific terms and therefore can offer no credible assurance that any Marital Settlement Agreement (e.g. the Third Amended Marital Settlement Agreement) could ever be an agreed upon facsimile and that the differences (custody, placement, large financial) are material.

6. The Court's attempt on January 6, 2023 to force an agreement runs totally contrary to the fact that this divorce was granted as a stipulated divorce. If the parties did not have a stipulation, the family court commissioner does not have the power to divorce the parties. The trial Court's options at that time would be to void the divorce judgment in its entirety, or to have the parties agree that they are divorced, and then have a contested trial on the outstanding issues. The trial Court's decision to force a settlement deprives the parties the opportunity to have a full contested hearing. This deprives them of their due process rights under both the U.S. Constitution and the Wisconsin Constitution.

7. Creating an altogether new Marital Settlement Agreement for use as "a jumping off point" would be welcomed and would have been the reconfigured Marital Settlement Agreement if agreed by all parties. However, the Third Amended Marital Settlement Agreement is inequitable in its distribution (opposes WI 767.61(3)), an illogical reversion from my client's successful Marital Settlement Agreement negotiations substantiated by her upward trending awards as the versions progressed (Financial Disclosure Form, Original,

Amended, hand-edited Amended), and inappropriately created, as it lacks my client's consent. It is well understood that my client rejected the Original Marital Settlement Agreement and sourced from Attorney Jeff Morrell an updated Marital Settlement Agreement as a baseline for final negotiations. Facing a contested divorce without a more equitable division, the Respondent agreed to both asset value correction (the unsigned Amended Marital Settlement Agreement incorporated mutually agreed upon real estate values as well as a corresponding uplift in cash equalization to reflect the increased equity) and subsequent asset re-allocation that was captured in the lost hand-edited Amended Marital Settlement Agreement. Both parties were sufficiently satisfied with the January 28 outcome such that neither requested additional alterations prior to the February 7 hearing. In examining only property division issues, the Third Amended Marital Settlement Agreement massively deviated from the lost hand-edited Amended Marital Settlement Agreement in key matters.

8 The Third Amended Marital Settlement Agreement awards an overpayment to the Respondent of approximately $48,000. This counters every historical statement by the Respondent, including his exhibit to the Court filed on December 27 (Document 106), claiming that the Marital Settlement Agreement provides an overpayment to ("favors") my client of varying amounts up to $19,000. The parties' math differs at times, but given the added, traceable, and discrete assets she brought into the marriage (and recognized need for start-up funds), both parties agreed that an overpayment was appropriate. This makes the Third Amended Marital Settlement Agreement both inequitable and illogical as a facsimile to the lost hand-edited Amended Marital Settlement Agreement, as it counters both parties' testimony and materials submitted to the Court.

a Contrary to the Court's questions (36 [9-25] and 37 [1-25] and 38 [1-12]), the undisclosed assets were divisible marital assets. These undisclosed assets, as categorized in Exhibit G (e.g. extensive weapons collection, precious metals, tools, perishables, and food equipment including canning machinery, pressure cooker, dehydrator, vacuum sealer, stock, and related materials) were in good measure known and inventoried. The inventory was supported by photos and included such information as make/model, condition, serial numbers (some, when applicable), and quantities. Also, these assets were appraised (to a similar or better standard as the real estate property). Per the Marital Settlement Agreement language:

i. By nature, these assets were not "household items and personal effects, including clothing and jewelry"

ii. By definition, these assets were not "disclosed assets in [either parties'] agreed upon possession at the time of the final hearing"

Instead, they were divisible marital assets, requiring either fair division or financial consideration in any new Marital Settlement Agreement. These represent more than $40,000 in value that have not yet been fairly divided nor properly considered in the Third Amended Marital Settlement Agreement. The Respondent misinformed the Court by stating that the $77,000 equalization payment includes $5,000 "to cover for guns and miscellaneous things in the basement" (31 [20-25]), as even if it were true, it undervalues these undisclosed assets by >$30,000, since the weapons collection alone was worth $14,500, or twice that of the parties' combined car values. However, the Respondent's statement was incorrect as shown next.

b The Respondent misinformed the Court with his statement regarding the $77,000 equalization payment and its components, which do not add up. The Respondent makes this miscalculation clear to the Court, but it was never re-addressed in the January 6, 2023 hearing (and examination of the parties was not permitted). Per (31 [21-25]):

> MR. FITZGIBBON: "The 77,000 includes the home equity payout and half the land payout. The land was valued at 20 -- or 40, and then we added $5,000 on to cover for guns and miscellaneous things in the basement. That's why I have it in here land and other items."

As shown on page 7 of the Third Amended Marital Settlement Agreement, the land has an agreed value of $50,000 based on improvements made to the property (e.g. significant clearing, cleaning, and planting of 48 trees, 14 of which were fruit-bearing) as well as the nominal appreciation from its purchase price of $40,000 several years ago. The undisclosed "basement assets" did not change in the few days separating the Original and hand-edited Amended Marital Settlement Agreement filings. However, both the home and land were appropriately revalued in the Amended Marital Settlement Agreement, though the land by only +19%, while the home increased by +31% over the figures filed weeks earlier in the Financial Disclosure Forms. The divisible property then included $104,000 for the home ($210,000 value - $106,000 mortgage) + $50,000 for the co-owned Marinette property (correcting the Respondent's full ownership claimed in Document 107). These two items are $154,000, which if halved, is $77,000. The $77,000 excludes not only "basement assets", but also consideration for the unequal, recognized, traceable contributions of both parties to these properties, which was one of several key areas of the January 28 negotiations that resulted in the lost hand-edited Amended Marital Settlement Agreement.

c. My client does not specifically recall agreeing to parcel out any portion of E*TRADE or Voya, though these and all other brokerage accounts were discussed as vehicles for exchanging blocks of value. However, in contrast to the Respondent's testimony on January 6, 2023 in which the Respondent arbitrarily claimed one half of Voya, as recently as December 5 (Exhibit F), the Respondent claimed both accounts were solely the Petitioner's. With an arbitrary basis of fact, the Third Amended Marital Settlement Agreement is unlikely to offer an equitable division.

d. The Court identified (31 [1-8]), then discarded, the $4,952 (not $4,000 (31 [3])) difference between these aggregate E*TRADE and Voya-bundled values, but despite significant discussion of values on January 6, 2023, no consideration in the Third Amended Marital Settlement Agreement was made for the differences. The source and magnitude of the differences warranted more discussion not merely for accuracy, but to verify whether or not the Respondent's mistakes were accidental or fraudulent and then incorporate such information into determining his credibility. Further, when such large numbers are ignored, the Third Amended Marital Settlement Agreement is unlikely to be an equitable division.

e. Without final numbers, or the ability to align the Third Amended Marital Settlement Agreement with the verifiable assets of the Fitzgibbon household as listed in Exhibit G (since all Marital Settlement Agreements exceeded the assets listed in the Financial Disclosure Forms), the Third Amended Marital Settlement Agreement does not encompass all assets and is therefore undoubtedly inequitable. The Court found that the parties had "made thoughtful agreements because the dollar amounts are so specific" (41 [12-15]), yet the Court failed to recognize the draft nature of the unsigned Amended Marital Settlement Agreement as well as how the numbers increased between Marital Settlement Agreement versions and their Financial Disclosure Forms. Further, while some numbers were clear (e.g. balance of mortgage), other numbers underwent significant revision as the parties refined their Marital Settlement Agreements. For example, the Court's appreciation for the precision of a $77,000 equalization payment would also apply to the precision of the $160,000 Financial Disclosure Form valuation of the 451 Lowell home...at least until the Court saw the home's increase in valuation to $210,000 in the Amended Marital Settlement Agreement. Further, the Respondent claimed that some values were discrete values, while other values were proxies for undisclosed asset mixtures; the Petitioner used her own calculations (summarized in Exhibit G) that do not match the Respondent's, whose calculations are consistently inconsistent and error-filled. In conclusion, only the final numbers, which are located within the lost HE Amended Marital Settlement Agreement are valid, while all other values represent placeholders with varying accuracy and agreement.

9 A fair outcome (Marital Settlement Agreement) can only stem from a fair process that preserves mutual consent or involves a contested trial where after presentation of evidence, the Court divides the assets in dispute.

a. Since none of the three parties could recall the terms of the lost Marital Settlement Agreement, on April 26, Family Court Commissioner Bermingham ordered (if he had any authority to do so), or at least gained agreement for (if he had no such authority), the parties to file a reconfigured Marital Settlement Agreement, as shown in the conference minutes (Document 32). The parties were not to file a recreated Marital Settlement Agreement (a facsimile to the one lost by the Court). Both Petitioner and Respondent agreed to submit their work to Family Court Commissioner Bermingham within 10 days (May 6), and all parties would reconvene to review and finalize the Marital Settlement Agreement using the only two quantified terms orally agreed to on February 7: 60/40 placement and $765/month child support. In the interim, all parties agreed to allow the use of the Original Marital Settlement Agreement (Document 15) to temporarily govern their divorce during the period the parties' required to co-create the new reconfigured Marital Settlement Agreement and finalize it with Family Court Commissioner Bermingham.

b. The Petitioner filed the Declaratory Order Motion (Documents 39-40) to drive closure to her untenable financial and custodial position. The Declaratory Order Motion was then filed to compel the Respondent's participation in negotiating the reconfigured Marital Settlement Agreement (per their April 26 contract) and finally end the Respondent's withholding and uncompensated use of my client's assets, which dis-incentivized his participation in finalizing a new Marital Settlement Agreement to abide by. The Respondent would be compelled to negotiate either in response to the Motion's filing or as an inevitable result of the voided February 7 divorce judgment and divorce restart.

c. Rather than compel the Respondent to co-create a new, reconfigured Marital Settlement Agreement, beginning with the December 20 hearing and concluding at the January 6, 2023 hearing (9 [10-12] and 25 [9-10]), the Court chose to attempt to recreate the lost Marital Settlement Agreement. This was despite the divorcing parties repeatedly testifying that they did not recall what the changes were to the Amended Marital Settlement Agreement that generated the lost HE Amended Marital Settlement Agreement and as a result were unable to recreate the lost Marital Settlement Agreement. The Court stated:

> Court: "We have a divorce, but not a memorialization of what essentially was a **stipulated contract**." (9 [1-3])

This claim that a stipulated divorce had been completed offered no evidence that a valid Marital Settlement Agreement with the parties' signatures existed at the divorce hearing and counters testimony, as Family Court Commissioner Bermingham admitted on April 26 and the Court acknowledged (24 [15-25]):

> Court: "And they were talking about two Marital Settlement Agreements, right? Because... Commissioner Bermingham has one presumably in front of him, but what he's looking at is not what they remembered handwritten notes, right? So when he's asking them the questions and he's looking at one that doesn't have the handwritten notes, they're answering yes to what they believed were their handwritten notes."
>
> Vesely: "Right"

Originally, Judge Keberlein had been asked to hear the Declaratory Order Motion (Document 40), which requested announcement that the divorce was invalid, unenforceable, and void because that was the logical end to the unfulfilled April 26 contract. **The Motion's employed statute (WI 806.07) only provides for relief from judgment**. However, rather than declare that the divorce was invalid, unenforceable, and void, **the Court instead chose to create and impose an altogether new original contract for a stipulated divorce via 806.07, which grants no such authority**: (47 [24-25] and 48 [1-8])

> Vesely: "And are you denying...the Attorney Fozard [806.07] motions?"
>
> Court: "Well, granted as to (h), but then my -- **as to (h), I'm granting it, but that was the purpose of the hearing today.** (h) was -- so I find that there is a need to clarify, but I'm not finding any of the provisions void. I'm not finding it unenforceable, again, because I'm attempting, through contract law, to reconstruct what the parties agreed to."

The statutory powers granted in WI 757.69(1)(p)(1) for granting a stipulated divorce apply to a Court Commissioner with a specific escalation process through trial with a judge, but this process was never properly followed. As such, both by process and by authority, the Third Amended Marital Settlement Agreement is an invalid derivative of the unenforceable and invalid original divorce, even if the Court preferred to not declare it void.

d On January 6, 2023, we participated with the understanding that we shared the view that only through mutual consent could we succeed. Ever since our conference on November 16 (Document 136, 8 [15-17] and 23 [18, 24] and 25 [16-20]), the Court made clear that it was not going to "determine something new", that it "can't get involved in negotiations", and that it much preferred "the parties coming up with their own agreement...as opposed to the Court cutting things in half with a chainsaw." This sentiment was even present in the January 6, 2023 hearing in which the Court stated (26 [3]):

> Court: "**Am I forcing terms on them? No.**"

Indeed, the Court had been clear that it would not interfere with the standard processes, either stipulated or contested, and that it would permit or facilitate consensual agreement between the parties. But that is exactly what the Court did on January 6, 2023: it imposed terms on the parties they both did not agree to. In so doing, the Court deprived the parties a fair and full hearing on the issues.

> Court: "**I'm going to determine what our Marital Settlement Agreement is going forward** I'm doing this because from my first hearing, I've tried to position the parties to identify for me what the issues in contest might be, what the Marital Settlement Agreement might be, and I don't have it and I still haven't gotten it. So we're going to use the afternoon to go forward in that fashion." (11 [7-14])

> Court: "...they've had since July to come up with any terms they wanted, and nobody's done anything. And I keep setting hearings and I offered to let the parties and their attorneys go in the back and come up and exchange ideas of what we might have for issues, what was missing from the Marital Settlement Agreement, and that was declined." (26 [3-9])

As such, while we reasonably assumed that the Court would find a way to reconcile the Third Amended Marital Settlement Agreement with either the Court's lost Marital Settlement Agreement or an equitable Marital Settlement Agreement, **the January 6, 2023 hearing produced an Order and the inequitable, illogical, and inappropriately created Third Amended Marital Settlement Agreement that lacked my client's consent (no "meeting of the minds"), as our dissatisfaction in our closing comments made clear. Most importantly, the Court's Order does not deal with significant marital assets of the parties, and provides a windfall to the Respondent because the assets are all in his possession.**

e Worse, the Court sought only testimony that it acknowledged as lacking credibility and offered no evidence of having performed its due diligence to remedy the Court's original, clerical mistakes in losing the parties' Marital Settlement Agreement. For example, my client was keenly aware of the approximate assets, asset division, and overpayment at the time of January 28 negotiation and February 7 divorce hearing (per her Exhibit G). **Therefore, it will be difficult for my client to ever use that same pre-February 7 information to later demonstrate the Respondent's pre-February 7 fraud or other harm, but the problem now stems from the Court's selection of information, not the Respondent's.** While there are indeed hundreds of documents to peruse, there is no better time than now to remedy the Court's original error and void the divorce, as the records will not only remain relevant, but they will expand to course correct errors in the Third Amended Marital Settlement Agreement, creating an ever greater burden for future judicial review.

10. The human impact is real and situation dire, but a legal and moral path forward remains available. If nothing else, the Third Amended Marital Settlement Agreement is financially devastating for my client, as it represents the loss of multiples of her highest annual income in nearly a decade. Despite her having entered the marriage with the vast majority of assets, if the divorce and Orders are left unchanged, the Court's recent actions condemn my client to poverty for (or bankruptcy in) the near future, after she honors her tens of thousands of dollars in personal loans. WI 767.61 (2)(b), (3)(b), (3)(d), (3)(h), (3)(L) all seek to protect against such an inequitable outcome imposed by the Third Amended Marital Settlement Agreement, as her situation is through no fault of her own.

From my brief review, beyond the property awarded in the Third Amended Marital Settlement Agreement, the Petitioner is due an additional $55,000-$70,000 (or more), excluding nearly the same in legal costs and attorney fees that stem from either the Court's original clerical error, or the Respondent's actions that compounded it.

In closing, we urge the Court to reconsider the January 6, 2023 Order and the validity of the divorce. This Motion to Reconsider seeks not to modify the Third Amended Marital Settlement Agreement but rather to void it and the divorce. The prior Declaratory Order Motion can then be used to publicly announce the invalid divorce, though other statutory vehicles exist, including the Court unilaterally vacating all orders since August, per WI 767.35(6), leaving only the invalid original

order to declare void. Only after such a reset can the Court compel accurate financial disclosures from both parties. Then can the Court use its well-established contested divorced processes to address any remaining gaps and achieve an equitable outcome.

Dated this 31st day of March, 2023.

Olson, Kulkoski, Galloway & Vesely, S.C.
Attorneys for the Petitioner

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Sent: 09/23/2022 at 07:18 PM
From: Adam Fitzgibbon
To: Elizabeth Fitzgibbon (*First Viewed: 09/23/2022 at 11:48 PM*)
Subject: Re: Unfortunate

Exhibit A #1/2

The msa on record was already agreed upon by both of us. That's on RECORD and approved by a judge. We had 10 days after our session with bermingham to come up with a new msa. You instead decided to go on another approximately 2 week vacation to Texas literally the day after. While I recommended you postpone your latest excursion until this could be potentially settled. Bermingham was correct the difference between the two msa's was small. I don't remember what exactly was in the lost was msa but to reiterate what bermingham said it wasn't much of a difference. There's one on record I suggest we use that one and try to move on with our lives. The money I have spent on lawyer fees could've gone to A.J.F. I do spend money on A.J.F. believe it or not. I put money aside for him in his unp and lmt account. For his birthday I bought him another 1/10 oz gold coin for his coin tube.

Adam statements ignore months of our communications that led up to my April 5 letter to the Court (CCAP Document #20) and the resulting April 26 conference. Also: Bermingham only noted that the differences between the Original (CCAP #15) and **unsigned Amended** (CCAP #22) were **few**, not small. CC Bermingham could not compare with the H-E Amended, as he no longer had a copy with which to compare! However, Adam DOES again admit 1) to not knowing what was in the lost Hand-Edited Amended MSA, and 2) that he was obligated to create a new MSA in 10 days after our April 26 conference (despite admitting on April 26 that his placement and resulting lower child support demands were "the big obstacles", rather than my financial / asset requirements.)

On 09/20/2022 at 11:19 AM, Elizabeth Fitzgibbon wrote:

To: Adam Fitzgibbon (*First Viewed: 09/23/2022 at 07:0*
Subject: Re: Unfortunate

Adam-

Let's talk MSAs.

- In March, I tried to work with you to recreate our final MSA. You declined and preferred to hang on to the hope that either I would accept the original MSA, or that the Court would insist that we use it, since it greatly favored you for reasons that have been well discussed.

- In April, you filed a motion to modify the placement and custody terms more to your liking, since these were the only issues that you apparently objected to from the original MSA, which you remained hopeful would remain in place.

- Your insistence in April and May that you would only sign an MSA that aligned with your preferred custody and placement terms scuttled all of my efforts to settle on an MSA with you.

- In June, you mocked the highlights I shared of the MSA that I shared, before later (July 12, etc.) chiding me for not accepting the original MSA (while holding all our assets, withholding child support and isolating our child), thinly disguising a black-mail attempt with Abel as a negotiating weapon.

Kid-napping A.J.F. on 6/22 and withholding him for nearly 3 months proved to be a good distraction from closing out the financial portions of our divorce agreement, as Abel was certainly more important. However, we now have a temporary order for custody and placement and are on a good path for a permanent solution, which deprioritizes these topics from MSA negotiations. As such, let's return to addressing the financial stipulations to be included in the next MSA.

There appear to be two general approaches, although I welcome corrections and alternatives:

1) Work together to create one, as I requested in March, and as Commissioner Bermingham directed on 4/26. This may include cooperative negotiation techniques, such as mediation.

2) Proceed via the contested-divorce process.

You're undoubtedly aware of the drawbacks to #2, but I'm as fine with this as I was in June, as at least it's unambiguous and given the extra sets of eyes, I sense the numbers will be more accurate and fair.

#1, however, is an opportunity to minimize cost and time. If we can agree on at least some aspects, it may speed the contested work and related costs. We can do this individually via OFW, or perhaps add a mediator. Our last mediation was no panacea. Even though you decided to

impasse the two topics we brought to our last mediation session, then proceeded to unilaterally decide each of them (topics well covered elsewhere), there were several mediation outputs that were useful (our Lists #1, #2, and #3, for example, and the concepts these represented). As such, I'm willing to entertain mediation on the rest of the MSA as well and am well prepared to begin.

Please reconsider my June 12, 2022 offer (sent to your yahoo address) and provide me with your feedback within a week. If you're generally agreeable to the financials, perhaps with minor swaps or timing tweaks, we can begin working on the MSA language, but if you are still hoping to get the original MSA's financials, then we can skip the details and simply move forward without negotiation as I'd planned 3 months ago prior to A.J.F. kid-napping.

On 07/12/2022 at 11:03 PM, Adam Fitzgibbon wrote:

To: Elizabeth Fitzgibbon (*First Viewed: 07/12/2022 at 11:04 PM*)

Subject: Re: Unfortunate

Exhibit A #2/2

We could have completed the msa that's already in the system. Then the financial assets you're so desperate for could've been split.

Jill gave sound advice it's too bad you had chosen to listen to any of it.

On 07/12/2022 at 10:49 PM, Adam Fitzgibbon wrote:

To: Elizabeth Fitzgibbon (*First Viewed: 07/12/2022 at 10:49 PM*)

Subject: Unfortunate

It is too bad that you completely rejected everything in mediation. I understand you rejecting my handful of proposals bc you hate me but rejecting Jill's every suggestion made that whole endeavor a waste of time. You essentially made a mockery of it. This could've been over done with if you had been semi reasonable and now this will drag on until September 9th.

Day #20 of Adam's withholding of our son, A.J.F. after Adam kidnapped Abel on June 22. His "too bad" comment is a form of taunting (since I won't be permitted access to our son until I do), while financially pressuring me to accept the inequitable Original MSA as Adam is aware that I was in desperate need of the financial assets from our divorce settlement. These are some of Adam's ways of punishing me for being unwilling to comply with his demands to reduce my placement allocation with our son, A.J.F. who was mostly babysat by Adam's parents when placed with Adam, which was one of the key reasons why Adam agreed to 40% placement in our MSAs.

Exhibit B #1/1

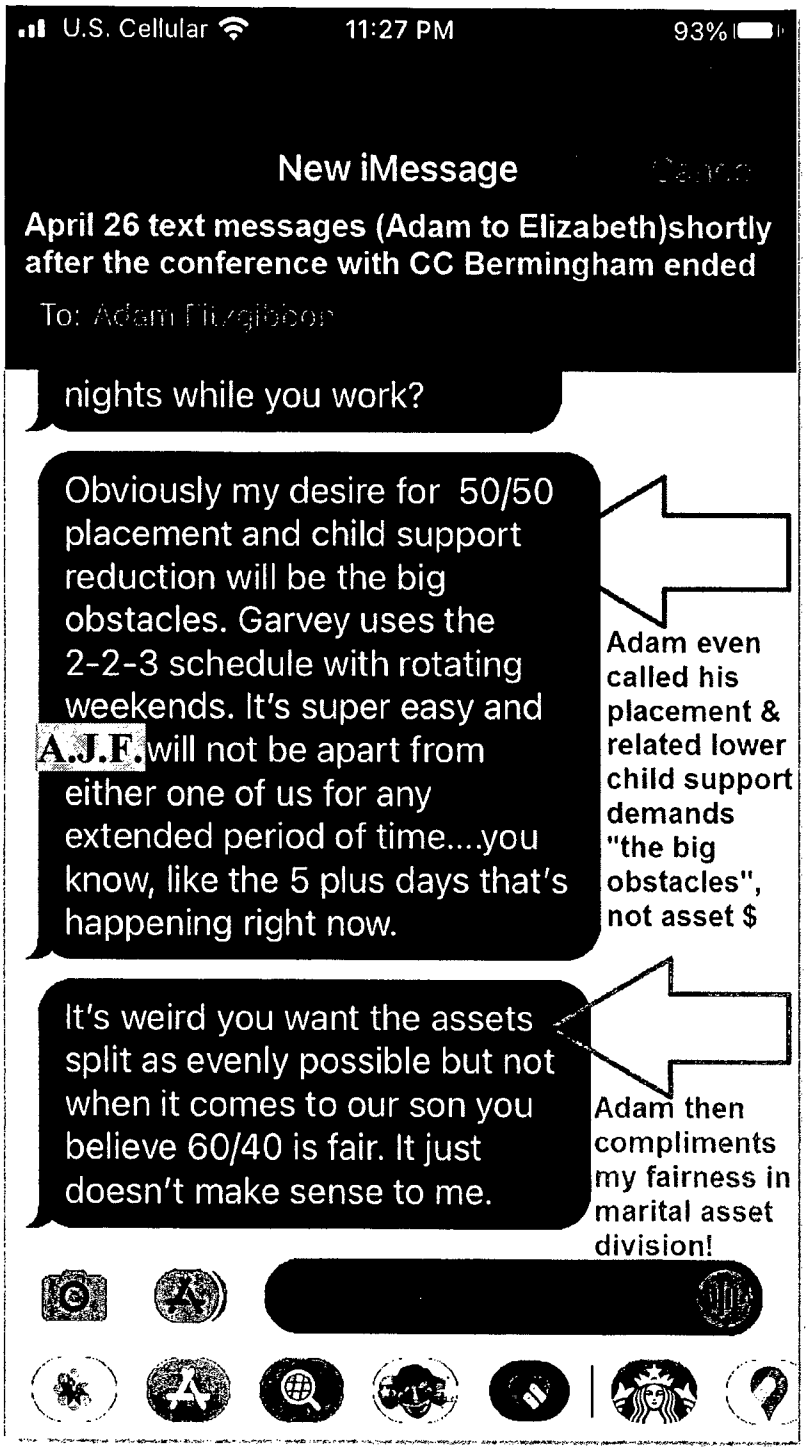
U.S. Cellular
11:27 PM
93%
New iMessage
April 26 text messages (Adam to Elizabeth)shortly after the conference with CC Bermingham ended
To:
nights while you work?
Obviously my desire for 50/50 placement and child support reduction will be the big obstacles. Garvey uses the 2-2-3 schedule with rotating weekends. It's super easy and A.J.F. will not be apart from either one of us for any extended period of time....you know, like the 5 plus days that's happening right now.
Adam even called his placement & related lower child support demands "the big obstacles", not asset $
It's weird you want the assets split as evenly possible but not when it comes to our son you believe 60/40 is fair. It just doesn't make sense to me.
Adam then compliments my fairness in marital asset division!

Exhibit C #1/1

Re: Msa

From: adam fitzgibbon (fitzman96@yahoo.com)

To: eaadler87@yahoo.com

Date: Tuesday, May 17, 2022, 09:30 PM CDT

Unfortunately, this comment arrived promptly after learning from Logan about Adam's desires to hurt/kill me and my father condoning (or worse) such statements by neither correcting, nor shunning, such views.

To be clear I will already will be getting joint legal custody. It's the placement I guess we just can't agree on. You Constantly talk about everything always needing to fair except for this one thing. It's also imo the most important thing by far. I still haven't heard why A.J.F. spending more time with you and less with me somehow benefits him. To be clear you not liking me and your negative opinions of me is not a reason he gets to spend more time with you. Maybe there's something else you know that I don't.

If I don't get 50/50 placement this time I will get it next time. We'll be doing the whole court bs again in 2 years and I'll win....unless I'm in prison.

I would love to sit down and hammer this out and just be done. You seriously can't fault me for wanting to spend equal time with our son? I certainly wouldn't fault you for it in fact I would be giving it to you. He's 50% you and 50% me and he deserves to be with both of us equally. Bc I truly believe that is the best for him.

To be clear I discovered the msa was completely screwed up and that was mid April. You were on another vacation (Virginia) while I was launching a full investigation into how screwed up it was with the help of community first. Their legal department did me a favor by helping me through this bc the court and your former lawyer weren't any help at all.

Adam seems to have forgotten how after weeks of my pressing him for help to resolve the MSA problem, I notified the Court on April 5.

Sent from my iPhone

> On May 17, 2022, at 8:22 PM, Elizabeth Adler <eaadler87@yahoo.com> wrote:
>
> Adam –
>
> I wish that we'd begun meeting in March when I proposed it after learning of the MSA situation, or even when I last brought this to you two weeks ago, prior to our court-assigned deadline.
>
> Please know that the 50/50 custody split remains a non-starter. If you still insist on this, let's instead enjoy our Saturday without MSA discussions and simply meet in Court on May 23. If you're comfortable with less than 50% custody placement, let me know, and we'll figure out how to proceed.
>
> On Monday, May 16, 2022, 04:10:27 PM CDT, adam fitzgibbon <fitzman96@yahoo.com> wrote:
>
> If you actually want to try to make another msa this Saturday 5/21/22 I would be willing to try. If you chose to then let me know what times work the best.
>
> Sent from my iPhone

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Message 620 of 631

Sent: 12/08/2022 at 10:56 PM
From: Adam Fitzgibbon
To: Elizabeth Fitzgibbon (*First Viewed: 12/09/2022 at 12:08 AM*)
Subject: Re: Open request

Exhibit D #1/1

Your house?? You're back on that? The second you left the house and officially got your own place you kissed that opportunity goodbye.

Whatever Culp and Larry did in the past with their back and forth squabbles does not concern me.

At some point I hopefully will have a new lawyer. How many did you go through again?

I can always pick up the missing pages 3&4 from YOUR house on oak street if it's too much trouble to mail it. I'll put in the energy you can have your boyfriend Robert bring them out.

I certainly hope you are not stringing this case out by withholding those pages 3&4 to gain an advantage over me?

767.44 regarding today that's assuming we had an intact msa to even amend.

On 12/08/2022 at 10:18 PM, Elizabeth Fitzgibbon wrote:

To: Adam Fitzgibbon (*First Viewed: 12/08/2022 at 10:39 PM*)
Subject: Re: Open request

Quid pro quo?

Physically mailed to at my Lowell house? Sure. I'd do that....if you first:

1) answer my prior questions (everything in the past week should suffice)
2) send me your belated homework that was due 11/30
3) co-sign a draft order with Larry for the 9/9 hearing (it's your responsibility to lead now that Culp is gone)

Otherwise, as you've often reminded me (e.g. Oct 26, 2022, 5:14 PM), I'm not your secretary, and I'll kindly decline to run your errands.

On 12/08/2022 at 05:33 PM, Adam Fitzgibbon wrote:

To: Elizabeth Fitzgibbon (*First Viewed: 12/08/2022 at 06:15 PM*)
Subject: Open request

Since You're capable of delivering the missing pages 3-4 to complete msa on court record I respectfully request them to end the drama.

Message 602 of 631

Sent: 12/08/2022 at 01:50 PM
From: Adam Fitzgibbon
To: Elizabeth Fitzgibbon (*First Viewed: 12/08/2022 at 01:54 PM*)
Subject: Re: Vessley

Exhibit E #1/1

Here is my stipulation for signing the msa that didn't get scanned into the system. 50/50 placement of course child support will have to be adjusted accordingly. If you agree to this I will take several days to read it over to make sure no minuscule changes were made. I think that is a fair

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Message 565 of 646

Sent: 12/05/2022 at 12:40 PM
From: Adam Fitzgibbon
To: Elizabeth Fitzgibbon (*First Viewed: 12/05/2022 at 10:06 PM*)
Subject: Re: Something to think about
Attachments: img_3050.png (956 KB)

Exhibit F #1/1

There is nothing to negotiate we have an msa on record. Once again it is your reluctance to use it not mine. As for my "math" what exactly doesn't add up correctly? Those are the numbers I didn't make those up. It's an approximate 14-16 thousand difference(fluctuates) between the assets allocated to each of us with it being heavily in your favor. You provided no additional information to prove those numbers incorrect.

You have consistently accused me of "living high on the hog". I'm just curious what would make you think that? I have not gone any vacations or conducted out of state "fun" activities. My life consists of working out, reading, and occasionally playing video games. Also taking great care of A.J.F. when I have him. I would hardly call my personal day to day activities a lavish lifestyle. It's more akin to the life of someone in prison. Going on 2.5 months of vacations looks like someone living high on the hog imo and probably many others. I have not touched the etrade or voya account. Based on the msa that we both agreed upon in the system those are not my accounts.

I suggest you look at that msa again.

The 4/26 hearing we had 10 days to submit a new msa. You went to the flote fest in Texas instead. Are claiming that didn't happen? I advised you this isn't the best time we have an msa complete. My question is simple how could we make a new msa when you have the state for almost 2 weeks??

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Comparison: Elizabeth vs. Adam's estimates of assets we allocated and/or split at our February 7, 2022 divorce hearing

Regardless of estimated, calculated or known actual, all $'s should be further validated to ensure accuracy at time of next agreement. This is simply my best understanding.

Legend:

Normal text	Actual value known
Bold text	**Estimated value**
Italicized text	*Calculated value*

Elizabeth's estimate			Adam's "I believe"*			Difference			
Elizabeth	Adam	Marital	Elizabeth	Adam	Marital	Elizabeth	Adam	Marital	Comment (all values estimated; all as of February 7 or shortly before)
$190,303	*$128,463*	N/A	*$104,000*	*$95,500*	N/A	*$86,303*	*$32,963*	N/A	Total net worth due each party (Individual + 50% of shared marital + start-up lump sum)
$30,000	$0	N/A	*$8,500*	$0	N/A	*$21,500*	$0	N/A	Elizabeth's start-up lump sum (in lieu of maintenance)
$160,303	*$128,463*	*$288,765*	*$95,500*	*$95,500*	*$191,000*	*$64,803*	*$32,963*	*$97,765*	**Total net worth due each party** (Individual + 50% of shared marital)
$116,963	*$116,963*	*$233,925*	*$95,500*	*$95,500*	*$191,000*	*$21,463*	*$21,463*	*$42,925*	**Marital shared allocations:** Total value of marital assets, split 50/50 across the parties
$43,340	*$11,500*	N/A	$0	$0	N/A	*$43,340*	*$11,500*	N/A	**Individual allocations:** Traceable assets each brought into the marriage (starting + gifts) rather than earned in-marriage

*Source: Document #106, CCAP

Approach to calculations (following Adam's May 8 default on most asset transfers to me and unwillingness to co-create another MSA aligned with 4/26 Court direction):

1) Inventory all assets the best I was able from Feb 7, 2022 divorce hearing (I do not have access to the contents of the safe or electronic accounts that Adam manages, so I have used his estimates or under-oath claims)
2) Check / Assign value to all assets (again, often reliant upon Adam's back-of-napkin estimates as well as his under-oath information)
3) Re-allocate or re-assign traceable assets to the party that brought them into the marriage -OR- received them as specific gifts (e.g. jewelry, parental contributions to my next home)
4) Calculate the value of all remaining assets (shared marital), then split these 50/50 between the parties
5) Add my additional lump-sum overpayment (similar to maintenance, but one-time, not monthly and not subject to Adam's income limitations)

Actual asset groupings and values	$288,765
Home equity	$103,813
Land equity (w/ Elizabeth's improvements)	$50,000
Voya and E*TRADE	$44,952
Brokerage accounts & Securities (All others)	**$20,500**
$25k "bank account" (w/ cash in safe)	$25,000
Precious Metals held in Lowell home safe	**$20,000**
Workshop tools & RC	**$2,500**
Weapons Collection	**$14,500**
Furniture, Furnishings, Home Equipment	**$3,000**
Perishables & Food Equipment	**$2,500**
Pensions & Retirement	**$2,000**
Life Insurance "Surrender Value"	**$0**
Artwork	**$0**
Mementos	$0
Lexus IS250	**$0**
Nissan Xterra	**$0**

App. Y-19
Page 185

Exhibit G #1/1

ACCT: ****946
ELIZABETH A FITZGIBBON

ACCOUNT-SF	AMOUNT	SEQ
TO FREE CHECKING		
****946-S8	20000.00	137
BALANCE:	49704.30	
PREVIOUS:	29704.30	
AVAILABLE:	49704.30	
CHECKS:	20000.00	

CKING BAL DOES NOT INCLD
OUTSTANDING CKS

SPII 55 13 FEB 17 11:20AM
BR 6 TLR 509

Exhibit H #1/2

When you bank at a credit union, you own the credit union so the profits come back to you! Make us your first choice.

Disbursed: 0.00

Received: 0.00

Memo:

Authentication:

SCANNED ITEMS:

Branch: 6

Teller: 509

Date: 02/13/2017

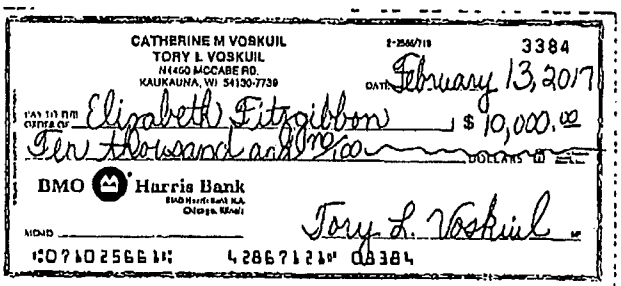
Amount: $20,000.00

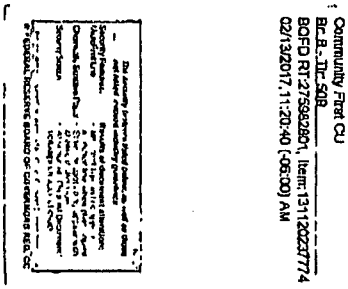
Account: SPII 8

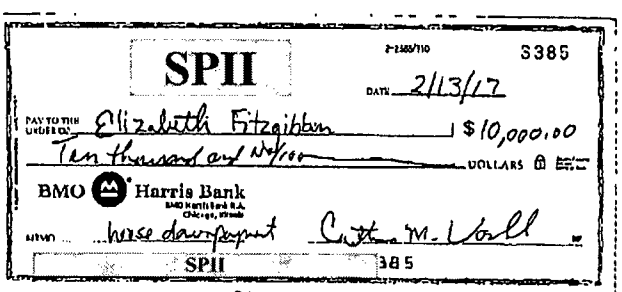
Item Type: VC

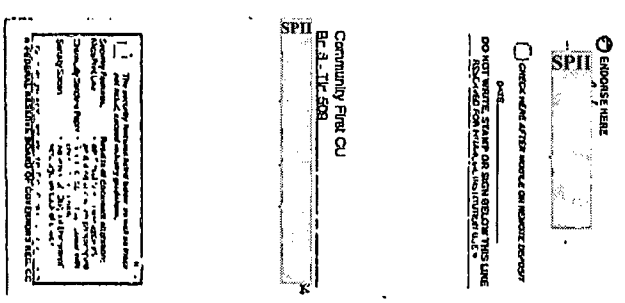
Deposit

123456789 SPII 1 9









DM Lynch 2/18/17 mtg loan closed

ACCT: ****946
ELIZABETH A FITZGIBBON

ACCOUNT-SF TO FREE CHECKING	AMOUNT	SEQ
****946-SB	15000.00	138
BALANCE:	20964.27	
PREVIOUS:	5964.27	
AVAILABLE:	20964.27	
CHECKS:	15000.00	

CKING BAL DOES NOT INCLD
OUTSTANDING CKS

SPII 45 11 JAN 17 11:09AM
BR 6 TLR 501

Exhibit H #2/2

When you bank at a credit union, you own the credit union so the profits come back to you! Make us your first choice.

Disbursed: 0.00

Received: 0.00

Memo:

Authentication:

SCANNED ITEMS:

Branch: 6

Teller: 501

Date: 01/11/2017

Amount: $15,000.00

Account: SPII 46

Item Type: VC

Deposit

123456789 SPII 1 9

COMMUNITY FIRST CREDIT UNION
P.O. Box 1487, Appleton WI 54912-1487

DATE 10JAN17

CHECK NO SPII 12

COMMUNITY FIRST CREDIT UNION
APPLETON, WI 54912-1487

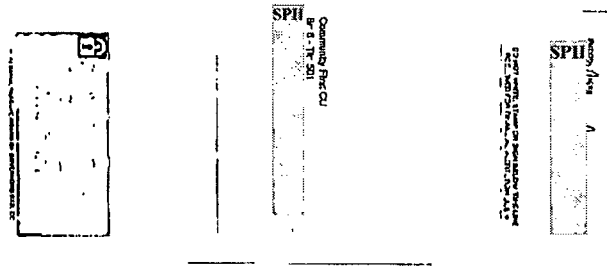
PAY THE SUM OF FIFTEEN THOUSAND AND 00/100 DOLLARS $ **15000.00

PAY TO THE ORDER OF ELIZABETH ADLER- FITZGIBBON**
RE: TERRY ADLER
HOME LOAN PAYMENT

AUTHORIZED SIGNATURE

SPII D1

1016



Community First Credit Union
2626 S. Oneida St.
Appleton, WI 54915

Don Fitzgibbon
2/9/17
My loan Check

Exhibit I #1/1

Message 598 of 646

Sent: 12/08/2022 at 01:13 PM
From: Elizabeth Fitzgibbon
To: Adam Fitzgibbon (*First Viewed: 12/08/2022 at 01:14 PM*)
Subject: Re: Vessley

The Original MSA (CCAP Doc #15) and Amended MSA (CCAP Doc #22) have been available to Adam for nearly 8 months prior to this dialogue, entirely countering Adam's letter to the Court (CCAP Doc #101).

Culp absolutely had the MSAs, which are:

1) Original MSA (as ordered) with signatures -missing (2) pages
2) Amended MSA without signatures, which include the unaltered (same as Original) 2 pages

What's the concern? What other(s) would you or he want? Neither are the hand-edited Amended final MSA that the CoC misplaced, which

a) you declined/refused to voluntarily re-create with me in March, and which
b) we were tasked in April to co-create with me in April-May, but you wouldn't

No, the "premise" is not on the missing2 pages of the Original, it's on the now-shredded hand-edited, Amended MSA and your sustained contempt for the Court's 4/26 direction. Culp knew that too, since he attended the same conference.

When will you answer my more relevant questions?

Below, Adam ignored or forgot our past 10 months of discussions, my April 5 letter (CCAP Doc #20) to the Court, our April 26 hearing, his agreement with the actions ordered during the hearing, my Nov 15 Supplemental Affidavit (CCAP Doc #91), our Nov 16 hearing, etc.

On 12/08/2022 at 12:43 PM, Adam Fitzgibbon wrote:

To: Elizabeth Fitzgibbon (*First Viewed: 12/08/2022 at 12:55 PM*)
Subject: Re: Vessley

Culp does not have the msa's you claim. He requested them and was denied by morrel just like I was. I'm requesting them from you because you're the only one with access to both msa's. Morrel didn't lose the pages the court did. You have access to both msa's with the missing pages 3-4 still intact in both of them. In early March I requested the msa you had and I was denied...why? I'm still puzzled by your refusal to send them to me.

The whole premise of this court proceeding was bc of the missing pages which you have access too and yet you have not relinquished them. What is the purpose that you have withheld them from me?

Message 603 of 646

Sent: 12/08/2022 at 01:54 PM
From: Elizabeth Fitzgibbon
To: Adam Fitzgibbon (*First Viewed: 12/08/2022 at 01:57 PM*)
Subject: Re: Interesting

Below, in case Adam did not know how to acquire copies of these documents himself, I suggested he simply drop by the Clerk of Courts' Office. Instead, he filed his December 19 letter (CCAP Doc #101) 11 days later.

Please get copies of the MSAs, as I've already described, from the Court, the same way Culp did. They'll even mail them to you upon request (I bet), but if you want them today, the Clerk's office is open today for a few more hours.

Now that that's done, is it safe for me to assume you will not answer my questions?

On 12/08/2022 at 01:33 PM, Adam Fitzgibbon wrote:

To: Elizabeth Fitzgibbon (*First Viewed: 12/08/2022 at 01:41 PM*)
Subject: Re: Interesting

I request both msa's be sent or dropped off at my residence.

Exhibit J #1/1

Re:

From: adam fitzgibbon (fitzman96@yahoo.com)

To: eaadler87@yahoo.com

Date: Wednesday, April 27, 2022 at 10:31 AM CDT

I do need to be crystal clear with you though the **A.J.F.** element of the msa will be different. It'll be 50/50 down the line this time. I will not sign anything unless that is met. If you don't find that video disturbing which unfortunately is a frequent occurrence. then we have more problems then I realize. Your dad has seen these events first hand involving **A.J.F.** I can't say it happens 100% of the time but at least 99% of the time.

Sent from my iPhone

App. Y-23
Page 189

Re: MSA Proposal

From: adam fitzgibbon (fitzman96@yahoo.com)

To: eaadler87@yahoo.com

Date: Tuesday, June 14, 2022 at 04:12 AM CDT

Exhibit K #1/2

I'm not doing it so drop it.
My lawyer has already instructed me about the msa.
Your argument as to why you get him 60/40 to Jill bc it's on that piece of paper. That argument also applies to the rest of the msa. Do you believe my lawyer to be an idiot? Did you think he did not tell me these things beforehand?

Sent from my iPhone

> On Jun 13, 2022, at 11:21 PM, Elizabeth Adler <eaadler87@yahoo.com> wrote:
>
> Adam –
>
> A joke? No, but thanks for asking for confirmation.
>
> As an aside, consider re-examining maintenance. There are several advantages for you (and arguably none for me) over a larger lump sum asset split, so your objection was a surprise
>
> Until Friday, I welcome constructive feedback on it, but otherwise, after 3 months of trying to get a resolution with you (remember your comment, "get a hobby"?), it's time to move forward.
>
> Let's make it a productive week.
>
> On Sunday, June 12, 2022 at 10:26:29 PM CDT, adam fitzgibbon <fitzman96@yahoo.com> wrote:
>
> 1500$ a month for maintenance sorry that's hilarious wtf lol plus child support
>
> Omg You've literally lost your mind
>
> I will send this to my lawyer for a good laugh.
>
> Did your lawyer and you really come up with this?
>
> We haven't wrapped a single thing not even close.
>
> Sent from my iPhone
>
> > On Jun 12, 2022, at 10:11 PM, adam fitzgibbon <fitzman96@yahoo.com> wrote:
> >
> > Lol is this a joke?
> >
> > Sent from my iPhone

App. Y-24
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On Jun 12, 2022, at 9:55 PM, Elizabeth Adler <eaadler87@yahoo.com> wrote:

Exhibit K #2/2

Adam –

I'm pleased that we're finally wrapping up a defined placement schedule and key elements of our parenting plan. I'm certain that the final agreement we make will reflect Abel's best interests. I sincerely expect to see significant improvements in his mood and behavior, which will benefit all involved.

Looking forward, it's past time to wrap up the MSA as well. To keep things brief, my counsel and I re-reviewed our pre-divorce financial situation as well as everything that has happened (and become visible) since then. Put simply, we're at a crossroads, as I hope you realize. The easy path is gaining agreement on an MSA and move forward with our lives.

As such, here are key highlights of what I propose:

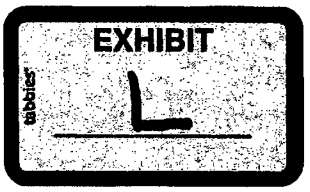
- $765/mo child support, to be revised as income and custody change
- $1495/mo maintenance for 24 months
- 60/40 placement split, joint custody
- Placement schedule, mutually determined annually by 1 October of the preceding year (e.g. 10/1/2022 for CY2023)
- Home-school (curriculum mutually reviewed, before/after annual standardized testing, annual mutual decision whether or not to continue based on standardized testing results, at least 2 hours of group socialization 5-days/week, equally split direct and support expenses, $0 compensation for me as primary teacher, $0 compensation for you in supporting Abel completing his homework)
- 2.5% per month interest rates
- You may claim and receive all future tax and federal benefits for A.J.F. to the extent these are available and allowed (e.g. future value of credits and deductions for IRS and WI are estimated to exceed $40,000, spanning Child Tax Credits, itemized deductions, Sch CS college savings accounts, and maybe someday, Sch PS private school tuition)
- Property: You keep everything except $177,000 ($17,000 in 15 days, $160,000 in 60 days). I am willing to accept tangible property at my estimate of fair market cash value
- Mutual agreement not to sue each other for any matters pre-dating June 11, 2022

The above reflects generosity on my behalf, in exchange for a rapid and peaceful closure to the MSA challenges we have faced. I believe I am eligible for more, even if arranged differently than the above, but prefer to avoid the mutual costs of a contested divorce and related delays. Some aspects of the Original MSA are no longer possible, so I have factored such considerations into the above.

Also, I think there are a handful of refinements that we can make for A.J.F. benefit. As an example, we can better optimize A.J.F. healthcare than the generic approach that Jeff Morrell drafted and include additional details to minimize future miscommunication and hardship. Regardless, such refinement language should follow re-agreement on an MSA's major elements.

It's my hope that you'll seriously consider the above, which I offer until June 17, 2022. If the big picture can be agreed-upon, I'm willing to incorporate it into an MSA for your review, refinement and approval, allowing us to separately celebrate Independence Day without further hardship or expense.

App. Y-25
Page 191



Re: Updates

From: adam fitzgibbon (fitzman96@yahoo.com)

To: eaadler87@yahoo.com

Date: Thursday, April 7, 2022 at 08:40 AM CDT

I'm asking once, our conversations shall only revolve around our son. Anything else you feel you the need to discuss, get a lawyer and have him contact me. The marriage is over with, the divorce is settled. There is nothing else you will get from me that isn't stated in court paper work. And that's final, thank you. If you don't oblige to this request I will be pursuing a restraining order against you. I'm tired of you wasting my time with this nonsense. Sent from my iPhone

> On Apr 7, 2022, at 3:10 AM, adam fitzgibbon <fitzman96@yahoo.com> wrote:
>
> Stop emailing me nonsense. You do realize I had no control of the checking account situation. Contact the bank if you doubt anything I said. The bank manager will explain what occurred. Her card is the envelope I also informed her you would not believe anything I told you so expect a call from my ex wife. She said that she would be happy to explain the situation. Basically it was all your fault and you should've been the one doing it bc you're the primary account holder.
>
> Sent from my iPhone
>
> > On Apr 6, 2022, at 10:49 PM, Elizabeth Adler <eaadler87@yahoo.com> wrote:
> >
> > Adam,
> >
> > Beyond failing to co-create a parenting plan, including a placement schedule, I've yet to receive child support and am 2 months in arrears. Please provide me with documentation that you are completing payments and that there's a glitch in the WISC Trust Fund disbursements. I will then take it up with them.
> >
> > Your cancelling of **my** checking account last week, rather than simply removing yourself from it as I requested, was a surprise, as it effectively ended my multi-decade relationship with my bank and adversely impacted my credit history at a time that I'm shopping for a house, which you probably know about, since I've taken A.J.F. to a handful of home showings in recent weeks.

App. Y-26
Page 192

Greetings Nikki,

Exhibit M #1/1

Thank you for taking time today to explain the situation regarding the closing of my bank account on 3/31 under the direct instruction of my ex-husband, Adam. For context, after Adam closed my account, I received a text message from Adam stating precisely, "You do not have a bank account right now. Since you were the primary account holder, you should've been the one doing this not me...Any questions ask Nikki Schmidt at Industrial Drive Community First." This is my follow-up with you for clarity.

To ensure I correctly heard the most salient details, I'd like to request your confirmation (or correction) of the following:

1) On the former (closed on 3/31) checking account, I was the primary account holder, having opened it in May of 2012.
2) CFCU policy is that I, as a primary account holder, could not remove Adam (a joint owner), but that only Adam could remove himself from the account.
3) Upon arriving at the branch and meeting with you, Adam expressed his concern that, "[Elizabeth] has access to my accounts, and we need to fix that."
4) You explained to Adam that if he had an individual account, which he now does (opened 1/18), that Elizabeth could (or at least should) not have access to those, but that both he (Adam) and Elizabeth have access to only their joint savings (tied to the mortgage) and (now closed) joint checking account.
5) Adam explained that he needed to close the joint accounts (checking and savings), explaining that Elizabeth can have no access to any accounts that he (Adam) was on. So, at his request, you had him complete the form to close the checking account. You answered any questions he had through the process.
6) Since the mortgage was tied to the savings account, you explained that the savings account could not be closed, but that he could remove himself from that account, just like he could have from the checking account. He explained that he would close the savings account after he refinanced the house and make no changes to it that day.

While I accept that this is not a precise transcription of the event with every detail, my goal is to summarize the material steps of the interaction. If I've misunderstood the above, I appreciate your revising / rewriting to ensure I understand and sending me a signed version of that instead. However, if the above is accurate, I could not possibly fault you or CFCU for the mess that Adam created, and I kindly request that you simply sign (notarized if possible) below.

Regardless, thank you for your help during this stressful time with my ex-husband as we complete the separation of our finances, post-divorce.

- Elizabeth Fitzgibbon

Per your request, I agree that the above is an accurate summarization of the transaction that day.

- Nikki Schmidt, Branch Manager, CFCU Date: 04/21/2022

STATE OF WISCONSIN, CIRCUIT COURT
WINNEBAGO COUNTY
FAMILY COURT BRANCH 3

In re the marriage of:

ELIZABETH ANNE FITZGIBBON,
Petitioner,
and
ADAM PAUL FITZGIBBON,
Respondent.

CASE NO. 21 FA 564

AFFIDAVIT IN SUPPORT OF THE MOTION FOR RELIEF AND DECLARATORY ORDER

STATE OF WISCONSIN)
)ss.
COUNTY OF WINNEBAGO)

Elizabeth A. Fitzgibbon, after being duly sworn on oath states as follows:

1. I am the Petitioner in the above action. I make this Affidavit in support of the related Motion.

2. On January 6, 2023, the Respondent testified to the Court (CCAP #135) information related to our marital assets at the time of our creating and agreeing upon the hand-edited, Amended Marital Settlement Agreement ("HE Amended MSA", signed and submitted to the Clerk of Courts Office on January 28, 2022 and subsequently lost by the Court). To my surprise, the Respondent revealed that he had misrepresented our assets, the value of various assets, and in particular, the value of specific assets that the Respondent convinced me to accept at the his stated value (reported under oath on his Financial Disclosure Statement, CCAP #12, which I had relied upon, in part).

3. On January 6, 2023, the Court relied upon the Respondent's testimony in its attempt to recreate the lost HE Amended MSA. The Court's ordered amended Judgment and Third Amended MSA on January 12 (CCAP #127) is therefore inequitable in its financial distribution and invalid.

4. The Respondent's testimony and misrepresentations were not accidental, but designed to deceive the Court and me, while enrichening himself. His testimony conflicted with his submissions to the Court 11 days prior. This is consistent with a few of his other self-enriching actions, including:

   a. Withholding of virtually all of my marital and discrete assets and all child support.

   b. Partially-draining and closing my bank account without my consent (against our MSA terms), damaging my longstanding bank relations and credit worthiness at a time he acknowledged knowing that I sought a mortgage for a home purchase.

   c. Continuing to use my bank account and the free use of my assets that he has withheld to advantage himself and elevate our son's perception of his net worth while suppressing mine (preventing me from acquiring a new mortgage to buy a home, unnecessarily wasting money on rent).

   d. Demonstrating his superiority to (by denigrating me and my net worth under his control) to our son, who he kidnapped and withheld for nearly a quarter of a year, causing emotional and mental harm to our son (verified by the Guardian ad Litem on January 26, 2023) and

harming our son's relationship with me (the Court awarded me extensive make-up time and ordered the Respondent to pay for our son's and my reunification therapy).

5. Relief of such misrepresentation discovered post-hearing might be solved with a specific award. However, the Respondent's misrepresentation is expansive, not merely specific. His testimony revealed his intent to obscure, hide, and dramatically devalue our assets with the intention of depriving me of my fair share.

6. While the problems with this case included financial misrepresentations that led up to the original February 7 divorce hearing, problems also occurred during the hearing and have greatly expanded afterward, despite my efforts. Such problems span historical errors, procedural missteps, policy violations, predatory actions, and copious misinformation, which include (but are not limited to):

   a. WI Statute of Frauds (WI 241.02(1)) requires agreements to be written that are marital-related or that are expected to last more than one year in duration. The only agreements surviving the original February 7 hearing were oral in nature and have since expired.

   b. All three parties have reiterated our inability to recall the edits made to the lost MSA.

   c. Our actions immediately following the divorce demonstrate that there was no meeting of the minds between us due to one or both of our misunderstandings, even before realizing the HE Amended MSA had been lost. These behaviors continue today.

   d. Unlike standard contracts and contract law, MSAs are three-party contracts with the State. Court Commissioner ("CC") Bermingham could not recall the details of the lost MSA or verify if he had ever even seen the lost HE Amended MSA, so he did not clearly consent.

   e. Due to the our inability to accurately recall the changes made to the lost MSA and our diverging actions post-Judgment (before we had a copy of the MSA to guide our actions, we relied only upon our January 28, 2022 memories), without the memorialized document required by statute, there is little to no evidence that a meeting of the minds ever took place.

   f. CC Bermingham could only adjudicate a stipulated divorce if there was a "meeting of the minds" between all three parties with all material issues resolved (per WI 757.69(1)(p)(1) and WI 767.61), but there is little to no evidence that this has yet happened.

   g. The Third Amended MSA (CCAP #127) is not a facsimile of the lost HE Amended MSA. First, if the sum of the divided marital assets does not closely align with my records, then the addends of the sum (e.g. specific awards) are inaccurate. Second, the Court lost the MSA and is singularly responsible for demonstrating any document it creates is a facsimile, yet because the Clerk of Courts violated multiple SCR 72 record retention rules, the Court is unlikely to ever be able to do so. Third, only then if all parties agree that it is a facsimile could it be regarded as such, but I have not agreed. The Third Amended MSA lacks my consent, despite its opening sentences claiming that "both parties agree".

   h. In attempting to recreate the lost MSA, the Court chose to rely on testimony from the Respondent, whose credibility has long been tarnished and who was either unable, unprepared, or unwilling to present documentation to support his financial claims.

i. Despite the detailed and accurate information I made available on January 6. 2023, the Court made no material effort to reconcile the differences between it and the Respondent's misrepresentations.

j. The resulting Third Amended MSA is inequitable in its financial distribution and therefore invalid (per WI 767.61(3)).

k. Enshrined in our Constitution is the concept of due process, which is necessary for achieving a fair outcome. Whether by statute, logic, or case (e.g. Button v. Button, 131 Wis. 2d 84, 95 (Wis. 1986)), each spouse must enter into the divorce agreement voluntarily and freely, or the outcome is not an agreement. A fair outcome (e.g. Judgment and MSA) cannot be coerced through misrepresented information but instead requires full and fair disclosure as necessary elements leading up to consent.

l. The impact of the January 6, 2023 hearing is significant. Financially, it inequitably rewards the Respondent with a half-decade of my net income, ignoring legal expenses I incurred in response to the Respondent first acquiring counsel and then his resistance to the Court's April 26, 2022 orders. Custodial battles continue, as the Third Amended MSA still lacks the referenced Section II. Physical Placement Exhibit, and we have yet to reach an MSA-aligned annual placement schedule even after one year and two rounds of Court-ordered mediation.

7. In closing, this Motion for Relief and Declaratory Order seeks not to modify the February 7, 2022 Judgment and MSA (or amendments to either, or derivative orders relying upon either) but rather to find and declare these and the entire divorce void. Only after reopening the case can the Court compel accurate financial disclosure statements from the Respondent and me, which are necessary to achieve a fair and equitable divorce. This will also give us the opportunity to reach more commonly understood custody terms, avoiding much, if not all of the litigation that has amassed as a result of our disputed views, which the Court cannot properly adjudicate without the proper "starting point" that all parties desire.

By: _____ 2/16/23
Elizabeth Fitzgibbon Date

Address: 308 Oak St. Neenah, WI 54956
Telephone: (920) 450-9277

CC: Honorable Brian D. Keberlein, Circuit Court Judge for Winnebago County
CC: Lawrence G. Vesely, of Olson, Kulkoski, Galloway & Vesely, S.C., Green Bay, WI (by email)
CC: Attorney Trista L. Moffat, of Huber Law Office, Neenah, WI (by email)

LAWRENCE G. VESELY

OLSON, KULKOSKI,
GALLOWAY & VESELY, S.C.
Attorneys

TOM F. GALLOWAY

416 S. Monroe Avenue
Green Bay, WI 54301
Telephone (920) 437-5405
Facsimile (920) 437-5917

April 6, 2023

E-File

Honorable Bryan D. Keberlein
Winnebago County Court
415 Jackson Street
Oshkosh, WI 54901

Re: In re the Marriage of Elizabeth Fitzgibbon and Adam Fitzgibbon
Winnebago County Case no. 21 FA 564
Third Amended Marital Settlement Agreement, Judgment, and Order from the January 6, 2023, hearing

Dear Judge Keberlein:

This letter supplements the Petitioner's Motion to Reconsider, presently scheduled to be heard on April 13, 2023.

In reflecting on the January 6, 2023, hearing and the events leading up to it, I would like to clarify points I made during the December 20, 2022 hearing.

1) On Page 5 [13-15] of the December 20, 2022, transcript (Document 137), I stated:

> Attorney Vesely: "In April, they were directed by the commissioner to come up with the missing terms, and that's where the wheels sort of fell off the bus."

During the February 7, 2022, divorce hearing, Family Court Commissioner ("FCC") Bermingham orally confirmed only two terms: $765/month child support and 60/40 (mother/father) placement of the parties' child, while all other terms were missing (they were contained within the Hand-edited Amended Marital Settlement Agreement (MSA) that was lost by the Court after the parties submitted the MSA on January 28, 2022). In this passage, I wished to inform the Court that FCC Bermingham directed the parties to co-create the missing terms in a new, reconfigured MSA, due within 10 days of the April 26, 2022, conference.

2) Next, on Page 6 [1-3], I stated:

> COURT: "So then number 3, child support, on your list, we don't need to address that, right??

> Attorney Vesely: "That is correct."

I wanted to simply confirm that $765/month in child support was not in dispute by my client, but my client did not dismiss other potential child support problems (e.g., Notice of Changes, Interest, Tax Returns, Variable Expenses). We still need to determine which, if any, child support issues remained unresolved.

3) Lastly, on Page 10 [9-25] and Page 11 [1-4], I stated:

> COURT: "...If I had a house and I disposed of it, I would know what I did with it...So the question isn't did they agree; it's what did they agree to. You're telling me your client doesn't remember what she agreed to?"
>
> Attorney Vesely: "You know, I think that she does...she has the records, not here today, to put that on paper for you...I like the idea where you're headed...Family Court Commissioner Bermingham, in the hearing in April, ordered them to **re-create this [MSA]. My client did, know, submit a proposal, you know, to the other party, and so...my client does have it, we just don't have it...right here and now. That's the issue**. And I think my client is very well – does recall, you know, what those issues are. The Family Court Commissioner Bermingham, in the hearing in April, ordered them to re-create this. **My client did, you know, submit a proposal, you know, to the other party, and so we do have -- my client does have it**, we just don't have it -- she doesn't have it right here and now. That's the issue."

I wished to simply confirm that my client had materials that could help develop another MSA.

Specifically, my client's June 12, 2022, MSA proposed draft (an update to her May 5 MSA proposed draft) was her effort to complete the "reconfigured" (new) MSA that she and the Respondent had agreed to provide FCC Bermingham following their April 26 hearing. Unfortunately, I misunderstood the purpose of her post-judgment proposed MSA effort, believing it to have been her attempt to recreate the lost MSA. As such, I thought it could be used to recreate the MSA in alignment with the Court's change of course from our November 16, 2022, agreements. As I explained, my client did not bring a copy of her July 12 MSA that she proposed to the Respondent to the December 20 hearing, as she did not find this proposal relevant to the expected discussions.

Regardless, in that passage and elsewhere, I agreed with the Court that the parameters of an MSA should reflect that utilized on February 7, 2022, and exclude information learned after that date, so recreating an MSA that reflected the parties' information and preferences as of that day was appropriate, even if the parties previously testified to their inability to recreate a facsimile of the lost MSA. I later confirmed the

> Attorney Vesely: "What we need to do is not be concerned what happened post-divorce in February."
>
> COURT: "Correct."
>
> Attorney Vesely: "We need to re-create what happened that day, and nothing more and nothing less than that."

I felt that it was possible to recreate agreement between the parties based on the same set of facts (e.g., assets and values as the parties understood as of February 7, 2022) using the approach that the Court endorsed, even if it was impossible to recreate the lost MSA itself.

Following the December 20, 2022, status conference, my client was certainly capable of making any changes she believed were made on or prior to January 28, 2022. However, after significant discussion, it was clear that she was uncomfortable with this approach, as it would not only lead her to perjuring herself (regardless of the accuracy of her edits). Both parties have stated previously that they could not accurately recreate the missing MSA. If the parties were unable to come up with a MSA, the Court would hold a contested hearing to judicially determine the unresolved matter. The Amended Judgement and Third Amended MSA created by the Court is not the result of a consensual agreement of the parties or resolve the Court's error in losing the Amended MSA. The only fair way to conclude this case is for a contested hearing on all unresolved issues. The current Court order results in an unfair outcome in favor of the Respondent and a further exacerbation of the error caused by the Clerk of Court losing the Amended MSA.

As such, we decided that we needed to return to the process that FCC Bermingham directed on April 26, 2022, whereby a new stipulated MSA would need to be co-created by the parties and that the Court's role should remain limited to (finally) compelling the Respondent's participation in this otherwise consensual process. Based upon the hearing held on November 16, 2022, it certainly appears as though the process the Court was inclined to follow was to have the parties attempt to resolve the issues themselves. If that did not occur, the parties would engage in formal mediation with a neutral third party, and finally, if mediation was unsuccessful, the Court would hold a contested hearing on any unresolved issues. However, despite the Respondent agreeing to proceed with mediation in lieu of the Court's agenda for January 6, 2023, the Court forced a new, stipulated MSA without my client's consent of either the process or the resulting Amended Judgment and Third Amended MSA.

Because of the complexities of the parties' unprecedented divorce case, it has taken significant time and effort to fully understand and appreciate the challenges my client has continued to face in resolving the lost MSA problem. Indeed, the complexities and historical oddities of this case are the reasons that the parties have relied on no fewer than four lead attorneys to understand the facts, unwind the issues, and chart a path forward. As such, my client and I certainly sympathize with the Court's frustration and desire for a conclusion.

My client and I believe that given all we and the Court have agreed on, the Court shares our desire for a consensual agreement and that the Court never intended to perpetuate the original clerical error or unjustly reward the Respondent by allowing the divorce and January 6, 2023, outcomes to stand. Declaring void the parties' divorce (via my client's Motion to Reconsider) remains the easiest and least litigious path to resolving their situation, and it is the easy approach to concluding the Court's clerical problem that began some 14 months ago.

Please feel free to contact me if you have any questions.

Sincerely,
Olson, Kulkoski, Galloway & Vesely, S.C.

Lawrence G. Vesely
LGV/lm

Cc: Elizabeth A. Fitzgibbon Email transmittal only
Adam Fitzgibbon Email transmittal only

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2021FA000564

STATE OF WISCONSIN, CIRCUIT COURT
WINNEBAGO COUNTY
FAMILY COURT BRANCH 3

In re the marriage of:

ELIZABETH ANNE FITZGIBBON,
Petitioner,
and
ADAM PAUL FITZGIBBON,
Respondent.

CASE NO. 21 FA 564

SUPPLEMENTAL AFFIDAVIT REGARDING PRE-APRIL 26, 2022 COMMUNICATIONS AND REBUTTAL TO RESPONDENT'S LETTER TO THE COURT (DOCUMENT 166)

STATE OF WISCONSIN)
)ss.
COUNTY OF WINNEBAGO)

Elizabeth A. Fitzgibbon, after being duly sworn on oath states as follows:

1. I am the Petitioner in the above action. I make this Affidavit in response to Adam's claims against my prior testimony, submitted materials, and character. This affidavit concerns the Hand-Edited Amended ("HE Amended" or "lost") Marital Settlement Agreement (MSA) that was mutually signed and submitted to the Court on January 28, 2022, then lost, as well as Adam's and my communications containing our evolving and differing beliefs about the terms of the missing MSA. **I maintain that regardless of texts, emails, or other communications, neither Adam nor I can recall or piece together all terms in the lost MSA. We both confirmed this to the Court on multiple occasions.**

2. On February 18, 2023, Adam notified me (**Exhibit A**, page 1154) that he had compiled and curated a set of text messages from a year ago. He believes these demonstrate that I withheld information (which we both obviously have had at our disposal) from him and the Court, and in my doing so, I committed "fraud" (**Exhibit A**, page 1154), but this is misinformation. Regardless, rather than share and discuss with me what prior communications he now views to be useful as I requested (**Exhibit A**, page 1153), he preferred to withhold the information (**Exhibit A**, page 1152) until April 3, but continues to do so, as confirmed by his "5%" disclosure (**Exhibit B**), because other 95% would:

    1. Contradict his provided 5% (as if this wasn't evident in his submitted materials and testimony)
    2. Expose his attempts to gaslight and bully me into accepting one of Adam's varying views
    3. Expose his resistance to resolving the MSA, co-create a co-parenting plan, including a placement schedule for our son

    In short, clarity and conflict resolution are clearly not Adam's motivation.

3. Rather than request the Court summarily dismiss what Adam shared (or may additionally decide to "reveal"), I instead encourage the Court to closely examine his offerings and determine the differences in Adam's prior testimonies and supplied materials. I also ask the Court to determine why he waited more than a year to present this information. The remainder of this affidavit should aid the Court's review and further support my other open and upcoming motions.

4. Lastly, on March 4, 2023, **Adam kindly confirmed for the Court and me that neither of the Court's MSAs (Second or Third Amended) are facsimiles of the lost MSA** (**Exhibit A**, page 1152), meaning that **the Court did not recreate our lost MSA as the Court claimed on the final pages of these documents** in lieu of Adam's and my signatures. The only difference between Adam's and my view is that since the Court-created MSAs grossly favor Adam, only Adam has consented to it and sought its enforcement via his March 30, 2023 OTSC contempt decision. **Ironically, a modified or inaccurate copy of an official document is a counterfeit, while the known use of a counterfeit document for financial gain is fraud.**

Direct Rebuttal to Adam's April 3, 2023 Court Communication (Document 166):

5. Today, April 5, marks the one-year anniversary of my seeking the Court's help in correcting Adam's mistakes, misunderstandings, and wrongdoings. His April 3, 2023 letter demonstrates that he continues to prefer to reshape the reality of our situation, just as he has our divorce terms. This is despite my:

   - **April 5, 2022 letter to CC Bermingham** (Document 20),
   - **September 8, 2022 Supplemental Affidavit** (Document 59)
   - **November 15, 2022 Supplemental Affidavit** (Document 91)
   - **December 31, 2022 response to Judge Keberlein's MSA homework** (Document 112)
   - **Oral testimonies**
   - **Hundreds of other communications to Adam throughout the past year**

   Adam is well aware of the facts, as the above have long-since rebutted each and every point in his letter, though to ensure the Court does not believe his misinformation, I will counter his points once more.

6. In mid-to-late February, 2022, Adam mistakenly received our Original MSA (Document 15, 19) from the Court following our February 7, 2022 "divorce" hearing, just as I did. Likely by then, the Court had already lost our HE Amended MSA following its January 28, 2022 submission to the Clerk of Court's Office. This lost MSA was the only contract that contained Adam's and my agreed-to divorce terms on February 7, 2022. **This was explained in the 1st, 3rd, and 4th bullet points in my April 5, 2022 letter to CC Bermingham (Document 20).**

7. I did not receive our Amended MSA (Document 22) from the Court, as Adam continues to claim. The Court did not have this **draft** document until the Clerk of Court's Office scanned and filed it on April 11, 2022 (though I had originally attached it to my April 5, 2022 letter, Document 20). I did so because CC Bermingham requested it, as he sought to understand the basis for our hand edits. Like any other of our draft MSAs, the Amended MSA may be interesting, but it is not legally binding, as it was never signed. **This was explained in the 2nd bullet point in my April 5, 2022 letter to CC Bermingham (Document 20).**

8. Our Amended MSA and its "completeness" is entirely irrelevant, as the terms within it never contained our consent. Similarly, the Original MSA and its "incompleteness" (missing pages 3 and 4) is also irrelevant, as this document also did not contain our consent after January 28, 2022, when it was replaced with the now-infamous (and now-lost) HE Amended MSA. Our Amended MSA was merely the draft to which we made hand-written edits on January 28, 2022. The Court could not "find" (nor ever needed to search for) the unedited Amended MSA because it was never a legal document, much less previously in their possession. The document that the Court could not find (but needed to) was our HE Amended MSA. **This was explained in the 1st and 2nd bullet points in my April 5, 2022 letter to CC Bermingham (Document 20).**

9. My "refusal" to give Adam the Amended MSA was because it was an invalid document and served no legal purpose. His request for this document is what warrants suspicion, not my refusal.

10. An invalid, unsigned, unedited Amended MSA does not support Adam's claim of intangible asset allocations. Even so, Adam's claim that he first viewed this document on December 20, 2022 is simply

false. Adam and his attorney had this document available to them since April 11, 2022, and the list of assets were reviewed in detail during the April 26, 2022 meeting with CC Bermingham. Adam claims that he was to receive half of both Voya and E*TRADE accounts, yet this was not present in the Amended MSA reviewed with the Court on December 20, 2022 and is as false a statement as it is irrelevant. I disagree with Adam's assertion, but Adam has a duty to avoid citing legal agreements from draft documents. Adam insinuates I've committed fraud, yet by issuing unsubstantiated claims, Adam actually is. Further Adam knows this because merely six days later (December 26, 2022), he disclaimed half of both Voya and E*TRADE accounts in his letter to the Court (Document 106) and then wavered between these claims during his January 6, 2023 oral testimony (Document 135). Clearly, Adam continues to perjure himself at significant cost to me for my time and legal support.

11. In both 2022 and 2023, I played no role in Adam's communications to his chosen bank, which he pursued under false pretenses, as the rest of this affidavit will reveal. Further, had he coordinated the implementation of any legally-ordered MSA with me, he could have avoided cancellations and lost mortgage application fees.

12. In summary, Adam's April 3, 2023 letter (Document 166) merely reveals his ongoing disregard for the terms of our agreements, statutes, and due process, except when he hopes to unfairly advantage himself.

13. The Court should offer no solace for any difficulties he faced financially harming me in his attempts to implement our (nullified) Original MSA by supplementing it with portions of a draft, unedited, and unsigned Amended MSA document. Behind Adam's writing style is not an ignorant man but one who understands our situation and what he has done, though he believes his simple (albeit ever-evolving) story will win the day. **His letter challenges the Court's intellect.**

Context and Details:

14. Between our Court meetings on February 7, 2022 and April 26, 2022, Adam and I argued via phone, text messages, and email, as well as in person, about what we believed were the custodial and financial terms of our January 28, 2022 MSA. **Text messages during this 11-week period show**:

    a. **Adam often cited the invalid, incomplete, and incorrectly-ordered Original MSA (Document 15, 19) and sought to have it enforced, as its terms greatly favored him financially.** For a time, I feared that he may have been correct in the permanent applicability of this document (being pro se at the time, but proactive and concerned, I confirmed with Tara Berry of the Clerk of Courts that until the lost MSA was found or another ordered, our Original MSA would govern our "divorce", even though it should have been nullified when it was replaced with the HE Amended MSA on January 28, 2022). Seeing an opportunity, Adam repeatedly attempted to bully me into accepting $55,000 for the ($35k) home equity and ($20k) land (e.g. texts March 7-8, 2022), and on March 26, 2022, Adam officially acknowledged the Court's clerical error and the unlikelihood of correcting the situation by texting:

> Adam: "They told me there is no other one *[only the Original MSA exists]*. You can call but it won't accomplish anything. I talked to the guy for 20 minutes. He told me whatever you have was not filed in time or was never filed. He said the court will not recognize your msa as a legal document. That's how the conversation ended."

Upon recognizing a financially advantageous opportunity, Adam was quick in his attempt to finalize implementation of our Original MSA, texting:

> Adam: "FYI I scheduled an appointment with bank about a week to ago. I'm bringing the legal *[Original]* msa and getting everything done. You can contact etrade and voya to get 100% of those accounts transferred into your name. Luckily for you I chose well when picking those securities."

My unwillingness to accept the Original MSA as a memorialization of our divorce is evidenced by my requirement for (and January 28, 2022 submission of) our HE Amended MSA. I also did not knowingly agree to the Original MSA during our February 7, 2022 divorce hearing, and neither did Adam by his own repeated admission. Since January 22, 2022, I never accepted as satisfactory the financial terms of the Original MSA, though after our (questionable) divorce hearing, I occasionally inquired about Adam's plans to proceed with their implementation. At times, I also did not refute or express my unwillingness to accept Adam's figures. The simple reason is that I periodically felt powerless to overcome the Court's mistake with a predatory ex-husband, who felt empowered with a "valid" Court order of the invalid, incomplete, and incorrectly-ordered Original MSA. (Such concerns ultimately proved justified, as for the next 8 months, Adam periodically pressured me to accept the Original MSA or at least portions of it.)

Lastly, given my financial state (few assets), I felt that I might be forced to accept some assets from Adam that were "directionally correct" and later acquire the rest that I was due, either through negotiation or litigation. Adam refused such partial payment ideas (including for child support, where I wrote and offered to notarize a contract, whereby I assumed his responsibility for paying past-due child support in exchange for him paying WI SCTF immediately). By prolonging his financial withholding of my assets, he was well aware that it might reduce my resolve in negotiating another equitable solution as well as my ability to afford litigation (though the opposite occurred as friends, family and now community have supported me).

b. **Occasionally (and temporarily), Adam convinced me that I had agreed to various terms**, such as accepting half of the E*TRADE brokerage account in early March. I viewed this as questionable (if not outright inaccurate) after Adam cited an impossibly low cash value for it on March 3, 2022, while I was attempting to prepare my mortgage application and down payment and shop for a new home. However, without a memorialization of our divorce, I had no way to disprove his claimed figures, so I ceased discussing it. For no reason that I can recall, on April 6, 2022, Adam began claiming half of both E*TRADE and Voya accounts, while asserting that I owed him a refund of either $7,000 or "$3500, no matter what", yet he never bothered to explain his figures or their differences between his claims and I never accepted his claims. In fact, **Adam claimed different asset values or allocations at least eight times via his text messages alone, yet strangely chose only to share select ones in his April 3, 2023 letter**. This is in addition to his multiple claims that varied our lost MSA's custody terms, as well as any claims he made orally or in Yahoo email. With each of his attempts to convince me of his view of our agreement, it became increasingly obvious that he either did not know what was accurate, or that he preferred to create an altogether new truth.

c. **I reiterated the $77k compensation for the real estate** ($52k home equity and $25k land), as I believed those accurately reflected my half of the agreed on valuation of the home equity ($210k with a $106k mortgage) and land ($50k). However, the $77,000 clearly did not compensate me for our other assets (including undisclosed), which were not addressed by the Court on January 6, 2023, despite Adam confirming their existence (e.g. gun collection) in his testimony even if we disagreed on their value, allocation, or anything else, despite the documentation that I offered.

In short, Adam's propensity to vary asset values and their allocations (and convince me that he is correct), his frequent attempts to inappropriately enforce the financial terms of the incorrectly-ordered Original MSA, and his strong (often baseless) opinions of our son's custody led me to finally submit my April 5, 2022 letter to the Court (CCAP 20) seeking the Court's assistance in resolving our differences and establishing an MSA that would properly memorialize and govern our divorce.

15. As such, Adam (along with his then-retained attorney, Peter Culp) and I met with the Court on April 26, 2022, during which Adam swore to CC Bermingham that Adam did not know the hand edits made to our lost MSA, much less with sufficient accuracy to recreate it. I mirrored Adam's statement. **We did not**

simply state that we could not agree to the changes made. Instead, we swore to CC Bermingham that neither of us could individually, or even collectively, recall the changes, mutually accepting that the three months of written and oral communications between January 28, 2022 and April 26, 2022 were inconclusive, often contradictory, and insufficient for recreating the MSA. This is despite both of us having had equal access to all messages that Adam now claims offer "proof" of my fraud and presumably validates the Court's MSA (Document 127), which obviously conflicts with both of our statements on April 26, 2022 and November 16, 2022 (among other times). Adam's "disclosure" of any past communications merely seeks to rewrite history by claiming specific text messages are now valid, while other oral and written communications made before, during, and after this period are not.

As a result of this meeting, CC Bermingham's order for (and our agreement to co-create) a new, reconfigured MSA have been well documented in other letters and affidavits. Adam's obstruction that followed, as well as his and his mother's kidnapping and withholding of our son has also been well-documented (with Adam's excuse being "it was the Wild West" – **Exhibit A**, page 1154) and served as an unwelcome distraction to the MSA work we needed (and were obliged) to perform. My July 12, 2022 Affidavit (Document 39), Supplemental Affidavit (Document 91) and my Letter to Judge Keberlein and its exhibits (Documents 112, 139) detail this history.

16. Indeed, there was no ambiguity in what we said or agreed to on April 26, 2022, or why. As such, on November 16, 2022, despite all of our text messages and emails in Adam's (and my) possession, Adam's attorney reiterated to the Court (Document 136) that Adam did not know what hand edits were made to the lost MSA. Again, I confirmed the same, despite my attorney accidentally stating that I knew before he corrected himself (Document 136, page 23).

> ATTORNEY CULP: "**Mr. Vesely just said these parties know what** was on -- **was handwritten on the documents. My client doesn't, but** nonetheless, **he's saying she does.**"
>
> ATTORNEY VESELY: "Well, my client disagrees with that. She just handed me a note that says I maybe have misspoke there." (Page 23 [9-17])
>
> ATTORNEY CULP: **"I'm assuming everything is at issue..."**

That day, all parties reached a similar conclusion to the one we had on April 26, 2022: the only sensible path forward included exchanging MSA issues we felt required resolution, conducting depositions to determine the best basis of fact that we could offer, use that basis to guide our scheduled mediation (co-creating some or all of a MSA), and then conducting a trial (if necessary) to resolve any unresolved issues. The events leading up to this agreement were detailed in my Supplemental Affidavit (Document 91), while those that followed this agreement were provided in my letter to Judge Keberlein (CCAP 112, 116, and exhibits within 139).

17. On January 6, 2023, I again reiterated that I could not accurately recall the hand-edited changes of the lost MSA. I did share what I felt confident in supporting, which I backed with substantial evidence to ensure the Court knew at least the parameters of the lost MSA. Both my testimony and the materials I provided to the Court that day were consistent with all prior communications to the Court.

18. That same day, during Adam's oral testimony, he made countless claims that contradicted virtually all of his prior under-oath materials and testimony, including his letter to the Court (Document 106) sent 11 days earlier, his April 26, 2022 and November 16, 2022 statements, and his Financial Disclosure Statement (Document 12). Each claim varied home, land, and brokerage **valuations**, and even varied the **allocations** of those assets. To this day, he continues to hide our other assets and agreements from the Court, despite confirming their existence in OFW (Exhibit A, page 1155), even if I disagree with his version of the specifics. I detailed a few of these contradictions in my Motion for Relief and Declaratory Order (Documents 146-147), but these are a fraction of the wildly varying claims he has made verbally and in

emails (including OFW), texts, and Court filings during the past year. For example, in his writings **since our February 7, 2022 hearing, Adam claimed that he viewed our home's official MSA value to be $175k, $176k (text), $195k, $210k, and $211k (text)**. While the two lowest values obviously reference the Original MSA, **all five of these written claims were made after Adam clearly knew of our home's revaluation to $210k**, as evidenced by the mid-January draft Amended MSA (uploaded mid-April as Document 22), our meeting with CC Bermingham on April 26, 2022 and even Adam's own subsequent claims and his January 6, 2023 testimony. Adam's $195k claim was baseless but not accidental, as he filed it with the Court (Document 106), before abandoning his "belief" in his January 6, 2023 testimony.

This should concern the Court, who favored Adam's credibility, despite his varying house valuations.

> COURT: "**My parents have been married over 50 years; they can tell you what they paid for their first house** of $16,500." (Document 135, page 30 [12-14])

Further, in that same time period, **across 13 different writings, Adam claimed at least six different valuations for E*TRADE or Voya, none of which matched the figures he provided to the Court and me in his Financial Disclosure Statement** that was the basis for the HE Amended MSA. **At least seven times, Adam also varied his believed allocations of either or both E*TRADE and Voya accounts**. He even gave three separate valuations of the other brokerage accounts and securities used in our negotiations and lost MSA. Which, if any, of these terms were accurate and actually agreed-upon during our January 28, 2022 final negotiations of the lost MSA?

> COURT: "I don't have a lot of empathy for the inability to remember what should have been done...seven months ago. So there is a passage of time, but **I also think this regarding credibility, that when people make life-changing decisions, when they make large commitments regarding money or other things, they have a tendency to recall some of those facts. Parties might recall what they paid for a home 17 years ago. People...might recall what the terms of the divorce were.**" (Document 135, pages 39 [16-25], 40 [1-6])

While I share the Court's frustration with Adam's eight months of obstruction of the Court's April 26, 2022 order, the Court should take no comfort in any information that Adam has ever given, be it in testimony, letters, or texts before thoroughly reviewing all of his claims for consistency.

Additional Context for Adam's and My Communications:

19. As should now be evident to all, Adam commingled assets (e.g. bundling intangible assets like the brokerage accounts as well as the "Land and other assets") to inhibit clarity for the Court and me, to favor himself financially, and now to accuse me of fraud as part of his latest disclosure and claims. From the beginning, Adam has shunned transparency, which I accommodated as long as I was sufficiently comfortable with the numbers (and the support I would get from the Court if his numbers provided under oath were wrong – see my second Motion for Relief and Declaratory Order, Documents 146, 147). As such, I shared the undisclosed assets and their financial allocations in my December 31, 2022 letter to the Court (Document 112) and its Exhibit G (re-filed within Document 139), which I orally presented to the Court on January 6, 2023. Since our February 7, 2022 divorce hearing, Adam began claiming that the value of all other divisible marital assets was much smaller (he stated $5000 in his January 6, 2023 testimony), that these assets were included in a "Land and other assets" category, and that I already received what I was due – all of this is simply untrue. I already shared with the Court that the undisclosed assets were worth at least $44,500, but as of January 28, 2022, I decided it was not worth the certain expense and time of a contested divorce to force additional clarity by parsing out each asset, particularly when the MSA had progressed to my satisfaction and the Court would protect me from any values that I might someday discover that Adam materially misrepresented. As late as January 6, 2023, my attorney and I believed the Court would order mediation (and a trial, if necessary) per all parties' November 16,

2022 agreement, so while I did not previously explain the origins of Adam's "Land and other assets" category (a term removed from all MSAs, including the now invalid Original MSA, Document 15, 19) that Adam cited that day, I'll now do so.

1. In late-2021, after I filed for divorce, Adam (empowered by his then off-the-record attorney, Peter Culp) pressured me to allocate many of our marital assets to a Trust for our son for financial liquidity (likely valid), tax reduction (maybe valid), and family heritage (a fallacious benefit) reasons. This is not conjecture but evidenced by the hand-written notes on both of our January 2022 Financial Disclosure Statements, which showed that the land (and most if not all undisclosed assets) was to be originally included in the Trust (page 5 of Document 12, page 4 of Document 13). However, Adam's final Trust proposal revealed his true intentions, which were for Adam to enjoy exclusive control and use of said assets without me and without my fair compensation. As evidence, Adam insisted on assigning himself as the sole trustee, our then-six-year-old son as the sole beneficiary, **explicitly refused to make me a co-trustee, and refused to offer me any compensation** for what would effectively become Adam's assets to someday pass along to A.J.F. (Adam wrongly believed that I was naïve enough to accept such overt, legalized theft).

   Despite Adam's demands, attempts at shaming me for "stealing from our son's future", and his bouts of unbridled fury, I declined Adam's offer to proceed with the Trust, as evidenced by the crossing-out of these hand edits in both Financial Disclosure Statements. However, beyond the land, there were a few other traceable assets Adam envisioned including in this Trust for our son that did not warrant itemizing in our MSA. Specifically (to my best recollection, as it was unclear what would be put in the Trust vs. merely retained by Adam for A.J.F. benefit), these included a Henry Repeating Arms "Golden Boy" rifle, a beginner's archery set, their related accessories, and a 0.1 ounce gold coin (I believe a $10 modern American Gold Eagle) that I felt were altogether worth less than $1,000. These were indeed shared marital assets but were also gifts that Adam personally selected and "gave" to our young son, who was much too young to responsibly enjoy them (as evidence, in mid-January 2022, I collected the last of my information on the weapons in preparation for our final MSA negotiations, and on September 23, 2022, in OFW, Adam confirmed giving "another" similar gold coin to our son as a seventh birthday present). I reasoned that had our son merely been older (an adult), these gifts certainly would have been his assets and excluded from marital asset division, so I allowed Adam to retain these assets for our son without compensation. However, this is quite unlike the land, which in addition to its far greater value, I personally found, led the negotiation and acquisition of, partially cleared, cleaned, and significantly developed with the help of my mother and without Adam's participation. Adam and I did not purchase this land for our son, but for ourselves. Similar to my allowing Adam to retain our son's gifts, Adam permitted my having a handful of marital assets with low financial value, including those related with our deceased son. Like many other assets, these still remain in the home that Adam and I co-own, as Adam has long since inhibited their retrieval (e.g. telling our son that I am stealing, threatening to call the police). Regardless, such goodwill gestures during our final negotiations minimized conflict with Adam and did not significantly affect financial divisions, though Adam's "Land and other assets" claims have periodically appeared after February 7, 2022, in texts, emails, and Adam's court submissions and testimony, but are generally misrepresented, as the Court's January 6, 2023 transcript (Document 135) verifies.

20. On June 12, 2022, I proposed the outline of a new MSA to Adam (**Exhibit C**), just as my attorney confirmed with the Court on December 20, 2022 (Document 137, page 11). However, just because I believe it to be largely representative of our lost MSA (adding moderate compensation to settle Adam's damages in lieu of litigation) and a path to resolve this unprecedented situation, I regard it no more relevant than any of our other written communications in terms of its value in recreating our lost MSA.

Interestingly, similar to my responses to some of Adam's pre-April 26, 2022 text messages, Adam did not refute the overall financial values, even though he objected to their presentation/structure. Adam now appears to believe that whatever texts he can offer the Court are conclusive of all (or even any) terms that we made within the lost Hand-Edited Amended MSA, but I'll decline making such claims in return.

Adam's Motivations: Same Then as Now

21. I suggest that Adam's selection and sudden disclosure of such information is not to provide helpful clarity but rather to retroactively, desperately defend the Court-created Third Amended MSA (Document 127), which greatly favors Adam. Further, should we progress through a contested divorce process, Adam is keenly aware that in addition to losing many of the assets he has withheld, his deception and perjury will be publicly exposed. **His claims were an immediate retaliation to my motions for Reconsideration (Document 139) and Relief/Declaratory Order (Documents 146, 147).** In exact parallel with his February 18, 2023 text message "disclosure" (**Exhibit A**, page 1154) and February 26, 2023 accusations of my "fraud" (**Exhibit A**, page 1154), his February 22, 2023 filed Order to Show Cause was not based on any agreement that he and I made or even any deadline embedded in any ordered MSA. Rather, it was merely his latest attempt to bully me (for my "insubordination" – **Exhibit D**) into accepting the illogical, incomplete, and inequitable Third Amended MSA. Adam's opportunistic behavior mirrors that of one year ago when he tried to acquire a new mortgage and pressure the transfer of our house, land, and other assets under terms that Adam clearly knew were not what we had agreed in the lost MSA. However, his efforts proved futile due to the Clerk of Courts' office incorrectly scanning our Original MSA (Document 15, 19), rendering it incomplete (the infamous "missing pages 3 and 4", which despite being published on CCAP since April, Adam claimed I had withheld it until our December 20, 2022 Court meeting). Regardless, Adam's lender rejected Adam's mortgage application. So, in an April 6, 2022 message, Adam stated:

> Adam: "There is nothing else you will get from me that isn't stated in court paper work [Original MSA, Document 19]. And that's final, thank you. **If you don't oblige to this request I will be pursuing a restraining order against you.** I'm tired of you wasting my time with this nonsense." [...of trying to fix the lost MSA issue.]

This is in clear opposition to (defiance of?) our March 8, 2022 text messages a month earlier, in which I reconfirmed our home value to be $210k, yet he re-confirmed his attempts to use the Original MSA in his April 20 letter to the Court (Document 27), and with it, the lower home valuation that he knew was wrong and confirmed the correct $210k home value number in his January 6, 2023 testimony.

After our November 16, 2022 Court meeting, when Adam finally faced depositions, mediation, and the co-creation of a new MSA, Adam rekindled his interest in the "missing pages" (per Adam's attorney's threat to subpoena my first attorney, Jeff Morrell – Document 93, page 4) to again try to acquire a mortgage and force the home's transfer under the same incorrect terms as Adam sought in March - April, 2022. This was no accident, as Adam demanded I release the "missing pages" at least 20 times via OFW. However, Adam and his attorney had these pages since April 11, 2022, as they were included in the unsigned, unapproved Amended MSA (Document 22) (at least without hand-edits, of which no copy exists, to my knowledge). Even after explaining this yet again at the time, Adam denied it. As shown earlier in this letter, his April 3, 2023 letter to the Court (Document 166) resurfaces the same incorrect and irrelevant narrative.

Adam's belligerence didn't just exist before our January 6, 2023, November 16, 2022, or even April 26, 2022 meetings with the Court; it was even prior to our February 7, 2022 divorce hearing. Days before our final MSA negotiations on January 28, 2022, Adam threatened to gift away (marital waste) some of our assets (e.g. guns) to gain an unfair advantage over our asset division. A concerned friend audio recorded our conversation for me, given the well-known physical safety risks of Adam's explosive behavior whenever I challenge him with "insubordination" (my own restraining order case# 2022CV936 offers

many more examples). I've transcribed and offer this to the Court not because it helps to recreate an MSA but because it exposes Adam's incredible behavior as motivational context for his claims against me:

> Elizabeth: "...So, so right. That's what I'm saying. It's..."
>
> Adam: "Well, these paintings weren't cheap, and you took those."
>
> Elizabeth: "They're not mine. My mom wants the horse one back she, and then my dad, that my dad never even gave us that one to keep. It's the family thing. It's the..."
>
> Adam: "Oh, so that's how that got played out. Okay."
>
> Elizabeth: "No, ask him. Talk to him [my father]."
>
> Adam: "**Well, then those guns, then those guns belong to my father then. I bought them** [with our marital money] **for my dad. I'll call him right now and say congratulations dad. You just got a bunch of Henrys.**"
>
> Elizabeth: "Adam, you know that that wasn't..."
>
> Adam: "No, I didn't! No, I didn't! You can't make this shit up! It's on the property. It's, it's part of the marital assets! Didn't you read any of those laws I sent you?!"
>
> Elizabeth: "Adam, that's not how this works."
>
> Adam: "Yes, it does! Then we're going to get a lawyer. Get a lawyer and leave. **Leave! If you're going to try pulling this shit!** Ugh, 'that was actually my dad's?!' I don't give a fuck! It was on the property! It doesn't matter. Don't you understand that? There's no written anything about any of that anywhere!"
>
> Elizabeth: "Because who goes and records stuff like that? It's not..."
>
> Adam: "It doesn't matter!"
>
> Elizabeth: "Adam, I'm not keeping it."
>
> Adam: "Well, I don't care. **Then I'm not keeping the guns. They're gifts to my dad. There. So that's the end of that story.** So continue on."
>
> Elizabeth: "Okay...so then the home value is way more..."
>
> Adam: "That's what we signed. That's what we agreed upon."
>
> Elizabeth: "It doesn't matter...I already called all of the appropriate people to find out that people make changes to stuff all the time when new information is presented. So this isn't an unusual thing at all."
>
> Adam: "Then we're selling the house."
>
> Elizabeth: "Okay."
>
> Adam: "I don't, like I said, **I knew this bullshit was going to fucking happen. I just fucking knew it! I fucking knew it!** *(Much noise follows, as he threw kitchen items at me while I fled the house)* **Get the fuck out of my house! Get the fuck out! You knew you were going to do all of this shit. Fuck you! Get the fuck out! I didn't know...going to call all of these people and make all of these changes! I didn't fucking know any of this! You are a liar and fucking whore! You know what, on top of that, fuck you! Get the fuck off my property you fucking gold-digging bitch! Fuck you!**"

Despite this, within a week, Adam understood the futility of pressuring me to accept the Original MSA, as I reiterated that I would not agree to it at the February 7, 2022 hearing, as it was inequitable. This forced the January 28, 2022 final negotiations and resulting HE Amended MSA, as Adam disdained the transparency, cost, and time associated with a contested divorce process and knew a negotiated

outcome would materially be the same. However, his seething hatred remained for the HE Amended MSA, and his vindictiveness re-emerged when the Court lost the MSA, which is the context that my attorney referenced on January 6, 2023 (Document 135, page 46). His latest motion and lashing claims are his final attempts to defend himself and his favored Court Order through aggression.

Conclusion:

22. Adam chose to disclose select text messages in an attempt to retroactively support the Court's decision and support a claim of my wrongdoing, but it should now at least be clear that these lack the consistency and necessary context to demonstrate either. All text and email messages, which both Adam and I have possessed the entire time, are as irrelevant now as they were on April 26, 2022, when Adam and I first confirmed with the Court that all prior communications, and our own memories, were ultimately unreliable and useless for recreating the lost MSA.

23. In contrast, despite the ongoing harm from Adam's obstruction and misinformation (I remain insolvent, save for family and friends' loans), I have only ever sought a consensual solution through mutual voluntary agreement and due process. **I have not sought any specific financial terms from the Court to favor me, so I disagree with Adam's claim of my "fraud".** Also, all of my numbers, including carve-outs for individually retained assets, are consistent with my January 6, 2023 testimony, which used my December 31-submitted materials that relied on and aligned with all of my prior statements and materials submitted to the Court, to the best of my knowledge. As such, if I ever erred in my statements or materials, such errors should be viewed in the context I have provided in this affidavit, or outright regarded as "harmless" per WI 805.18(1).

24. More than anything else, Adam's latest claim merely demonstrates the need for both clarity and a proper memorialization of our divorce by either co-creating a reconfigured MSA (as CC Bermingham directed on April 26, 2022 – the easiest, least litigious path forward) or by completing mediation (and a contested divorce process if necessary to resolve open issues), exactly as all parties agreed to on November 16, 2022. Until then, Adam may well continue to use the Court to delay our fair divorce, enforce the currently-ordered inequitable judgments, and consume my and the Court's limited resources in doing so.

Elizabeth Fitzgibbon, Petitioner

Subscribed and sworn to before me this 12 day of April, 2023.

Lawrence G. Vesely
Notary Public, Brown County, WI
My commission is permanent.

LAWRENCE G. VESELY NOTARY PUBLIC STATE OF WISCONSIN

nt: 03/15/2023 at 02:27 PM
om: Adam Fitzgibbon
o: Elizabeth Fitzgibbon (*First Viewed: 03/17/2023 at 05:06 PM*)
bject: Re: Latest motion

Exhibit A
These 5-pages are a single Our Family Wizard (OFW) email thread (oldest message at the bottom)

e never compromised on a 60/40 that was a number you slipped in there that got past me. I thought joint custody meant 50/50 placement. A mmon mistake most people make including me.

Adam claims that he missed the 60/40 custody %'s in:
- (2) signed MSAs (Original & Hand-Edited Amended)
- multiple other MSA drafts,
- multiple negotiations, and
- our February 7, 2022 divorce hearing, during which h verbally confirmed his agreement to CC Bermingham'

nce again I have all your text messages pre and post divorce. They're very interesting lol

ur letters lack substance. I've already read your "sworn to be true" affidavits.

Worse, these are two critical numbers that I "slipped ir there that got past" him? **Adam is a world-class liar and rarely makes such easily disprovable mistake: Amazingly, he expects the Court and me to believ he made no other numerical mistakes in our MSA!**

On 03/15/2023 at 01:16 PM, Adam Fitzgibbon wrote:

To: Elizabeth Fitzgibbon (*First Viewed: 03/17/2023 at 05:06 PM*)
Subject: Re: Latest motion

The judge is going to sure love to see our text messages lol pre and post divorce...most of it your own words.

Adam ignores that on April 26, 2022, he and I both swore to CC Bermingham that we were not just unable to agree on the chang to the lost MSA, but that we were unable to recreate the lost MS through any combination of texts, emails, or discussions. As suc we were ordered to co-create a new reconfigured MSA, which Adam not only failed to do, but prevented me from doing so.

On 03/12/2023 at 07:15 PM, Elizabeth Fitzgibbon wrote:

To: Adam Fitzgibbon (*First Viewed: 03/15/2023 at 01:13 P*
Subject: Re: Latest motion

I'll reply to the various Mar 4 2:50 AM and 4AM emails you've stacked in the email chain below.

Once again, you're welcome for A.J.F. positive attitude about you. Indeed, the past year has been rough on him, as everyone has noted. We had dinner at Grandma's house the other day. He LOVES going there! The first thing he did was run to her candy stash for a bag of M&M's. Then he started making his favorite mac and cheese on the stove. He's rational – he loves tasty treats, watching TV, and being coddled withou responsibilities. That's what grandma's are for, I suppose. Not moms, but A.J.F. doesn't know that yet...and not dads, but A.J.F. really doesn't know that yet, either.

Adam never expressed an interest in my idea of 80% placement for $80 month less child support. This disproves his assertion from 3/4/2023.

Do you honestly think that the reason I care about our son's placement (of which I didn't get our agreed-to percentage of) is for child support (of which you were delinquent in paying for over an entire year)? If so, would you offer me this deal: 80% placement (with plenty of time for you during "premium time" (weekends/breaks)) in exchange for $80/month LESS child support for you? Think of the money you'd save! By your own admission and preferences, 60/40 was the compromise from A.J.F. 90/10 historical placement time and what placement should hav been post-divorce given his familiarity and time spent with each of us. This had literally no relevance to child support. However, your email isn't new. Instead, because you've repeatedly sought to reduce child support by reducing A.J.F. placement with me, it's becoming clear that you're projecting your own view that A.J.F. is more of a cost burden than a child to cherish and develop.

Moving on: when have you contradicted yourself? Reread your texts and emails (about literally any subject) and do a keyword search for "$". Read your Court submissions, from your FDS to your letter to the Court. Compare these with your oral testimonies. There are dozens of material examples, Adam. These are not my "assertions" -- I've already showcased a few in my letters to the Court, but our entire May 31 hearing centers on your statements. Your documents are all there for the world to see. However, it was really not worth discussing your claim: when you also stated to the Court that you did not accurately remember our changes, such as what you and Culp stated on Nov 16. However in the days leading up to the January 6 hearing, during it, and then afterward, you crossed the line into perjury/misrepresentation when you began making unambiguous, fact-free, evidence-free claims. It's really quite a list.

Frankly, I think that neither of us remember the exact edits, and I've no need to demonstrate that I accurately remember, as even if I did, you'd likely reject them, so our best recollection guess is not the solution, but to restart of a negotiated process would be, exactly as CC Bermingham understood and ordered on April 26. That has been and remains the easy path. Indeed, to that point (and yours), I can't even count the hours I've dedicated to this nonsense, but I very much think that the pursuit of justice will be worth it in the end. Trust that I will continue working

decisions on conjecture. As for your testimony, the cost of maintaining integrity is irrelevant – one either still has it, or they sold it too cheap.

Related: we can prove our starting assets (and likely will) in a few months. I was already prepared last year, before your attorney bailed (just prior to our planned depositions and mediation).

RE: The MSA "missing" pages...again, this is completely, entirely inaccurate and irrelevant. Please study my email (appended below) and those I sent in December before your death-threats began. I've literally exhausted these topics for the last year in an effort to correct the Court's initial clerical error and then overcome your interference and obstruction. I've nothing more to add to the matter -- you have the information, in OFW, testimony, and affidavits, even if you choose not to use it.

On 03/04/2023 at 04:02 AM, Adam Fitzgibbon wrote:

To: Elizabeth Fitzgibbon (*First Viewed: 03/04/2023 at 12:20 PM*)

Subject: Re: Latest motion

You'll receive the text messages when the Honorable Judge Keberlein receives them. My parents and I have put this all together. When I have i contradicted myself? One again no examples just more assertions from you. Culp told me we have an msa in the system already approved by bermingham so he wanted to go with that one and just fill in the 2 missing pages. That was his strategy and I had no objections to it. I was following his legal advice. So That doesn't mean I contradicted myself. I'm the one dragging this out??? You've got to be kidding me! We have legal msa and now I'm using it but you're contesting it again.

Just a reminder: Less then a year from now A.J.F. will get his wish and be with much more than he is now. Last Wednesday he was crying in my arms not to go back to your house....again

The only reason you will not grant A.J.F. wish is bc your child support will be reduced considerably.

On 03/04/2023 at 02:50 AM, Adam Fitzgibbon wrote:

To: Elizabeth Fitzgibbon (*First Viewed: 03/04/2023 at 12:20 PM*)

Subject: Re: Latest motion

App. AB-12 Page 212

I'll give one example: I came into the marriage with all the assets...that's a statement from you. Yet it fails to list any of those assets. (I guess your green rusty ford taurus was an asset lol you sold for 1500$ to some guy) It's a totally made up assertion just like everything else you submit to the courts.

Once again I have all our text messages. You do realize that correct? The fact in early March when I asked you for the amended msa (you even sent a pic of it to me) you refused to give it to me bc I had an appointment with the bank Saturday morning to refinance. That told your dad and me something fishy was going on we just weren't sure what it was at the time. Later on I obviously found out bc I was supposed to get half the etrade and voya account. If I would've seen that back in March of last year I would've been extremely angry. So you hid that from me. 3 changes were made to the hand amended msa. House value was changed the etrade and voya were split. Once again I have all the text messages. Keep in mind these are your own words pre and post divorce in these text messages. They will be submitted to the court this time for keberlein viewing. FYI my statements during the deposition are in line with your text messages pre and post divorce.

judge keberlein ruled overall correctly. I think he did a very good job given the situation he was put in. Was his ruling perfect"no" i was supposed to get half the etrade account. I respect his ruling and I decided to move on with my life. I'm not delusional like you bc I don't walk into the courtroom expecting everything to go 100% of my way every time. What's really sad you turned this into your career. Your life is consumed by this stuff. You admitted to me you spent 80 hours doing this I spent 26 hours doing that etc... what is wrong with you lol? God only knows how much time and money you have dedicated to this unholy endeavor.

EXCELLENT! Adam kindly confirmed that neither the Court's Second nor Third Amended MSA is a facsimile of the lost MSA. Adam and I disagree why, but because the Court so egregiously favored Adam, he was graciously willing to "move on with [his] life". A recreated, stipulated MSA could only be valid if either 1) all parties agreed that it was a facsimile, or 2) all parties agree that it is an acceptable substitute. I agree with neither. **As such, no existing MSA is valid.**

A year later, **Adam continues to express frustration that he could not force me to transfer our home to him and refinance our mortgage using the invalid and incomplete Original MSA** (incorrectly ordered 2/15/2022). This is despite Adam's access to the missing pages since April 2022, weeks before our May 6 deadline for a new MSA and a month before the refinancing deadline. **Worst of all: Adam knew the Original MSA's financial terms were not what we had agreed to on 2/7/2022, but he tried to force the matter anyway, which I regard to be fraud.**

On 03/02/2023 at 12:22 PM, Elizabeth Fitzgibbon wrote:

To: Adam Fitzgibbon (*First Viewed: 03/04/2023 at 01:39 AM*)

Subject: Re: Latest motion

You withheld information from the Court and me this past year that could have saved all of this heart-ache and head-ache? Why didn't you disclose this months (or even a year) ago? Please upload it here ASAP. I'll be quite glad to work with you to get the MSA fixed so that we can both provide our consent. Beyond assets, it would be great to fix the other issues in the 1/6 MSA as well (language/terms, Exhibit), but any steps in the right direction would be delightful and a dramatic departure from your April 26 and November 16 statements to the Court.

I wholeheartedly support the above but sense it may still not be enough to get the MSA fixed.

You have contradicted yourself on the financials alone at least a dozen times. On Jan 6, you testified that you even "remembered" after repeatedly acknowledging / testifying you didn't. I never testified that I remembered. As such, you are the only one who will have to explain t the Court your endlessly varying testimonies and submissions. My role is simply to present such information so that the Court realizes they relied upon incredible information. What will probably save you from contempt/perjury is your admission that whatever information you have chosen to withhold surely isn't the extent of the edits that both you and I acknowledged making, and further, that what information you do have may not be accurate, since neither of us have seen the actual edits for 13+ months, so every message and communication since Jan 28, 2022 is in doubt and can only be interpreted as, "I believe".

How does it go? "Oh the wicked web we weave..."

Moving on, I'm surprised by your ongoing misunderstandings of our case and MSAs. Morrell did not cause the Court to incompletely scan the Original MSA. Morrell owed you nothing because you signed nothing with him. For 10 months, you and your attorney had a copy of Morrell's last piece of work, which are the only documents I've had. Morrell wasn't in the kitchen with us debating and hand editing the Amended MSA. Morell didn't cause the Court to lose the HE Amended MSA. Truly, please study my December 7 and 8 OFW messages and my Supplemental Affidavit (Doc #91) as well as my attorney's Motion to Reconsider and Motion for Relief/Declaratory Order on a few of th reasons why this MSA (or our divorce) is unlikely to stand.

What's sad/tragic about your latest misunderstandings (a near mirror of your dozens and dozens of December nothingburger "missing two pages" rants) is that the more you delude yourself into believing something other than the truth, the more you'll probably resist it and the corrections necessary to advance our case. Simple: we won't get where we need to go until we get on the right path.

The fast and easy path to fixing this is restarting the process where it went wrong, which is what you agreed to do with me on April 26, 2022 (when you and your attorney told Bermingham that it wasn't possible to recreate the MSA).

The alternative path is a long-stream of litigation to incrementally fix the MSA and the past, an inelegant, expensive, and time consuming, but it could work. Do you really prefer the stream of motions, each of which could escalate to appeals at the state then federal levels? It's not like what you and your family have done has been forgotten or that, through the Court's mistakes and your obstruction and fortune, I'll write off most of my assets. The backlog of 15+ contempt charges only needs to be pursued if Winnebago doesn't reopen the case, as appeals could take years to resolve, yet statutes have filing deadlines, so we'll soon have to begin parallel contempt and appeal litigation. Meanwhile, whether it's your latest allegation of my "fraud" (your email below) or your contempt motion, to be heard on March 30, you'll continue doing more of the same to me for the same reasons -- a near endless stream of motions because the basis from which we're working from is incomplete, inequitabl and illogical.

If our case is reopened, all past orders and terms are voided, few (if any) outstanding terms are enforceable (or contemptuous violations) and you get away scott-free on most of your wrongdoings. For me, that's a hefty price to pay, but it's worth getting on the fast and easy path.

Despite Judge Keberlein's best intentions, his decision on Jan 6 didn't help matters. While we can't get back the past 13 months, we can certainly try to avoid repeating this same thing for the next 10.5 years. You're not obliged to take the fast and easy path, but I am surprised to see your ongoing resistance to getting it fixed sooner rather than later. For a year now, you've managed to compound the simple Clerk's mistake into a truly epic mess (or "circus" if you prefer), and from your latest contempt motion and emails, it looks like you're set on keeping it going. Why?

On 02/26/2023 at 11:54 AM, Adam Fitzgibbon wrote:

...**because the unsigned, unapproved Amended MSA was irrelevant**, even if it included the missing 2 pages to graft into a new unsigned, unapproved MSA. Adam sought to use it to force the home transfer and refinancing, just as he did 2023.

To: Elizabeth Fitzgibbon (*First Viewed: 02/28/2023 at 09:25*

Subject: Re: Latest motion

One note I might add to this circus you have created. Back in March of last year I asked you for msa you had. It was clearly different than the one I received from the court. After I got the correct one sent to me after they also screwed up and sent me Hanna Fredrick's msa to me by accident which I gave to her dad. I requested The one you had from you. You refused to give it to me and I wasn't exactly sure why and your dad also wasn't sure either. As time went on it occurred to me it has the missing pages 3&4 and also did you possibly commit fraud? It turns out you did commit fraud. We both initialized the changes to be made to the etrade and voya account. It was 4:36am next to stove by the toaster. I remember it quite clearly I just wasn't 100% sure on the house value. I knew it was between 195000 and 210000 but I just couldn't remember not the exact number. Basic algebra told me it was most likely 205000-210000$ but I didn't want to merely guess.

Jeff Morrell was also supposed to send me a copy of everything I signed with him/you despite him not representing me. Three separate lawyers and a retired family court commissioner told me that. Even Larry will tell you that. Jeff morrell is a poor lawyer. That's what others in that industry have said about him.

Once again I have all the text messages that I have now compiled.

On 02/18/2023 at 02:17 PM, Adam Fitzgibbon wrote:

To: Elizabeth Fitzgibbon (*First Viewed: 02/18/2023 at 06:13 PM*)

Subject: Re: Latest motion

For someone that claimed to know*

On 02/18/2023 at 02:01 PM, Adam Fitzgibbon wrote:

To: Elizabeth Fitzgibbon (*First Viewed: 02/18/2023 at 06:09 PM*)

Subject: Latest motion

Not only were the marriage assets not split equally it is completely in your favor. I was to receive half the etrade account which I clearly didn't receive to equalize the split. I have all the text messages that will be submitted to the court and they're detailed. They're not these baseless accusations without substance.

I will completely debunk this nonsense line by line.

FYI: Your child support is paid in full.

Six months after CC Rust ordered him to return our son to me, **Adam finally excused his kidnapping and withholding of our son for 79+ days by claiming 1) "It was the Wild West" and 2) A.J.F. and I deserved such treatment for upholding the custody terms of our (temporarily-ordered) MSA and to do so, necessarily rejecting Adam's periodic placement schedule.**

Accusing me of a felony again(kidnapping) it was the Wild West and you refused the 6/8 schedule in mediation which is essentially what we have now. The schedule we have now is our schedule. Don't forget your lawyer requested the GAL's scope be expanded. I agreed knowing it would benefit A.J.F. That She would also create a schedule that helped A.J.F. and she did.

The bank story that doesn't die. You still got your 10,000$ as I got my 10,000$ cfcu also said this wouldn't impact you at all.

You can't get a house no bank would give you a loan lol I almost couldn't refinance the house I was right on the edge. Unless you have another stream of income that I do not know about. Hmmmm
I lived off our assets story that doesn't die. (Explain to me how exactly) was the land generating income or the house? was I receiving monthly checks from them? To answer those questions it's NO

Since you're asking for full litigation this is what will happen in the tiny chance this goes anywhere.

Placement will be 50/50

That's just for starters

For someone that knew who claimed to know nothing about our finances now has become an expert on them. Everything was split on the table in the living room and printed off and given to Jeff Morrell. Everything in the basement was split and in fact you were the one that did th splitting. Then you would come during the day while I was at work and take whatever you wanted. Then A.J.F. would be crying about it and accusing you of stealing stuff and money from me. THAT IS WHY A.J.F. SAID THOSE THINGS! That's why I asked you to finally stop doing that bc A.J.F. didn't like it.

YOU printed off the 2nd amended msa during the December 20th status hearing. Now you're trying to amend the amended msa that you wanted. Lol

There is almost no truth in anything that Adam wrote on this page.

1) If everything was split on the table in the living room, printed off, and given to Attorney Morrell, why did we make hand-edits to the MSA, sign it, and submit it that same morning? We did not because Adam inaccurately remembers what happened that day. If Adam was correct, then Attorney Morrell would have integrated the changes into a new typed version, which we would have signed without hand-edits, but that did not happen.

2) The basement "undisclosed assets" remain in dispute, including what they were, their value, how they were divided, and what the final allocations were. Regardless, many of my assets remain at our Lowell home because Adam would not permit my access. **Our son, A.J.F. was never present when I moved assets out of the home as I knew that would be very traumatic for him even for items of little to no sentimental value to him (e.g. foodstuffs, my clothes, etc.). As such, the only way that A.J.F. understood what had happened to anything that I properly removed from the home was from Adam telling him that I "stole" from "them", which caused A.J.F. incredible distress and fomented distrust with me.** In fact, because Adam performed a bulk of the asset dividing without my presence (but with A.J.F. present!), A.J.F. who is incredibly sensitive and sentimental, would often breakdown in tears during his placement time with me because Adam kept dividing our belongings and adding to a "throw out pile" in front of A.J.F. which was incredibly distressing for him. As a result, even though my rental home is a fraction of the size of our Lowell Pl home, for A.J.F. emotional well-being, I ended up taking the bulk of the "throw out pile" to make the transition less traumatizing for A.J.F. To this day, A.J.F. occasionally checks on these items, stored in A.J.F.'s closet (or the home's basement). Adam's actions are just one of the many forms of mental and emotional child abuse that Adam employed to control my actions through our son's perceptions and distress, but there are many video recordings (most in support of my motion for sole custody) that document Adam's other forms of abuse of A.J.F.

lessage 1 of 1

ent: 04/04/2023 at 05:46 PM
rom: Adam Fitzgibbon
o: Elizabeth Fitzgibbon (*First Viewed: 04/04/2023 at 08:25 PM*)
ubject: Re: BB

Exhibit B

Only the highlighted portion is relevant to the affidavit to which i is attached.

es, someone needs to be billed I took that responsibility. You're also obligated to pay half just like karate and tuition. These are not separate issues ey are all one in the same. The irony again is you signed him up for karate and you enrolled him in NLS Once again this not up to you. FYI Your lano email clearly states otherwise.

our lawyer has not responded to me regarding your contempt of court charge. All pdf's were sent to you and him. I would do this over the OFW as ell but it doesn't allow pdf's apparently bc I tried.

o you understand what was submitted to judge Keberlein yesterday is only 5% of what I have.

/e are legally divorced the only financial information you'll receive from me will be my W-2 for now on which you have received from me 3/30/23 a our contempt of court hearing. If I am not in possession of yours come April 16th expect another contempt of court to filed against you mediately. I want to know how you afford all these lawyers and vacations plus pay bills. I certainly can't afford that so logic would dictate you mak ore money than me. I understand when it comes to A.J.F. your wallet magically becomes empty. I'll mail another w-2 be to safe. You and your lawye ave no moral qualms about lying in court and on those ridiculous affidavits. I can already hear the bs claim it was never sent.

App. AB-16 Page 216

Re: MSA Proposal

From: adam fitzgibbon (fitzman96@yahoo.com)

To: eaadler87@yahoo.com

Date: Tuesday, June 14, 2022 at 04:12 AM CDT

Exhibit C

Single email thread containing my June 12, 2022 MSA proposal (update from May 5, 2022), incorporating the 60/40 + $765/mo terms from April 26, 2022 meeting with CC Bermingham.

I'm not doing it so drop it.
My lawyer has already instructed me about the msa.
Your argument as to why you get him 60/40 to Jill bc it's on that piece of paper. That argument also applies to the rest of the msa. Do you believe my lawyer to be an idiot? Did you think he did not tell me these things beforehand?

Sent from my iPhone

> On Jun 13, 2022, at 11:21 PM, Elizabeth Adler <eaadler87@yahoo.com> wrote:
>
> Adam –
>
> A joke? No, but thanks for asking for confirmation.
>
> As an aside, consider re-examining maintenance. There are several advantages for you (and arguably none for me) over a larger lump sum asset split, so your objection was a surprise
>
> Until Friday, I welcome constructive feedback on it, but otherwise, after 3 months of trying to get a resolution with you (remember your comment, "get a hobby"?), it's time to move forward.
>
> Let's make it a productive week.
>
> On Sunday, June 12, 2022 at 10:26:29 PM CDT, adam fitzgibbon <fitzman96@yahoo.com> wrote:
>
> 1500$ a month for maintenance sorry that's hilarious wtf lol plus child support
>
> Omg You've literally lost your mind
>
> I will send this to my lawyer for a good laugh.
>
> Did your lawyer and you really come up with this?
>
> We haven't wrapped a single thing not even close.
>
> Sent from my iPhone
>
> > On Jun 12, 2022, at 10:11 PM, adam fitzgibbon <fitzman96@yahoo.com> wrote:
> >
> > Lol is this a joke?
> >
> > Sent from my iPhone

On Jun 12, 2022, at 9:55 PM, Elizabeth Adler <eaadler87@yahoo.com> wrote:

Adam –

I'm pleased that we're finally wrapping up a defined placement schedule and key elements of our parenting plan. I'm certain that the final agreement we make will reflect A.J.F.'s best interests. I sincerely expect to see significant improvements in his mood and behavior, which will benefit all involved.

Looking forward, it's past time to wrap up the MSA as well. To keep things brief, my counsel and I re-reviewed our pre-divorce financial situation as well as everything that has happened (and become visible) since then. Put simply, we're at a crossroads, as I hope you realize. The easy path is gaining agreement on an MSA and move forward with our lives.

As such, here are key highlights of what I propose:

- $765/mo child support, to be revised as income and custody change
- $1495/mo maintenance for 24 months
- 60/40 placement split, joint custody
- Placement schedule, mutually determined annually by 1 October of the preceding year (e.g. 10/1/2022 for CY2023)
- Home-school (curriculum mutually reviewed, before/after annual standardized testing, annual mutual decision whether or not to continue based on standardized testing results, at least 2 hours of group socialization 5-days/week, equally split direct and support expenses, $0 compensation for me as primary teacher, $0 compensation for you in supporting A.J.F. completing his homework)
- 2.5% per month interest rates
- You may claim and receive all future tax and federal benefits for A.J.F. to the extent these are available and allowed (e.g. future value of credits and deductions for IRS and WI are estimated to exceed $40,000, spanning Child Tax Credits, itemized deductions, Sch CS college savings accounts, and maybe someday, Sch PS private school tuition)
- Property: You keep everything except $177,000 ($17,000 in 15 days, $160,000 in 60 days). I am willing to accept tangible property at my estimate of fair market cash value
- Mutual agreement not to sue each other for any matters pre-dating June 11, 2022

The above reflects generosity on my behalf, in exchange for a rapid and peaceful closure to the MSA challenges we have faced. I believe I am eligible for more, even if arranged differently than the above, but prefer to avoid the mutual costs of a contested divorce and related delays. Some aspects of the Original MSA are no longer possible, so I have factored such considerations into the above.

Also, I think there are a handful of refinements that we can make for A.J.F. benefit. As an example, we can better optimize A.J.F. healthcare than the generic approach that Jeff Morrell drafted and include additional details to minimize future miscommunication and hardship. Regardless, such refinement language should follow re-agreement on an MSA's major elements.

It's my hope that you'll seriously consider the above, which I offer until June 17, 2022. If the big picture can be agreed-upon, I'm willing to incorporate it into an MSA for your review, refinement and approval, allowing us to separately celebrate Independence Day without further hardship or expense.

.essage 1 or 1

nt: 02/17/2023 at 09:43 AM
'om: Adam Fitzgibbon
ɔ: Elizabeth Fitzgibbon (*First Viewed: 02/18/2023 at 11:20 AM*)
ıbject: Transfer of assets

Exhibit D

This was my first notice (and threat) from Adam of his intent to transfer and refinance our real estate. It closely followed my 2023 motions for Reconsideration and Relief/Declaratory Order

ıis is a 5-day notice to sign for assets acquired through legal proceedings. If you fail to sign within the 5-day given period I will be forced to file ntempt to court against you. I will not be subject to penalties for your insubordination.

FILED
04-10-2023
Clerk of Circuit Court
Winnebago County, WI
2021FA000564

STATE OF WISCONSIN, CIRCUIT COURT
WINNEBAGO COUNTY
FAMILY COURT BRANCH 3

In re the marriage of:

ELIZABETH ANNE FITZGIBBON,
Petitioner,
and
ADAM PAUL FITZGIBBON,
Respondent.

CASE NO. 21 FA 564

AFFIDAVIT IN SUPPORT OF MOTION TO STAY AND ALL OTHER CURRENT MOTIONS

STATE OF WISCONSIN)
)ss.
COUNTY OF WINNEBAGO)

Elizabeth A. Fitzgibbon, after being duly sworn on oath states as follows:

1. I am the Petitioner in the above action. I make this Affidavit in support of the simultaneously-filed Motion to Stay as well as in support of my:

    - First Motion for **Relief and Declaratory Order** (Document 39-40)
    - Request to hear de novo my Motions heard on January 26, 2023, including:
        - **Contempt – Counseling** (Documents 85-86)
        - **Change Custody – Sole and Primary Placement** (Documents 99-100)
    - Motion to **Reconsider** (Document 139)
    - Second Motion for **Relief and Declaratory Order** (Document 147)
    - Motion to **Change Custody (School)** (Documents 161-162)
    - My April 7, 2023 filings, which have pending Document ID numbers and include:
        - Request to **hear de novo the Respondent's March 30, 2023 Order to Show Cause** ("OTSC", which the Respondent filed as Documents 148-150)
        - Motion for **Contempt – Joint Custody (School)**
        - **Supplemental Affidavit Regarding Pre-April 26, 2022 Communications, RE's Document 166**

2. This Stay is beneficial to grant because:

    a. Without the Stay, I will suffer irreparable harm resulting from the loss of my Constitutionally-protected rights of due process and equal protection.

    b. I am likely to succeed in reversing some or all of the Orders, Judgements, and Marital Settlement Agreements (MSA(s)) that are based on the errors of fact or law used in past Court meetings.

    c. There is minimal to no harm to the public interest as a result of granting my Stay Motion, as the Respondent currently benefits from retaining and using my assets as well as the lower (3.375%) interest rate of the mortgage we currently share. Further, until correctly guided by the Court, the Respondent is likely to incur additional harm, such as again paying to apply for a mortgage.

3. The January 12, 2023 Judgment and Third Amended MSA ("3A MSA") build upon an unsound legal foundation (and therefore necessitate a Stay) of:

    a. The Court's original clerical error that resulted in our lost and final MSA,

    b. How the February 7, 2022 "divorce" was informed, processed, adjudicated, and subsequently handled all the way through its January 12, 2023 amended Judgment and 3A MSA, and

    c. The Respondent's actions and obstruction and conflicting materials, affidavits, and testimony.

The OTSC built upon the 3A MSA, so the Court's finding from the OTSC hearing also necessitates a Stay.

4. The Motion to Stay is already supported by extensive materials. The following Wisconsin Circuit Court Access case documents are to be fully incorporated herein:

a.	#20	My first letter to the Court, the problems of which have yet to be resolved, including my prescient final question to the Court
b.	#39	Affidavit in support of my first Motion for Relief and Declaratory Order
c.	#54	Affidavit in support of my Motion for an Emergency Hearing
d.	#59	Supplemental Affidavit in support of my Motion for an Emergency Hearing
e.	#86	Supplemental Affidavit in support of my Motion for Contempt
f.	#91	Supplemental Affidavit on my efforts to co-create with the Respondent a new "reconfigured" MSA with which to finalize our divorce
g.	#99	Affidavit in Support of the Motion to Modify – Custody and Physical Placement
h.	#112, #116	Letter to Judge Keberlein re MSA changes
i.	#112 Exhibits	Included with Document 112 but re-uploaded January 31, 2023 as appendices to the Motion to Reconsider (Document 139)
j.	#139	Affidavit in support of my Motion to Reconsider
k.	#147	Affidavit in support of my second Motion for Relief and Declaratory Order
l.	#TBD	Supplemental Affidavit Regarding Pre-April 26, 2022 Communications, RE #166

Please note that for clarity, all citations that follow and are formatted "(page# [line #])" refer to specific portions of a hearing transcript, with the default being the January 6, 2023 hearing (Document 135). For brevity, barring specific references to the contrary, all dates are of the year 2022, and the hand-edited, Amended MSA (signed January 28) will be abbreviated as "HE Amended" or "lost" MSA. Lastly, unless a version is specified, the generic term "MSA" simply refers to the MSA (or MSA term) that I sincerely believed to be in effect at that time; this should not impact my analysis and conclusions. All MSAs contained much common language (e.g. "joint custody"), even if each version had some key differences.

Context for this Affidavit:

5. My attorney and I reviewed the Court's Order, Judgment, and MSAs (Documents 119-127) as well as available transcripts (Documents 135-137). We filed our January 31, 2023 Motion to Reconsider (Document 139) to address the incomplete and inequitable Judgment and MSA(s) resulting from the January 6, 2023 hearing. We also filed the February 16, 2023 Motion for Relief and Declaratory Order (Document 147) to address Adam Paul Fitzgibbon's ("Respondent") misrepresentations that led up to the unfair and inequitable February 7 divorce hearing and which subsequently misinformed the Court during the January 6, 2023 hearing. While each Motion addresses errors of law and/or fact, both Motions are complementary and seek the same goal: find and declare the divorce void so that these errors can then be corrected. My other Motions are focused on specific, tactical solutions to child custody matters, as our son cannot wait for the Court and the Respondent to correct our divorce agreements.

6. In response to the Respondent's February 22, 2023 Order to Show Cause for Finding of Contempt (Document 150, which was filed in response to my aforementioned two Motions, per the Respondent's OFW message) and to prevent further harm from the enforcement of erroneous past Orders, my attorney and I filed our Motion to Stay the Orders, Judgments, and MSAs resulting from the January 6, 2023 and March 30, 2023 OTSC hearings in the event the divorce is (or at least the January 11, 2023 Order and its related January 12, 2023

Amended Judgment and Second and 3A MSAs are) not soon declared void prior to any deadlines associated with the ordered January 12, 2023 Judgment and MSA. We had deferred the Stay Motions to minimize litigation, but the Court's March 30, 2023 enforcement of the MSAs necessitated our latest filings.

Additional Facts and Perspectives to Assist the Court's Decision-Making:

7. **Being Family Court, a "meeting of the minds" during the February 7 divorce hearing must include the Court as a third party to the contract (on behalf of the State of Wisconsin), but it played no such role.** As referenced earlier, on April 26, Court Commissioner (CC) Bermingham stated that he did not know which MSA he reviewed or used during our hearing. The Court presented no evidence that he ever saw (or even knew of) the HE Amended MSA, so he clearly did not consent to our final (lost-by-the-Court) HE Amended MSA. Pre-dating the lost MSA's January 28 submission to the Court by a week are CC Bermingham's:

   - January 21 preparation notes (e.g. Document 14)
   - January 21 approval signature at the bottom of the Original MSA attached to the February 17 Judgment with MSA (Document 19)

   As such, the Court (by CC Bermingham's actions and statements) could not have known to what it was agreeing, so no "meeting of the minds" occurred that day based on the Court's own misunderstanding.

8. **Beyond our personal statements and submissions, the Respondent's and my actions immediately following the divorce hearing demonstrate that there was also no "meeting of the minds" between us on February 7.** Even the Court recognized this (Document 137, page 13 [2-3]):

   > COURT: "...given your sworn testimony before Court Commissioner Bermingham, I believe you had an agreement, okay? Now, **there may be some confusion or misunderstanding about it**, but I think you agreed to something."

   Here, I certainly agree with Judge Keberlein. The Court's transcripts show that this agreement included 60%/40% placement with mom/dad and $765/month child support from dad to mom. Unfortunately, not only is virtually everything else in question, but **it's also unclear whether even those two terms were understood**. One need only to look at the Respondent's and my diverging actions immediately following our hearing to induce at least the Respondent's disagreement with his sworn testimony:

   a. Parenting Plan with CY2022 Placement Schedule: We should have co-created a placement schedule (part of a broader parenting plan, defined at least by WI 767.41(1m)), as every ordered MSA directed us to do so in Section II (a), yet immediately following the divorce hearing, disagreement arose. The Respondent refused (and still refuses) to co-create any part of a parenting plan. Moreso, the Respondent rejected any change from our pre-divorce placement arrangements (i.e. our son was placed with the Respondent every Tuesday after school through Thursday after school, Friday after school through Sunday evening each week, along with my babysitting every Wednesday and Thursday from at least 4:30AM until school began). Whether evidence of his misunderstanding or his defiance, in effect, the Respondent initially insisted on our child's ~60% placement with him rather than with me. This 60% happens to have been the inverse of all ordered MSAs. Perhaps the Respondent misunderstood the assignment (mom vs. dad) of our son's 60% allocation? The Respondent has since stated that "60/40...was a number [Elizabeth] slipped in there that got past me" (Exhibit A, page 1151), though the Respondent fails to address how it "slipped by" him in the signed Original MSA (Document 15, 19), our multiple other MSA drafts, our multiple negotiations, and in our February 7 hearing itself, during which he verbally confirmed his agreement with CC Bermingham. **While he lacks credibility** from his contradictory statements, perhaps he prefers to lie than be viewed as stupid for misunderstanding what

placement actually meant – the Court can decide.

After months of my effort and the Respondent's obstruction to creating a placement schedule, I finally turned to the Court for mediation assistance on placement and school choice matters (Document 25), as I recognized the ongoing harm our different views of MSA terms caused. Rather than negotiate with me (even through a mediator), however, the Respondent sought to use the Court's powers to forcibly impose placement and custody terms he believed (or perhaps merely demanded) would carry over from our marriage. As specific evidence, one week after receiving the Order for mediation, he initiated litigation by filing his Motion to Change Custody and Child Support (Document 26), with both the Respondent and his parents submitting letters alluding to our pre-divorce "verbal agreements", citing my reliability with our verbal agreement as becoming increasingly "erratic over time", which, to the Respondent and his parents, was "intolerable", and if permitted to continue (without Court intervention) would be "beyond intolerable". Either each individually perjured themselves (and colluded as a group) to misrepresented our agreements, or they merely misunderstood the MSA.

b. The Respondent's Motion to Change Custody and Child Support (Document 26): **Beyond physical placement, the Respondent sought modifications to the Original MSA** (which, with regard to custody and child support, mirrors the 3A MSA other than a single name change) and specifically sought changes to **child support, placement allocations, vacation, out-of-state travel, holidays, choice of school, activities, responsibility for the health insurance premium, uninsured costs, and variable expenses. He even sought to clarify agreements regarding our life insurance policy and future auto insurance payments.** I disagreed with most (if not all) proposed changes. Regardless, on April 26, I suggested allowing us to negotiate these changes as part of CC Bermingham's ordered "reconfigured" MSA, and all parties agreed to try, therefore deferring the Respondent's motion. Clearly, **the Court's erroneously-ordered Original MSA (Document 19), including any unwritten agreements that may have satisfied the "meeting of the minds" requirement on February 7, misaligned with at least the Respondent's understanding of the MSA, so no "meeting of the minds" actually occurred.**

Further, any additional clarifying changes from our January 28 negotiation were obviously not yet incorporated in the unedited, unsigned Amended MSA (which is also the same as the Original MSA in these sections), and besides one simple name change, remain excluded from the Court-created 3A MSA (derived from the Amended). While both the Respondent and I agreed that most material changes to the Amended MSA were financial in nature (at least to the best of our recollection), the actions and statements of both of us demonstrate that many non-financial discrepancies existed between the Original MSA, Amended MSA, and the HE Amended MSA (that the 3A MSA sought to recreate), or such litigation would not have been necessary barely two months post-"divorce". This was not an accident; the Respondent was so committed to his views that he only withdrew his motion (Document 26) five months later, after CC Rust found him to have kidnapped and withheld our child for 79 days and denied the Respondent's attorney's Motion to stay proceedings that would further delay the Court hearing, prolonging my son's and my separation for more weeks (or even months).

However, the Respondent's diverging actions were not limited to 60/40 and $765/month terms.

c. Financial Withholding: For the year that followed our divorce hearing, the Respondent withheld all child support and virtually all of my assets. **If he believed that the HE Amended MSA was unenforceable, his withholding of my assets would reveal his willingness to perform immoral, illegal acts, which should harm his credibility. If, however, he believed that the HE Amended MSA was unknown and unreproducible, his withholding of my assets would reveal that any financial "meeting of the minds" had actually been illusory,**

undermining the Court's January 6, 2023 claim that we reached an agreement on February 7. As such, either the 3A MSA includes terms sourced from a party that should be regarded as discredited, or there is no "meeting of the minds" to substantiate the 3A MSA's existence.

Given the speed at which aforementioned large problems surfaced, it is logical to conclude that not all material issues were resolved prior to the divorce (even if the three parties believed otherwise at the divorce hearing) and that no "meeting of the minds" occurred that day (or any day since). The 3A MSA essentially mirrors the invalid Original MSA in these contested areas thereby upending whatever incremental progress we achieved (or believed we achieved) in the lost MSA.

These diverging actions substantiate Judge Keberlein's acknowledgment of "misunderstandings and confusion", but whether the result of unilateral or mutual mistakes, intelligent misinterpretations of uncertain language, or some combination thereof, such a determination is likely unnecessary to demonstrate that there was no "meeting of the minds" on February 7, possibly before, or even ever since. Despite his conflicting materials and testimony, his repeated kidnapping, his police records documenting his lies, and his written admissions of domestic abuse, even I struggle to believe that all of the Respondent's diverging actions can simply be regarded as malicious. Regardless, while the Court could find the Respondent to be consistently contemptuous of our agreements and Orders, it has so far not and instead seems to view the Respondent as merely "confused".

These diverging actions of the Respondent, however, are clearly intentional and long-standing. This is evidenced by the double impasses resulting from the second annual round of Court-ordered mediation (Document 145) and reflects the Respondent's continued unwillingness to co-create a placement schedule and parenting plan (now for more than a year), which necessitated my seeking the Court's mediation help on April 11 (Document 23). In fact, all of my Motions (noted in the first paragraph of this Affidavit) and statements ultimately stem from either the Respondent's misunderstanding or malice, and while the Court may choose one cause over the other, the Court cannot ignore our deviating actions (or their impact) or discount their MSA source.

9. **During (and after) the January 6, 2023 hearing, it remains clear that neither the Respondent nor I accurately recalled the hand-written edits ("hand-edits") made to the now-lost HE Amended MSA.** In the 10 days leading up to our divorce hearing, neither of us had seen or received copies of our MSA, which concluded our red-eye negotiations at 4:30AM on January 28. In our February 7 approval of our "MSA", we both relied on our memory of (and beliefs about) the document, as neither of us had (or were offered) copies during our hearing. We understood that we would receive official copies in the mail (along with our corresponding Judgment) following its conclusion. However, our inability to recall the details of the lost MSA well enough to uniformly implement them immediately after the divorce hearing (as demonstrated by our diverging, if not outright opposing actions) erodes any confidence that there was a "meeting of the minds" at the time of the hearing. Recognizing this, I submitted my April 5 letter to the Court.

As such, Adam (along with his then-retained attorney, Peter Culp) and I met with the Court on April 26, during which Adam swore to CC Bermingham that Adam did not know the hand edits made to our lost MSA, much less with sufficient accuracy to recreate it. I mirrored Adam's statement. **We did not simply state that we could not agree to the changes made. Instead, we swore to CC Bermingham that neither of us could individually, or even collectively, recall the changes, mutually accepting that the three months of written and oral communications between January 28 and April 26 were inconclusive, often contradictory, and insufficient for recreating the MSA.** I explained this in detail in my Supplemental Affidavit Regarding Pre-April 26, 2022 Communications. After his careful review, CC Bermingham agreed, and we set forth to co-create a new MSA.

There was no ambiguity in what we agreed to on April 26, or why. As such, on November 16, despite all of our written communications in Adam's (and my) possession, Adam's attorney reiterated to the Court that Adam did not know which hand edits were made to the lost MSA. Again, I confirmed the same, despite my attorney accidentally stating that I knew before he corrected himself (Document 136, page 23 [9-21]):

> ATTORNEY CULP: "**Mr. Vesely just said these parties know what** was on -- **was handwritten on the documents**. **My client doesn't**, **but** nonetheless, **he's saying she does**."
>
> ATTORNEY VESELY: "Well, my client disagrees with that. She just handed me a note that says I maybe have misspoke there."
>
> ATTORNEY CULP: "**I'm assuming everything is at issue**..."

Twice, both the Respondent and I testified (e.g. April 26 with CC Bermingham and November 16 with Judge Keberlein) that neither of us could recall the changes that were made to the (unsigned, unapproved) Amended MSA (Document 22). The Court acknowledged our prior "I do not recall" April 26 and November 16 testimonies but chose to seek from the parties (and accept as fact) such untrustworthy information from whomever was least incredible (46 [10-12] and 47 [8-13]):

> COURT: "So **I'm not saying she's not believable**. It goes to credibility. **I find it less credible**"
>
> - - - - -
>
> Vesely: "I think **Mr. Fitzgibbon's credibility is also in question because now if he's recalling something that he previously said he didn't recall**, I don't understand how that can occur either."
>
> COURT: "**I hold that against both of them, to be honest**."

No distinction was offered between the synonyms "believable" and "credible". Regardless, under judicial discretion, the Court chose to adopt the inconsistent testimony of the Respondent, while despite my consistency, discounted my credibility. **It is implausible that the passage of nearly a year aided the Respondent's memory, particularly given the Respondent's testimony that contradicted his prior sworn statements (six weeks earlier) and submissions (11 days earlier). As such, his January 6, 2023 (and more recent) claims that he accurately recalls should not be considered credible (and his testimony regarded as useless) in reconstructing the lost MSA, as it was on April 26.**

10. **On February 7, not all material issues had been resolved, and this has yet to happen, even now.** Clearly, the Respondent's statements, submissions, and actions this past year demonstrate that material issues remained at the hearing (and still remain today, per our impasses on the matters discussed in our Court-ordered February 15, 2023 mediation), as does disagreement over property and other terms. Further, no manufactured consent (whether forced or merely facilitated using financial misrepresentations) will generate a "meeting of the minds" as appears to have been the case of January 6, 2023. For example, the January 6, 2023 hearing revealed that one year earlier, the Respondent had misinformed the Court and me of financial facts (e.g. the $4,952, an 11% value difference in one brokerage account bundle), thereby preventing the resolution of all material issues (this was further detailed in the Motion for Relief and Declaratory Order -- Document 147). At the time of our divorce hearing, there was no written memorialization of our agreement in an MSA, which the Court acknowledged:

> COURT: "**I still don't even know what the judgement is because we don't have a written memorialization of it. We have a divorce, but not a memorizliation of what... was a stipulated contract.** (8 [24-25] and 9 [1-3])
>
> - - - - -

> COURT: "**I don't have a memorialization of what was agreed to**, that the parties swore that they reviewed, that they agreed to, that they drafted. So... **this is not a family issue**...**this is a contract issue**. There was a contract that occurred." (10 [13-23])
>
> - - - - -
>
> COURT: "this is one specific issue we need to address as far as a contract, what did they agree to... **the Court didn't have the document**." (20 [20-23])

This remains true today, as there is no current MSA (or other document containing mutually accepted terms) bearing our signatures, and given both the Court's and Respondent's abandonment of the April 26 agreement, there is no path for even achieving this without first voiding the divorce.

11. The **3A MSA is not a facsimile of the HE Amended MSA**. As a result, the 3A MSA lacks my consent (despite its initial sentences claiming that "both parties agree"), is unsigned, and is a counterfeit of the lost MSA.

    a. The ordered Second Amended MSA excludes allocation of all assets, even those referenced in the MSA, and the 3A MSA only partly corrects it.

    b. If the sum of the divided marital assets does not closely align with my records, then the addends of the sum (e.g. specific awards) must be inaccurate.

    c. Both the Second and Third Amended MSAs reference, but exclude, an Exhibit.

    d. Only if all parties agree that the 3A MSA is a facsimile could it be regarded as such, but I have not agreed. As such, it is a new MSA, with all the ramifications it should entail. **Further, on March 4, 2023 at 2:50AM, the Respondent confirmed that the 3A MSA is not a facsimile** (Exhibit A, page 1152), as detailed in my Supplemental Affidavit Regarding Pre-April 26, 2022 Communications.

    e. While I have spent a year trying to help the Respondent and the Court, I deny any obligation to prove (22 [12-13]) that a new MSA is a facsimile of the lost MSA or even prove that a new MSA is not a facsimile of the lost MSA. As the accountable steward of the lost MSA, the Court is singularly responsible for demonstrating any document it creates is a facsimile of the lost MSA. The Court is unlikely to ever be able to do so, and it has not tried, as the Court has offered no evidence that the 3A MSA is a facsimile of the lost MSA. Proof would be very difficult to ever establish, given the Respondent's and my testimony as well as the fact that the Clerk of Court (Tara Berry) and CC Bermingham believed that the signed HE Amended MSA (and its copies) submitted on January 28 were shredded before scanning. There is no reason to believe the 3A MSA is such a facsimile, and there certainly is no agreement that it is, beyond the Court's decree. The differences (custody, placement, large financial) are material, so beyond fairness principles, I will not dismiss the difference as unworthy of resolving. In short, **an MSA resulting from a stipulated divorce that lacks agreement (e.g. best memorialized by signatures) is not an agreement but a counterfeit.**

12. **The Court tempted only the Respondent to submit guesswork (at best, given his incentives), including:**

> COURT: "I want you to write on the MSA where you think the notes were and **what you think the notes said**." (13 [14-16])

(As alluded to in 11.e.) I viewed the approach as a path to unjustly rewarding the more convincing ("credible") party regardless of the facts (whether misinformed or misinforming), which was unfair, so I declined to materially participate. Instead, I reiterated my honest, consistently consensual position in an effort to move the Court in a better direction. In review of each of our "credibilities":

a. **Petitioner**: I have maintained my position from the beginning, and while I appreciate the Court's attempt to gather my best thoughts, the only cornerstones of this case have been my integrity, honesty, and consistency. Even the Respondent entrusted me to submit the only copy of our hand-edited ~$400,000, 12-year contract without further revisions (most anyone lacking my integrity and honesty would have made additional hand-edits to favor themselves, but I did not), since there were neither chain of custody nor version controls.

I did update my May 5 reconfigured MSA draft to form my June 12 MSA and shared its highlights with the Respondent, stating that I had included the costs of the Respondent's past offenses in exchange for my waiving all litigation rights to his past wrongdoings. With no objection to the financial totals, the Respondent rejected my proposed June 12 MSA, likely because it lacked the placement terms he demanded (which opposed the terms CC Bermingham stated on April 26 he had verbally divorced us under). Lastly, while I allowed the Respondent to manage our family's finances to minimize conflict with him, I have a Bachelors in Business from UW and am financially adept, as the clarity and transparency I brought to the family's assets vastly improved that which the Respondent offered in the Financial Disclosure Statements (FDSs). I have never attempted to coerce the Respondent into reusing the inequitable Original MSA (as it had been mutually voluntarily replaced by our HE Amended MSA) or any MSA inequitable to the Respondent.

b. **Respondent**: **During the hearing on November 16 (Document 136: 23 [12-13]), Attorney Culp again verified that the Respondent did not know what the hand-written edits were on the lost MSA**. This reiterated the Respondent's April 26 statement to CC Bermingham. Between these Court appearances, on September 23, the Respondent stated, "I don't remember what exactly was in the lost was msa" (per the Exhibit A referenced by Attorney Vesely in the January 6, 2023 hearing (22 [21-24])). Also, the Respondent had previously referred to the lost HE Amended MSA as "defunct" (the embedded image in his December 5 OFW message, Exhibit F in the January 6, 2023 hearing). Further, the Respondent's use of disclaimers such as "I believe" in his exhibit for the January 6, 2023 hearing (Document 106) undermined his written claims and conflicting sworn testimony that he offered during the hearing, accompanied by no evidence to support his claims. **The Respondent simply disagreed with the Court's point that "hindsight does not make a stipulation invalid" (9 [23]), as he repeatedly sought to use the pressure of our kidnapped child to coerce me into accepting the incorrectly-ordered Original MSA (Document 19), or even worse terms. Failing to coerce my "consent", the Respondent obstructed all progress, since the Respondent maintained his demands throughout 2022.**

13. **Key facts were misunderstood by the Court that affected the Court's perception of my credibility as well as the soundness of the 3A MSA.** I recognize that such opinions may be at least partly subject to judicial discretion, but I do wish to clarify what I believe to be the key errors made by the Court that inappropriately resulted in a bias against my credibility and resulted in an illogical, inequitable, and inappropriately-created MSA.

a. **I found no conflict between my testimony on January 6, 2023 and my February 7 divorce hearing regarding the entirety of the equalization payment** (35 [3-6] and 46 [13-22]), as the Court claimed. Despite being accused of misleading the Court, I did my best to explain myself on January 6, 2023. Both my testimony and exhibits were consistent with the February 7 hearing and were credible, yet the Court continued to seek details (pressuring me to guess), which I avoided to preserve my credibility and integrity. Even if I offered a guess that was eventually proven accurate, I would still have perjured myself from my prior statements. **During our February 7 hearing, CC Bermingham never asked me about a specific amount for the equalization payment, any specific asset valuations or allocations, nor did he ask the Respondent.** Had CC Bermingham asked such questions, we may have discovered the MSA problem much earlier and corrected it prior to being told we were divorced, but the procedural shortcuts taken by the Court

that day remain the Court's responsibility to correct and should not fault me for failing to recall such details, particularly when even CC Bermingham could not.

b. **I also found no conflict between my testimony on January 6, 2023 and at my February 7 divorce hearing regarding written agreements** (46 [13-22]). **CC Bermingham never asked about oral agreements that I had made with the Respondent regarding undisclosed assets**. Due to the Respondent's sensitivity of the undisclosed assets, I did not offer additional information that was not asked, but to that point, the Respondent also offered no additional information and is no more or less credible as a result.

c. By comparison, **the Respondent provided the list of all assets and values in the FDSs, which I copied and relied on, given the Respondent's familiarity and oath**. Misstatements in asset values (particularly during the January 6, 2023 hearing) should be thoroughly examined prior to awarding any assets. For example, the Respondent claimed an 11% decrease in value of E*TRADE and Voya ($40,000) during the January 6, 2023 hearing compared with the FDS reported value ($44,952) that I relied on during our January 28 negotiations. When dividing the property, I believe I accepted these intangibles at the Respondent's FDS value, yet the materially-varying values are suspicious, given the Respondent's incentives, history of hiding assets (evidenced by my Supplemental Affidavit that was supported by audio recordings that have been available to the Court since I filed Document 91 on November 15), and countless conflicting under-oath statements made in the past year, including during the January 6, 2023 hearing. Even identifying the ~$5000 discrepancy, **the Court did not balance the numbers, question the Respondent's testimony about the difference from his submitted FDS, or properly discount his credibility.**

d. **My materials received little to no attention from the Court.** In addition to prior examples of the Court's dismissal of key information, all 13 exhibits were somehow removed from my letter (Documents 112, 116) filed on December 30. These were offered to the Court by the Clerk in the hearing (18 [20-21] and 33 [13-18] and 44 [2-5]) but were seemingly dismissed without cause:

> CLERK: "Do you want me to pull it in and mark Exhibit G, Judge?"
>
> COURT: *<Never answered>*
>
> - - - - -
>
> CLERK: "...filed exhibits, but until they're marked and offered, they're just sitting in a queue that you cannot see."
>
> COURT: "That's okay. I don't need to right now."
>
> - - - - -
>
> CLERK: "And then **I'm going to just reject all of these exhibits** since none of them were offered or received, correct?"
>
> COURT: "**Okay**."

Exhibit G contained critical financial information I often referenced during the hearing. The 3A MSA cannot be reconciled with the information I offered in Exhibit G in addition to my sworn testimony that cited key portions of it. The Respondent even testified to large values of additional, undisclosed assets, but the Court made no significant effort to understand the accuracy of (or differences in) our statements, much less account for them in the 3A MSA.

14. **Creating a new MSA to use as "a jumping off point" (23 [18]) would be welcomed if it was either a facsimile or the reconfigured MSA agreed to by all parties, but it was neither. If a new MSA was anything else, I would not welcome it, particularly if it was one that required additional litigation to correct. The 3A MSA is inequitable in its distribution and is an illogical reversion from the trend of our negotiations, as substantiated by my increasing property allocations with each successive version (FDS,**

Original, Amended, HE Amended). Also, the 3A MSA was not appropriately co-created and lacks my consent, yet it purports to be the product of a stipulated divorce, which in the absence of my approval, it clearly is not. It is understood that I rejected the Original MSA and sourced from Attorney Jeff Morrell an updated MSA as a baseline for final negotiations. Facing a contested divorce unless he approved an equitable asset division, the Respondent agreed to both asset value correction (the unsigned Amended MSA included these mutually agreed-to real estate values as well as a corresponding uplift in cash equalization to reflect the increased equity) and additional asset re-allocation. These changes were captured in the lost HE Amended MSA. The Respondent and I were sufficiently satisfied with the January 28 outcome such that neither of us requested additional alterations prior to the February 7 hearing. In examining only property division issues, the 3A MSA massively deviated from the lost MSA:

a. **Rather than an overpayment to me, the 3A MSA awarded an overpayment to the Respondent of ~$48,000.** This counters every historical statement by the Respondent, including his December 27 Court exhibit (Document 106), claiming that the MSA provided an overpayment to ("favors") me with varying amounts up to $19,000. **Even as recently as February 18, 2023 in OFW at 2:01PM, the Respondent reiterated, "the marriage assets not split equally it is completely in your favor."** Our math differs, but given the added, traceable, and discrete assets I brought into the marriage (and my recognized need for start-up funds), the Respondent and I agreed that an overpayment was appropriate. As such, this makes the 3A MSA both inequitable and illogical as a facsimile to the lost MSA, as it counters our testimonies and materials submitted to the Court.

b. **Contrary to the Court's questions (36 [9-25] and 37 [1-25] and 38 [1-12]), the undisclosed assets were divisible marital assets.** These undisclosed assets, as categorized in Exhibit G (e.g. extensive weapons collection, precious metals, tools, perishables, and food equipment including canning machinery, pressure cooker, dehydrator, vacuum sealer, stock, and related materials), were in good measure known and inventoried. The inventory was supported by photos and included such information as make/model, condition, serial numbers (some, when applicable), and quantities. Also, these assets were appraised (to a similar or better standard as the real estate property). Per the MSA language:

    - By nature, these undisclosed assets were not "household items and personal effects, including clothing and jewelry".
    - By definition, these undisclosed assets were not "disclosed assets in [either parties'] agreed upon possession at the time of the final hearing".

    Instead, they were divisible marital assets, requiring either fair division or financial consideration in any new MSA. These represent >$40,000 in value that have not yet been fairly divided or properly considered in the 3A MSA. **The Respondent misinformed the Court by stating that the $77,000 equalization payment includes $5,000 "to cover for guns and miscellaneous things in the basement" (31 [20-25]), as even if it were true, it undervalues these undisclosed assets by >600% (>$30,000), since the weapons collection alone was worth >$14,500, or twice that of our combined car values.** However, as is shown next, the Respondent's statement was incorrect.

c. **The Respondent misinformed the Court with his statement regarding the $77,000 equalization payment and its components, which does not add up.** The Respondent makes this miscalculation clear to the Court, but it was never re-addressed in the January 6, 2023 hearing (and examination of the Respondent was not permitted). Per (31 [21-25]):

    > MR. FITZGIBBON: "The 77,000 includes the home equity payout and half the land payout. The land was valued at 20 -- or 40, and **then we added $5,000 on to cover for guns and miscellaneous things in the basement**. That's why I have it in here land and other items."

As shown on page 7 of the 3A MSA, the land has an agreed value of $50,000 based on improvements made to the property (e.g. significant clearing, cleaning, and planting of 48 trees, 14 of which were fruit-bearing) as well as the nominal appreciation from its purchase price of $40,000 several years ago. The undisclosed "basement assets" did not change in the few days separating the Original and HE Amended MSA filings. However, both the home and land were appropriately revalued in the Amended MSA, though the land by only +19%, while the home increased by +31% over the figures filed weeks earlier in the FDSs. The divisible property then included $104,000 for the home ($210,000 value - $106,000 mortgage) + $50,000 for the co-owned Marinette property (correcting the Respondent's full ownership claimed in Document 107). These two items are $154,000, which if halved, is $77,000. While I discussed the $77,000 figure in detail in my Supplemental Affidavit Regarding Pre-April 26, 2022 Communications, the $77,000 excludes not only "basement assets" but also consideration for the unequal, recognized, traceable contributions of each of us to these properties and to our marriage.

d. While it was certainly discussed, I do not specifically recall agreeing to parcel out any portion of E*TRADE or Voya, though these and all other brokerage accounts were discussed as vehicles for exchanging blocks of value. However, **the Respondent testified on January 6, 2023 that one half of either the E*TRADE or Voya accounts were his but that he did not know which (28-29 [21-1]):**

> COURT: "And that Adam, on Page 6, which falls under property division, noted that property award to wife, Line 4, E-Trade was crossed out and "half" was written, and Voya account was crossed out and "half of account" was written. It was one of these -- it was half of one of these accounts. He didn't seem to recall which one."

Yet 11 days prior, the Respondent believed he knew definitively (Document 106). Further, as recently as December 5 (Exhibit F in the January 6, 2023 hearing), the Respondent claimed both accounts were solely mine. These are only a few of the Respondent's inconsistencies. With an arbitrary and wavering basis of fact, the 3A MSA is unlikely to offer an equitable division.

e. **The Court identified (31 [1-8]), then discarded, the $4,952 (not $4,000 (31 [3])) difference between these aggregate E*TRADE and Voya-bundled values, but despite significant discussion of values on January 6, 2023, no consideration in the 3A MSA was made for the differences.** The source and magnitude of the differences warranted more discussion not merely for accuracy but to verify whether or not the Respondent's mistakes were accidental or fraudulent and then incorporate such information into determining his credibility. Further, when such large numbers are ignored, the 3A MSA is unlikely to be an equitable division.

f. **The 3A MSA does not encompass all assets and is therefore undoubtedly inequitable.** The 3A MSA does not align with the verifiable assets of our household as listed in Exhibit G (referenced in the January 6, 2023 hearing). All MSAs (Original, Amended, HE Amended, and 3A) exceeded the assets listed in the Financial Disclosure Statements, so the Court had no basis of fact from which to draw. The Court found that the Respondent and I had "made thoughtful agreements because the dollar amounts are so specific" (41 [12-15]), yet the Court did not recognize the draft nature of the unsigned Amended MSA, including how the numbers increased between MSA versions and our FDSs. Further, while some numbers were clear (e.g. balance of mortgage), other numbers underwent significant revision as we refined our MSAs over time. For example, the Court's reverence for the precision of a $77,000 marital property equalization payment would also apply to the precision of the $160,000 FDS valuation of our 451 Lowell home as well as our home's revaluation to $210,000 in the Amended MSA. The point is simple: precision of any specific dollar amount is not indicative of its accuracy, much less what the dollar amount includes and excludes. Further, the Respondent claimed that some values were discrete values, while other values were proxies for undisclosed asset mixtures; I used my own calculations (summarized in Exhibit G) that

do not match the Respondent's, whose calculations are consistently inconsistent and error-filled. In conclusion, only the final numbers, which are located within the HE Amended MSA, are valid, while all other values represent placeholders with varying accuracy and agreement.

g. **Individual terms cannot be reasonably viewed in isolation but only in the context of the whole agreement, as all terms of the MSA are part of an integrated consideration.** This is particularly true for non-standard terms (e.g. $765/mo child support, 60%/40% placement), which rest upon such context. Without context, the Court is unaware of the reasons why I allowed negotiations to fall below primary placement (until initiating divorce, our son was with me ~90% of the time). One such integrated factor was how the Respondent and I would schedule placement for our son, as we both agreed that the quality of time our son receives with us is even more important than the quantity of time. As such, we agreed to optimize that value by collaboratively creating ("co-creating") the physical placement schedule, just as it is written in Section II (A, B, C) of all accessible MSA versions. The Respondent's now year-long unwillingness to create such schedule represents either his breach of our marital agreement (demonstrating his contempt and the MSA's unenforceability) or his fundamental disagreement with the terms reached on February 7 (demonstrating no "meeting of the minds"). As evidence, he has never proposed a placement schedule that offered 60/40 placement for 2022 and has refused all of the near-dozen such proposals I offered that did so.

   Proper relief from the Respondent's resistance excludes assigning a periodic schedule (example: CC Rust's order on January 26, 2023), as this is a fundamentally different scheduling approach from the one in the MSA and undermines the entire agreement, of which placement allocation and scheduling design (including holidays) form an integrated consideration. More appropriate would be to enforce the MSA and compel the Respondent's participation (e.g. $ fine/day) or to simply assign one of the many proposals I offered to the Respondent that aligned with our MSA, at least until the Respondent appropriately participated. More broadly, the Court should always compel a negligent or unwilling party's participation with the terms in the MSA rather than overwrite isolated terms to which the parties consented, as by doing the latter, the Court undermines the entire agreement formed on the basis of integrated consideration. In other words, the Respondent's failures are not an open invitation to the Court to write new MSA terms, as it not only disrespects my compliance with (and my efforts to uphold) our MSA, but it breaks the MSA entirely.

h. **The 3A MSA is incomplete.** The 3A MSA misses one third of our assets, which the Respondent hid from the Court (most evidently on January 6, 2023, when I sought to provide transparency). It also misses the entirety of our agreements that allocate these assets to us, which the Respondent simply chose not to honor. Such agreements were due to have been fulfilled by May 2022 (90 days), in parallel with deed transfers and home refinancing, yet given the Respondent's litigation and behavior this past year, it now seems even less likely to be fulfilled without clear documentation.

   Beyond financials, the 3A MSA lacks the Exhibit referenced in Section II. Physical Placement and retains the Amended MSA's unrefined wording. Between these and the Respondent's sustained resistance to working collaboratively, we have yet to co-create a parenting plan and placement schedule for more than one year, despite my efforts and two rounds of Court-ordered mediation, the latest of which concluded as another double impasse on February 15, 2023 (Document 145).

15. **The ordered outcome (Judgment and MSA) was not only unfair, but it did not stem from a fair process that necessitated preserving the attributes of a stipulated divorce including mutual consent.**

    a. **Like CC Bermingham, I have always sought mutual consent and practical solutions, which the**

unorthodox April 26 agreement sought to achieve. CC Bermingham understood and communicated that he could not and would not force an agreement on a stipulated divorce. It was also clear to me then that even if the Court was empowered to do so, any Winnebago County Court adjudicator should recuse themselves to avoid the inherent conflict of interest in solving their employer's and coworkers' liability for losing our MSA. At the time, it was not preferable to find and declare the divorce void, and all parties, including CC Bermingham, believed that a consensual solution could fix our divorce problem.

On April 26, since none of the three parties could recall the precise terms of the lost MSA, CC Bermingham ordered (if he had any authority to do so), or at least agreed to allow (contracting with both the Respondent and me, if he had such authority) the Respondent and me to co-create and file a **"reconfigured" MSA**, as shown in the conference minutes (Document 32). **The Respondent and I were not to file a recreated MSA (a facsimile to the one lost by the Court), as that was agreed to be impossible**. Both Respondent and I agreed to submit our work to CC Bermingham within 10 days (May 6), and all parties would reconvene to review and finalize the MSA, which needed to include the only two quantified terms orally agreed to on February 7: 60/40 placement and $765/month child support. In the interim, all parties agreed to allow the use of the Original MSA (Document 15, 19) to temporarily govern our "divorce" during the period we required to co-create the new, reconfigured MSA and finalize it with CC Bermingham, which would have solidified a legal divorce. However, this three-party contract with limited powers, along with the invalid original divorce Judgment and MSA, were ultimately unenforceable, as it became clear within two months when the Respondent kidnapped our child (during active Court-ordered mediation) and withheld him for nearly a quarter of a year, despite my enormous efforts to end the withholding, including engaging the police. The Respondent also continued to withhold all child support and virtually all of my marital assets. This prompted the Declaratory Order Motion (Documents 39-40) and two Emergency Hearing Requests (Documents 43 and 54-55), specifically for the return of our child and resolution of our custody disputes. Incorrect and contradictory statements within Attorney Culp's response (Document 44) only further highlight the unenforceability of these contracts along with misunderstandings originating from the February 7 hearing, further demonstrating that a "meeting of the minds" that was never achieved. I explained this situation in significant detail in my Supplemental Affidavit (Document 91). Regardless, the months of distress and confusion were unnecessary because, despite understanding the errors leading up to and including those made on February 7, CC Bermingham did not seem to follow the correct process on April 26, which would have been to escalate our case to the Circuit Court. This would have required the Respondent and me to restart and complete at least the final steps of the pre-hearing process, including the consensual formation of an MSA (or perform a contested process). Instead, CC Bermingham bypassed the correct process, likely to avoid additional scrutiny into the Court's errors, but since I was pro se, I perhaps overly relied on the Court for legal and logical direction on April 26. Despite my efforts to negotiate a new reconfigured MSA, no successful MSAs were co-created, the timelines had long since expired, and any legal opportunity to retroactively validate the February 7 divorce has long since been lost.

b. **I created an MSA with which to refine with the Respondent prior to CC Bermingham's May 6 MSA deadline. The Respondent obstructed this process by continuing to insist on placement allocation and custody changes, which I viewed as protected by a two-year truce (WI 767.451(1)(a)).** I was prepared for our MSA follow-up hearing, scheduled for May 23, but to give the Respondent more time, without my knowledge or permission, the hearing was rescheduled for July 25. Even with months of additional time, the Respondent failed to offer any materials. Upon him having a difficult June 10 mediation session (where it reinforced the 60/40 placement allocations and MSA-aligned scheduling approach he disliked), I immediately

sought new agreement with the Respondent by sharing the highlights of my draft 60/40-aligned, reconfigured MSA. In response, the Respondent summarily declined to participate and instead chose to kidnap our child on June 22, which refocused my subsequent efforts on regaining access to our child and minimizing the harm from the abusive and alienating act.

c. **I filed the Declaratory Order Motion (Documents 39-40) to drive closure to my untenable financial and custodial position, while remaining true to my principle of voluntary negotiation.** Previously, on April 26, CC Bermingham stated that the Respondent and I were said to be divorced but without a valid and enforceable contract (one might argue that the case was essentially reopened without announcement, though the Respondent and I would only begin to learn of this distinction months later). The Declaratory Order Motion was then filed to compel the Respondent's participation in negotiating the reconfigured MSA (per our April 26 Order/agreement) and finally end the Respondent's withholding and uncompensated use of my assets, which had dis-incentivized his participation in finalizing a new MSA for us to abide by. The Respondent would be compelled to negotiate either in response to the Motion's filing or as an inevitable result of the voided February 7 divorce Judgment and divorce restart.

   During the nearly seven months that followed the April 26 agreement, the Court repeatedly failed to act in good faith per its role in our April 26 agreement. The Court required >4 months to hear the Declaratory Order Motion, despite the unenforceability of the temporarily-permitted, Original MSA. The Court unilaterally delayed the July 25 hearing until September 9 and rejected my first emergency hearing requests to resolve our Court-ordered mediation impasses and fix the kidnapping of our son and never heard or acknowledged my second emergency hearing request. At every step, I sought rapid, consensual resolution but was stymied by both the Court and the Respondent.

d. **In response to the Court's November 16 requests, I promptly and accurately participated in the MSA "required changes" information exchange, but the Respondent and his attorney continued to obstruct progress.** First, rather than participate in the new MSA "required change" information exchange, the Respondent sought to make permanent the incomplete and inequitable Original MSA (Document 93), which, on April 26, had only been permitted for temporary use. Second, the Respondent failed to fulfill the November 16 agreed-to deposition and mediation plan. Shortly thereafter, however, the Respondent's attorney abruptly severed relations with the Respondent soon after receiving our MSA "required change" information that better explained the divorce situation.

   Regardless, during the November 16 conference (and up to the December 20 status conference), the Court appeared well-aligned with CC Bermingham's approach for guiding a consensual solution to the lost MSA problem. I absolutely agreed with the Court's perspective, as my 8 months of actions mirrored the Court's own sentiments:

   > COURT: "I think there's a lot of power in the parties coming up with their own agreement" (Document 136: 25 [16-18])

e. **On December 20, in response to the lack of progress created by Respondent's ongoing obstruction and recent disbandment of his counsel, the Court abruptly turned away from the path that all parties agreed to on November 16.** First, the December 20 meeting was only to be a 15 minute status conference (Document 136: 29 [8-11, 13-18] and 30 [11-15]):

   > COURT: "...move that status up to like a 15-minute...after the depositions so that we can determine whether we need to do mediation"

VESELY: "Yeah. That's fine."

COURT: "Attorney Culp?"

CULP: "That's fine."

CLERK: "Moving the status hearing?"

COURT: "Yeah, let's move it. Just like 15 minutes to see where we're at."

CLERK: "December 20th at 10:00 a.m."

COURT: "Okay. All right."

CULP: "And that's a status?"

COURT: "Yes."

Yet on December 20, the status conference inexplicably began turning into a hearing:

> COURT: "So can we have the parties take each of their respective Page 3 and 4, modify it the way they think they modified it, and then I'll look at it and see if it's the same or not?...write down what you think the agreement was, and then I'm going to look at them." (Document 137: 6 [21-24] and 8 [11-18])

The Court's request missed the entirety of the problem, which is that most (if not all) issues were outside Pages 3 and 4 and that both the Respondent and I had repeatedly testified that we did not recall the changes. Also, given the Respondent's eight month history of revising the division of our assets and extorting me to accept his terms by withholding our son, it was most unlikely that he would voluntarily recall an equitable division of assets. At best, our guessed edits would simply substantiate the issues we summarily exchanged on November 30. Even if the Respondent and I consistently guessed at the changes (miraculously creating mirrors of one another's individual work), there was no guarantee that the edits would form a facsimile of the lost MSA, and if adopted as such, would embed hastily-generated errors into a document designed to govern our divorce for at least the next 11 years, likely inflaming contention rather than resolving it in a way that only a consensually co-created solution would provide. In short, I disagreed with the Court's new role and direction, as it was not only unlikely to help, it was very much misaligned with our April 26 agreement with CC Bermingham that justified my consent to the temporary use of the Original MSA to govern our "divorce" so as to give the Respondent and me time to co-create the new, reconfigured MSA.

My attorney and I returned from recess without the requested edits and attempted to explain why. However, while the Court delayed its direction to December 31 (in preparation for a January 6 hearing), **the Court cemented its new self-assigned role and a new legal direction for our case** (Document 137: 13 [2-13, 15-19]):

> COURT: "I believe you had an agreement, okay? Now, there may be some confusion or misunderstanding about it, but I think you agreed to something. **The question for me to determine is what did you agree to**. I think if you had an agreement, you should be pretty close when you write down whatever the issues were."
>
> COURT: "So what I'm going to do, when we come back, **if it's not consistent, I'm going to swear you in, I'm going to take testimony, and I'm going to determine who I think is being credible or not credible.**"
>
> COURT: "So December 31st, these forms need to be -- some type of documentation from each party has to be turned back in to the Court so I can review them in advance of the January 6th hearing."

I disagreed with attempting to re-create the lost MSA, but I shared the Court's frustration with the lack of progress caused by the Respondent's ongoing obstruction and recent disbandment with his counsel that had upset the implementation of our November 16 agreements.

Even so, I welcomed preparing and submitting additional details of the issues that we had exchanged on November 30 to help guide the Court (per the Court's November 16 request) toward a co-created, consensual solution that (even after 8 months) remained the only logical alternative to voiding the divorce altogether.

f. **Hours before the hearing on January 6, 2023, my attorney gained agreement with the Respondent (pro se) to proceed with mediation and regain the footing we established on November 16.** My attorney notified the Court, requesting a reschedule of the January 6, 2023 hearing, but our mutual request was denied in lieu of the Court's preferred agenda.

g. **On January 6, 2023, I participated with the understanding that the Court and I shared the view that only through mutual consent could we succeed.** Since the hearing on November 16 (Document 136: 8 [15-17] and 23 [18, 24] and 25 [16-20]), the Court made clear that it was not going to "determine something new", that it "can't get involved in negotiations", and that it much preferred "the parties coming up with their own agreement...as opposed to the Court cutting things in half with a chainsaw." This sentiment was even present in the January 6, 2023 hearing in which the Court stated (26 [3]):

> COURT: "**Am I forcing terms on them? No.**"

Indeed, the Court was clear that it would not interfere with the standard processes, either stipulated or contested, and that it would permit or facilitate consensual agreement between the Respondent and me. However, this tone shifted when the Court expressed its impatience with the Respondent's inaction and overall lack of progress and surprisingly stated:

> COURT: "**I'm going to determine what our MSA is going forward**. I'm doing this because from my first hearing, I've tried to position the parties to identify for me what the issues in contest might be, what the MSA might be, and I don't have it and I still haven't gotten it. So we're going to use the afternoon to go forward in that fashion." (11 [7-14])
>
> COURT: "...**they've had since July to come up with any terms they wanted, and nobody's done anything**. And I keep setting hearings and I offered to let the parties and their attorneys go in the back and come up and exchange ideas of what we might have for issues, what was missing from the MSA, and that was declined." (26 [3-9])

As clearly demonstrated in this and other materials I've submitted, Judge Keberlein's frustrated assertions about my prior year's efforts are simply incorrect.

Regardless, while I reasonably assumed that the Court would find a way to reconcile the 3A MSA with either the Court's lost MSA or an equitable MSA that gained the Respondent's and my agreement, **the January 6, 2023 hearing produced an Order, and the inequitable, illogical, and inappropriately-created 3A MSA lacked my consent (no "meeting of the minds" occurred that day), as my dissatisfaction shared through our closing comments made clear.**

h. **No statute or case has been cited that grants a Circuit Court Judge the authority to conduct the January 6, 2023 hearing that forced an original agreement on a stipulated divorce.** The Respondent's eight months of obstruction did not exempt proper procedures from being used. **The Respondent and I sought a stipulated divorce and never agreed to a partially-stipulated**

or contested divorce (much less waive discovery and a trial if a contested divorce was necessary). Rather than compel the Respondent to co-create with me a new, reconfigured MSA, beginning with the December 20 hearing and concluding at the January 6, 2023 hearing, the Court chose to attempt to recreate the lost MSA (8 [15-16], 9 [4-12]):

> COURT: "I went through that statute, which is 806.07...***(h): Any other reasons justifying relief from the operation of the judgment.*** Which gets me to where we are today. What I feel like I'm getting from at least the parties or a party is that we need to reopen this and relitigate it, but **I think that there's another solution, and that's what I've been trying to push the parties toward, is to what Court Commissioner Bermingham ordered many, many months ago, to re-create the MSA**"
>
> COURT: "**they were ordered to re-create**...I believe this is at least our third meeting, and I've been telling everyone the whole time what I wanted; **I want this MSA re-created**. That's the only issue." (25 [5-10])

Put simply, this was not what CC Bermingham ordered, nor was it the role that the Respondent and I agreed to with CC Bermingham on April 26. In that exchange, we consented for the Court to temporarily use our Original MSA to govern our divorce until we co-created another. This gave the Court the authority to call for the parties to meet on January 6, 2023, as without the April 26 agreement, it is unclear what role the Court would even have had in our "divorce". Regardless, the Court stated the following oxymoron (9 [1-3]):

> COURT: "We have a **divorce**, but **not a memorialization** of what essentially was a **stipulated contract**."

The claim that a stipulated divorce was completed included no evidence that the pre-requisite artifacts (i.e. a valid MSA with our signatures) even existed during the divorce hearing. It even counters the Court's own testimony, as CC Bermingham admitted on April 26 and the Court acknowledged (24 [15-25]):

> COURT: "And they were talking about two MSAs, right? Because... Bermingham has one presumably in front of him, but what he's looking at is not what they remembered handwritten notes, right? So when he's asking them the questions and he's looking at one that doesn't have the handwritten notes, they're answering yes to what they believed were their handwritten notes."
>
> VESELY: "Right"

Originally, Judge Keberlein was asked to hear the Declaratory Order Motion (Document 40), which requested announcement that the divorce was invalid, unenforceable, and void because that was the logical end to the unfulfilled April 26 contract. **The Motion's employed statute (WI 806.07) only appears to provide for relief from judgment.** However, rather than declare that the divorce was invalid, unenforceable, and void, **the Court instead chose to create and impose an altogether new original contract for a stipulated divorce via WI 806.07.** Repeating the Court's prior claim (9 [4-12]), the Court cites this statute a second time, validating that the statutory citation was not accidental (47 [24-25] and 48 [1-8]):

> VESELY: "And are you denying...the Attorney Fozard [806.07] motions?"
>
> COURT: "Well, granted as to (h), but then my – **as to (h), I'm granting it, but that was the purpose of the hearing today. (h) was** -- so I find that **there is a need to clarify, but I'm not finding any of the provisions void**. I'm not

finding it unenforceable, again, because **I'm attempting, through contract law, to reconstruct what the parties agreed to."**

No motion requesting such an action was submitted by any party, and again, no other statute or case was cited granting authority for the Court to do so.

In addition, the Court made no request of the Respondent and me to follow (nor was it ever claimed that we underwent) a contested divorce process. While an ordered, unsigned MSA could have resulted from a contested divorce process, it could not have resulted from the stipulated divorce that the Court claimed was the status of the case (as evidence, the Court still does not possess a valid MSA with our signatures). **Since the 3A MSA did not result from a stipulated divorce agreement between the parties, there is now a categorical mismatch between the 3A MSA resulting from the January 6, 2023 hearing (a divorce by decree) and what the Court claims this MSA represents (a stipulated divorce) in the Amended Judgment (Document 127).** This is in addition to the Amended Judgment (Document 127), making no reference to the 3A MSA, and instead retroactively assigning the Second Amended MSA to apply as of February 7, 2022. I believe that the retroactive assignment (via the Amended Judgment) of a stipulated divorce agreement must also be agreed by all parties, which it has not, because I have not consented to it.

Fundamentally, I do not understand how our stipulated "divorce" was created by a Circuit Court Judge. We did not review our MSA with a Court Commissioner. No specific escalation process through trial was announced.

As such, by process, authority, and classification, in my opinion, the 3A (like the Second Amended) MSA is an invalid derivative of the unenforceable and invalid original divorce.

i. **The Court's January 6, 2023 interruption of standard divorce processes led to the Court inhibiting agreement (assuming the divorce was ever valid to begin with), and significant evidence was presented in both the January 6, 2023 hearing and in this document that the substantive provisions of the 3A MSA are inequitable.**

- I provided, but neither the Court nor I received from the Respondent, fair and reasonable disclosure of his or our financial status, either leading up to our February 7, 2022 hearing or on January 6, 2023, or both. My Motion for Relief and Declaratory Order details this and seeks resolution of when, precisely, the Respondent failed in his duty. By rejecting the Original MSA and co-creating the HE Amended MSA, I corrected what I could from the Respondent's misinformation and felt that I had satisfied my MSA goals but still had minor uncertainty (even so, the ~$4,952 value difference of E*TRADE and Voya accounts was a surprise on January 6, 2023). By discrediting me and discounting my information on January 6, 2023, the Court limited its own visibility into these disclosure problems (e.g. in addition to the E*TRADE and Voya account differences, the >$30,000 value difference of undisclosed "basement" assets, among other differences). This undermined the Court's own efforts to recreate the lost HE Amended MSA. **Withheld information is a form of coercion.**
- As such, without fair and reasonable disclosure of critical information, I could never have provided consent (free and voluntary agreement) at either the February 7 or January 6, 2023 hearings. Again, this is the basis for my upcoming second Motion for Relief and Declaratory Order (Document 147). Further, the Court could not have agreed as the third party. However, such misinformation was only made clear at the January 6, 2023 hearing. **The Respondent's withholding of critical information not only makes the original February 7 divorce (MSA and Judgment) additionally unfair,**

inequitable, and invalid, but it also makes the January 6, 2023 Judgment and 3A MSA unfair, inequitable, and invalid (for the same statute and case), as these rest upon the original divorce and misinformation.

j. **The 3A MSA inhibits future curative litigation, counter to the Court's intent.** I appreciate the Court's expressed willingness to litigate whether or not something is fair in the future (10 [23-25]), however, this is virtually impossible, as the Court memorialized incorrect information in the 3A MSA and related Order, yet it fully understands the permanence of potential mistakes:

> COURT: "At this point, that will be the MSA that the parties will work off of going forward." (43, [12-15])

...and that significantly more litigation will follow (49 [13-19]):

> COURT: "There's so many documents that have been filed with references to fairness...to someone being dishonest, not being truthful, not being up front. How can I possibly make any of those determinations without a starting point? So today, we have a starting point to what I assume is probably going to be more litigation."

This decision accepts the risk of expanding and perpetuating the Court's original clerical harm by cementing any inaccurate information into the MSA. Worse, the Court used only testimony it acknowledged as lacking credibility and offered no evidence of having performed its due diligence to remedy the Court's loss of our MSA. For example, I was keenly aware of the approximate assets, asset division, and overpayment at the time of January 28 negotiation and February 7 divorce hearing (per my Exhibit G, re-submitted in Document 139). **Therefore, it will be difficult for me to ever use that same pre-February 7 information to later demonstrate the Respondent's pre-February 7 fraud or other harm, as the problem now stems from the Court's selection of information, not the Respondent's.** Further, I have been proactive through this process, not negligent. While there are indeed hundreds of documents to peruse, there is no better time than now to remedy the Court's original error and void the divorce, as the records will not only remain, but they will expand to course correct errors in the 3A MSA, creating an ever greater burden for future judicial review.

k. **It is unclear how a contract (i.e. 3A MSA) can be formed first without consent (agreement) and second without a path for relief from fraud, misrepresentation, and breach stemming from the Court's choice of fact and ordered agreement.** Morally, it is unclear to me who is liable for any party's future misconduct if not all parties have mutually agreed with the MSA's stipulations.

l. **Now that clarity exists on the invalid, unenforceable divorce, it is only a matter of time and opportunity before it will be declared void.** Whether by appeal, or by a change of judges (in time, or perhaps by a change of venue), or even the Court being moved after the Respondent agrees with the invalidity and unenforceability of the document (at a time more opportune for him), **the certainty that the Court tried to provide on January 6, 2023 instead represents an ongoing, ever-expanding liability and risk for all parties.** What if I am awarded sole custody, so the Respondent then seeks to void the decision by motioning the Court to void the divorce? What if I win the lottery, and the Respondent seeks to share my windfall? The only logical solution is to declare the divorce void to regain a solid legal foundation from which to rely.

m. **As if that was not enough, the Respondent's and my case is tremendously unique, due to our temporary authorization for the Court to use our Original MSA (Document 15, 19) until the Respondent and I could co-create a new, reconfigured MSA, which was due to the Court**

on May 6. This was necessary because the only agreements surviving the original February 7 hearing were oral in nature, were obviously of marital content, and have since expired, assuming they were ever valid to begin with. **On January 6, 2023, the Court upended CC Bermingham's April 26 Order and/or the Respondent's and my April 26 contract with the Court. In doing so, the Court simultaneously dissolved its only authority, which it sourced from our April 26 agreement.**

Whether the Court's actions (inadvertently) violated my Constitutionally-protected due process or breached our April 26 contract, or possibly both, I also believe the Court's decisions to have unfairly regarded my materials and testimony, since through the Court's January 6, 2023 judicial discretion, the Court:

- Recognized yet ignored contradictions in the Respondent's testimony (e.g. the E*TRADE and Voya values, the $77,000 composition)
- Heard and ignored my testimony, even making no effort to reconcile the receipts and records I could offer with the Respondent's evidence-free claims
- Applied higher standards for me to recall the changes made to the lost MSA than it did to either the Respondent or to the Court's own CC Bermingham

Further on the latter point: in the legal profession, the extensive use of citations and transcripts exists because details matter. Even the most intelligent, focused people, in the most conducive environments (and ours was not), cannot recall key details even weeks later, let alone the 11+ months between the January 28 final negotiation (or February 7 hearing) and the January 6, 2023 hearing. No reason (logic, statute, or case) exists for the Court to apply a higher standard to divorcing parties on terms material to our child's and our own lives. CC Bermingham himself was unable to identify the changes only three months later using the exact same Amended MSA (Document 22) as a baseline on which to make changes (assuming that he ever even saw the lost HE Amended MSA, which is very unlikely). A year later, the Court expected even more from me and trusted that despite the Respondent's conflicting statements and materials (even in the same hearing), his recollection was sufficiently adequate to order his claimed awards.

In its actions, the Court's Order, Judgment, and MSAs (Documents 123-127) deprives me of wealth as well as my son's and my custodial rights, while disregarding my enormous investment of both time and money into correcting the Court's original mistakes and the Respondent's wrongdoings. **This was made even more clear and urgent following the Court finding me in contempt on March 30, 2023, despite my having no stated deadline to complete the transfer of my home to the Respondent (I) within any ordered MSA.**

16. **The human impact is real and situation dire, but a legal and moral path forward remains available.** If nothing else, the 3A MSA is financially devastating for me, as it represents the loss of multiples of my highest annual income in nearly a decade, and again, it fails to recognize my investments in correcting the Court's original mistake and the Respondent's predatory actions that followed. Despite my having entered the marriage with the majority of assets, if the divorce and Orders are left unchanged, the Court's recent actions condemn me to poverty for (or possible bankruptcy in) the near future after I honorably repay my personal loans to those who have supported me throughout this journey. I should not suffer from such an inequitable outcome as imposed by the 3A MSA, as our situation is through no fault of my own, but rather is in spite of my efforts.

    a. From my brief review, beyond the property awarded in the 3A MSA, I am due an additional $55,000-$70,000 or more, excluding at least half again as much in legal costs and attorney fees that stem from the Court's original clerical error, though it is primarily from the Respondent's

actions that compounded that error. I claim that I am owed more still from incidental and consequential financial harm imposed by the Respondent (envisioned for separate litigation with related legal costs), who turned the Court's original mistake into an unprecedented catastrophe.

b. The Amended Judgment and 3A MSA (Document 127) are an unjust end to the >2000 hours I have allocated to trying to **discreetly** correct the Court's mistake and overcome the Respondent's actions and inaction for nearly a year. Friends and family have followed my story and sadness, showering me and our son with support, given what appears to have been a clerical error that metastasized into a nightmare.

c. Particularly if the Motion to Reconsider (Document 139) is denied and I am forced to seek relief through an appeal, I will need additional funding, and the already present financial problems will continue to grow. Even today, the Respondent continues to live large on the back of his ill-gotten gains and free use of my capital, credit, and even my bank account (**at least the one that he did not cancel out of spite, per the Community First Credit Union manager's letter**). The current disparity is so apparent that I have been criticized by our young son, who was recorded mocking me in light of his father's superior financial means and lifestyle. I feel this opposes all Wisconsin property division principles, which I've understood to include, "a reasonable...award is measured...by the lifestyle that the parties enjoyed in the years immediately before the divorce and could anticipate enjoying if they were to stay married." (LaRocque, 139 Wis. 2d at 36 (Wis. 1987)). Such visible disparity between our son's parents creates yet another hurdle for my son and me to overcome during the Court's own recently-ordered reunification counseling to counter the Respondent's kidnapping and alienating actions, as reported by the Guardian ad Litem to CC Rust on January 26, 2023. A failure to void the divorce will expand and elongate the harm suffered by all, but most importantly our son. All escalation paths are lengthy, expensive, and only further publicly expose what should have remained a private affair for our family.

17. The complexities and historical oddities of this case are the reason that I have relied on no fewer than three lead attorneys to understand the facts, and attempt to untangle the issues, minimize harm, and chart a practical and non-litigious path forward. There were procedural matters to address resulting from the Court's loss of the HE Amended MSA, since CC Bermingham appeared to be part of the solution and not the root of the problem. However, most of the complexity and all prior litigation stems from one source: the Respondent. Unfortunately, as of January 6, 2023, the Court began exacerbating the Respondent's harmful actions, though even now, I cannot believe this was ever the Court's intent.

18. While my attorney recently clarified some of his past statements, the Court should understand that my June 12 MSA draft (an update to my May 5 MSA draft) was my best and final effort to complete with the Respondent a reconfigured MSA that we agreed to provide CC Bermingham following our April 26 meeting. On December 20, I had not brought along a copy because this proposal was not relevant to the expected discussions (of deposition progress, mediation, and a contested divorce process to resolve any open issues, as all parties had agreed on November 16 would be the agenda at the December 20 "**status**" conference).

19. On January 6, 2023, I had hoped that the Court would review my information and finally compel the Respondent's participation in our April 26 obligation. Now, after a detailed review of the hearing and the events that followed (e.g. March 30, 2023 contempt finding), the best option is simply to void the divorce to avoid perpetuating the errors from which only the Respondent has benefitted. My Motion for Relief and Declaratory Order (Document 147), just like my Motion to Reconsider (Document 139), seeks not to modify the Judgment and 3A MSA (Document 127) but rather to find and declare these and the entire "divorce" void. Once the Judgment and 3A MSA (Documents 123-127) are voided, I hoped that the July 12 Relief and Declaratory Order Motion (Document 39) heard on January 6, 2023 could be used to publicly announce the "divorce" as invalid. This seemed to be an easier solution that the Court unilaterally vacating all orders since October, leaving only the invalid original Order, Judgment, and MSA (Document 19) to

declare void, per my Motion for Relief and Declaratory Order (Document 147). **Regardless, only after reopening the case can the Court compel accurate financial disclosures, which will be necessary to achieve the stipulated divorce we thought we agreed to on February 7 (or complete a contested divorce, if required).** This will also give us the opportunity to reach more commonly understood custody terms, preventing future litigation, while avoiding much of the litigation that has amassed in the past year. Without a solid foundation from a clear and consensual MSA, this (or any eventual) Court will struggle to properly adjudicate our current and future disputes.

20. In closing, the problems with this case pre-dated the original February 7 divorce hearing, occurred during the hearing, and have exponentially worsened in the 14 months that have followed, despite my best efforts. Such problems span historical errors, procedural missteps, local and Supreme Court rule violations, and the Respondent's predatory actions and copious misinformation. As stated previously, should this unprecedented situation not be appropriately corrected, the Respondent and I will face perpetual litigation, as is already being experienced.

From the onset of our divorce, it took 11 months to reach 50 documents on CCAP. Some 4 months later, CCAP expanded by another 50, as I feverishly attempted to remedy the invalid and demonstrably unenforceable MSA as well as the Respondent's wrongdoings that preyed upon the Court's original mistake. On December 20, the Court abandoned the April 26/November 16 curative paths, setting the stage for the January 6, 2023 hearing, and just 2 months later, we surpassed another 50. Clearly, the Court's efforts to resolve our problems and avoid litigation have been no more successful than my own.

However, the Respondent's willingness to engage in mediation prior to the January 6, 2023 hearing offers me hope that we can achieve a fruitful, straightforward, and most importantly consensual MSA. Again, I believe that given all the Court, my attorney, and I have agreed on, the Court shares my desire for a consensual agreement and that the Court has no intentions of further compounding the original clerical error by allowing the snakebit February 7 divorce to stand.

Elizabeth Fitzgibbon, Petitioner

Subscribed and sworn to before me this 7th day of April, 2023.

Lawrence G. Vesely
Notary Public, Brown County, WI
My commission is permanent.

FILED
04-10-2023
Clerk of Circuit Court
Winnebago County, WI
2021FA000564

STATE OF WISCONSIN, CIRCUIT COURT
WINNEBAGO COUNTY
FAMILY COURT BRANCH 3

In re the marriage of:

ELIZABETH ANNE FITZGIBBON,
Petitioner,
and CASE NO. 21 FA 564

ADAM PAUL FITZGIBBON,
Respondent.

MOTION TO STAY

The Petitioner, Elizabeth A. Fitzgibbon, moves the Court for a Stay of the following Orders entered by the Court:

1. Amended Findings of Fact, Conclusions of Law and Judgment dated January 10, 2023 (Doc. No. 122)

2. Order from January 6, 2023 (Doc. No. 125)

3. Second Amended Findings of Fact with Third Amended Marital Settlement Agreement (Doc. No. 126)

4. Second Amended Findings of Fact with Third Amended Marital Settlement Agreement (Doc. No. 127)

5. Order from hearing before the Family Court Commissioner on March 30, 2023.

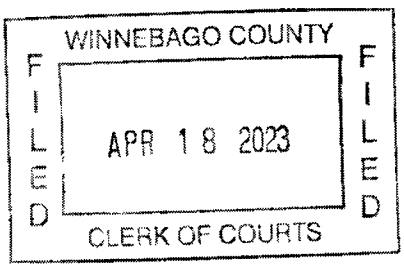
Dated this 7th day of April, 2023.

Olson, Kulkoski, Galloway & Vesely, S.C.
Attorneys for the Petitioner

By: _____
Lawrence G. Vesely

416 So. Monroe Avenue
Green Bay, WI 54301
Telephone: (920) 437-5405
Facsimile: (920) 437-5917
State Bar Code #01014713
E-mail address: larry@veselylaw.com

04/17/2023



Case # 2021FA000564

Attn. Judge Bryan D. Keberlein

Petitioner: Elizabeth Anne Fitzgibbon
Respondent: Adam Paul Fitzgibbon

Exhibit A attached
Exhibit B, B-1 attached

The speech you gave to both of us at the closing of our recent hearing on April 13th,2023, I am in total agreement. That is why I didn't file a motion to reconsider after the January 6th, 2023 ruling.

When I walked out of your courtroom January 6th, 2023, I knew I had left approximately $12,000-$15,000 dollars on the table regarding the ETrade account.

Also, these were the only thoughts going through my head as I exited the courtroom:

1. The assets I did not receive will not impair my ability to provide a stable and nurturing environment for A.J.F.

2. This is finally over with and I can move on with my life.

3. You awarded me half of the VOYA account and I thought, "whatever, close enough".

In this text message (exhibit A) from April 6th, 2022, I clearly stated what I knew what was in the hand amended MSA regarding the brokerage accounts. It also expresses my concern for fraud which I was completely convinced occurred at that point. Nothing else explains the petitioners behavior and the petitioners reluctance to show me her "correct MSA" as the petitioner stated in the March 3rd, 2022, text correspondence.
The March 3rd, 2022 text correspondence was filed April, 13th, 2023 in the court system by the respondent.

Exhibit B-1 will show that fraud has occurred in a filing by the petitioner.
The filing was filled out in her handwriting and signed by the petitioner,
it does not have the respondents signature.

Sincerely, Adam Fitzgibbon

From: adam fitzgibbon
Subject: Print
Date: Apr 16, 2023 at 5:51:51 PM
To: Sally Fitzgibbon

UScellular LTE 8:24 PM 68%

Liz

Exhibit A

Apr 6, 2022 at 5:24 AM

I will be dropping him off at school tomorrow(Thursday) you will be picking him up from school Thursday. You have Thursday night. Then you will bring him to school Friday morning. If you are unable to pick him from school Friday then I will personally do it. You're not getting him 2 weekends in a row

Even if somehow the courts change the msa to fraudulent one you have you will still owe

Exhibit A

me 3500$. Even after spliting those 2 accounts(etrade voya) you still owe me 3500$ no matter what.

Can You Challenge a Divorce Decree Years After Divorce?

Sent from my iPhone

Exhibit B-1

Petitioner/Joint Petitioner A: Elizabeth Fitzgibbon
Respondent/Joint Petitioner B: Adam Fitzgibbon

WINNEBAGO COUNTY
FILED FILED
FEB 16 2022
CLERK OF COURTS

Amended MSA 1/26/2

Enter the name of the county in which this case is filed.	**STATE OF WISCONSIN, CIRCUIT COURT,** [redacted] **COUNTY**
Enter the name of the Petitioner/Joint Petitioner A.	IN RE: THE MARRIAGE OF **Petitioner/Joint Petitioner A** [redacted] Elizabeth Anne Fitzgibbon Name (First, Middle and Last)
Check divorce or legal separation.	and
Enter the name of the Petitioner/Joint Petitioner B.	**Respondent/Joint Petitioner B** [redacted] Adam Paul Fitzgibbon Name (First, Middle and Last)
Enter the case number.	£ Amended **Parties Approval of Findings of Fact, Conclusions of Law, and Judgment With Minor Children** £ **Divorce** - 40101 £ **Legal Separation** - 40201 Case No. [redacted] 2021FA000564

The parties have each reviewed and approved the [£ Amended] Findings of Fact, Conclusions of Law, and Judgment with minor children that was filed with the court on [Date] [redacted], 20[redacted].

All parties to the action should approve how accurately the form has been completed before the judge signs it. The parties must approve by signing in the space to the right.

[redacted]
Petitioner/Joint Petitioner A
[redacted] Elizabeth Fitzgibbon
Name Printed or Typed
[redacted] 308 Oak St Neenah, WI
Address
[redacted] eaadler87@yahoo.com
Email Address
[redacted] 920-450-9277 [redacted] 2/8/22
Telephone Number Date

[redacted]
Attorney
[redacted]
Name Printed or Typed
[redacted]
Address
[redacted] [redacted]
Email Address Telephone Number
[redacted] [redacted]
Date State Bar No.

1

[redacted]
Respondent/Joint Petitioner B
[redacted] Adam Fitzgibbon
Name Printed or Typed
[redacted] 451 Laurel Place Neenah WI
Address
[redacted] fitzmen96@yahoo.com
Email Address
[redacted] 920-810-0557 [redacted] 2/8/22
Telephone Number Date

[redacted]
Attorney
[redacted]
Name Printed or Typed
[redacted]
Address
[redacted] [redacted]
Email Address Telephone Number
[redacted] [redacted]
Date State Bar No.

[redacted]
Child Support Representative
[redacted]
Name Printed or Typed
[redacted]
Address
[redacted] [redacted]
Email Address Telephone Number
[redacted] [redacted]
Date State Bar No. (if any)

[redacted]
Guardian ad Litem
[redacted]
Name Printed or Typed
[redacted]
Address
[redacted] [redacted]
Email Address Telephone Number
[redacted] [redacted]
Date State Bar No. (if any)

Winnebago County **Civil Court Record** 09-20-2023 02:39 PM

Caption	Responsible Court Official	Case Number
In RE the marriage of Elizabeth Anne Fitzgibbon and Adam Paul Fitzgibbon	Bryan D. Keberlein	2021FA000564

Filing Date	Filing Court Official	Classification
09-08-2021	Michael D. Rust	Divorce

Disposition Date	Disposition Court Official	Disposition	Next Action(s)
02-17-2022	John Bermingham	Default judgment	

Party Type	Name	Address	Attorney
Petitioner	Elizabeth Anne Fitzgibbon	308 Oak St, Neenah, WI 54956 United States	Lawrence Gerard Vesely
Respondent	Adam Paul Fitzgibbon	451 Lowell Place, Neenah, WI 54956 US	
Child	A.J.F.		Trista Lee Moffat

Date	Court Record Entries	Court Official	Court Reporter Tape/Counter Location
09-08-2021	Notice of hearing Default divorce on February 7, 2022 at 09:00 am.		
09-08-2021	Notes Filing Court Official: John Bermingham		
09-08-2021	Notice of Limited Appearance. Submitted by Atty. Morrell.		
09-08-2021	Confidential petition addendum Submitted by Atty. Morrell. Copy to CSA.		
09-08-2021	Filing fee paid -- $214.50 Adjustment Number: 21A 506425, Payable Number: 307084, Receipt Number: 21R 027311, Amount: $214.50		
09-08-2021	Case initiated by electronic filing		
09-08-2021	Summons and Petition with Minor Children Submitted by Atty. Morrell. Copy to CSA.		
09-13-2021	Admission of service Submitted by Atty. Morrell.		
10-08-2021	Notice of hearing Default divorce on February 7, 2022 at 09:15 am.		
11-12-2021	Affidavit of mailing submitted by CSA		
11-12-2021	Notice of Termination of Limited Appearance. Submitted by Atty. Morrell.		
12-06-2021	Letters/correspondence from Atty. Morrell re: termination of limited appearance. Clerk removed Atty. Morrell from case.		
12-06-2021	Electronic Notice Update		
01-07-2022	Notes		

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Original and 3 sets of MSA submitted at COC counter by PE. Routed to Family Clerk. jr routed to CSA. 1/13/2022 jr routed to CC.

01-07-2022 Financial Disclosure - Petitioner
Original and 3 sets submitted at COC counter by PE. Original and 1 set back to PE, 1 set to CSA. Sent to CC Bermingham for review

01-07-2022 Financial Disclosure - Respondent
Original and 3 sets submitted at COC counter by PE. Original and 1 set back to PE, 1 set to CSA. Sent to CC Bermingham for review

01-21-2022 Marital settlement agreement

01-21-2022 Other papers
Marital Settlement Agreement Checklist

01-28-2022 Notes
AMENDED Marital Settlement Agreement - Original and three copies submitted at COC counter by PE, routed to Adm Assoc III FA Clerk for processing. jr routed to CC.

02-07-2022 Change of address notification
ADDRESS INFO for Elizabeth Anne Fitzgibbon
Current: 308 Oak St, Neenah, WI 54956 United States (Effective: 02-07-2022)
Prior: 451 Lowell Place, Neenah, WI 54956 US

02-07-2022 Default divorce John Bermingham Recorder Rm141, DAR
Minutes - divorce granted to Petitioner.

02-16-2022 Prop. findings of fact/conclusion of law/judgment
w/MSA / Forwarded to CC

02-16-2022 Notes
FFCLJ submitted at COC counter by PE. Routed to Family Clerk

02-16-2022 Party app finding of fact/conclusion of law/jdgmnt
submitted at COC counter by PE

02-17-2022 Default judgment John Bermingham

02-17-2022 Findings of facts/conclusions of law w/ judgment John Bermingham
w/MSA / Certified copies sent to: PE, RE

04-05-2022 Letters/correspondence
from Petitioner to the court regarding amended MSA; routed to CC.

04-06-2022 Notice of hearing
Telephone conference on April 26, 2022 at 11:30 am.

04-11-2022 Proposed Order
for Mediation and Parent Education Group. Submitted by FCS. Routed to CC.

04-11-2022 Affidavit
Submitted by FCS.

04-11-2022 Received documents
The unsigned copy of Amended MSA prior to the hand edited notes (original submission from 1/28/22 was lost between COC and FCC offices) - submitted at COC counter by PE. PE indicated a copy was sent to RE. Color copy of received stamped document printed off and given back to PE.
NOTE: -document scanned as received, but receive stamp did not apply to the document. Discussed with PE that the document header in blue font, gave info of case number, document number and date scanned at the top of the document.

04-12-2022 Order John Bermingham
for Mediation and Parent Education Group. 2 copies to FCS.

04-18-2022 Notice of motion, motion
to change physical placement and child support. Original submitted at COC counter by RE. Original and one copy returned to PE, one copy forwarded to CSA. Also provided 2 FDS and service packet.

04-20-2022 Letters/correspondence
from RE re: MSA. Submitted at COC counter by RE. Sent to Family Clerk

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04-26-2022 Telephone conference John Bermingham
cc: 11:31 a.m. Appearance by Petitioner, Elizabeth Fitzgibbon by phone w/out counsel. Appearance by Respondent, Adam Fitzgibbon by phone w/Atty Peter Culp by phone. Court addresses orders, MSA and Amended MSA. Child Support and land addressed. Court listened to DAR minutes from Default Divorce hearing. Court order: 1) Parties have ten days to file re-configured MSA. 2) Court scheduled Default Divorce Hearing/Motion Hearing also moved to same date as DD Hrg.

04-26-2022 Notice of retainer
Attorney Peter Culp for Respondent

04-26-2022 Electronic Notice Update

04-26-2022 eFiled Document Fee Paid – $20.00
Adjustment Number: 22A 172764,
Payable Number: 318982,
Receipt Number: 22R 013100,
Amount: $20.00

04-27-2022 Notice of hearing
Motion hearing on May 23, 2022 at 10:30 am.

04-27-2022 Notice of hearing
Default divorce on May 23, 2022 at 10:30 am.

05-12-2022 Notice of appearance
Attorney Joseph Putzstuck for Petitioner

05-23-2022 Letters/correspondence
from Atty. Culp re: joint request for adjournment. Routed to CC. 05/23/2022:pw Per CC: Ok to adjourn.

06-15-2022 Notice of retainer
for Petitioner, submitted by Atty Fozard.

06-16-2022 Proposed Order
to Substitute Counsel for Petitioner, submitted by Atty Putzstuck, routed to FCC for signature.

06-17-2022 Stipulation and order Lisa M. Krueger
to Substitute Counsel, Copies to Petitioner and Respondent, 1 copy to CSA.

06-23-2022 Memorandum
Submitted by FCS re: Impasse. Routed to FCC. 6/24/22 sk, per FCC file only, mediation by affidavit.

07-12-2022 Notice of hearing
Default divorce on September 9, 2022 at 09:00 am.

07-12-2022 Notice of hearing
Motion hearing on September 9, 2022 at 09:00 am.

07-12-2022 Notice of motion, motion
for Declaratory Order, to Reopen Judgment as to any Invalid, Unenforceable or Void/Voidable Provisions, to Hold in Abeyance Respondent's Motion, and for Temporary Order pending Declaratory Order and Final Orders, submitted by Atty Fozard.

07-12-2022 eFiled Document Fee Paid – $50.00
Adjustment Number: 22A 338153,
Payable Number: 322880,
Receipt Number: 22R 020825,
Amount: $50.00

07-12-2022 Affidavit
submitted by Atty Fozard.

07-13-2022 Letters/correspondence
to FCC regarding response to Letter from Atty Fozard, submitted by Atty Culp, routed to FCC for review. 07-21-2022 er, per FCC file only, response drafted

07-13-2022 Letters/correspondence
to FCC requesting Telephone Conference for Placement, submitted by Atty Fozard, routed to FCC for review. 07-21-2022 er, per FCC file only, response

drafted

07-14-2022 Proposed Order
for Payment (Adam Fitzgibbon). Submitted by FCS. Routed to FCC.

07-14-2022 Proposed Order
for Payment (Elizabeth Fitzgibbon). Submitted by FCS. Routed to FCC.

07-18-2022 Order for payment Lisa M. Krueger
(Adam Fitzgibbon). Routed to COC (MS) and copy to FCS.

07-18-2022 Order for payment Lisa M. Krueger
(Elizabeth Fitzgibbon). Routed to COC (MS) and copy to FCS.

07-19-2022 Mediation fee paid -- $150.00
22R 021462

07-21-2022 Letters/correspondence
Letter from FCC to all parties regarding 07-13-2022 letters

08-08-2022 Proposed Order
for Substitution of Attorneys, submitted by Atty Vesely, routed to FCC for signature.

08-08-2022 Other papers
Consent for Substitution of Attorneys, submitted by Atty Vesely, routed to FCC for review. 08/09/22 lv, per FCC file only, approved.

08-08-2022 Notice of retainer
submitted by Atty Vesely.

08-09-2022 Order Lisa M. Krueger
for Substitution of Attorneys, Copy to Petitioner and Respondent, 1 copy to CSA.

08-18-2022 Notice of motion, motion
for an Emergency Hearing Re Legal Custody and Physical Placement, submitted by Atty Vesely.

08-18-2022 eFiled Document Fee Paid – $50.00
Adjustment Number: 22A 394295,
Payable Number: 324842,
Receipt Number: 22R 024965,
Amount: $50.00

08-18-2022 Affidavit
in Support of Notice of Motion and Motion for an Emergency Hearing, submitted by Atty Vesely.

08-29-2022 Affidavit of service
submitted by Atty Vesely.

09-07-2022 Affidavit
of Peter Culp in Support of Motion to Compel Deposition, for Stay of Motion Proceedings, and for Sanctions, submitted by Atty Culp.

09-07-2022 Notice of motion, motion
to Compel Deposition, for Stay of Motion Proceedings, and for Sanctions, submitted by Atty Culp.

09-08-2022 Affidavit
in Response to Respondent's Motion to Compel Deposition, Stay Proceedings, and for Sanctions. Submitted by Atty. Vesely.

09-08-2022 Affidavit
Supplemental Affidavit in Support of the Emergency Motion for an Emergency Hearing Regarding Legal Custody and Physical Placement. Submitted by Atty. Vesely.

09-09-2022 Letters/correspondence
to Honorable Michael D. Rust regarding September 9 court minutes, submitted by Atty Culp, routed to CC for review.

09-09-2022 Notice of hearing
Motion hearing on November 16, 2022 at 02:00 pm.

09-09-2022 Motion hearing Michael D. Rust

Motion Hearing / DDST.
cc 9:00am. Petitioner appeared in court with attorney Lawrence Vesely.
Respondent appeared in court with attorney Peter Culp.

09-09-2022 Responsible court official changed Bryan D. Keberlein
Updated responsible court official to currently presiding official for eFiling purposes.

09-13-2022 Consent of GAL
Submitted by Atty. Moffat.

09-13-2022 Letters/correspondence
from Atty. Moffat re: Consent to Act as GAL. Routed to CC. 9/20/22 sk, per CC file only.

09-13-2022 Order appointing GAL Michael D. Rust

09-13-2022 Notice of hearing
Review hearing on November 30, 2022 at 03:00 pm.

09-16-2022 Proposed Order
Amending Judgment, submitted by Atty Vesely, routed to CC for signature.

09-16-2022 Letters/correspondence
to Commissioner Rust regarding proposed Order Amending Judgment, submitted by Atty Vesely, routed to CC for review. 09/19/22 lv, per CC: no holds for counsel, needs to be circulated for approval.

09-19-2022 Letters/correspondence
to Honorable Michael D. Rust regarding objection to entry of proposed order, submitted by Atty Culp, routed to CC for review. 09/19/22 lv, per CC file only.

09-19-2022 Transcript
Default Divorce 2/7/22

09-21-2022 Proposed Order Declined
Per CC: No holds on cases with counsel, needs to be circulated for approval. Copy to Petitioner and Respondent. 1 copy to CSA.

09-30-2022 Letters/correspondence
to Honorable Bryan Keberlein regarding request to reschedule November 16 motion hearing, submitted by Atty Culp, routed to Branch3 JA/CA for review.

09-30-2022 Letters/correspondence
to Honorable Michael D. Rust regarding request to reschedule GAL Review Hearing, submitted by Atty Culp, routed to CC for review. 09/30/22 lv, per CC: Hold request pending decision from Br. 3 on rescheduling MH simultaneously filed. The GAL RH should not take place until after the decision from Br. 3 on the pending motions. If Br. 3 reschedules, we will need to reschedule.

10-05-2022 Notice of hearing
Status conference on November 16, 2022 at 02:00 pm.

10-18-2022 Letters/correspondence
to Commissioner Rust request to schedule motion hearing, submitted by Atty Vesely, routed to CC for review. 10/19/22 lv, per CC: file only.

10-26-2022 Proposed Order
regarding scheduling of depositions

10-26-2022 Letters/correspondence
regarding continuing deposition difficulty and proposed order, submitted by Atty Culp, routed to CC for review. 10/27/22 lv, per CC: Court will address at 11-14-22 hearing.

10-28-2022 Letters/correspondence
from Atty. Culp re: resolution of deposition issue and request to withdraw order. Routed to CC and Branch 4 JA. 10/28/22 sk, per CC file only.

10-31-2022 Proposed Order Declined
Declined at request of counsel.

11-03-2022 Affidavit
of Lawrence G. Vesely, submitted by Atty Vesely.

11-03-2022 Notice of motion, motion

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to Determine Court Order from September 9, 2022 Hearing Before Family Court Commissioner Michael Rust, submitted by Atty Vesely.

11-03-2022 Affidavit
of Elizabeth A. Fitzgibbon, submitted by Atty Vesely.

11-07-2022 Affidavit
Regarding Contempt for September 9 Order for Counseling, submitted by Atty Vesely, routed to Branch 3 JA/CA for review.

11-07-2022 Notice of motion, motion
for Contempt, submitted by Atty Vesely, routed to Branch 3 JA/CA for review and processing.

11-10-2022 Affidavit of service
submitted by Atty Vesely.

11-14-2022 Proposed Order Declined
Per CC: To be modified as discussed in 11/14 hearing.
Copy to Petitioner and Respondent, 1 copy to CSA.

11-14-2022 Motion hearing Michael D. Rust
Motion to Clarify Order
cc: 10:32 a.m. Appearance by Petitioner, Elizabeth Fitzgibbon w/Atty Lawrence Vesely. Appearance by Respondent, Adam Fitzgibbon w/Atty Peter Culp. Atty Vesely states issue w/placement. Requesting clarification. Atty Culp addresses proposed order re: placement. Attorneys discuss counseling for child - transportation. Court orders: 1) Fine with removing counselors name from order. 2) 28 day schedule - 2nd weekend out of 28 day schedule with dad. 3) GAL language to be limited to Motion to Enforce Physical Placement. Atty Peter Culp to draft order.

11-14-2022 Proposed Order
on Motions/Sent to CC Rust

11-14-2022 Letters/correspondence
from Atty Culp re: Motion for Remedial Contempt/Sent to CC Rust

11-15-2022 Affidavit
Supplemental Affidavit of Elizabeth Fitzgibbon

11-16-2022 Status conference Bryan D. Keberlein Stephanie Koenigs
2:07 Petitioner Elizabeth Anne Fitzgibbon in court. Attorney Lawrence Gerard Vesely in court for Elizabeth Anne Fitzgibbon. Respondent Adam Paul Fitzgibbon in court. Attorney Peter J. Culp in court for Adam Paul Fitzgibbon.
The contempt issue that was noticed for today will need to be addressed at the Court Commissioner level.
Attorney Vesely states issue for the Court is what is the divorce judgment. The hand written MSA was lost by the Clerk's Office. The attorneys have depositions scheduled December 7th, request Court to set a date after that.
Attorney Culp agrees with attorney Vesely. Attorney Culp notes they may need to depose Court Commissioner Bermingham. Attorney Culp refers to 806.07 several times.
The Court will Order parties to exchange issues by November 30, 2022 and set another status hearing December 20 @ 10:00.
Status conference scheduled for December 20, 2022 at 10:00 am.

11-30-2022 Letters/correspondence
Copy of Letter to Attorney Vesely regarding Issues, submitted by Atty Culp, routed to CC for review. 12/01/22 lv, per CC file only.

12-02-2022 Letters/correspondence
from RE addressed to Judge Keberlein. Original and 2 copies submitted at COC counter, original returned, copy to CSA. Routed to Branch 3 JA/CA.

12-02-2022 Letters/correspondence
from RE addressed to CC Rust. Original and 2 copies submitted at COC counter, original returned, copy to CSA. Routed to FA Clerks. 12/02/22 lv, routed to CC for review. 12/05/22 lv, per CC: file only.

12-05-2022 Order Michael D. Rust
on Stipulation to Withdraw as Counsel, copy to Petitioner and Respondent with copy of stipulation paperwork, 1 copy to CSA and 1 copy to Atty Culp.

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12-05-2022 Proposed Order
on Stipulation to Withdraw as Counsel for Respondent, submitted by Atty Culp, routed to CC for signature.

12-05-2022 Stipulation
to Withdraw - Respondent, submitted by Atty Culp, routed to CC for review. 12/05/22 lv, per CC: file only.

12-07-2022 Notice of motion, motion
Attachment to Letter from LGV to Judge Keberlein -Proposed Notice of Motion and Motion, submitted by Atty Vesely, routed to Branch 3 JA/CA for review and processing.

12-07-2022 Letters/correspondence
Letter from attorney Vesely to Judge Keberlein, proposed Notice of Motion and Motion

12-19-2022 Notice of motion, motion
to Change Placement, original and 3 copies submitted by Respondent at COC. Original and 1 copy returned to Respondent by mail with service packet. 1 Copy to CSA.

12-19-2022 Letters/correspondence
from RE re: MSA. Original and 2 sets submitted at COC counter by RE. Original and 1 set back to RE. Sent to Family Clerks. 12/19/22 lv, routed to Branch 3 JA/CA for review.

12-20-2022 Letters/correspondence
to CC regarding Tomorrow's Hearing 12/21/2022, submitted by Atty Moffat, routed to CC for review. 12/20/22 lv, per CC: Change RH to TC on scheduling. 12/20/22 lv, per telephone calls with Atty Moffat and Atty Vesely, aware of call in information for 12/21/2022 hearing. Per telephone call with Respondent, Respondent will appear in person for 12/21/2022 hearing.

12-20-2022 Status conference Bryan D. Keberlein Stephanie Koenigs
10:00 Petitioner Elizabeth Anne Fitzgibbon in court. Attorney Lawrence Gerard Vesely in court for Elizabeth Anne Fitzgibbon. Respondent Adam Paul Fitzgibbon in court. Attorney Trista Lee Moffat in court for A. J. F. Issues are still not clear. Recess @ 10:08 for parties to write down what they think their agreement was at the time of the stipulated divorce. Recalled @ 10:19. RE wrote down what he thinks the divorce agreement was. Attorney Vesely doesn't provide a list, wants until the end of the year to provide it. Attorney Vesely said his client does have the documents to say what the agreement was, just doesn't have the documents with her today. The Court will Order the parties to each take the MSA and write what they think isn't correct. The parties are ordered to turn that into the Court by December 31, 2022. The Court will take testimony if the parties are not in agreement. Attorney Vesely requests to expand the role of the GAL to be able to do an investigation. The pending motions will be heard by the Court Commissioner. The court will make a final decision about the MSA on January 6. Attorney Vesely to draft Order from todays hearing.
Motion hearing scheduled for January 6, 2023 at 01:30 pm.

12-20-2022 Affidavit of mailing
Original submitted by RE at COC counter. Original returned to RE.

12-20-2022 Letters/correspondence
to Atty Culp with Enclosed Petitioner's List of Issues, submitted by Atty Vesely, routed to Branch 3 JA/CA for review.

12-21-2022 Telephone conference Michael D. Rust
11:09 AM Petitioner Elizabeth Anne Fitzgibbon appeared by phone. Attorney Lawrence Gerard Vesely appeared by phone for Elizabeth Anne Fitzgibbon. Respondent Adam Paul Fitzgibbon in court. Attorney Trista Lee Moffat appeared by phone for A. J. F. Court adjourns review hearing.
Review hearing scheduled for January 26, 2023 at 11:00 am.

12-27-2022 Other papers
Original and 2 sets submitted at COC counter by RE. Sent to Br 3 for review

12-29-2022 Proposed Order
from 12/20 hearing

12-29-2022	Proposed Order from 11/16 hearing		
12-29-2022	Letters/correspondence to Judge Bryan D. Keberlein requesting 5 Day Hold on Orders, submitted by Atty Vesely, routed to Branch 3 JA/CA for review.		
12-29-2022	Affidavit of mailing submitted by Atty Vesely		
12-29-2022	Proposed Order on Motions from 09-09-22 and 11-14-22, submitted by Atty Vesely, routed to CC for signature.		
12-29-2022	Letters/correspondence to Commissioner Michael Rust requesting 5 day hold on proposed Order on Motions, submitted by Atty Vesely, routed to CC for review. 01/03/23 lv, per CC: approved to hold.		
12-29-2022	Other papers Original and 2 sets submitted at COC counter by RE. Sent to Family Clerks. 12/29/22 lv, routed to Branch 3 JA/CA for review.		
01-03-2023	Other papers Information relevant to MSA dispute. Original and 2 sets submitted at COC counter by RE. Sent to Family Clerks. 1/3/23 sk, routed to Branch 3 JA and CA.		
01-03-2023	Other papers Page 6 of Petitioner's Letter to Court Inadvertently Omitted, submitted by Atty Vesely, routed to Branch 3 JA/CA for review.		
01-03-2023	Letters/correspondence from Terry W. Adler. Original submitted by T. Adler at COC counter. Original returned to filer. Routed to Family Clerks. 01/03/23 lv, routed to CC for review. 01/04/23 lv, per CC: file only.		
01-03-2023	Other papers Petitioner's Position Statement on Marital Settlement Agreement, submitted by Atty Vesely, routed to Branch 3 JA/CA for review.		
01-04-2023	Affidavit of Lawrence G. Vesely, submitted by Atty Vesely.		
01-06-2023	Motion hearing 1:30 Petitioner Elizabeth Anne Fitzgibbon in court. Attorney Lawrence Gerard Vesely in court for Elizabeth Anne Fitzgibbon. Respondent Adam Paul Fitzgibbon in court. Neither party filed a copy of the MSA writing the changes they remembered from their lost original MSA as ordered by the Court at the 12/20/22 hearing. The court swears both parties in, takes testimony and gives them both a copy of the filed MSA (document 22) to write changes they remember from their lost original MSA. Recess @ 2:12 for Judge to review what each party wrote on the copy of the MSA they were given in court today. Recalled @ 2:24 with same appearances. Judge questions both parties as to their changes on the MSA. The Court does find that the parties intent was to get divorced on 2/7/22. The court will deny the Motion to Reopen the divorce judgment. The Court does find a need to clarify but will not find the terms void. The Court will make the following changes to the MSA (document 22) - Page 2, the first paragraph, change the child's name from Adam to A.J.F. Page 6, A, #4 will read, Etrade and 1/2 of Voya account. The Court will draft a new MSA. *no exhibits were offered for this hearing, all exhibits were deleted from the exhibit tab.	Bryan D. Keberlein	Stephanie Koenigs
01-10-2023	Findings of facts/conclusions of law w/ judgment Amended with attached Second Amended MSA	Bryan D. Keberlein	
01-10-2023	Proposed Order Amended Findings of Fact, Conclusions of Law, and Judgment With Minor Children with attached Second Amended Marital Settlement Agreement		
01-10-2023	Marital settlement agreement Second Amended MSA		

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01-11-2023 Order Bryan D. Keberlein
Order from January 6, 2023

01-11-2023 Order Bryan D. Keberlein
from 12/20/22 hearing

01-11-2023 Order Bryan D. Keberlein
from 11/16/22 hearing

01-12-2023 Findings of facts/conclusions of law w/ judgment Bryan D. Keberlein
Second Amended Findings with Third Amended MSA

01-12-2023 Marital settlement agreement
Third Amended MSA

01-13-2023 Order Michael D. Rust
on Motions from 09-09-22 and 11-14-22, Copy to Petitioner and Respondent, 1 copy to CSA.

01-18-2023 Letters/correspondence
Original and 2 sets submitted at COC counter by RE's father and mother re: status of case. Original and 1 set back to father and mother. Sent to Family Clerks. 1/18/23 sk, routed to CC. 1/18/23 sk, per CC ex parte communication; content not considered by the Court.

01-19-2023 Letters/correspondence
Original and 2 sets of letter from RE father and mother re: case status submitted at COC counter. Original and 1 set back to father and mother. Sent to Family Clerks. 1/19/23 sk, routed to CC. 1/19/23 sk, per CC file only.

01-19-2023 Letters/correspondence
from Family Court re: ex parte. Copy mailed to PE and RE.

01-24-2023 Transcript
Status Conference 12/20/22

01-24-2023 Transcript
Status Conference 11/16/22

01-24-2023 Transcript
Motion Hearing 1/6/2023

01-24-2023 Letters/correspondence
submission with attachments submitted by Robert Murray, routed to CC for review. 01/25/23 lv, per CC: file only.

01-24-2023 Letters/correspondence
response to T. Adler's Letter submission, submitted by Petitioner's Mother, routed to CC for review. 01/25/23 lv, per CC: file only.

01-26-2023 Motion hearing Michael D. Rust
Placement

10:58 AM Petitioner Elizabeth Anne Fitzgibbon in court. Attorney Lawrence Gerard Vesely in court for Elizabeth Anne Fitzgibbon. Respondent Adam Paul Fitzgibbon in court. Attorney Trista Lee Moffat in court for A. J. F. Motion to Compel Depositions denied by court - never took place.
Atty Moffat informs court lots of family involvement. Child hostile w/mom. Mom stronger w/boundaries, dad the fun parent. Addresses counseling. Gives recommendation: 1) Joint Legal Custody. 2) Placement - 60/40 arrangement as parties doing now, or, 28 day block, EOW w/dad, wk 1 EOW Fri - Mon, Mon, Tues, Wed w/dad. 3) Make up Placement - mom pick one day at beginning or end of block. 4) No disparaging remarks about the other to child. 5) Counseling - Parties attend counseling (Sherman Counseling) and comply with recommendations. Child to be enrolled in individual counseling and re-unification counseling for mom/child. Parties share out of pocket costs for co-parenting and child's counseling. RE to pay for re-unification counseling for mom/child. 6) Extracurricular Activities - child to continue w/piano and karate. Both parties to be supportive. Any new activities be discussed and mutually agreed upon by both parties. 7) Child's Personal Items - Child's personal items to flow freely between homes. 8) Holiday/School Selection - Parties to attend mediation. 9) Review Hearing in June 2023.
Atty Vesely - PE would like to keep placement schedule as is now due to work

schedule. Agrees with GAL recommendation.
RE- Agrees with GAL recommendation. No objections.
Court Orders: Motion to Modify Placement (December 19, 2022)- denied. Motion to Enforce Physical Placement - previously granted. PE's Motion for Contempt - denied (child counseling). Parties stipulate to GAL recommendations/Court orders as part of Mtn to Enforce Physical Placement. PE to pick one day at beginning or end of each place (total of 42 picks). Atty Lawrence Vesely to draft order. Standard GAL fee.

01-27-2023 Mediation referral
Family Court Services

01-31-2023 Affidavit of mailing
submitted by Atty Vesely.

01-31-2023 Motion
to Reconsider, submitted by Atty Vesely, routed to CC for review. 02/01/23 lv, per CC: route to Br 3.

02-13-2023 Request for De Novo Hearing
re: 1/26/2023 CC Michael Rust Motion Hearing. Submitted by Atty. Vesely. Routed to Branch 3 JA and CA for processing.

02-14-2023 Notice of hearing
Hearing De Novo on April 13, 2023 at 08:30 am.

02-15-2023 Memorandum
Impasse, submitted by FCS, routed to CC for review. 1 copy to FCS. 02/15/23 lv, per CC: file only; pending de novo.

02-15-2023 Affidavit of mailing
submitted by Atty Vesely.

02-15-2023 Affidavit of mailing
submitted by Atty Vesely.

02-16-2023 Notice of motion, motion
for Relief and Declaratory Order, submitted by Petitioner at COC. 2 copies made, original and 1 copy returned to Petitioner. Routed to CC for review. 02/17/23 lv, per CC: This motion is going to be heard by Br 3, not by CC. 02/17/23 lv, per phone call with Atty Vesely's office, approved to cancel and will submit amended notice with Branch 3.

02-16-2023 Affidavit in support of motion
for Relief and Declaratory Order, original submitted by Petitioner, 2 copies made. Original and 1 copy returned to Petitioner.

02-22-2023 Order to show cause Michael D. Rust
for Finding of Contempt, Copy to Respondent for service.

02-22-2023 Prop. order to show cause
for Finding of Contempt, submitted by Respondent at COC, routed to CC for signature.

02-22-2023 Affidavit
for Finding of Contempt, original and 2 copies submitted by Respondent at COC, routed to CC for review. 02/22/23 lv, per CC: file only; does not include motion/order to show cause.

02-23-2023 Notice of hearing
Motion hearing on May 31, 2023 at 09:00 am.

03-01-2023 Proposed Order Declined
Per CC: Submitted without cover letter, unable to determine if copy provided to RE. May submit under cover with request for 5-day hold for any objection to language by RE. Copies mailed to Petitioner and Respondent.

03-01-2023 Proposed Order
from January 26, 2023, submitted by Atty Vesely, routed to CC for review and signature.

03-02-2023 Notice of hearing
Hearing De Novo on April 13, 2023 at 08:30 am.

03-08-2023 Affidavit of service

Original and 2 copies submitted by Respondent at COC. Original and 1 copy returned to Respondent.

03-09-2023 Letters/correspondence
from RE re: loan refinance. Original and 2 sets submitted at COC counter by RE. Sent to Family Clerks. 3/9/23 sk, routed to CC. 3/10/23 sk, per CC file only.

03-10-2023 Affidavit of mailing
Original and 2 copies submitted by Respondent at COC. Original and 1 copy returned to Respondent.

03-13-2023 Proposed Order
from January 26, 2023, submitted by Atty Vesely, routed to CC for signature.

03-13-2023 Letters/correspondence
to Commissioner Rust re: Proposed Order and Objection from Respondent, submitted by Atty Vesely, routed to CC for review. 03/14/23 lv, per CC: Wording of Order can be addressed at OTSC hearing 3/30.

03-15-2023 Affidavit of mailing
submitted by Atty Vesely.

03-22-2023 Notice of motion, motion
for Custody Change (School), submitted by Atty Vesely.

03-22-2023 eFiled Document Fee Paid – $50.00
Adjustment Number: 23A 115176,
Payable Number: 336399,
Receipt Number: 23R 008466,
Amount: $50.00

03-22-2023 Affidavit in support of motion
for Custody Change (School), submitted by Atty Vesely.

03-30-2023 Order Michael D. Rust
from January 26, 2023, Copies mailed to Petitioner and Respondent.

03-30-2023 Order to show cause hearing Michael D. Rust
9:04 AM Petitioner appeared in court with Attorney Vesely. Respondent appeared in court, without counsel. Court finds petitioner in contempt for failure to comply with court order. Purge conditions set in court, court sets TC for status of compliance. Court holds open financial damage awarded to respondent, will issue written decision. Attorney Vesely to draft.
Telephone conference scheduled for April 19, 2023 at 09:30 am.

03-30-2023 Notice of hearing
Telephone conference on April 19, 2023 at 09:30 am.

04-03-2023 Letters/correspondence
to Judge Keberlein with attached Exhibits, original and 2 copies submitted by Respondent at COC. Original and 1 copy returned to Respondent. Routed to Branch 3 JA/CA for review.

04-04-2023 Letters/correspondence
from RE to CC Rust with attachments
Electronically routed to FA Adm Assoc III clerks. 04/04/23 lv, routed to CC for review. 04/05/23 lv, per CC: file only.

04-04-2023 Affidavit of mailing
Original only filed, original returned.
Electronically routed to FA Adm III clerks.

04-05-2023 Affidavit of mailing
Original and two copies submitted at COC counter by RE, original and one copy returned.
Electronically routed to FA clerks for review.

04-06-2023 Letters/correspondence
to Judge Keberlein Supplement to Petitioner's Motion to Reconsider, submitted by Atty Vesely, routed to Branch 3 JA/CA for review.

04-07-2023 eFiled Document Fee Paid – $15.00
Adjustment Number: 23A 170466,
Payable Number: 337138,

Receipt Number: 23R 009602,
Amount: $15.00

04-10-2023 Verification from Court of Appeals

04-10-2023 Affidavit of mailing
Original and 1 copy submitted at COC counter by RE. Original returned to RE.
Electronically Routed to FA Adm Assoc III Clerks.

04-10-2023 Notes
Notice of Appeal and supporting docs submitted to Court of Appeals

04-10-2023 Other papers
Court Record Entries

04-10-2023 Docketing Statement

04-10-2023 Statement on transcript

04-10-2023 Notice of appeal
Routed to Br 3 CA for review

04-10-2023 Notice of hearing
Hearing De Novo on May 30, 2023 at 02:30 pm.

04-10-2023 Request for De Novo Hearing
re: March 30, 2023 Hearing with CC Rust. 1 set submitted by Atty Vesely, copy to Branch 3 JA/CA for review and processing.

04-10-2023 Exhibit
A to Affidavit in Support of Motion to Stay, submitted by Atty Vesely, routed to CC for review. 04/10/23 lv, per CC: route to Br. 3. Routed to Branch 3 JA/CA for review.

04-10-2023 Motion
to Stay, submitted by Atty Vesely, routed to CC for review. 04/10/23 lv, per CC: route to Br. 3. Routed to Branch 3 JA/CA for review.

04-10-2023 Affidavit in support of motion
to Stay, submitted by Atty Vesely, routed to CC for review. 04/10/23 lv, per CC: route to Br. 3. Routed to Branch 3 JA/CA for review.

04-10-2023 Affidavit
Regarding Pre-April 26, 2022 Communications and Rebuttal to Respondent's Letter to the Court (Document 166), submitted by Atty Vesely, routed to Branch 3 JA/CA for review.

04-10-2023 Affidavit
in Support of Change of Custody (School) and Upcoming Motions, submitted by Atty Vesely.

04-10-2023 Notice of motion, motion
for Contempt - Joint Custody (School), submitted by Atty Vesely.
Petitioner and Respondent Counsel to coordinate time/date if needed and file/serve amended notice.

04-10-2023 Affidavit in support of motion
for Contempt - Joint Custody (School), submitted by Atty Vesely.

04-12-2023 Letters/correspondence
From RE to CC Rust and Judge Keberlein with attached Exhibits A & B.
Original and 2 copies submitted at COC counter by RE. Original and 1 copy returned to RE.
Electronically Routed to FA Adm Assoc III Clerks. 4/12/23 sk, routed to CC and Branch 3 JA and CA. 4/13/23 sk, per CC file only; PE copy via efile.

04-12-2023 Affidavit of mailing
Original and 2 copies submitted at COC counter by RE. Original and 1 copy returned to RE.

Electronically Routed to FA Adm Assoc III Clerks.

04-12-2023 Notice of hearing
Hearing De Novo on May 30, 2023 at 02:30 pm.

04-13-2023 Letters/correspondence

to Commissioner Rust re: Contempt, submitted by Atty Vesely, routed to CC for review. 04/14/23 lv, per CC: file only.

04-13-2023 Hearing De Novo Bryan D. Keberlein Lori L. Baldauf
De Novo of 1/26/23 hearing & Motion to Reconsider
8:43 Petitioner Elizabeth Anne Fitzgibbon in court. Attorney Lawrence Gerard Vesely in court for Elizabeth Anne Fitzgibbon. Respondent Adam Paul Fitzgibbon in court. Attorney Trista Lee Moffat in court for A. J. F.
De Novo
The court will not find Adam in contempt of the Order for Counseling. The Court notes that the counseling is happening now without issue. The Court will decline to order sole legal custody and physical placement to Elizabeth.
Motion for reconsideration
Attorney Vesely notes this is now outside of time limits, so it is denied by law.
The Court schedules the Motions to Stay that were filed on 4/10, they will be heard at the already scheduled 5/30 De Novo Hearing.
Attorney Vesely to draft order.

04-13-2023 Other papers
Texts and Correspondence. Original and 2 copies submitted by RE at COC counter. Original and 1 copy returned to RE. Routed to Family Clerks. 4/13/23 sk, routed to CC. 4/13/23 sk, per CC file only.

04-17-2023 Proposed Order Declined

04-17-2023 Affidavit of mailing
Original and 2 copies submitted at COC counter by RE. Original and 1 copy returned to RE.

Electronically Routed to FA Adm Assoc III Clerks.

04-17-2023 Notice of compilation of record

04-17-2023 Affidavit of mailing
for Respondent; submitted by Atty Vesely

04-17-2023 Transmittal of record to court of appeals
Appeals Document Index: 2023AP000611 sent to Court of Appeals by: Kristl Thompson

04-17-2023 Index
Appeals Document Index saved for: 2023AP000611 by: Kristl Thompson

04-17-2023 Other papers
Supplement to Petitioner's Parenting Plan, submitted by Atty Vesely, routed to CC for review. 04/17/23 lv, per CC: file only as attachment to Document 192.

04-17-2023 Proposed parenting plan - petitioner
submitted by Atty Vesely, routed to CC for review. 04/17/23 per CC: File as individual proposed parenting plan, only signed by PE.

04-18-2023 Motion
to Stay, submitted by Atty Vesely.

04-18-2023 Affidavit
of Lawrence G. Vesely, submitted by Atty Vesely.

04-18-2023 Affidavit of mailing
Original and 2 copies submitted by Respondent at COC. Original and 1 copy returned to Respondent.

04-18-2023 Affidavit of mailing
Original and 2 copies submitted by Respondent at COC. Original and 1 copy returned to Respondent.

04-18-2023 Letters/correspondence
from RE to Judge Keberelein with attachments.
Original and two copies submitted at COC counter by RE, original returned. Electronically routed to FA clerks. 04/18/23 lv, routed to Branch 3 JA/CA for review.

04-18-2023 Letters/correspondence
from RE to CC Rust requesting voluntary witness.
Original and two copies submitted at COC counter by RE, original and 1 copy

returned.
Electronically routed to FA clerks. 04/18/23 lv, routed to CC for review.

04-18-2023 Decision and order Michael D. Rust
Supplemental Written Decision and Order of the Circuit Court Commissioner/Copies sent to: PE, Atty Lawrence Vesely (e-file), RE, Atty Trista Moffat GAL (e-file)

04-19-2023 Affidavit of mailing
Adam Fitzgibbon, submitted by Atty Vesely.

04-19-2023 Order Michael D. Rust
for Scheduling (Sanctions) sent to: PE, Atty Lawrence Vesely (e-file), RE, Br.3 (e-file)

04-19-2023 Telephone conference Michael D. Rust
Compliance of Contempt

9:31 AM Petitioner Elizabeth Anne Fitzgibbon appeared by phone. Attorney Lawrence Gerard Vesely appeared by phone for Elizabeth Anne Fitzgibbon. Respondent Adam Paul Fitzgibbon appeared by phone. Atty Vesely states RE not able to get mortgage loan due to De Novo Hrg/Judgment not final. Requesting Motion to Stay. Court informs parties this is not a Notice of Motion, Motion to Stay - no notice to RE, therefore, Ex Parte Communication. Needs to be heard by Br.3. Atty Vesely agrees this is not adequate notice to RE. RE states he was approved for everything (loan) by credit union, PE just needed to provide RE the Quit Claim Deed by April 12, 2023 and she refused to do it. Court will not hear Motion to Stay. Court cannot hear Contempt- on De Novo. Court certifies to Br.3 for sanctions as PE not compliant with Purge Conditions from last hearing. Court to draft order.

04-20-2023 Affidavit of mailing
RE to PE re: school
Original and 2 copies submitted at COC counter by RE. Original and 1 copy returned to RE.
Electronically Routed to FA Adm Assoc III Clerks.
4/20/23 (AMT) - clerk realized after customer left file stamp is for 4/19/23, however filing is in fact as recorded for 4/20/23.

04-20-2023 Letters/correspondence
RE letter to court re: Child's Grades
Original and 2 copies submitted at COC counter by RE. Original and 1 copy returned to RE.
Electronically Routed to FA Adm Assoc III Clerks. 4/20/23 sk, routed to CC.
4/20/23 (AMT) - clerk realized after customer left file stamp is for 4/19/23, however filing is in fact as recorded for 4/20/23. 4/24/23 sk, per CC file only; copies to other party via eFile.

04-20-2023 Notice of hearing
Contempt hearing on May 31, 2023 at 09:00 am.

04-24-2023 Notice of motion, motion
for Order. Submitted by Atty. Vesely. Routed to CC. 4/25/23 sk, per CC Petitioner Counsel and Respondent to coordinate time/date if needed and file/serve amended notice.

04-24-2023 Affidavit
of Lawrence G. Vesely. Submitted by Atty. Vesely. Routed to CC. 4/25/23 sk, per CC file only.

04-25-2023 Affidavit of mailing
submitted by Atty Vesely.

04-25-2023 Motion hearing Michael D. Rust
9:30 AM Petitioner Elizabeth Anne Fitzgibbon in court. Attorney Lawrence Gerard Vesely in court for Elizabeth Anne Fitzgibbon. Respondent Adam Paul Fitzgibbon in court.
Attorney Trista Lee Moffat in court for A. J. F. Court denies motion to change custody due to it not reaching the burden of health welfare and safety issue. The court finds RE in contempt for making the school choice of the 2022 and 2023 school year without consulting the petitioner. Purge condition RE shall

pay full costs of 2023-2024 school year. RE shall pay attorney fees of $250 within 30 days. Attorney Vesley to draft.

04-27-2023 Letters/correspondence
From RE to Court re: Concerns About Length of Time For Divorce
Original and 2 copies submitted at COC counter by RE. Original and 1 copy returned to PE.
Electronically Routed to FA Adm Assoc III Clerks.
04/27/23 lv, routed to CC for review. 04/28/23 lv, per CC: file only; copy to PE via eFile.

05-01-2023 Acknowledgment from Court of Appeals

05-01-2023 Transmittal of record to court of appeals
Appeals Document Index: 2023AP000611 sent to Court of Appeals by: Dana Suprise

05-01-2023 Other papers
Clerk's Certificate

05-02-2023 Affidavit of mailing
RE filed original and two copies re: mailing of "text/correspondence" to Elizabeth Fitzgibbon
Original returned.
Electronically routed to FA clerks.

05-03-2023 Motion
to Reconsider April 13, 2023 Order, submitted by Atty Vesely, routed to Branch 3 JA/CA for review.

05-03-2023 Affidavit in support of motion
to Reconsider April 13, 2023 Order, submitted by Atty Vesely, routed to Branch 3 JA/CA for review.

05-08-2023 Transcript
held April 13, 2023, prepared by Stephanie Koenigs.

05-10-2023 Proposed Order
Order to Enforce Placement, Contempt of Counseling, Custody Change and Motion to Reconsider from April 13, 2023 hearing

05-10-2023 Letters/correspondence
from LGV to Judge Bryan Keberlein, Order to Enforce Placement, Contempt of Counseling, Custody Change and Motion to Reconsider, submitted by Atty Vesely, routed to Branch 3 JA/CA for review.

05-10-2023 Proposed Order
on Contempt of 2022-2023 School Choice and Custody Change (School), submitted by Atty Vesely, routed to CC for signature.

05-11-2023 Proposed Order
on Contempt of 2022-2023 School Choice and Custody Change (School), submitted by Atty Vesely, routed to CC for signature.

05-11-2023 Letters/correspondence
from LGV to Commissioner Rust, along with proposed Order for Contempt, submitted by Atty Vesely, routed to CC for review. 05/12/23 lv, per CC: Approved to hold.

05-11-2023 Affidavit of mailing
3 copies submitted at COC Counter by RE. 2 copies returned.
Electronically forwarded to FA Clerks.

05-11-2023 Affidavit of mailing
to Adam Fitzgibbon - Order for Contempt, Order to Enforce Placement, submitted by Atty Vesely.

05-11-2023 Order Bryan D. Keberlein
High Conflict Family Court Order

05-11-2023 Proposed Order Declined
Per CC: Must be submitted under cover letter allowing 5 days for pro se party to object to proposed order. Copies mailed to Petitioner and Respondent.

05-12-2023 Request for De Novo Hearing

re: April 25, 2023 Hearing with CC Rust. 1 Set submitted by Atty Vesely, copy routed to Branch 3 JA/CA for review and processing.

05-12-2023 Letters/correspondence
to CC from GAL re: Order, submitted by Atty Moffat, routed to CC for review. 05/12/23 lv, per CC: Schedule for TC on proposed order language.

05-15-2023 Notice of hearing
Hearing De Novo on July 10, 2023 at 03:00 pm.

05-15-2023 Notice of hearing
Telephone conference on June 7, 2023 at 09:15 am.

05-16-2023 Affidavit of mailing
RE on PE : Text Messages/MSA
Original and 2 copies submitted at COC Counter by RE.
Original and 1 copy returned.

05-16-2023 Letters/correspondence
With attachments, from RE to Judge Keberlein and CC Rust.
Three printed originals submitted at COC counter by RE, two returned to RE.
Electronically routed to FA clerks. 5/16/23 sk, routed to CC Rust and Branch 3 JA and CA. 5/16/23 sk, per CC file only.
*not reviewed by Judge Keberlein - doesn't indicate what hearing or motion it is in regards to.

05-18-2023 Affidavit of mailing
Original and 2 copies submitted at COC counter by RE. Original and one copy returned.
Electronically routed to FA clerks.

05-18-2023 Letters/correspondence
re: Child
3 copies submitted at COC Counter by RE. 2 copies returned to RE. 5/18/23 sk, routed to CC. 5/18/23 sk, per CC file only.

05-22-2023 Motion to Supplement Record
submitted by Atty Vesely, routed to Branch 3 JA/CA for review.
(5/24-sent to COA by KST)

05-22-2023 Subpoena
Mary Lornson, submitted by Atty Vesely, routed to Branch 3 JA/CA for review.

05-22-2023 Affidavit of mailing
letters correspondence
Original and 2 copies submitted at COC Counter by RE. Original and 1 copy returned.
Electronically routed to FA Clerks.

05-22-2023 Letters/correspondence
RE to court re: previous correspondence
Original and 2 copies submitted at COC Counter by RE.
Original and 1 copy returned to RE.
Electronically routed to FA Clerks. 5/22/23 sk, routed to CC and Branch 3 JA and CA. 5/23/23 sk, per CC file only.
Routed to Judge for review

05-23-2023 Letters/correspondence
from LGV to Judge Bryan Keberlein re: brief on issue to hear a De Novo review, submitted by Atty Vesely, routed to Branch 3 JA/CA for review.

05-23-2023 Proposed Order
Amended Subpoena - Mary Lornson

05-23-2023 Order Bryan D. Keberlein
Order from 4/13/2023 hearing, to Enforce Placement, Contempt of Counseling, Custody Change and Motion to Reconsider

05-24-2023 Affidavit of mailing
to Adam P. Fitzgibbon. Submitted by Atty. Vesely.

05-24-2023 Proposed Order
Amended Subpoena - Mary Lornson

05-24-2023 Proposed Order Declined

Orders by local court rule must have 3" header for court signature

05-26-2023 eFiled Document Fee Paid – $50.00
Adjustment Number: 23A 228638,
Payable Number: 340055,
Receipt Number: 23R 015016,
Amount: $50.00

05-26-2023 Notice of motion, motion
to Relocate with Minor Children with attachment, submitted by Atty Vesely, routed to CC for review. 05/30/23 lv, per CC: file only.

05-26-2023 Subpoena Bryan D. Keberlein
Mary Lornson

05-30-2023 Letters/correspondence
from LGV to Judge Keberlein re: client is withdrawing Motion hearing for 5-31-23, submitted by Atty Vesely, routed to Branch 3 JA/CA for review.

05-30-2023 Hearing De Novo Bryan D. Keberlein Stephanie Koenigs
De Novo of 3/30 hearing & Motion to Stay filed 4/10/23
2:30 Petitioner Elizabeth Anne Fitzgibbon in court. Attorney Lawrence Gerard Vesely in court for Elizabeth Anne Fitzgibbon. Respondent Adam Paul Fitzgibbon in court. As to the De Novo - the Court will decline to find Ms. Fitzgibbon in contempt. The certification of contempt from CC Rust, set for 5/31, will be removed from the Court's calendar. Motion to Stay filed 4/10/23 - the Court does not find that there would be irreparable harm. The Court will deny the Motion to Stay.

05-30-2023 Amended
Notice of Motion and Motion to Relocate with Minor Children and additional Information attached, submitted by Atty Vesely.

05-30-2023 Affidavit of service
submitted by Atty Vesely.

05-30-2023 Affidavit of mailing
to Adam P. Fitzgibbon, submitted by Atty Vesely.

05-31-2023 Proposed Order
Order from 5/30/23 Hearing

05-31-2023 Letters/correspondence
Confirming Reschedule for 06/23/2023 Relocation Hearing to 07/18/2023, submitted by Atty Vesely.

05-31-2023 Affidavit of mailing
submitted by Atty Vesely.

05-31-2023 Letters/correspondence
to Judge Keberlein from Attorney Lawrence G Vesely requesting Hold on Order from 05/30/2023, submitted by Atty Vesely, routed to Branch 3 JA/CA for review.

06-07-2023 Telephone conference Michael D. Rust
9:17 AM Petitioner Elizabeth Anne Fitzgibbon appeared by phone. Attorney Lawrence Gerard Vesely appeared by phone for Elizabeth Anne Fitzgibbon. Respondent Adam Paul Fitzgibbon appeared by phone. Attorney Trista Lee Moffat appeared by phone for A. J. F. Court clarifies that the court did order purge conditions of RE paying full costs of 2023-2024 Neenah Lutheran school year and the child attending the Neenah Lutheran school for the 2023-2024 school year. Attorney Vesely to draft new order.

06-08-2023 Proposed Order Declined
Per CC: To be resubmitted with language as ordered on April 25 and clarified at June 7 TC. Copies mailed to Petitioner and Respondent.

06-09-2023 Order Bryan D. Keberlein
from 05/30/2023 hearing (Mailed to Respondent)

06-13-2023 Proposed Order
on Contempt of 2022-2023 School Choice and Custody Change (School), submitted by Atty Vesely, routed to CC for review and signature.

06-16-2023 Order Michael D. Rust

on Contempt of 2022-2023 School Choice and Custody Change (School), copies mailed to Petitioner and Respondent.

06-20-2023 Letters/correspondence
to Judge Keberlein re: Motion to Relocate with the Minor Child hearing, submitted by Atty Vesely, routed to Branch 3 JA/CA for review.

06-20-2023 Affidavit of mailing
submitted by Atty Vesely.

06-22-2023 Affidavit of mailing
submitted by Atty Vesely.

06-26-2023 Other papers
- School choice/de novo hearing
Original and two copies submitted at COC counter by A.D.F , original and 1 copy returned.
Electronically Routed to FA Clerks. 6/27/23 sk, routed to Branch 3 JA and CA.

06-26-2023 Letters/correspondence
to Judge Keberlein re: Clarification for hearings requested, submitted by Atty Vesely, routed to Branch 3 JA/CA for review.

06-27-2023 Affidavit of mailing
School choice/de novo hearing.
Original and two copies submitted by RE at COC counter, original and one copy returned.
Electronically routed to FA Clerks.

06-27-2023 Letters/correspondence
from Court re: 7/10/23 Hearing may start late

06-27-2023 Affidavit of mailing
submitted by Atty Vesely.

06-29-2023 Affidavit of mailing
Additional texts for School/relocate to PE. Original and two copies submitted by RE at COC counter, original and 1 copy returned.
Electronically routed to FA Clerks.

06-29-2023 Letters/correspondence
with attachments From RE to Court re: School Choice Decisions
Original and 2 copies submitted at COC Counter by RE.
Original and 1 copy returned. Electronically routed to FA Clerks. 06/29/23 lv, routed to CC for review. 06/30/23 lv, per CC: file only.

07-05-2023 Letters/correspondence
Letter from Atty. Vesely to Tara Berry, request to add documents

07-05-2023 Letters/correspondence
from LGV to Judge Keberlein re schedule hearings, submitted by Atty Vesely, routed to Branch 3 JA/CA for review.

07-06-2023 Affidavit of mailing
submitted by Atty Vesely.

07-07-2023 Objection
to Relocate with Minor Children and Motion to Change Placement/Custody with attachments
Original and 2 copies submitted at COC counter by RE, original and 1 copy returned.
Electronically Routed to FA Clerks. 7/7/23 sk, routed to CC. 7/10/23 sk, per CC file only.

07-10-2023 Hearing De Novo Bryan D. Keberlein Stephanie Koenigs
De Novo of 4/25/23 Hearing
2:59 Petitioner Elizabeth Anne Fitzgibbon in court. Attorney Lawrence Gerard Vesely in court for Elizabeth Anne Fitzgibbon. Respondent Adam Paul Fitzgibbon in court. Attorney Trista Lee Moffat in court for A. J. F. Testimony taken. The Court finds Adam in contempt. The Court will order the child continue to attend school at the school he is currently enrolled in (Neenah Lutheran School) until ther is further order of the court or the child ages out. The Court will not order Adam to pay Elizabeth's attorney fees. The Court will

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order Adam to pay for school fees until further order of the court. The court will not will not schedule a second hearing on the Motion to Relocate (currently pending with CC Rust) until it finishes the Court Commissioner level. The Court will schedule the unheard De Novo of 1/26/2023 of Motion to Modify Make up Placement (document 102) and sole legal custody (document 99). The GAL feels it makes more sense to hear this after we know what the decision on the Motion to Relocate is. Attorney Vesely wants the sole legal custody heard prior to the Motion to Relocate if possible. The Court will only hear the De Novo of the sole legal custody on Sept 8, 2023 @ 1:00 - 4:30. The Court will schedule the De Novo Motion to Modify make up placement (doc 102) when the court schedules the Motion to Relocate (if it comes to the court)

Attorney Vesely to draft the Order.
Hearing De Novo scheduled for September 8, 2023 at 01:00 pm.

07-11-2023 Affidavit of mailing
Objection to Relocation on Elizabeth Fitzgibbon
Original and 2 copies submitted at COC Counter by RE.
Original and 1 copy returned. Electronically routed to FA Clerks.

07-11-2023 Notice of hearing
Hearing De Novo on September 8, 2023 at 01:00 pm.

07-17-2023 Other papers
Supportive Document for Motion to Relocate-Filed on behalf of Petitioner. Routed to CC Rust. 07-18-2023 er, per CC Ex parte communication, content not considered

07-17-2023 Notice
of Limited Appearance-Change in Scope of Representation. Submitted by Atty. Vesely. Routed to Branch 3 JA and CA.

07-18-2023 Notice of hearing
Hearing De Novo on August 11, 2023 at 08:30 am.

07-18-2023 Findings and order Michael D. Rust
Copies mailed to PE / RE

07-18-2023 Affidavit of mailing
Submitted by PE at COC counter, original given back to PE.
Routed to FA Clerks

07-18-2023 Request for De Novo Hearing
Original only submitted at COC counter by PE
Electronically Routed to FA Clerks. 07/18/23 lv, routed to Branch 3 JA/CA for review.

07-18-2023 Motion hearing Michael D. Rust
Petitioners Motion to Relocate

9:30 AM Petitioner Elizabeth Anne Fitzgibbon in court without counsel. Respondent Adam Paul Fitzgibbon in court without counsel. Attorney Trista Lee Moffat in court for A. J. F. Petitioner requests to relocate with the minor child due to the financial situation she is in due to the unresolved MSA issues. GAL does not support petitioners motion to relocate. Respondent objects to motion to relocate. Court finds petitioner has not met the statutory requirements to relocate with the minor child. Motion denied. Court to draft order.

07-26-2023 Objection
to Relocate with Minor Children and Motion to Change Placement/Custody. Original and 2 copies submitted by RE at COC counter. Original and 1 copy returned to RE. Routed to Branch 3 JA and CA.

07-27-2023 Affidavit of mailing
Original and two copies submitted at COC counter by RE. Original and 1 copy returned.
RE mailed to PE objection to relocate on 7/27/23
Electronically routed to FA Clerks.

07-28-2023 Affidavit of mailing

Original and 1 copy submitted by PE at COC counter. Original returned to PE.

07-28-2023 Affidavit
in Support of Motion for Reconsideration (School Choice). Original and 1 copy submitted by PE at COC counter. Original returned to PE. Routed to Branch 3 JA and CA.

07-28-2023 Motion
for Reconsideration (School Choice). Original and 1 copy submitted by PE at COC counter. Original returned to PE. Routed to Branch 3 JA and CA.

08-04-2023 Affidavit of mailing
3 copies submitted by Petitioner at COC, 2 copies returned to Petitioner.

08-04-2023 Proposed Order
from July 10, 2023, submitted by Petitioner at COC, routed to Branch 3 for signature.

08-04-2023 Letters/correspondence
regarding Hearing on July 10, 2023 and Order, 3 copies submitted by Petitioner at COC. Routed to Branch 3 JA/CA for review. 2 copies returned to Petitioner.

08-04-2023 Letters/correspondence
from Petitioner, 3 copies submitted by Petitioner at COC, routed to CC and Branch 3 JA/CA for review. 2 copies returned to Petitioner. 08/04/23 lv, per CC: Pending de novo; Commissioner cannot review decision while de novo pending.

08-07-2023 Order Bryan D. Keberlein
Order from 7/10/23 Hearing
(mailed copy to PE & RE)

08-08-2023 Letters/correspondence
From PE to Court
Original and 2 copies submitted at COC Counter by PE.
Original returned. Electronically routed to FA Clerks.
08/08/23 lv, routed to Branch 3 JA/CA for review.

08-08-2023 Letters/correspondence
From PE to Court
Original and 2 copies submitted at COC Counter.
Original returned. Electronically routed to FA Clerks.
08/08/23 lv, routed to Branch 3 JA/CA for review.

08-08-2023 Affidavit of mailing
Letter on 2-part approach to resolving misunderstandings and issues and Letter requesting court's preference for addressing RE's letters to Court - mailed to Adam Fitzgibbon.
Original and 1 copy submitted by PE at COC counter, original returned. Electronically routed to FA Clerks.

08-09-2023 Affidavit of mailing
Letter of Concern mailed to Elizabeth Fitzgibbon. Original and 2 copies submitted by RE at COC counter, original and 1 copy returned. Electronically routed to FA Clerks.

08-09-2023 Letters/correspondence
of concern from RE re: custody/placement and petitioner's mental and financial health. Original and 2 copies submitted by RE at COC counter. Original and 1 copy returned to RE. Routed to Branch 3 JA and CA.

08-11-2023 Hearing De Novo Bryan D. Keberlein Stephanie Koenigs
Motion to Relocate
8:33 AM Petitioner Elizabeth Anne Fitzgibbon in court. Respondent Adam Paul Fitzgibbon in court. Elizabeth Fitzgibbon asking that we not hear the motion to modify make up placement (Doc. 102-Court grants. GAL Recommendation: Does not support motion to relocate. Ask the Court to deny the motion. The Court will deny the motion to relocate. Atty. Moffat to draft the order.

08-14-2023 Proposed Order
Order from 08/11/2023 Hearing

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08-14-2023 Letters/correspondence
to Judge with Proposed Order, submitted by Atty Moffat, routed to Branch 3 JA/CA for review.

08-15-2023 Letters/correspondence
to Elizabeth Fitzgibbon re: motion and affidavit for reconsideration

08-22-2023 Order Bryan D. Keberlein
Order from 08/11/2023 Hearing

08-28-2023 Notes
PE left a voice mail Friday 8/25 asking to move her 9/8 De Novo hearing back 3 or 4 months. Judge said just to make a note on CCAP of the message but not to reschedule the hearing.

08-29-2023 Received documents
3 copies submitted by Petitioner at COC. 2 copies returned to Petitioner, routed to Branch 3 JA/CA for review.

08-29-2023 Letters/correspondence
to Judge Keberlein regarding Reschedule of 09/08/2023 Hearing, 3 copies submitted by Petitioner at COC. 2 copies returned to Petitioner, routed to Branch 3 JA/CA for review.

08-29-2023 Letters/correspondence
to Respondent regarding Rescheduling, 3 copies submitted by Petitioner at COC. 2 copies returned to Petitioner, routed to Branch 3 JA/CA for review.

08-29-2023 Affidavit of mailing
Request to reschedule September 8, 2023 motion for custody change -- Judge Keberlein mailed to Adam Fitzgibbon. Original and 1 copy submitted by PE at COC counter, original returned. Electronically routed to FA Clerks.

08-31-2023 Letters/correspondence
from Judge to Ms. Fitzgibbon re: adjournment

09-06-2023 Affidavit of mailing
2 copies submitted by Petitioner at COC, 1 copy returned to Petitioner.

09-06-2023 Letters/correspondence
to Judge Keberlein regarding Response Letter from Courts and Follow Up, 3 copies submitted by Petitioner at COC, routed to Branch 3 JA/CA for review.
(The court has reviewed the letter of the petitioner filed Sept 6 2023.
As noted by the Court in the previous correspondence, Wisconsin statute requires de novo hearings of court commissioner decisions in family cases to occur within 60 days.
The Court will not adjourn the hearing as scheduled, as the Court has been attempting to hear the many filings as timely as possible.
Based on the petitioners letter the Court will accept the withdrawal of the de novo request as scheduled for September 8, 2023 at 1pm.)

09-19-2023 Docketing Statement
(School Choice) (not signed by Atty. Vesely)

09-19-2023 Statement on transcript
Statement on Transcript (school choice) (not signed by Atty. Vesely)

09-19-2023 eFiled Document Fee Paid – $15.00
Adjustment Number: 23A 455574,
Payable Number: 345780,
Receipt Number: 23R 024925,
Amount: $15.00

09-19-2023 Notice of appeal
Notice of Appeal (School choice) (not signed by Atty. Vesely)

09-20-2023 Statement on transcript
Amended Statement on Transcript (school choice)(signed)

09-20-2023 Docketing Statement
Amended Docketing Statement (school choice) (signed)

09-20-2023 eFiled Document Fee Paid – $15.00
Adjustment Number: 23A 455621,
Payable Number: 345843,

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Receipt Number: 23R 024998,
Amount: $15.00

09-20-2023 Amended
Amended Notice of Appeal (school choice) (signed)

09-20-2023 Notes
Notice of Appeal and supporting docs submitted to Court of Appeals (school choice)

FILED
10-18-2023
CLERK OF WISCONSIN
COURT OF APPEALS

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II
Case No. 2023AP0611

IN RE THE MARRIAGE OF:

ELIZABETH ANNE FITZGIBBON,

Petitioner-Appellant,

v.

ADAM PAUL FITZGIBBON,

Respondent-Respondent.

BRIEF OF PETITIONER-APPELLANT

On Appeal from a Final Order of the Winnebago County
Circuit Court, Case No. 2021FA0564,
The Honorable Bryan Keberlein, Presiding

ELIZABETH ANNE FITZGIBBON
Petitioner-Appellant

PREPARED BY:
LAWRENCE G. VESELY, STATE BAR NO. 1014713
OLSON, KULKOSKI, GALLOWAY & VESELY, S.C.
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PREFACE

To aid review, this optional section summarizes, but adds nothing to the Brief.

This Appeal arises from an Order with a two-part decision. First, the court denied in part the Petitioner-Appellant's motion for relief from (and declare as void) the original divorce judgment. Second, the court granted in part the same motion using Wis. Stat. § (henceforth "§")806.07(1)(h) to justify the court creating, then ordering, an Amended Judgment and Amended MSA without the parties' consent.

The January 6, 2023 hearing was held to address errors cascading from the court's loss of the unreproducible final MSA and the FCC's accidental use/order of an obsolete MSA during the parties' February 7, 2022 divorce hearing. The circuit court agreed that extraordinary relief from prior judgment was proper, but the court erred when it unsuccessfully attempted to recreate the lost MSA through testimony. No detailed asset inventory existed in the record. No stipulated agreement existed for the court to modify (only draft materials rejected by the parties). The parties were never offered a contested divorce trial, nor was a proper one performed.

This Brief presents four errors (each link to the similarly numbered issue/argument):

1. No proper divorce ever occurred, invalidating the Original Judgment.

The court-created Amended Judgment(s) and MSA(s) are:

2. Procedurally flawed, lack consent/not "stipulated", therefore invalid, and
3. Inequitable, therefore invalid.

The court erred in its denial of:

4. Costs (including attorney fees).

This Court is requested to reverse all decisions made that day: grant the Motion to Declare as Void and vacate/void the Order for the Amended MSAs/Judgments. The Conclusion section further details this general request. Anything less may well leave the parties in the untenable situation (or worse) that convened the hearing.

TABLE OF AUTHORITIES

All authorities are Wisconsin based unless explicitly cited otherwise.

WISCONSIN CASES

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WCCLR's are here: https://www.co.winnebago.wi.us/sites/default/files/uploaded-files/winnebagocountylocalcourtrules2020.pdf

ISSUES PRESENTED AND STANDARDS OF REVIEW

Trial court answers are imprecise summaries to aid review, subject to §805.18(1).

I. On February 7, 2022, was there a proper, valid, complete, and enforceable divorce, thus deserving denial of the Motion to Declare as Void?

Trial court answer: Yes. All provisions were valid and enforceable, but the Marital Settlement Agreement ("**MSA**") was simply unknown to the circuit court and needed documentation, notwithstanding misunderstandings between the parties that required the circuit court judge's clarifications.

Standard of Review: Whether or not a Family Court Commissioner ("**FCC**") can grant and sustain a stipulated divorce without the procedural prerequisites (e.g. a valid MSA with all material issues of property and custody resolved) is a **question of law subject to de novo review** without deference to trial court decisions. See ***Omernick v. Lepak***, 112 Wis.2d 285,290, 332 N.W.2d 307 (1983).

II. To replace an MSA the court lost, does §806.07(1)(h) permit a circuit court Judge to create and retroactively order an MSA and amended stipulated Judgment of Divorce, without the parties' consent?

Trial court answer: Yes. There had to be an extraordinary step taken, but the original divorce remains valid and enforceable, albeit requiring clarifications to avoid further misunderstandings about what was agreed.

Standard of Review: Whether or not a trial court judge can (re-)create a marital settlement agreement lost by the court prior to the court approving/denying the agreement (notwithstanding subsequent, ongoing

disagreement over property division and custodial terms between the respondent and sole petitioner), then retroactively ordering a stipulated divorce are **questions of law subject to de novo review** without deference to trial court decisions. ***Omernick v. Lepak***, 112 Wis.2d 285 at 290. The de novo review should specifically include the court's approach to using Wis. Stat. §806.07(1)(h) and whether the circuit court exceeded its authority (including inherent, noting "once you start utilizing some of those inherent powers, that's a slippery slope" – ***State v. Schwind***, 2019 WI 48,¶7, 386 Wis.2d 526, 926 N.W.2d 742) to alter and order a non-agreement (unsigned, unapproved, incomplete, draft MSA provided post-judgment) for a stipulated divorce when no parties of the divorce action requested either the document's alteration or a contested divorce to overcome any objections.

Given the Petitioner-Appellant's concerns (dismissed by the circuit court but incorporated within the Motion that convened the January 6, 2023 hearing in question) regarding the validity and enforceability of the incorrect Original MSA and Judgment from February 7, 2022 as well as what binding agreements exist from the February 7, 2022 hearing (and if any, how such agreements should be regarded/upheld), this de novo review should include the circuit court's use/denial of the declaratory order statutes (§806.04) for which "the Supreme Court of Wisconsin has held declaratory judgment to be reserved for those without other adequate recourse available." ***State ex Rel. Leung v. Lake Geneva***, 2003 WI App. 129,¶5, 265 Wis.2d 674. This is necessary because "when suit is brought pursuant to the declaratory judgment statute, §806.04, Wisconsin courts are to 'liberally...afford relief from an uncertain infringement of a party's rights.'" ***State v. WI E. Comm***, 2020 WI App. 17,¶24, 391 Wis.2d 441, 941 N.W.2d 284 citing ***Town-Eagle v. Christensen***, 191 Wis.2d 301,316, 529 N.W.2d 245 (Ct.App. 1995).

III. If Issue II is upheld/affirmed, was the court-created MSA and stipulated Judgment of Divorce equitable?

Trial court answer: Yes. There had to be an "extraordinary step" taken. Any appearance of discretion used in deciding the previously-agreed terms is misunderstood, as the court merely "reconstruct[ed]" the MSA that the court lost and that the FCC and circuit court judge would have approved one year earlier, so the court does not require re-assessing equitability.

Standard of Review: Whether or not the trial court had the authority (and properly proceeded) to reconstruct and order the MSA is the prior Issue (II), while this Issue (III) concerns the trial court's use of discretion in dividing the property (assuming this Court affirms the circuit court's actions in Issues I and II). Whether or not a trial court's division of property was rational and equitable (procedurally and substantively fair), thereby demonstrating appropriate discretion (***Button v. Button***, 131 Wis.2d 84,93-99, 388 N.W.2d 546 (1986)), is a **mixture of questions spanning both law and fact with varying deference to trial court decisions parsed out as follows.**

This Court should first review the circuit court's determination of what property exists (including its resolution of any disputed historical facts regarding the property, such as differences between financial disclosure statements ("**FDS**") and MSAs) for **clear error**. ***Omernick v. Lepak***, 112 Wis.2d 285 at 290.

Next, this Court should review the circuit court's decisions of what property (e.g. gifts, pre-marital) is *non-divisible* as a question of **law subject to de novo review** (***Derr v. Derr***, 2005 WI App 63,¶ ¶11-13,25,51, 280 Wis.2d 681, 696 N.W.2d 170), even if few asset details exist in the record.

Once there is a basis of property facts, this Court should review the circuit court's *division of divisible marital assets, including hardship considerations*, validating the circuit court's proper use of discretion (***Id.***,¶9), by verifying that the circuit court applied a rational process, "applying correct legal standards" ***Cook v. Cook***, 208 Wis.2d 166,171-72, 560 N.W.2d 246 (1997), citing ***Hartung v. Hartung***, 102 Wis.2d 58,66, 306 N.W.2d 16 (1981), so as to avoid, "an erroneous exercise of discretion," citing ***Schmid v. Olsen***, 111 Wis.2d 228,237, 330 N.W.2d 547 (1983). As such, the property division in the trial court-created MSA **should be reviewed for the erroneous exercise of discretion**.

More broadly, this Court **should review de novo the trial court's proper categorization of its MSA-term decisions as properly discretionary, authorized, and adhering to limitations of statutes, cases, and public policy, as these are questions of law that should be reviewed de novo,** particularly since the FCC retired prior to reviewing/approving the MSA retroactively entered into the Amended Judgment bearing the FCC's name.

IV. Was Elizabeth's request for reimbursement of attorney's fees, costs, and supplemental relief reasonable and justified?

Trial court answer: No.

Standard of Review: A circuit court awarding attorney fees in a divorce action is clearly discretionary and not to be disturbed "unless that discretion is abused." ***Selchert v. Selchert,*** 90 Wis.2d 1,15-16, 280 N.W.2d 293 (1979) citing ***Anderson v. Anderson***, 72 Wis.2d 631,645, 242 N.W.2d 165 (1976). This Court should determine whether the trial court's denial for Elizabeth's request for attorney fees and related declaratory costs reveal an erroneous

exercise of the circuit court's discretion, given the insufficient judicial consideration not merely of the "lodestar factors" (per ***Kolupar v. Wilde P.C.***, 2004 WI 112,¶¶27-30, 275 Wis.2d 1, 683 N.W.2d 58) but also of Elizabeth's need, Adam's ability, and the conscience-shocking injustice if not awarded, given the Petitioner-Appellant's efforts to reach a simple, consensual solution.

KEY ABBREVIATIONS AND ACRONYMS

(All Dates are of Year 2022 unless specified)

"§" .....Section, within Wisconsin Statutes (unless otherwise specified)

"**6Jan2023-Documents**" ..... Ordered (R.125) January 6, 2023 hearing documents:

1. 01/10/2023 "Second Amended Martial [sic] Settlement Agreement" (R.120)
2. Amended Judgment (R.122) back-dated to February 7, 2022, ordering and appended with Second Amended MSA (R.120:10-19)
3. 01/12/2023 "*Third* Amended Martial [sic] Settlement Agreement" (R.126)
4. Second Amended Judgment (R.127), back-dated to February 7, 2022, ordering the "01/10/2023 Second Amended" MSA (A.App.53)(R.127:4), but appended with the *Third* Amended MSA (A.App.59)(R.127:10-19)

"**A.App.**" ..... Petitioner-Appellant's Appendix Page# (**always precedes R.**)

"**Declare as Void, Motion to**" .....Declaratory Order, to Reopen Judgment, hold in abeyance Respondent's Motion, and for Temporary Order (R.39-40)

"**CSA**" ..... Child Support Agency

"**DAR**" .....Digital Audio Record(ing) of a hearing

"**FCC**" or "**[F]CC**" .....Family Court Commissioner

"**FDS**" or "**FDF**" .....Financial Disclosure Statements

"**Judgment**" **(of Divorce)**.....Finding of Fact, Conclusions of Law and Judgment of Divorce with Minor Children

"**MSA**" ..... Marital / Martial [sic] Settlment Agreement

"**Parties Approval of Judgment**" ..... Parties Approval of Finding of Fact, Conclusions of Law and Judgment of Divorce with Minor Children

"**R.**" ..... Circuit Court Record Number

"**SCR**" ..... Supreme Court Rule

"WCCLR" ..... Winnebago County Court Local Rule

STATEMENT ON ORAL ARGUMENT

Petitioner-Appellant Elizabeth Anne Fitzgibbon does not request oral argument. However, she is willing to answer written questions to assist this Court in deciding this case as well as deciding how to augment the case for publishing purposes, thereby improving guidance for other civil and family law cases.

STATEMENT ON PUBLICATION

The opinion in the case should be published in the official reports. It will clarify (perhaps enunciate for the first time in Wisconsin, or even in the United States) the law on whether a circuit court has authority to create new stipulated marital agreements without the parties' consent as well as what relief and legal support should be offered to a disputing party with no such agreements, given that agreement disputes are now not merely between petitioner and respondent, but also with the circuit court.

More broadly useful to the public, this Court has an opportunity to better describe which specific statutes/authorities (and limitations) and subject matters (e.g. any, limited to the material with which the State has a real interest §767.205(2), or other) a circuit court may alter an agreement for a stipulated divorce when no parties of the divorce action requested either alteration of their agreement or a contested divorce. This can guide parties to an action on how best to resolve the court's objections/limitations to adopting agreements into stipulated divorces (§767.34), which would benefit the public and reduce litigation. Similarly, this Court can better describe which specific statutes/authority (and limitations) authorize a circuit court to transition a stipulated, uncontested divorce into a contested divorce and what obligations exist for the circuit court to adopt at trial some or all of an agreement that does not conflict with the court's requirements

(perhaps raised on behalf of the State). Further, this Court can clarify what objections (approval impediments) a circuit court may raise to an agreement for a stipulated divorce that extend beyond matters in which the State has defined as its real party interests (§767.205(2)). In doing so, this Court can better distinguish the ultimate differences (if any) between stipulated/uncontested divorces from contested, in the event that the court (particularly as the State's representative party) has any objection to the agreement formed by the parties of the stipulated divorce action (§767.34). In parallel, this Court can better describe the relationship (and practical differences) between §767.34 and §767.35 in the event that the State (court, as the State's representative party) has any objection to the agreement formed by the parties of the stipulated divorce action.

Lastly, this case offers this Court the opportunity to clarify what (if any) disclosures or waivers (or similar measures) are required of circuit courts when the court acts sua sponte as the State's representative party rather than strictly as an adjudicator to an action that others bring to it. In doing so, this Court can clarify what additional procedures circuit courts should afford parties to an action so that they may rework their stipulated agreement to accommodate the Court's requirements prior to final judgment. In the alternative, this Court should clarify what relief/remedy a petitioner or respondent (or both) may seek (if any), and with whom, when a circuit court orders court-created alternatives rather than the agreements of the petitioner and respondent.

STATEMENT OF THE CASE AND FACTS

(All Dates are of Year 2022 unless specified)

Elizabeth Anne Fitzgibbon ("**Elizabeth**") and Adam Paul Fitzgibbon ("**Adam**") married in 2013. Adam supplemented steady factory work with side jobs (e.g. nightclub bouncer, R.189:14). The couple decided Elizabeth would relinquish her career to become a homemaker, primary caregiver for their son, and homeschool teacher. To complement Adam's schedule and income, Elizabeth acquired/maintained a part-time phlebotomy job that used neither her Bachelor's degree in business nor professional experience. For household harmony, Adam managed all income and investments (A.App.45)(R.112:5)(A.App.175)-(R.175:8¶12a).

By 2021, they shared A.J.F.(5-year-old son), a marital residence, undeveloped Wisconsin land, securities, and 15%-20% of their wealth in tangible assets stored in their cellar ("basement" assets). Domestic conflicts (R.86:3¶14) periodically resulted in parental/police intervention (R.86:3¶14)(A.App.33)(R.91:3¶8), so upon serving Adam her petition for divorce, Elizabeth left their home with her personal effects, and car. Adam shared access to her bank accounts.

Adam resisted publicly disclosing family financials. He proposed a trust, jointly-funded with Elizabeth, with A.J.F. as the sole beneficiary. When Adam insisted Adam be the sole trustee, denying Elizabeth consideration for contributing assets (A.App.154-155)(R.174:6-7¶19), Elizabeth declined Adam's proposal, as the crossed-out hand-edits to both FDSs reflect (R.12:5)(R.13:4). With limited data, Elizabeth drafted Adam's (R.12) and her (R.13) "FDSs" (template from Attorney Morrell, Sterling Law); they signed these on October 4, 2021.

Elizabeth continued compiling asset information but was unable to acquire an updated FDS from Adam. Elizabeth completed an initial MSA (Sterling Law's template/version of §767.34's FA-4150V) with improved financial information,

such as their home's value ($175,000 up from $160,000). "Basement" assets were least-accurately detailed. The Fitzgibbons felt it was essential only to reach an equitable agreement, not agree on each item's value (A.App.45-46)(R.112:5-6). In December 2021, Elizabeth and Adam signed the "Original MSA" (R.15:8).

On January 7, 2022, Elizabeth submitted to the court the signed versions and three photocopies of both FDSs and their original MSA. The Case Record Details (A.App.202)(R.183:2) show both FDSs were scanned/filed the same day, though the original MSA (without scanning/filing) was routed to "CSA" for approval/signature (R.15:8), then "to [F]CC" on "1/13/2022". On January 21, FCC Bermingham filed an MSA Checklist (R.14) and approved/signed the "Original MSA" (R.15:8).

Meanwhile, Elizabeth continued her financial due diligence. She factored in pre-marital/gifted assets (A.App.46)(R.112:6). She identified errors/gaps in the FDSs and Original MSA. She collected receipts, took detailed notes and photos, and made spreadsheets of the basement assets (e.g. precious metals, weapons) aided by independent/informal assessments/appraisals. When Elizabeth realized how inequitable the Original MSA was, she requested updating it with Adam. Adam threatened to gift away marital assets to hide them from division then chased her from their marital residence (A.App.32-33)(R.91:2-3¶8)(A.App.157)(R.174:9). However, Adam returned to negotiations to avoid a contested divorce (A.App.33)(R.91:3¶9). Attorney Morrell provided a partly-updated MSA to prime the Fitzgibbons' final negotiations, titled "Amended MSA" (R.22)(A.App.33)(R.91:3¶9).

Around 4:30AM on January 28 (A.App.33)(R.91:3¶10), Adam and Elizabeth completed negotiations, hand-editing a printed copy of the Amended MSA. After both signed it, Adam entrusted Elizabeth to submit the final hand-edited Amended MSA ("HE Amended MSA"). Hours later, Elizabeth delivered it and all three

photocopies to the court (A.App.33)(R.91:3¶10). Neither she nor Adam made separate copies (electronic/physical) (A.App.84)(R.135:16¶1-16). Similar to January 7, the Case Record Details (A.App.202)(R.183:2) show the court received the HE Amended MSA, routed it to "Adm Assoc III FA Clerk for processing", then "to CC". Satisfied, the Fitzgibbons ceased negotiations and awaited their hearing two weeks later.

On **February 7, 2022, the Fitzgibbons attended their stipulated divorce hearing** in person, during which they believed they were being divorced with the HE Amended MSA. The FCC referenced an MSA throughout the hearing, but the Fitzgibbons were provided no copies. Few MSA details were discussed.

On February 8, Elizabeth drafted the "Judgment" for the court's signatures and completed Wisconsin's FA-4160VB "Parties Approval of Judgment" as instructed (R.69:15¶4-5)(§767.251(2))(WCCLR §3.12,§902.01(4)). Without a copy of the HE Amended MSA, Elizabeth cited it (R.17:1)(A.App.12)(R.19:4) on both forms before signing and offering them to Adam.

On February 16, Elizabeth submitted her signed copy of the "Parties Approval of Judgment", which the court filed without Adam's signature (R.17). Adam never submitted his own. The Case Record Details (A.App.202)(R.183:2) show Elizabeth submitted the 7-page drafted Judgment. Afterward, the clerk added pages 8-16 and a "Proposed" watermark, filed it (R.18), and routed it to the FCC. The FCC signed the Judgment filed on February 17 (R.19). All three post-hearing documents refer to the HE Amended MSA as the "1/28/22" "Amended MSA" without titular reference to its hand-edits (R.17:1)(R.18:4)(A.App.12)(R.19:4).

Soon after their February 7 hearing, Adam and Elizabeth began disagreeing about their obligations. For example, Elizabeth believed they had co-creating a Parenting Plan and placement schedule for A.J.F. (like R.19:10¶A). Adam refused

(A.App.35)(R.91:5¶17d), demanded their pre-divorce hearing placement continue (A.App.33)(R.91:3¶10) and would call her disagreement "intolerable" (R.26:5,8).

In March, Adam alerted Elizabeth (R.166:2) that he had received the wrong (Original, R.19:9-16) MSA from the court. Elizabeth noted the correct Judgement (A.App.12)(R.19:4), but eventually double-checked the MSA (A.App.17)(R.19:9) against the draft Amended MSA (R.22), Elizabeth realized that she had received the same (incorrect) MSA. Adam learned that the HE Amended MSA had been lost, informing Elizabeth on March 26 (A.App.151)(R.174:3¶14a). Tara Berry, Clerk of Courts, confirmed to Elizabeth that the HE Amended MSA had been properly submitted on January 28 but was discarded prior to scanning. She advised Elizabeth to re-create the MSA with Adam and request help from FCC Bermingham (A.App.33)(R.91:3¶13)(R.124:5).

Elizabeth sought to recreate the lost MSA (A.App.34)(R.91:4¶14), but Adam refused and demanded using the Original MSA. Oddly, Adam then told their tax preparer that he and Elizabeth were currently married, denied Elizabeth's review of their 2021 U.S./Wisconsin taxes, and filed them without Elizabeth's consent (R.59:2¶8)(A.App.33)(R.91:3¶13,10¶32)(R.189:19).

On March 31, Adam closed (A.App.34)(R.91:4¶14a)(A.App.144-145)(R.139:26-27) Elizabeth's checking account (e.g. R.19:12¶6)(A.App.145)-(R.139:27). Adam paid Elizabeth $5,512.80 (of $12,500 assumed owed (A.App.20)(R.19:12)) but never accounted for the differences. (In 2023, he claimed both received their "$10,000" (A.App.162)(R.174:14). Adam retained access to Elizabeth's savings account that maintains a minimal ($1-$600) balance, to receive monthly transfers for mortgage auto-payments (R.12:5)(R.13:3).)

Adam sought to use the Original MSA for a new mortgage, claiming sole ownership of the marital residence (A.App.151)(R.174:3¶14a). Adam's lender

rejected his application upon discovering pages 3-4 and an Exhibit were missing from the Original MSA (A.App.33-34)(R.91:3¶12,4¶14).

Since child support terms were on the missing pages (R.59:4¶17), CSA refused to initiate collections (A.App.144)(R.139:26¶L).

On April 5, Elizabeth requested the court's help to resolve the lost MSA (A.App.25)(R.20)(R.91:3-4¶13-14), writing "I am unwilling to accept the...original MSA...evidenced by the...amended version, and would not have provided...agreement at the [divorce] hearing had the Court been clear of its use of the original MSA." Elizabeth also filed the un-edited Amended MSA (R.22) that began January 28 negotiations. She then requested court-ordered mediation (R.23) to resolve custodial disputes, which the FCC ordered (R.25).

On April 6, Elizabeth reiterated to Adam her "financial burdens" from his non-cooperation (A.App.34)(R.91:4¶14a). Referencing the Original MSA, Adam responded: "There is nothing else you will get from me that isn't stated in court paper work", and threatened a "restraining order" if she continued trying to recreate the lost MSA (A.App.34)(R.91:4¶14b)(A.App.144)(R.139:26¶L).

On April 18, Adam filed a Motion (R.26) detailing his disagreement with virtually every custodial and child support term in the Original MSA, which mirrored (A.App.140)(R.139:22) the Amended MSA's (R.22). Days later, Adam requested (R.27) the court correct the missing two pages so that he could again attempt to transfer the real estate to himself and obtain a mortgage with the Original MSA, despite Elizabeth's objections (e.g. R.20).

On April 26, Elizabeth, Adam, and Adam's newly-hired Attorney (Culp) convened with FCC Bermingham. The FCC reconfirmed that the HE Amended MSA had been correctly submitted January 28 but irretrievably lost. His notes and the February 7 hearing's digital audio recording **("DAR")** lacked any reference that

determined which MSA had been used (A.App.34-35)(R.91:4-5¶15). The FCC could not verify approving (or even seeing) the HE Amended MSA. The DAR captured everyone's agreement on a **few joint custody terms**, which were essentially 60%/40% Elizabeth/Adam joint custody and derivative healthcare and support obligations (per §767.511,§767.513,DCF 150). Upon reviewing the draft Amended MSA (R.22), the FCC found material financial differences (A.App.26)(R.32:1) relative to the Original (R.19).

Next, Adam and Elizabeth swore under oath (A.App.172)(R.175:5¶9) that neither could individually, nor collectively, recall the changes made to the Amended MSA, mutually accepting that their pre-April 26 communications were inconclusive, often contradictory, and insufficient for recreating the lost MSA (A.App.152-153)(R.174:4-5¶15).

FCC Bermingham concluded that the lost MSA could not be re-created.

As such, Adam and Elizabeth agreed to co-create and file a new, "reconfigured" MSA in 10 days, reconvene for another divorce hearing, and temporarily use their Original MSA as interim terms (R.59:2-3¶11) prior to a final Judgment, enabling custodial mediation to begin. The FCC ordered their agreement (A.App.26)(R.32:1)(A.App.35)(R.91:5¶16), scheduled a May 23 "Default Divorce" hearing (R.30), and held Adam's omnibus Motion for custodial changes (R.26) until then (R.31).

Shortly after the April 26 meeting concluded, Adam and Elizabeth discussed the new, "reconfigured" MSA. **Adam complimented Elizabeth's asset division fairness** (A.App.132-133)(R.139:14-15), stating that if he received 50% placement of A.J.F. with reduced support (like R.26), MSA negotiations "should be pretty easy" (A.App.35)(R.91:5¶17), though "bickering" over those terms would cause "big obstacles" (A.App.132)(R.139:14¶B). Elizabeth declined Adam's custody and support changes (A.App.36)(R.91:6¶18). Elizabeth drafted a reconfigured MSA,

retaining FCC Bermingham's agreed custodial terms (A.App.36)(R.91:6¶18)-(R.136:5¶1-3)(A.App.180)(R.175:13¶15b), but negotiations stagnated (A.App.141)(R.139:23¶J).

Due to the MSA issue and Adam's co-creation refusal, Elizabeth's financial woes worsened, harming her relationship with A.J.F. (A.App.146-147)(R.146:1-2¶4c-d), who claimed that Elizabeth was a "thief" trying to steal "their" (Adam's and his) assets (A.App.163)(R.174:15). A.J.F. said Adam loved him more because Adam took A.J.F. on trips, bought A.J.F. what he wanted, and that Elizabeth's few assets and cash-strapped lifestyle were "boring" (A.App.32)(R.91:2¶5,6¶19)-(A.App.188)(R.175:21¶16c). To help, Elizabeth's boyfriend took A.J.F. and her to a Texas festival (R.86:3¶15).

Throughout their April 28-May 4 trip, Elizabeth maintained communications with Adam to enable MSA negotiations. Adam maintained his refusal of their previously-agreed terms (A.App.35)(R.91:5¶17). She returned to Wisconsin with two days remaining to complete any negotiations, co-sign, and file an MSA, but Adam's demands continued (A.App.38)(R.91:8¶29), so they missed their new MSA's May 6 deadline.

On May 8 (90-days post-February 7), the deadline expired for transferring all marital assets. **Elizabeth chose to not enforce the Original MSA**, which required selling their marital residence (A.App.21)(R.19:13). Instead, Elizabeth continued trying to negotiate an MSA with the previously-agreed custodial terms. Adam rebuffed every discussion/offer that excluded the Original MSA's financials (R.59:4)(A.App.34)(R.91:4¶14b)(A.App.144)(R.139:26¶L)(A.App.175)(R.175:8¶12b) and/or his custodial preferences (R.26) that were never in an MSA (R.54:2¶11). **Pressuring Elizabeth, Adam withheld child support and her assets** (R.59:4¶17)(A.App.31-36)(R.91:1¶5,4¶14b,6¶19).

With borrowed money, Elizabeth hired counsel. To give Adam more time to co-create an MSA, the parties' attorneys agreed to adjourn the May 23 hearing (R.34), which the court rescheduled for July 25.

On June 12, Elizabeth offered Adam the highlights of her final MSA draft (A.App.175)(R.175:8¶12a). Adam rejected/ridiculed her proposal (A.App.36)-(R.91:6¶19-21) without debating/countering the total value (A.App.142-143)-(R.139:24-25¶K)(A.App.155-156)(R.174:7-8¶20).

Meanwhile, mediation custodial negotiations proved challenging amidst Adam's admitted stalking of Elizabeth and public discussions of violently hurting her (Winnebago Case#2022CV000936 (§902.01(4))). On May 17, Adam messaged, "if I don't get 50/50 placement this time I will…We'll be doing the whole court bs again in 2 years and I'll win....**unless I'm in prison**." (A.App.40)(R.91:10¶35)(A.App.133)(R.139:15¶C). Adam continued obstructing a Parenting Plan for A.J.F. and rejected Elizabeth's every proposal.

Their court-ordered mediator ultimately required the parties reach an agreement or accept an impasse. Rather than respond to Elizabeth's final 60%/40% proposed placement schedule, on June 22, Adam and Sally Fitzgibbon (Adam's mother) took A.J.F. against Elizabeth's consent ("kidnapped")(A.App.36-37)(R.91:6-7¶22). On June 23, the mediator declared an impasse (R.38).

While demanding A.J.F. return (R.54:1¶6), Elizabeth continued proposing various custodial schedules and plans that upheld their 60%/40% agreement. For each, Adam either rejected, ignored, or counter-proposed schedules aligned with his Motion (R.26)(A.App.37-38)(R.91:7-8¶28, 9¶31). While Adam's past placement interference periods had lasted days, this time appeared indefinite. Police (A.App.37)(R.91:7¶24) could not intervene without an order prescribing A.J.F. placement, which Adam's custodial/MSA obstruction had prevented.

On June 28, Adam began withholding A.J.F. from the mental healthcare counseling both parents had agreed to (R.86:3¶17), declaring that A.J.F. "just needed his dad" (R.86:4¶21-22).

On July 12, Elizabeth's new attorney (Fozard, R.37) filed a Motion to "Declare as Void" (R.39-40). It sought a reconfigured MSA, even if that first required declaring the divorce void (A.App.181)(R.175:14¶15c). The court added it to the July 25 "Default Divorce" hearing, before rescheduling both hearings to September 9 (R.41-42) "at the court's request" (R.49:1¶2).

On July 13, Elizabeth requested an emergency hearing with the court to temporarily resolve custody disputes (R.43). Adam's response (R.44) was self-contradicting (e.g. claimed breach of placement agreement before requesting a placement agreement) and misleading (e.g. Adam "received" A.J.F. on June 22 and sought to transfer A.J.F. to Elizabeth) (A.App.37)(R.91:7¶27). FCC Krueger expressed confusion before denying the emergency hearing (R.49:1¶2-3).

Adam withdrew support of Elizabeth homeschooling A.J.F. (A.App.39)(R.91:9¶30b), and on July 17, despite their mediation impasse on school choice (R.54:2¶12-15), Adam unilaterally enrolled A.J.F. into Adam's preferred school. Adam refused to un-enroll A.J.F. and resolve their dispute/impasse through the court (R.171:3¶12-15).

By August, Adam ceased virtually all communications with Elizabeth. For weeks at a time, he disappeared from OurFamilyWizard (the court-ordered/audited email platform), avoiding her dozens of pleas for A.J.F. return (R.54:3¶16).

On August 18, Elizabeth's new attorney (Vesely, R.51) requested another emergency hearing (R.54-55), as A.J.F. behavior (via infrequent videochats with Elizabeth) was worsening and school/placement disputes required rapid resolution (R.54:3¶18-19). The court added the request to the September 9 hearing (R.55).

On September 8, Elizabeth summarized the disaster (R.59). Simultaneously, Adam demanded that Elizabeth absolve him of past wrongdoings and accept his MSA terms by day's end or risk further loss of placement with A.J.F. and expanded, expensive litigation (without her assets) (A.App.39)(R.91:9¶31).

On September 9, FCC Rust (replaced retired Bermingham), ordered (R.62) A.J.F. immediate return to Elizabeth along with temporary custody terms, ending Adam's 79-day "**Wild West**" period (A.App.162)(R.174:14). Elizabeth's Motion (R.39-40) was routed to the circuit court (R.63). Adam's continued obstruction delayed finalizing the September 9 order for >4 months via:

1. Minutes updates (R.64),
2. Proposed order objections (R.72-74)(R.77)(R.90),
3. Counter-proposed order, retracted (R.79)(R.80), and
4. FCC conferences (R.83-84)(R.92).

On October 7, Adam and his parents again kidnapped A.J.F. (A.App.40)(R.91:10¶32-34). Adam's father "violently threatened" the intervening police (R.134:5).

On November 16, all convened with the Judge to finally hear Elizabeth's Motion to Declare as Void (R.39-40). Adam reiterated that he did not know the hand-edits made to the lost HE Amended MSA (R.136:23¶11-13) and denied knowing what issues (R.136:21¶17-19,24¶3-8) prevented the Original MSA's use.

In response to a minor misstatement, Adam's Attorney exclaimed, Attorney "**Vesely just said <u>these parties know what…was handwritten on the documents. My client doesn't</u>**". Vesely quickly corrected his harmless error (R.136:25¶2-17)

Prefacing his approach, the Judge said:

1. "**Court, is to not get involved in...forcing conversations or ideas**" (R.136:24¶10-12) and "**can't get involved in negotiations**" (R.136:24¶18).

2. "There's a lot of **power in...parties coming up with their own agreement** ...something they want that they can carve out with a scalpel as opposed to the Court cutting things in half with a chainsaw" (R.136:25¶16-20).

The Judge ordered (R.123) an exchange of MSA-related issues between the parties, depositions, and a December 20, 15-minute "status conference" (R.136:29¶18). Except for adding depositions to aid the attorneys, this agreed-to approach mirrored what Adam, Elizabeth, and FCC Bermingham agreed to on April 26 and would result in a new, "reconfigured" MSA (or a trial to resolve still-contested issues, as the Judge alluded, "we'll schedule...probably a full day...to...hear everybody out" (R.136:16¶10-14)).

On November 30, Elizabeth's attorney sent issues concerning the Original MSA to Adam's attorney (R.103)(A.App.181)(R.175:14¶15d). Adam then back-tracked, seeking again (R.27) to use the Original MSA after adding the two missing pages (R.93). Afterward, Attorney Culp and Adam severed their relationship (R.96)(R.98), uprooting deposition and negotiation plans.

Just before December 20, Adam (pro se) reiterated (R.101) his April 18 and November 30 requests to obtain the two missing pages to complete the Original MSA. He barraged Elizabeth with dozens of demands to provide these pages and/or the lost MSA. Adam denied having the Amended MSA (R.22), citing (R.101:2) but disagreeing with Elizabeth's explanations (A.App.33)(R.91:3¶9)(A.App.140)-(R.139:22¶I).

Starting the December 20 "status conference", Attorney Vesely explained that **the two missing pages are "part of the record...document 22...that's really not the issue**...the issue is that the parties had filed an amended MSA that was lost

by the clerk of court's office, and that was the one…they were testifying to…at…the final hearing." (R.137:6¶9-20) He concluded, "**that order**[R.19]**…does not include…agreement of the parties**" (R.137:8¶4-6).

Surprisingly, the Judge directed Adam and Elizabeth to (A.App.181-183)(R.175:14-16¶15e), "write down **what you think** the agreement was…**I'm not going to reinvent this**…let's get it down on paper so we know what it is" (R.137:8¶11-18).

Attorney Vesely re-explained that Elizabeth did not know the hand-edits to the Amended MSA (R.22)(R.137:9-10). However, after a hasty recess, he misspoke, saying he believed that Elizabeth's past work on the "reconfigured" MSA would help in "re-creating" the MSA (R.137:10¶22-25). Upon reviewing the hearing transcripts, Attorney Vesely clarified his statements in time for the court's consideration (R.170):

1. FCC Bermingham "directed the parties to co-create…a new, **reconfigured** MSA" (R.170:1).

2. Elizabeth "had materials that could help develop another MSA" but Vesely "misunderstood the purposes of her post-judgement proposed MSA effort, believing it to have been her attempt to recreate the lost MSA" (R.170:2) that Elizabeth had indeed unsuccessfully attempted in March-April (A.App.34)(R.91:4¶14).

3. Vesely "felt that it was possible to recreate agreement between the parties based on the same set of facts…even if it was impossible to recreate the lost MSA itself." (R.170:3).

The Judge opined, "there may be some confusion or misunderstanding about it, but…**if you had an agreement, you should be pretty close when you write down whatever the issues were**. So…when we come back, if it's not consistent,

I'm going to...take testimony, and...determine who I think is being credible," (R.137:13¶3-13) concluding, "we will take care of the MSA...so that we have...**some permanency**." (R.137:15¶15-18).

On December 31, in response to the Judge's direction to (re-)submit their MSA issues, Elizabeth wrote a detailed explanation (R.112)(R.116):

1. "**I do not accurately recall** what...changed on the Amended MSA...to create the Hand-Edited, Amended MSA. As such, few specifics... are truly defensible, and **I prefer my credibility to remain unchallenged.** I have consistently stated this to the Court at least 5 times:

   a) Letters to the Court (Document#20, April 5),

   b) Affidavits (Document#91, November 15), and

   c) Court meetings (April 26, September 9, November 16).

2. The "Court should understand that while the Amended MSA was directionally improved from the Original MSA...the Hand-Edited Amended MSA continued this trend. If this were not true, I would have continued negotiations...this logical progression completely contradicts what Adam claims in his December 26 letter...that...suggest a downward trend."

3. "[B]oth the Original MSA and the unsigned, unapproved Amended MSA [R.22] have been available to the Court, Adam, and...Culp, for more than 8 months. This opposes...Adam's December 19 letter"

4. "December 8, [Adam] stated that he knew the Voya and E*Trade were always to be my assets...This again contradicts his December 26 letter"

5. Worth "$40,000-$45,000", "not all [basement] assets were disclosed on the" FDFs/FDSs

6. Our "combined net worth was approximately $285,000-$295,000. This is an approximate $85k-$103k" [+50%] "difference in total assets" from Adam's.

7. "I can provide substantial, incontrovertible evidence…of my claims…summarized in Exhibit G. Conversely, Adam has yet to provide any supporting documentation and Adam's numbers do not align with our" FDSs.

8. "Adam tried to lump other concerns into the land value, which I disagreed with, though I cared less for how Adam justified his numbers…I was comfortable with the final division"

9. I received a "reasonable one-time overpayment."

To the final point, every MSA "favored" Elizabeth via Adam's "overpayment" (A.App.39)(R.91:9¶32b)(R.106)(A.App.122)(R.139:4¶8).

Pre-hearing, Adam re-agreed to negotiate a reconfigured MSA via a mediator as discussed November 16, so Attorney Vesely contacted the court, requesting adjournment. **The Judge denied their request.**

The Judge discussed the Motion to Declare as Void (R.39-40), stating:

1. "What I feel like I'm getting…is that we need to reopen and relitigate… **another solution…I've been trying to push the parties toward,** is to what **[FCC] Bermingham ordered…to re-create the MSA**" (A.App.77)-(R.135:9¶6-14).

2. "***Ronald J.R. vs. Alexis A.L.***[sic]…a party…regretted a stipulated bargain…hindsight does not make a stipulation invalid." (A.App.77)-(R.135:9¶15-23).

3. "***Thoma vs. Village of Slinger***…court should examine allegations…assume they are true, and determine whether they present extraordinary or unique

> facts justifying relief under [§806.07]1(h)...If the...court finds extraordinary or unique facts...the Court should hold a hearing to decide the truth or falsity of the allegations. **Here, we clearly have unique and extraordinary facts.** The difference is, though, **I don't have a memorialization of what was agreed**" (A.App.77-78)(R.135:9¶24-25,10¶1-16).

The Judge proceeded, "...this is **not a family issue**...this is a **contract issue...**There was a meeting of the minds when the two drafted with handwritten notes...an MSA and...submitted it...**I don't...need...to relitigate whether something is fair. I need to find out what was agreed**...I've got a copy of the MSA; you're...to...make what handwritten notes you think you had. I'm going to ask you some questions. **I'm going to determine what our MSA is going forward**..." (A.App.78-79)(R.135:10¶16-25,11¶1-12).

Adam took the MSA, edited it, and returned it to the Judge (A.App.79-82)(R.135:11-14).

Directed to do likewise, Elizabeth replied, "I've been consistent in the fact that I don't recall exactly what the handwritten edits were" (A.App.84)-(R.135:16¶24-25).

Attorney Vesely offered, "she honestly doesn't recall the exact terms that they put in there, but the terms do include...dealing with those assets that are not mentioned in the written document. And those items are listed on Exhibit G." (A.App.86)(R.135:18¶7-19).

The Judge queried, "**something they own...wasn't...in the MSA?**" (A.App.86)(R.135:18¶20-23), which had been earlier documented (A.App.43)-(R.112:3)(R.139:4-5¶8).

Referencing the exchanged issues that cited "secreted or transferred" assets (R.103:2), Attorney Vesely shared that "guns" and "precious metals" had "not been dealt with in…the court file" (A.App.87)(R.135:19¶2-8).

The Judge pleaded, "From" the Amended MSA (R.22) "**you folks can file anything you want.**" (A.App.88)(R.135:20¶23-25).

Attorney Vesely reminded, "both parties in the record…stated they don't recall, including Mr. Fitzgibbon" (A.App.89)(R.135:21¶5-7). Clarifying FCC Bermingham's April 26 order, "**They both said at that point they didn't recall, he ordered them to reconfigure it**" (R.135:21¶12-16).

Attorney Vesely added, "**it's an impossible task to…reconstruct what happened**, what was in…the MSA that got lost…on the credibility of both parties, they said they don't recall…that's part of the record…I don't know how we can…force terms on them" continuing, "were the parties divorced? Well, **they think they were with the FCC divorcing them, but were they…the record shows, they didn't have a meeting of the minds in terms of what…that MSA was.**" He added, "One of the documents that we submitted is…Exhibit A…**an OurFamilyWizard message…Mr. Fitzgibbon…states: I don't exactly remember what was in the lost MSA**. My client has said the same statement on…several occasions on this record…so the difficulty that my client and I have…**how do you reconstruct it and say with any degree of certainty these are the terms, but yet I didn't recall them earlier without perjuring yourself?**" (A.App.89-91)(R.135:21¶20-25,22¶1-25,23¶1-6).

The Judge responded, "if the parties don't agree…can't remember, I'm going to take the pieces that I have, which, again, is structured as the MSA that they had been using as a jumping off point, so it tailors it; it narrows it. It's a contract issue…they agreed to something. I have a transcript that tells me they did. **Is it a**

fair, accurate representation of your agreement? Yes." (A.App.91)(R.135:23¶7-23).

The Judge concluded, "**I'm not forcing terms on anyone**...this happened in February, it came to light, **they were ordered to re-create**...I've been telling everyone the whole time...**I want this MSA re-created**...I say that because we had a list of [November] issues that included...custody and placement, child support, property division. We can't even get to any of that until we know what the original agreement was...Now...**we're going to create an agreement today, and then if there are motions that are going to come for it, so be it,** but at least we have something to work off of." (A.App.93)(R.135:25¶1-20) He added, "we're looking at...what do they think they agreed to, and then **the Court has to make a determination. Am I forcing terms on them? No. Because they've had since July to come up with any terms they wanted, and nobody's done anything**." (A.App.94)(R.135:26¶1-5).

Elizabeth offered, "The only thing that I'm confident about is..." The Judge replied, "write it down..." (A.App.94-95)(R.135:26¶17-25,27¶1-3).

Elizabeth shared, "I don't recall the specifics. I know that they were **noncustodial** and **placement**-related" (A.App.95)(R.135:27¶15-17).

The Judge pressed her (A.App.95)(R.135:27¶18-25) to little avail before dismissing her, "Okay. You can step down." (A.App.96)(R.135:28¶1-3).

The Judge then observed that **Adam's and Elizabeth's edited MSAs were entirely different** (A.App.96)(R.135:28¶15-25,29¶1).

The Judge continued seeking Elizabeth's corrections/confirmations to various terms. Sixteen times, Elizabeth stated that she did not recall (or similar) (A.App.94-104)(R.135:26¶21-22,27¶6-7,27¶15-17,28¶1-27,29¶6-

7,30¶1,30¶5,30¶8,30¶20,30¶25,31¶9-10,32¶17-19,34¶23-24,35¶16-17,36¶1-4,36¶13-14).

Returning to the brokerage accounts (15% of marital assets), the Judge noted, "Adam believed the E-Trade account was about 29,000, the Voya was about 11,000. Elizabeth believes her records indicate that the total value of the two accounts was 44,952…off by about $4,000…I think that there's some credibility to what both of them **thought**. **The question then is how the Court would divide half of one of those in favor of Adam**." (A.App.109)(R.135:41¶17-24).

Throughout the hearing (e.g. R.135:18¶10,18¶19,33¶9,35¶2), Elizabeth and her attorney referenced Exhibit-G (A.App.137)(R.139:19). They and the courtroom clerk repeatedly offered Exhibit-G to the Judge, who repeatedly disregarded/dismissed its contents (R.119:2)(A.App.86-112)(R.135:18¶20-21,33¶13-18,35¶21-25,44¶2-5). Elizabeth recited some of the assets and their total valuation (A.App.104)(R.135:36¶5-18).

Attorney Vesely noted, "it's important…that…there would be a record as to…why my client can't have a more clear recollection of what's in the handwritten amended MSA…her credibility…clearly, that finding…directed towards her is inappropriate given what…she's filed…I'm very concerned about…inferring that my client somehow is not believable" (A.App.113-114)(R.135:45¶17-25,46¶1-9).

The Judge responded, "I find it less credible…her comment…directly contradicts anything that she said under sworn testimony on February 7th to FCC Bermingham because there were multiple questions about whether this was the entirety of the agreement, whether there was any other agreement out there…Those answers were, no, there was not" (A.App.114-115)(R.135:46¶11-22, 47¶2-4).

Attorney Vesely noted, "she's being honest in every assertion", then continued, "Mr. Fitzgibbon's credibility is...in question because...he's recalling something that he...said he didn't recall" (A.App.115)(R.135:47¶5-11).

The Judge responded, "I hold that against both of them" (A.App.115)(R.135:47¶12-13).

Attorney Vesely added, "the transcript from February 7th, you know, is very poor..." before asking, "are you denying then the...motions?" (A.App.115)(R.135:47¶16-25)

The Judge replied, "...**as to** [§806.07(1)]**(h), I'm granting it,** but that was the purpose of the hearing today...**there is a need to clarify, but I'm not finding any of the provisions void...unenforceable**, again, because **I'm attempting, through contract law, to reconstruct what the parties agreed to**...given the **very unique, exceptional**...MSA being lost by the family court...that **there had to be some type of extraordinary step taken. I anticipate there's more litigation coming out of this case...**the only question is...what was the memorialization of that agreement, and so that is what I accomplished today." (A.App.116)(R.135:48¶1-24)

Attorney Vesely asked, "you are denying the motion to reopen under §806.07(1)(a) and (d), but are **utilizing...**[§806.07(1)]**(h)?"** (A.App.117)-(R.135:49¶1-3).

The Judge affirmed, "**Correct**." He concluded, "**we have a starting point to what I assume is probably going to be more litigation**." (A.App.117)-(R.135:49¶4-19).

The court then created, corrected, and ordered (R.125) two Amended MSAs, and two back-dated Amended Judgements that only grant the court's initally created MSA ("6Jan2023-Documents") reflecting the Judge's decisions. Lacking

agreement (A.App.174)(R.175:7¶11), all signatures (Adam/Elizabeth/CSA/FCC) that previously concluded the Original MSA (R19:16) were replaced by, "***As ordered by the Court to reconstruct the [MSA] that was lost...***" (e.g. R.127:19), before retitling them "martial" settlement agreements (e.g. R.127:10).

On January 31, 2023, Attorney Vesely filed a Motion to Reconsider (A.App.119-129)(R.139:1-11), seeking to reverse the January 6, 2023 decisions, showing errors of fact and procedure. He stated that **Elizabeth disagreed that the 6Jan2023-Documents memorialized their stipulated agreement** (A.App.122)(R.139:4¶7) and re-appended the Exhibits (A.App.130-145)(R.139:12-27) cited in the December 31 filing (R.112)(R.116), which were referenced throughout the January 6, 2023 hearing.

On February 15, 2023, due to ongoing custodial disputes, a second mediation concluded with impasses on all topics (R.38)(R.145)(A.App.148)(R.146:3¶6L), so after refining a Parenting Plan for A.J.F. with the GaL's feedback, Elizabeth filed it (A.App.213-228)(R.192-193).

On February 16, 2023, Elizabeth filed a Motion for Relief and Declaratory Order (R.146-147) for Adam's FDS/MSA financial misrepresentations revealed by his January 6, 2023 testimony and materials.

Adam quickly sought enforcement of the 6Jan2023-Documents with an Order to Show Cause for Finding of Contempt ("OTSC Quit Claim", R.148-150) to compel Elizabeth to relinquish the marital residence to Adam. Adam claimed harm from her "unwillingness to sign the deed" (R.156) and would not tolerate her "insubordination" (A.App.167)(R.174:19¶D) for disputing the 6Jan2023-Documents.

On March 30, the FCC found Elizabeth in contempt, ordered her to pay damages, and "sign the appropriate documents" to transfer the marital residence to

Adam (R.165)(R.168). Attorney Vesely showed Adam's "damages" were negative (Adam instead owed Elizabeth) (R.191).

Meanwhile, on April 3, 2023, to retroactively bolster the 6Jan2023-Documents, Adam provided curated/cherry-picked pre-April 26, 2022 discussions with Elizabeth **and admitted that the Court did not recreate the lost MSA**: "**I was [supposed] to receive**..." (R.166:1), making new claims of property division. Elizabeth rebutted (A.App.149-158)(R.174:1¶2,4¶14b,5-6¶18-19,10¶22) Adam's claims. Elizabeth refuted (A.App.150-151)(R.174:2-3¶10)(A.App.194)(R.177:4) Adam was due more and encouraged the Court to "closely examine...Adam's prior testimonies and supplied materials...[and] determine why he waited more than a year to present this information" rather than share it during the January 6, 2023 hearing (A.App.149)(R.174:1¶3).

Elizabeth said, "On March 4, 2023, **Adam kindly confirmed...that neither of the Court's MSAs...are facsimiles of the lost MSA** **["judge keberlein...was his ruling perfect 'no' I was supposed to get..."(A.App.160)(R.174:12)]**, meaning [that Adam agrees] that the Court did not recreate our lost MSA...[but] since the Court-created MSAs grossly favor Adam, only Adam has consented...and sought...enforcement" (A.App.150)(R.174:2¶4).

On April 18, for a third time, Adam conveyed that the 6Jan2023-Documents did not recreate the lost MSA, writing to the court, "whatever, close enough".

Elizabeth then sought a truce to stave off spiraling conflict/litigation (A.App.169-170)(R.175:2-3¶5-6) by filing a Motion to Stay (R.175-177) the 6Jan2023-Documents and OTSC contempt Order, then this Appeal (R.180-183), as her Motion to Reconsider (R.139) went unanswered and was denied by operation of law (R.190:2).

On May 30, 2023, the court denied her Motion to Stay (R.176).

Elizabeth's counsel advised against accepting "directionally correct" amounts (A.App.152)(R.174:4¶14a) to avoid conveying consent (A.App.44)-(R.112:4) with the Original MSA or 6Jan2023-Documents, so Elizabeth froze all marital assets she could and has yet to accept even child support. She has adopted/attempted to enforce only the few custodial terms confirmed February 7/April 26 for A.J.F. who could not wait years for MSA resolution (A.App.169)(R.175:2¶5).

ARGUMENT

(All Dates are of Year 2022 unless specified)

I. The February 7, 2022 divorce was improper, and at no point leading up to the January 6, 2023 hearing was the divorce corrected. The court should have granted the Motion to Declare as Void, reopened the case, and issued a Temporary Order for custody.

A: The parties were not properly divorced on February 7, 2022.

A stipulated divorce (status and process) is well-defined, spanning statutes (e.g. §757.69(1)(p)1.,§767.34,§767.35) and local rules (WCCLR §3.01-§3.12). These were not followed, so no proper divorce was granted.

First, the Statute of Frauds exists to avoid fraud and misunderstanding resulting from oral testimony of critical contracts, like marital agreements, requiring they be written §241.02(1). No written, mutually-agreed MSA existed then (or today), so the divorce is improper.

Second, no MSA was approved by all parties (A.App.147)(R.146:2¶6d), making "a meeting of the minds" impossible:

1. The Fitzgibbons intended to "voluntarily and freely" ("procedural fairness", ***Button v. Button***, 131 Wis.2d 84,95-96, 388 N.W.2d 546 (1986)) approve only the HE Amended MSA. Neither Fitzgibbon was aware that the Original MSA was used at their divorce hearing (A.App.126)(R.139:8¶9c). Elizabeth noted (A.App.25)(R.20) that the HE Amended MSA superseded/invalidated the Original.

2. The divorce required FCC (§757.69(1)(p)1.), then Judge, approvals (WCCLR §3.11(B)). Such "segregation of duties" form checks-and-balances against error/fraud and mitigate conflicts of interest. However, no FCC/Judge

saw/approved the HE Amended MSA (A.App.170)(R.175:3¶7). No Judge was involved before hearing Elizabeth's Motion to Declare as Void (R.40) on November 16.

3. Adam failed to sign/file the required Parties Approval of Judgment (R.17).

§807.05 adds: "No agreement...shall be binding **unless made in court...and entered in the minutes or recorded by the reporter**, or made in writing and subscribed by the part[ies]..." No matching agreement was entered in the minutes or recorded by a court reporter or subscribed to by the parties.

Third, the audio record (DAR) revealed that few issues were discussed, much less explicitly agreed, save a few custody terms (*See infra* Argument I.D.). Regardless, these few custody terms are insufficient for recreating an MSA or confirming that "all material issues" had been "resolved" on February 7, as necessary for the FCC to divorce the Fitzgibbons (A.App.28)(R.39:2¶11-13)(A.App.147)(R.146:2¶6).

"A stipulation between the parties to a divorce action is only 'a recommendation'", so **without the HE Amended MSA, a "stipulation or agreement amounting to no more than an understanding of what the parties...recommend to the court does not rise to the dignity of a contract**." – ***Norman v. Norman***, 117 Wis.2d 80, 81, 342 N.W.2d 780 (1983) citing ***Bliwas v. Bliwas***, 47 Wis.2d 635, 178 N.W.2d 35 (1970) before ***Miner v. Miner***, 10 Wis.2d 438,444, 103 N.W.2d 4 (1960).

Fourth, on December 20, the Judge acknowledged that "there may be some confusion or misunderstanding about" the divorce agreement (R.137:13¶2-3). Such confusion was material, given the Fitzgibbons' diverging actions immediately following their divorce hearing (R.59:3¶14)(A.App.170-172)(R.175:3-5¶8), which demonstrated that even if there had ever been a "meeting of the minds" (e.g. January

28), then by the February 7 divorce hearing, the terms were misunderstood or forgotten on both financial and custodial matters. Elizabeth's April 5 letter (A.App.25)(R.20) documented Adam's "unwillingness to attempt to reconstruct our amended MSA" and disputed MSA financials, including their "home revaluation". Custodial disputes spanned placement allocation, child support, placement schedules, vacation, travel, holidays, school choice, insurance, uninsured costs, and variable expenses. Adam's Motion (R.26) seeking to alter these MSA terms and Elizabeth's requested (R.23) court-ordered mediation (that achieved zero agreements) further confirm severe disagreements. **On February 7, the FCC failed his "serious duty...to determine if they understand the provisions and the effect of the agreement...There is no such thing in this state as a divorce by consent or agreement**." – ***Conrad v. Conrad***, 92 Wis.2d 407,415-416, 284 N.W.2d 674 (1979) citing ***Miner v. Miner***, 10 Wis.2d 438 at 443 .

An FCC can only grant divorces if "all material issues...are resolved" (§757.69(1)(p)1.). Elizabeth's Motion confirmed the foregoing material issues remained (A.App.28)(R.39:2¶11-13), and MSA/memorialization deficiencies existed, so no proper divorce occurred (A.App.121)(R.139:3¶6).

B: On April 26, FCC Bermingham erred, as did all FCCs afterward. Entering the January 6, 2023 hearing, there was never a period in which the parties were properly divorced.

On April 26, Adam and Elizabeth believed themselves divorced (R.20)(R.26), but FCC Bermingham knew that no valid divorce was ever ordered when he asked how they wished to correct the MSA deficiency.

The FCC had a duty to act within his limited powers. Allowing Adam and Elizabeth to reach an agreement to co-create a reconfigured MSA, then ordering

their agreement, provided a contract/path to finalize the divorce. However, **FCC Bermingham did not and could not validate/sustain their "divorce"** (*See supra* Argument I.A.) **until their next "Default Divorce" hearing, as no such authority exists** (§757.69(1)(p)1.). Missing an MSA but having filings (R.20)(R.26) that detailed material, disputed issues, **the FCC should have immediately routed the case to the Judge to vacate the Original Judgment and start a contested divorce,** (§757.69(1)(p)1.,WCCLR §3.04(C)), as Elizabeth noted (A.App.180)(R.175:13¶15a).

In her July emergency hearing denial, FCC Krueger failed to resolve her confusion ("I am not sure how this is scheduled for a Default Divorce since these parties are in fact divorced")(R.49:1¶2-3) with not only Elizabeth's letter (R.20), Adam's Motion to Change Custody (R.26), and the FCC's April 26 minutes (R.32) but also the dire Motion to Declare as Void (R.39-40) and emergency hearing request (R.43) as proof that not "all material issues had been resolved" for the divorce. Again, the FCC should have routed the case to the Judge.

On September 9, FCC Rust was to hear the Fitzgibbons' stipulated Default Divorce after approving their MSA, which was never submitted, despite Elizabeth's efforts (A.App.180)(R.175:13¶15b). For the same reasons as FCC Krueger, but with more motions, requests, and affidavits detailing disputed issues, FCC Rust should have routed the case to the Judge, exactly as the preceding FCCs should have. Instead, the minutes (R.64) state, "**unless the circuit court reopens the divorce** based on the pending motion [(R.39-40)] certified", showing that **FCC Rust misunderstood the parties' divorce deficiencies/invalidity** and the genesis for that day's hearing.

Confusion on both divorce status and proper procedure continued until the January 6, 2023 hearing, which the Fitzgibbons entered still improperly divorced.

C: Proper relief required the court to invalidate the Judgment and initiate a contested divorce process. This was intent of the Motion to Declare as Void.

The Original Judgment (R.19) was clearly ordered in error (*See supra* Argument I.A.), due to the MSA's loss (A.App.187)(R.175:20¶22), an accident for which multiple records retention WI Supreme Court Rules exist to prevent (§72.01(11),§72.02). Per ***Johnson v. Johnson***, 157 Wis.2d 490,499-500, 460 N.W.2d 166 (1990) courts "may...reopen the judgment based on §806.07(1)(h)... in the event of 'extraordinary circumstances.'" The circuit court found "extra-ordinary circumstances". (A.App.78,116)(R.135:10¶12-13,48¶9-13)(*See infra* Argument II.B.).

From Elizabeth's one-page initial letter (A.App.25)(R.20) through her 22-page Motion to Stay (A.App.189)(R.175:22¶20) and this Appeal, it's clear that without reopening the case, errors merely compound. Future remedy is impossible, as there is no fact-based agreement to adjudicate, and Elizabeth must now argue with the court about errors in prior documents. Only under duress would a party comply with a non-consensual MSA that resulted from improper procedure.

Declaring (§806.04) the Original Judgment-MSA (R.19) invalid, unenforceable, and void is a complementary, logical extension to the requested (R.40) relief to void it (§806.07(1)(h)). Since her "Petition for Divorce" (R.2), Elizabeth has had a legally protectable interest (from Adam) in various "stipulated contracts" to which she never agreed, including the court-ordered Original Judgment-MSA (R.19)(A.App.77)(R.135:9¶3) and 6Jan2023-Documents. The resolvable, ongoing uncertainties/controversy caused by the Original Judgment-MSA are sufficiently developed/ripe (*See supra* Arguments I.A.,I.B.) and justiciable (***Loy v. Bunderson***, 107 Wis.2d 400,409-414, 320 N.W.2d 175 (1982)). The July

12 foreseen (R.40) looming litigation quickly began and multiplied (*See infra* Argument II.D.)(A.App.127)(R.139:9¶9e).

Note: §806.04(8), §806.04(10) complement/support Temporary Custody Orders and Fee/Cost Awards (*See infra* Arguments I.D.,IV.).

A just divorce begins by vacating/declaring void the improper divorce that was granted on February 7, 2022 (A.App.128-129)(R.139:10-11).

D: Along with declaring the Original Judgment void, the Motion's requested temporary custodial order should be granted.

The February 7 hearing's DAR digitally wrote the parties' agreement on these few custody terms (*See supra* Argument I.A.), as the FCC confirmed on April 26 (A.App.26)(R.32:1)(R.69):

1. **60%/40% Elizabeth/Adam joint custody**, sharing healthcare insurance and uninsured expense responsibilities (R.69:8¶8-22)(§767.333(2)), and
2. **$765/month child support** (R.69:8¶1-8)(§767.333(3)).

As the February 7 hearing fulfilled §767.333(6), these few terms should be declared not an MSA but still an agreement (§806.04)(A.App.29)(R.40:1¶4a-f) and used as "**initial orders based on stipulation prior to judgment**," effective February 7, 2022 and included into the parties' final judgment and MSA. These were reaffirmed on April 26 (R.59:2-3¶11), repeatedly after (R.137:5¶21-25)(6Jan2023-Documents), and throughout court-ordered custody mediation (R.25)(R.38)(R.145). Statute (§767.385) authorizes such custodial orders even following a denied/un-entered divorce (a voided Original Judgment's effect).

A.J.F. first and only Parenting Plan (A.App.213-228)(R.192-193) precisely implements these few agreed-to custodial terms. It was drafted by Elizabeth on March 5 (R.59:3¶14) and iteratively refined (incorporating Adam's/GaL's feedback). Adam refused to explicitly agree with anything that did not accommodate his custodial demands, but having never filed one himself after the mediation impasses, Adam waived his right to object to it by operation of law §767.41(1m).

To sustain A.J.F. care, the above terms and Parenting Plan should be temporarily ordered until the next stipulated divorce judgment.

Lastly, beyond open litigation of A.J.F. kidnappings/abuse, the circuit court ordered individual trauma counseling and parental reunification for A.J.F. and Elizabeth, and co-parenting counseling for Elizabeth and Adam. To aid these, the divorce records should not be sealed if/when the original divorce is vacated/voided.

II. Without authority, the court retroactively ordered the parties' judgment of divorce by creating the January 6 documents that did not reconstruct the lost MSA.

Primarily concerning "procedural fairness" (***Button v. Button***, 131 Wis.2d 84 at 95-96), the 6Jan2023-Documents suffer from four **categories of court errors**:

A. Misunderstood parties' divorce/marital status and procedural history;

B. Misapplied case and family law;

C. Misused contract law (forcing terms; acting as both party and non-party); and

D. Misapplied MSA retroactively, without consensus agreement.

A: The court misunderstood the divorce status and procedural history.

The Fitzgibbons were still improperly divorced entering the January 6, 2023 hearing (*See supra* Argument I.B.) for Elizabeth's Motion to §806.04 Declare as Void (R.39-40) and provide §806.07 relief from the Original Judgment (R.19). The Judge erroneously stated that the parties were divorced under a stipulated judgment (A.App.125)(R.139:7¶9c), with only a need to "clarify" and "reconstruct" (A.App.116)(R.135:48¶1-24) or "re-create" (A.App.77)(R.135:9¶9-14) the lost agreement. The Judge either misunderstood or disregarded FCC Bermingham conclusion (R.32), which recognized that the lost MSA must be co-created as reconfigured, not "re-created" (A.App.172-173)(R.175:5-6¶9). Alternatively, the Judge misunderstood the terms "reconstructed", "recreated" and "reconfigured" (A.App.107)(R.135:39¶16)(A.App.48)(R.125:1), interchanging them without discernment.

Recreate and reconstruct are synonyms, but Merriam-Webster defines (https://merriam-webster.com/dictionary/reconfigure) reconfigure: "to configure (something)…**in a new way**". On April 26, Adam and Elizabeth agreed that the newly co-created, **reconfigured MSA** would be similarly equitable but without the burden (false claim) of being a facsimile/recreation/reconstruction. Only Elizabeth's April 26-June12 reconfigured MSA drafts upheld the April 26 agreement (A.App.175)(R.175:8¶12a). "Reconfigured" also underpinned Elizabeth's November 30 issue exchange (R.103) and December 31 filings (R.112)(R.116)(A.App.130-145)(R.139:12-27), January 6, 2023 hearing participation (R.135:21¶12-16), and Motion to Reconsider (A.App.127)-(R.139:9¶9d). Adam never shared a draft, reconfigured MSA, nor participated in co-creating one, nor approved any of Elizabeth's so none exist for court review.

Regardless, beginning December 20's "15-minute" "status conference" (R.136:29¶18)(A.App.188)(R.175:21¶18) that had paused hearing Elizabeth's Motion to Declare as Void (R.40) in hope of consensual resolution, the Judge sought re-creation/reconstruction. When his direction ("write down...the agreement" (R.137:8¶11-18)) could not be fulfilled, the Judge adjourned the approach for 16 days rather than return to the April 26/November 16 agreement(s).

On December 20, the Judge stated, "the question for me to determine is what did you agree to" (R.137:13¶5-7), but **the agreement had been reaffirmed April 26: 60%/40% joint custody, $765/month child support, and the assignment of healthcare matters** (R.32)(R.69)(*See supra* Argument I.D.). All other terms were either not agreed, were proxied (e.g. bundles, overpayment), or were insufficiently-descript and unenforceable (e.g. A.J.F. placement schedule (A.App.180)-(R.175:13¶15a)), leaving the parties improperly divorced (*See supra* Argument I.A.).

Since the parties disagreed on the HE Amended MSA's terms, there was no MSA before January 6, 2023. The court could not recreate for the Fitzgibbons what the Fitzgibbons could not create themselves, yet would try, since a reconstructed MSA would benefit all parties by cleanly concluding the lost MSA issue.

B: The court misapplied family and case law to create the 6Jan2023-Documents.

On January 6, 2023, the parties convened to hear Elizabeth's Motion to Declare as Void (R.40) the Fitzgibbon's stipulated divorce.

The court misapplied family and case law.

First, the cited cases unequivocally supported the Motion to Declare as Void.

Regarding ***Ronald J.R. vs. Alexis L.A.***, 2013 WI App 79,¶11-13, 834 N.W.2d 437, Elizabeth never regretted the HE Amended MSA. She had labored to re-create it with Adam until April 26. After, she tried to co-create/reconfigure a similar one. In contrast, Adam regretted/resisted returning to the HE Amended MSA. Since the court confirmed the MSA's loss, Adam repeatedly sought to:

1. Overturn February 7, 2022 custodial terms (*See supra* Arguments I.A.,I.D.)(R.26), and

2. Enforce the financials (A.App.34)(R.91:4¶14b)(A.App.144)(R.139:26¶L) of the rejected/superseded, Original MSA (R.19), completed by the missing pages (R.27)(R.93)(R.101).

Adam tried enacting everything the court delayed/denied granting him. He not only withheld marital assets (§767.117(1)(b)) and child support but also A.J.F. (A.App.40)(R.91:10¶33-34)(R.134)(§948.31,§767.117(1)(a),§767.117(1)(c)), therein coercing Elizabeth to acquiesce (A.App.34)(R.91:4¶14b,7-10¶28-31)(A.App.144)(R.139:26¶L)(§767.117(1)(a)). Adam ignored Elizabeth's disagreement (A.App.25)(R.20)(A.App.95)(R.135:27¶19-21) with the Original MSA and sought its use to benefit himself. While obstructing/delaying resolution, Adam willfully retained custodial/financial benefits (use of virtually all assets, accounts, credit) and sought more (home title) as **unjust enrichment/rewards** ("one who has received a benefit has a duty to make restitution where retaining such a benefit would be unjust." – ***Watts v. Watts***, 137 Wis.2d 506,530-534, 405 N.W.2d 303 (1987), citing ***Puttkammer v. Minth***, 83 Wis.2d 686,689, 266 N.W.2d 361 (1978))(R.59:2¶6-8,4¶15-17)(A.App.32-36)(R.91:2¶5,6¶19)(A.App.182)-(R.175:15¶14-15e)(R.191).

Prolonging the problem, Adam disregarded the parties' April 26 agreement/order (R.32)(R.93) and distracted attention from it by summarily misrepresenting the case (R.44)(R.57-58)(R.93:1-2)(R.101)(R.136:15¶12-21).

The Judge next referenced ***Thoma vs. Village of Slinger***, 2018 WI 45,¶30, 381 Wis.2d 311, 912 N.W.2d 56: "...under [§806.07]**1(h)**...**the Court should...decide the truth or falsity of the allegations.**" Beyond Elizabeth's affidavits, the court had already confirmed the truth of the allegations on April 26/November 16 (R.32)(R.136)(R.123) and the Judge agreed on December 20 (R.137:8¶8-10). The Judge misapplied ***Thoma***, focusing on Adam's newfound allegations of disputed terms within the lost agreement/MSA rather than the court's procedural mishaps that improperly ordered the Original MSA (*See supra* Arguments I.A.-I.C,II.A.). This misguided efforts to recreating/ordering the lost MSA and blocked proper remedy via negotiation/trial (A.App.121)(R.139:3¶6)-(A.App.174)(R.175:7¶10-11).

Second, the court agreed that the case's "extraordinary facts" (A.App.78)(R.135:10¶12-13) justified using §806.07(1)(h), which exists to grant litigants relief from judgments ("if extraordinary circumstances justify," per ***State ex rel. M.L.B. v. D.G.H.***, 122 Wis.2d 536,552-554, 363 N.W.2d 419 (1985)), not for a court to unilaterally force (create and order) new stipulations (A.App.183-185)(R.175:16-18¶15h) or similar "extraordinary step" (A.App.116)(R.135:48¶1-24). No statutory exception exists for redefining "equitable" (A.App.109)-(R.135:41¶22-24) because time passed without a resolution ("Court has to make a determination...because...since July...nobody's done anything" R.135:26¶1-5), missing Elizabeth's proactive, tireless efforts to resolve the lost MSA. §806.07(1)(h) "does not vest the court with completely **unfettered decision-making power**" (***Marks v. Gohlke***, 149 Wis.2d 750,754 439 N.W.2d 157 (1989))

Third, fair outcomes (MSA) require upholding due process (A.App.121)(R.139:3¶6).

Without "unfettered power", courts may "override the parties' agreement if...**inequitable**" (***Button v. Button***, 131 Wis.2d 84 at 94). Congruently, §767.34's

plain, unambiguous language limits courts' authority to only approving/rejecting stipulated agreements. These oust/bypass no court and undermine no public policy because if parties cannot reach agreement as a court requires, processes exist to iteratively (stipulated) or immediately (contested, §767.35) revise terms to fulfill all requirements that a proposed MSA missed. Expediency must subordinate to the divorcing petitioner(s) on whether to stipulate (fair negotiation, known outcome, unknown timeline) or contest (fair trial, unknown outcome, known timeline). Court stipulation modifications must follow petitioner(s) approval to contest. Either "shall" provisions of §767.61 subordinate to §767.34, or stipulated is indistinguishable from contested.

Elizabeth never approved a shift from "stipulated" to "contested", and no proposed agreement existed for the court to approve/modify.

Before taking testimony, the Judge twice appeared to honor ("forcing terms…? No.") (A.App.93-94)(R.135:25¶2-3,26¶3)(A.App.179-185)(R.175:12-18¶15a,15d,**15g**-h) his November 16 statements ("Court...to not get involved in...forcing...ideas…negotiations" (R.136:24¶10-18,25¶16-20)). This reassured Elizabeth that honest participation would be rewarded. As such, **believing the court would compel Adam to uphold the April 26/November 16 agreements** (A.App.188)(R.175:21¶19), **grant her Motion** (R.40), or **order an MSA bearing consent** (A.App.183)(R.175:16¶15g), **or all** (sequentially), **she offered no greater resistance**. Both proactively ("guess…then defend" R.116)(A.App.115)-(R.135:47¶10-11) and reactively (A.App.121-122)(R.139:3-4¶7)(A.App.179-185)-(R.175:12¶15,16-18¶15h), Elizabeth objected to the court's use of "unfettered power" ("extraordinary step" via §806.07(1)(h)) to create the 6Jan2023-Documents. Elizabeth's subsequent Motions to Reconsider (A.App.119-129)(R.139:1-11) and Stay (R.175-177) showed she did not voluntarily/freely consent to the 6Jan2023-Documents, nor did the court ever even request that (A.App.94-95)(R.135:26¶17-25,27¶1-3). **The court's thrice-repeated expectation of further litigation to**

correct/refine/tailor the MSA (A.App.91-93,116-117)(R.135:23¶15-23,25¶9-20,48¶9-14,49¶4-19), shows that the court knew the MSA lacked agreement. Indeed, **the 6Jan2023-Documents remain unsigned** (and unaccompanied by the required Parties Approval of Judgment). Our Wisconsin Supreme Court "characterized the lack of a signature not as a mistake but as a 'formal defect'" – ***S.P.N.Bank v. Ginkowski***, 140 Wis.2d 332,338-339, 410 N.W.2d 589 (1987). Further, "assent of the parties is an essential element of even the most informal agreements. The lack of it is necessarily fatal." – ***Nelson v. Albrechtson***, 93 Wis.2d 552,560-561, 287 N.W.2d 811 (1980).

Fourth, the court relied upon dubious information, notwithstanding its statutory duty of care. "Once spouses have filed for divorce…additional judicial oversight is necessary to ensure that the needs of the parties are met. §767.10(1) [now: §767.34] embodies these concerns" – ***Van Boxtel v. Van Boxtel***, 2001 WI 40,¶24, 242 Wis. 2d 474, 625 N.W.2d 284.

By April 26, the **court knew (A.App.26)(R.32:1) that no reliable basis of financial fact existed**, per the large differences between Original (R.19) and Amended (R.22) MSAs and FDSs (R.12-13). On January 6, 2023, Elizabeth's filings sought to supply this information (A.App.137)(R.139:19-**Exhibit-G**)(R.103:2), totaling $288,875, but refrained from claiming specific allocations or accuracy ("should be further validated", "best understanding"). Adam's "I believe" numbers (R.106) totaled $199,500.

Adam and Elizabeth repeatedly testified that they could not recall their hand-written edits (A.App.89,115)(R.135:21¶20-23¶6,47¶5-11), including Adam's claims:

1. April 26 FCC meeting (R.32), prompting the order for a reconfigured MSA

2. September 23: "I don't remember what exactly was in the lost...MSA" (A.App.43)(R.112:3)(A.App.130)(R.139:12¶A)

3. November 16 hearing (R.136:23¶11-13)

Afterward, all specific testimony should have been deemed incredible (A.App.115)(R.135:47¶12-13), yet the court solicited guesses (A.App.181-183)(R.175:14-16¶15e).

Elizabeth declined guessing (A.App.174)(R.175:7¶12)**. She only ever agreed-to/sought a proper, stipulated divorce** (R.112)(R.116)(A.App.129)-(R.139:11)(A.App.148)(R.146:3¶7)(A.App.188-189)(R.175:21-22¶19). She consistently maintained that she could not accurately recall, from her letter to Bermingham explaining the issue (A.App.25)(R.20) through affidavits (A.App.172-175)(R.175:5-6¶9,7-8¶12) supporting her Reconsider, Relief, and Stay motions (R.139)(R.147)(R.176).

Adam sought/claimed specific terms, but his assets, bundles, values, totals, and divisions conflicted (*See infra* Argument III "substantively unfair").

On January 6, 2023, the court should have estopped Adam from supplying wavering statements/conflicting claims (or found Adam incredible and contemptuous (§785.03(2))). "A party who...consents to...the decree is estopped to question its validity, especially where he has obtained a benefit from it." ***Bliwas v. Bliwas***, 47 Wis.2d 635 at 640 citing 24 American Jurisprudence 2d, *Divorce and Separation*, p.1030, sec.907. Observing ***Rintelman v. Rintelman***, 118 Wis.2d 587,596, 348 N.W.2d 498 (1984), the Fitzgibbons entered into their April 26 agreement freely and knowingly. Both were to equally participate, but Adam refused. Pursuing unjust enrichment, Adam sought to be released from the April 26 agreement via delays, re-asserting that the Original MSA was valid (R.27)(R.93:1-2)(R.101) and declaring that his memory returned (after failing the entire year prior),

which is inconsistent with the facts ("cannot recall changes") and legal conclusions (must "co-create a reconfigured MSA") that Adam agreed to be true. Adam's subsequent submissions and testimony (R.106)(R.135) conflicted not just with each other but also with his reiterated inability to recall.

Instead, the court created/ordered the 6Jan2023-Documents from Adam's testimony. **The court erred by sustaining its Order (R.125)** after learning that:

1. Elizabeth's testimony contradicted neither her nor Adam's February 7 testimony (A.App.122)(R.139:4¶8a), which mirrored each other's, negating credibility differences (A.App.175-176)(R.175:8-9¶13). Elizabeth's testimony matched her filings (R.103)(R.112)(R.116), unlike Adam's 'recall' testimony & filings (R.106).

2. Elizabeth maintained that **the 6Jan2023-Documents did not reconstruct the lost MSA** (A.App.121)(R.139:3¶5)(A.App.174)(R.175:7¶11). **Adam conveyed agreement** (**March 4:** Was the Judge's "ruling perfect[?] 'no' I was supposed to get…" (R.177:4), **even directly notifying the court** (**April 3**: "I was [supposed] to receive", R.166:1)

3. Adam's every filing and testimony conflicted with the 6Jan2023-Documents. From his scattergun assertions, Adam can support nearly any claim with prior communications…if he withholds conflicting information. Elizabeth demonstrated this using E*Trade/Voya/home values and allocations (A.App.152-158)(R.174:4¶14b,5-6¶18,10¶22). Adam brazenly denied the February 7 DAR transcript (R.69:7¶10-19) and prior two MSAs stating, "**60/40 [placement] was a number you[Elizabeth] slipped in there that got past me**"(A.App.191)(R.177:1). Adam's post-hearing claims over the E*Trade/Voya accounts (A.App.197)(R.177:7) show his ongoing, wavering certainties (A.App.150-151)(R.174:2-3¶10) regarding asset values/allocations, over/cross-payments, and other terms.

Adam's **'hindsight'** never validated the 6Jan2023-Documents (A.App.77)-(R.135:9¶23).

Fifth, unlike initial/interim support orders (*See supra* Argument I.D.) pending judgment, forming a stipulated divorce (§767.34), requires all parties' consent to add/alter/delete terms, or no agreement exists. Key MSA details include:

1. Packages: all terms must integrate with all others (A.App.179)(R.175:12¶14g). Example: In lieu of A.J.F. primary (>75%) placement and a repeating schedule (e.g. academic/non-academic), "60%/40%" required the Fitzgibbons co-create a schedule optimizing A.J.F. placement with each parent (R.59:3¶13).

2. Asset-specific: people select assets of the highest subjective values, without substitution, maximizing perceived contractual surplus. Example: a party may accept a violin and not its appraiser's $900 equivalent cash equalization payment (the Judge's "scalpel" not "chainsaw" (R.136:25¶16-20)).

3. Permanent: sold/disposed-of property cannot be reclaimed. Titled property transfers cannot be voided. Example: marital residence quitclaim.

Unlike the 6Jan2023-Documents, the lost HE Amended MSA encapsulated such foregoing considerations. The court erred in arbitrarily dividing only some assets (e.g. brokerage accounts), dismissing others (A.App.137)(R.139:19-**Exhibit-G**), ignoring updated values, and failing to systematically validate each term in a draft, unapproved MSA (R.22). Parties consent to entire stipulated divorce agreements.

Consent is so essential that a party's hidden/forgotten assets that could have altered consent can be court-ordered into a constructive trust to benefit an aggrieved party (§767.127(5)); **court-dismissed/ignored assets have unclear remedy**.

On January 28, 2022, Adam's MSA negotiation resistance ended when he faced a contested divorce. On January 6, 2023 (pre-hearing), Adam again agreed to negotiations, but the court denied the parties' preference for stipulated agreement (A.App.183)(R.175:16¶15f-g), then denied granting Elizabeth's Motion (R.40) that would also have compelled it, or at least generated a detailed property inventory for a trial.

The court disregarded property list differences (R.106)(A.App.137)(R.139:19-Exhibit-G), knowing (A.App.44)(R.112:4)(R.116)-(A.App.87)(R.135:19¶2-8) it lacked the full "inventories" (***Omernick v. Lepak***, 112 Wis.2d 285,291, 332 N.W.2d 307 (1983)) necessary to either verify/adopt an equitable stipulated agreement or properly divide property in a trial.

Claiming to reconstruct/memorialize a stipulated divorce (e.g. MSA preamble/XII/XIII/XVI), the 6Jan2023-Documents were unjustly created and lack consent, so they should be declared void.

C: The court is the State's representative party to this case's MSA, so no party may use contract law to force terms on another.

Typically, civil courts are non-parties offering adjudication services without interest in a matter's outcome. When a non-party, a "trial court may totally accept or reject a stipulation presented by the parties for its approval." (***Phone Partners v. CFCC***, 196 Wis.2d 702,709 542 N.W.2d 159 (1995)).

"Marriage is not simply a contract between two parties…the state has a special interest…and…the spouses…contract in the shadow of the court's obligation to review the agreement on divorce" (***Button v. Button***, 131 Wis.2d 84 at 94).

When an MSA is not simply between two parties, because the State/County ("State") has interests (e.g. §767.205(2)), the court is the State's representative third party (A.App.185)(R.175:18¶15i)("authorized entity")(§767.205(2)(a)2.)(§822.02(6)). Case law affirms this, as §767.29(1)(now §767.57(1)) "...reflects legislative concern..." making "the [FCC] an **arm of the state**...§785.03(3)" in ***Biel v. Biel***, 130 Wis.2d 335,338, 387 N.W.2d 295 (1986).

Marital contracts require voluntary/free agreement (***Button v. Button***, 131 Wis.2d 84 at 95-96), so parties cannot unilaterally obligate/force others into an MSA. This restriction applies even more to court, since the parties to an action bear the decision's burden and besides, a conflict of interest arises with the court/State, with limited safeguards (e.g. SCR §60.04(1a,4d,6),§60.02) or even relief possibilities from another judge (§801.58).

Oft cited (e.g. ***Phone Partners v. CFCC***, 196 Wis.2d 702,709) ***Bliwas v. Bliwas***, 47 Wis.2d 635,639-640 stated the family court is, "not required...[to] accept or reject the stipulation *in toto;*...has the right to make such modifications in...provisions that the interests of justice, or...minor children...may require." However, **the Bliwas Court declined affirming any authority exceptions for State interests** ("a family court order, which would not be enforceable without a prior stipulation...rests not...in the...extension of jurisdiction of the court") but instead reinforced §767.34's plain, unambiguous language, crediting only the powers of stipulation and fair process.

Further, unlike Bliwas, Elizabeth never consented to a court-approved MSA, never benefited from empowering the court with extended authority, and repeatedly objected (*See supra* Argument II.B.-"**Third**").

Beyond §767.41's ("shall make...provisions") and §767.61's ("may alter...distribution") required discretion-consideration factors, §767.34's practical effect must be shielded from "**unfettered power**" (extending inherent authority)

and **competing interests** (State/statute, expediency, or conflict exceeding de minimis, R.175:13¶15a).

The 6Jan2023-Documents already lacked procedural fairness, including consent (*See supra* Argument II.B.). However, the court reneged its November 16 commitment ("Court...to not get involved in...forcing...ideas...negotiations"), favoring unspecified competing interests, so the 6Jan2023-Documents should be declared void.

D: The court erred in retroactively applying the 6Jan2023-Documents to February 7, 2022.

Only if all parties agreed that an MSA was a facsimile of the lost MSA could it be truthfully, harmlessly branded as "reconstructed" and retroactively ordered.

Adam and Elizabeth (*See supra* Argument II.B.-"**Fourth**") agree that the 6Jan2023-Documents are not facsimiles of the lost MSA.

The 6Jan2023-Documents universally reference FCC Bermingham as having divorced the Fitzgibbons, but **Bermingham could never truthfully state that he did so because he only saw/approved the Original MSA (R.15)(R.19), not the HE Amended MSA that the court now claims the 6Jan2023-Documents reconstructed.** Bermingham's April 26 order sought to avoid manufacturing agreement via contest or fiat (A.App.179-180)(R.175:12-13¶15a).

Spin-offs of the unapproved draft (R.22), all 6Jan2023-Documents are:

1. altered writings purporting to (§943.38(1),§943.38(2) and/or §943.39(3)) have been made by another (Bermingham/Adam/Elizabeth), at another time (on/after February 7, 2022), with different provisions (inauthentic

stipulations), and/or authority of one who did not give such authority (Bermingham/Adam/Elizabeth), and

2. altered data in a formalized manner (§943.392, as clarified in §943.70(1)(f)) including altering, electronically signing, then filing Form FA-4160VA with the Clerk of Courts on January 12, 2023.

All 6Jan2023-Documents are lost MSA counterfeits (A.App.174)(R.175:7¶11d-e).

III. Beyond being procedurally-unfair in their creation, the 6Jan2023-Documents are substantively unfair, inequitable, and invalid.

Beyond procedural unfairness and that the 6Jan2023-Documents did not recreate the lost MSA (*See supra* Argument II.B.), Adam (*See supra* Argument II.B."**Fourth**") and Elizabeth (A.App.128)(R.139:10¶10)(A.App.147-148)-(R.146:2¶5,3¶6L)(A.App.187-188)(R.175:20-21¶16) claim material (albeit uncertain) financial shortfalls ("substantively unfair").

The court missed/excluded key financial information either submitted for (R.112)(R.116)(A.App.130-145)(R.139:12-27) or revealed during the January 6, 2023 hearing (A.App.146)(R.146:1¶2)(A.App.177-178)(R.175:10-11¶14c,14e). Further, the Fitzgibbons' frozen/inaccessible assets and values differ between all MSAs and FDSs, while others transformed since February 7 (e.g. guns/ammo collection "sold to a friend" per Adam's testimony, Winnebago Case#2022CV000936).

Button v. Button, 131 Wis.2d 84 at 89 stated of §767.255(11)(now §767.61), "an agreement is **inequitable**...if it fails to satisfy any one of the...requirements:

1. each spouse…made fair and reasonable disclosure…of…financial status;

2. each spouse…entered into the agreement voluntarily and freely; and

3. the substantive provisions…dividing the property…are fair to each spouse."

The 6Jan2023-Documents are inequitable because:

1. Adam never provided fair and reasonable disclosure of the family's assets. By January 28, 2022, Elizabeth's due diligence had reduced FDS errors, but her family's assets (specifics/value/division) remained partly obscured all the way through (and after) the January 6, 2023 hearing (Adam's inconsistencies prompted Elizabeth's Motion for Relief and Declaratory Order (R.146-147)).

2. (Voluntarily/freely were explained; *See supra* Arguments II.B.,II.C.,II.D.)

3. The **substantive provisions unfairly divided the property**, failing to:

    a. verify the full scope of potentially divisible assets,

    b. consider pre-marital assets and post-marital gifts (§767.61(2)(a)), disclosed in **Exhibit-G**,

    c. reconcile 6Jan2023-Documents with **Exhibit-G** (A.App.137)-(R.139:19), Adam's sworn/filed information (A.App.148)-(R.146:3¶6i) such as $40,000 (A.App.109)(R.135:41¶17-24)(R.106) and FDS' $44,952 (R.12:4) for E*Trade/Voya values, on which Elizabeth relied (A.App.176)(R.175:9¶13c-13d)(R.13:3),

    d. consider Adam's consistent statements (albeit inconsistent values) for "overpayment" (A.App.39)(R.91:9¶32b)(R.106)(A.App.122)-(R.139:4¶8)(A.App.177)(R.175:10¶14a) to Elizabeth (her "favor") or the reasons (e.g. R.112:6), and

e. verify equitable (or justify an inequitable) distribution, including "basement" assets (A.App.177-181)(R.175:10¶14b,12¶14g,14¶14h)-(A.App.163)(R.174:15) per §767.61(3). Assets excluded from an MSA affect equitability calculations (*See supra* Argument II.B.-"**Fifth**").

To reconstruct the lost MSA, the Judge accepted such risks, explaining that a court would be obliged to recreate a prisoner's conviction to justify their 83-day sentence, stating, "**if the judgment of conviction has to be re-created through all sorts of different means, that's what has to happen**." (A.App.91)(R.135:23¶7-13). The Judge excluded explaining how that prisoner could properly appeal a conviction that served judicial expediency over facts and due process.

Like the prisoner, Elizabeth no longer knows who to litigate against or how, as Adam is no longer the sole source of disputed terms (A.App.128)(R.139:10¶9e). Elizabeth's litigation now must challenge the foundation of the 6Jan2023-Documents, which the court itself (not Adam) defends (A.App.186)(R.175:19¶15j-k). Denying her Motions to Reconsider (R.139) and Stay (R.176), the court upheld its 6Jan2023-Documents, making moot her Motion for Relief and Declaratory Order (R.147) from Adam's financial mistakes/misrepresentations, so she withdrew it to save litigation costs.

Since Elizabeth states that the 6Jan2023-Documents are inequitable, no FCC can approve them (*See supra* Argument I.A.) before she reviews/revises an MSA with Adam. Until then, no proper stipulated divorce can occur. Either the April 26/November 16 negotiated approach or a proper contested process remain inevitable (A.App.185)(R.175:18¶15h), yet a contested divorce first requires understanding the totality of assets to exercise proper discretion.

In ***Anderson v. Anderson***, 72 Wis.2d 631,645, 242 N.W.2d 165 (1976) "division of property is...within the...discretion of the trial court...unless...some

mistake or error respecting the facts…or unless…the amount is either clearly excessive or inadequate." Relying on Adam's financials was court error (*See supra* Argument II.B.-"**Fourth**")(A.App.176-179)(R.175:9-12¶14), given what testimony/documentation he offered (146:2¶6h) and contradicting asset:

1. divisions (brokerage accounts, R.175:11¶14d),

2. bundles (A.App.173-178)(R.175:6¶10,10-11¶14b,e),

3. values (brokerage accounts (A.App.176)(R.175:9¶13c), real estate (A.App.177-178)(R.175:10-11¶14c)) in filings (R.106:1, "MSA that I believe I agreed to") and testimony (A.App.99)(R.135:31¶20-25), and

4. explanations, irrationally obtuse/opaque (e.g. "values are **derived** from a **20-day moving average**…for the brokerage accounts" (R.106:1) rather than a simple snapshot).

Elizabeth provided more examples (A.App.152-154)(R.174:4¶14a,5-6¶18) to Reconsider/Stay the 6Jan2023-Documents.

"'Discretion'…depends **on facts that are in the record or reasonably derived by inference from the record and yields a conclusion based on logic and founded on proper legal standards**" – ***Mullen v. Coolong***, 153 Wis.2d 401,406, 451 N.W.2d 412 (1990). However, the court disregarded inventory (e.g. R.139:19"Exhibit-G") and "overpayment" facts that necessitate knowing all details to compute (R.106)(A.App.122)(R.139:4¶8)(A.App.177-179)(R.175:10-12¶14), reasonable inferences (e.g. packages, specific assets (Argument II.B.-"**Fifth**")), and a logical conclusion (e.g. negotiation trends, R.112:2-3) of not only what the lost MSA could have been but what the Fitzgibbons may have agreed was equitable (A.App.137)(R.139:19"**Exhibit-G**").

The 6Jan2023-Documents are not merely invalid due to unfair procedural shortcuts and inaccurate reconstructions/recreations of the lost MSA they claim to be (*See supra* Argument II.B.) but are also:

1. **inequitable** (A.App.148)(R.146:3¶6j), and

2. **incomplete** (missing Exhibit (A.App.60)(R.127:11¶II.C) and custody details that the Parenting Plan (A.App.213-228)(R.192-193) patches).

IV. The court should have carefully reviewed Elizabeth's request for attorney fees and other costs, then ordered their reimbursement.

Denying Elizabeth's Motion (R.40), the court made no evaluation or award of fees/costs erroneously disregarding her need, fee/cost reasonableness ("lodestar factors" – ***Kolupar v. Wilde P.C.***, 2004 WI 112,¶¶27-30, 275 Wis.2d 1, 683 N.W.2d 58), and parties' ability to pay (***Selchert v. Selchert***, 90 Wis.2d 1,16, 280 N.W.2d 293 (1979) citing ***Anderson v. Anderson***, 72 Wis. 2d 631 at 646), all satisfied, as:

1. Elizabeth's need is well-established, by her poverty-level income and little wealth (R.13:1)(A.App.31)(R.91:1¶5,6¶19)(A.App.47)(R.116:1)-(A.App.128)(R.139:10¶10)(A.App.187-188)(R.175:20-21¶16).

2. Minimizing fees, Elizabeth demonstrated significant restraint and did much of the legal work herself (A.App.188)(R.175:21¶16b). She limited litigation to resolving either the lost MSA or urgent, critical custodial matters the lost MSA might have otherwise mitigated (e.g. regaining access to A.J.F. She has only initiated defensive financial litigation (OTSC Quit Claim de Novo, R.178).

3. Adam's equitable share of the marital assets (whether R.127:15-16 or R.139:19"Exhibit-G") exceeds Elizabeth's legal fees. Since his late-2021 raise, Adam earns >$70,000/year (R.184).

But for Adam's obstruction of another MSA, unclean hands (§103.57), and extreme/outrageous actions, all litigation would have been avoided, including this Appeal. Following January 6, 2023, MSA-related legal costs quickly doubled at triple the pace. Elizabeth requested (R.40:2) and deserves reimbursement of all attorney fees (>$70,000) since April 5, 2022 (§767.241(1)(a)) along with similar, reasonable, compensatory relief/costs (A.App.188)(R.175:21¶16b)-(§806.04(8),§806.04(10)).

CONCLUSION

This Court should remand the case with these instructions:

1. Reverse the Order (R.125) denying the Motion to Declare as Void (R.40), replacing it with another that grants the same motion:

   a. Voiding the Original Judgment/MSA (R.19).

   b. Granting temporary, "initial custodial orders based on stipulation prior to judgment" (§767.333(1)) implemented via A.J.F. Parenting Plan (R.192-193)(§767.41(1m)), while leaving the record unsealed (*See supra* Argument I.D.).

   c. Ordering Adam to pay Elizabeth's legal fees/costs and reasonable relief/costs since April 5, 2022 (§806.04(8),(10) and §767.241(1)(a)) (*See supra* Argument IV.).

2. Vacate/void the 6Jan2023-Documents (R.120)(R.122)(R.126)(R.127).

3. Declare/clarify the parties, relations and rights to, and status of the 6Jan2023-Documents, the Original Judgment (R.19), the ordered April 26 agreement ("Parties have 10 days to file re-configured MSA", R.32), and the "Summons/Petition for Divorce" (R.2)(§806.04(2)).

Respectfully submitted, this 18th day of October, 2023:

By: ***(Electronically Signed)***

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CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this brief conforms to the rules contained in Wis. §809.19(8)(b,c) for a brief and appendix produced with a proportional serif font. The length of this brief (defined by §809.19(8)(c)1., specifically including Statement of Case and Facts, Arguments, Conclusion) is **10,703** words.

Respectfully submitted, this 18th day of October, 2023:

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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II
Case No. 2023AP0611

IN RE THE MARRIAGE OF:

ELIZABETH ANNE FITZGIBBON,

Petitioner-Appellant,

v.

ADAM PAUL FITZGIBBON,

Respondent-Respondent.

PETITIONER-APPELLANT'S MOTION FOR RECONSIDERATION

On Appeal from a Final Order of the Winnebago County Circuit Court, Case No. 2021FA0564,
The Honorable Bryan Keberlein, Presiding

ELIZABETH ANNE FITZGIBBON
Petitioner-Appellant

PREPARED BY:
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Petitioner-Appellant ("Elizabeth") moves this Court to reconsider its May 29, 2024 Decision, due to errors in fact and law. Citations reference Elizabeth's Brief ("Brf.Pe-App."), this Court's Decision ("D."), and record ("R.").

1. Nothing confirms that the Hand-Edited Amended MSA **still** existed at the time of the divorce hearing (countering D.8-9¶13) either physically (destroyed) or mentally (forgotten by Adam/Elizabeth; unknown by FCC, representing Winnebago County/Wisconsin) (Brf.Pe-App.40-42,47-48).

2. The Decision claims (D.4-5¶4-5) Adam/Elizabeth divorced on February 7, 2022 without confirming how: under **the Original MSA without their consent**, or under **the lost MSA** with **neither the court's approval (Judge or FCC, countering D.9¶14) nor a memorialization**, or **otherwise**, then offered no statute/case demonstrating such an exception could achieve a divorce. Also: "*the circuit court...**justified reopening** the judgment of divorce*" (D.12-13¶20) is error (Brf.Pe-App.36).

3. FCC scheduled the first (Brf.Pe-App.23) of **three "Default Divorce"** hearings (May 23-September 9) that would have been inappropriate had the parties been divorced, not just told they were ("*I am not sure how this is scheduled for a Default Divorce since these parties are in fact divorced.*" (Brf.Pe-App.43)). Both called themselves divorced (until learning otherwise), though **Adam waivered**, benefitting by claiming "married" (Brf.Pe-App.21).

4. Irrelevant is the Decision's RESTATEMENT OF CONTRACTS passage (D.13¶22). Nothing confirms that the Hand-Edited Amended MSA ever was (or could have been) a divorce memorandum; the record fails to show that it fulfilled statutory requirements of being court-approved (including equitability) without alterations (that Adam/Elizabeth may have then contested; certainly Elizabeth and likely Adam (Brf.Pe-App.54-55) would have if the FCC ordered the 6Jan2023-Documents) and then memorialized the hearing's meeting of the minds (Brf.Pe-

App.41,57). **The Hand-Edited Amended MSA was only an informal, non-binding memorandum of Adam's/Elizabeth's January 28, 2022 household meeting, not a divorce hearing** and not a restate-able contract (Brf.Pe-App.41-42).

5. All who have claimed to have ever seen the lost MSA have also claimed the 6Jan2023-Documents failed to accurately recreate/reconstruct it ("inaccurate"). **Both Adam** and Elizabeth repeatedly stated on record that they could not remember/recall the terms of the lost MSA **before** and **during** the January 6, 2023 hearing (Brf.Pe-App.23,52-53), during which the court found **both Adam** and Elizabeth lacked credibility. Critically:

> *"oral modification...of a written contract...within the statute of frauds cannot be wholly or in part the foundation of an action...Any other rule would...nullify the statute of frauds, for otherwise, anyone who had any contract in writing"* (**draft Amended MSA**) *"could make an entirely different contract by parol,"* (**6Jan2023-Documents**) *"using the written one as a basis for the change...To permit oral proof of an alteration would...expose the contract to all the evils which the statute is intended to remedy."* And, *"...where the parties have failed to put sufficient of the agreement in writing to comply with the statute, any subsequent oral modification...is **ineffective, because there is no enforceable contract to be modified**."* – 72 Am.Jur. 2d Statute of Frauds §274 (1962)

The 6Jan2023-Documents are ineffective creations from oral modifications made to draft, approved-by-nobody paperwork. **Only Adam contradicted himself on record** (including before, during, and post-hearing) (Brf.Pe-App.38,52-55).

6. Irrelevant is *Mitchell Bank v. Schanke*, 2004 WI 13, 268 Wis.2d 571, 676 N.W.2d 849. Unlike an MSA, no similar statutory ("commissioner-

approved") requirement existed for the bank's Note. If anything, ***Id.*** supports Elizabeth's Appeal, countering the Decision (D.13-14¶22):

> *"A mortgage, secures the debt, not the note...the note represents, and is the primary evidence of, the debt...What matters is the debt itself, not the Note...Therefore, it matters not whether the Note itself is produced, as long as the Bank can prove the underlying debt secured by the Mortgage."* (***Id.***,596-597)

Here, the January 28, 2022 record entry and submitted paperwork are primary evidence ("Note") of Adam's/Elizabeth's **desire** to divide their property and rights ("debt"). Lacking a judgment containing the 3-party-agreed Hand-Edited Amended MSA ("mortgage"), nothing was secured, no divorce occurred, and it's ineffective to recreate/reconstruct an invalid document to cure an invalid judgment.

7. Irrelevant for the same lack of statutory contract requirements, ***Anchor Sav. & Loan Ass'n v. Coyle***, 148 Wis.2d 94, 435 N.W.2d 727 (1989) also relied on modifying a valid court judgment, which is missing in the instant case (no valid divorce judgment).

8. Discretion cannot be appropriate if (or enabling) violating/quashing various statutes (§§241.02(1),767.34,767.61,807.05,943.38 or §943.39(3), and by acknowledging unresolved "*material issues*" via "*a starting point to...more litigation*" §757.69(1)(p)1.)(Brf.Pe-App.40-61) when statute-compliant options were requested and remain available (Brf.Pe-App.44-63). No offered statute/case demonstrated otherwise. Such discretion undermines not only statutory marital property and process protections but also major custodial decision-making (e.g. military enlistment), logically empowering trial courts to conscript minors (the "slippery slope" of "unfettered power" from "competing interests" (Brf.Pe-App.50-55) could create an involuntary army of Dan Bullocks.).

9. Equitability must be reviewed; no "separate motion" exists (D.14¶24), and the 6Jan2023-Documents remain inequitable (Brf.Pe-App.44-45). Elizabeth need not identify "*a single term*" (D.14¶22) to know the 6Jan2023-Documents are also inequitable/inaccurate, as **Adam did so** (Brf.Pe-App.54) after Elizabeth provided evidence and testimony (Brf.Pe-App.59-63). Elizabeth motioned (R.147) to address Adam's financial inconsistencies upon which the court partly relied on January 6, 2023. She later withdrew that motion (R.258), but included excerpts from it in this Appeal.

10. Elizabeth objected in her ignored/denied Reconsideration and Stay motions. However, **Elizabeth's agreement is required to memorialize a stipulated divorce; she owed no objection** (correcting D.5¶8). Trials resolve disagreements on "material issues" (as Elizabeth requested) (Brf.Pe-App.40-61).

11. The Decision offered no explanation/statute/case demonstrating how a court can create/alter/adjudicate an MSA while being a (representative) party in it, without gaining all other parties' consent to waive the court's conflict of interest (Brf.Pe-App.56-57).

12. For "*award of fees*" (D.15¶26), all accruing costs should be totaled when her motion (R.40, this Appeal's request (Brf.Pe-App.65)) or similar relief are fully granted.

13. If/However Elizabeth erred in helping resolve losing the MSA (and Adam's problem-compounding actions), she requests recognition of her comparatively clean hands (§805.18(1)).

Despite the imposed duress, Elizabeth has avoided accepting the (invalid/inequitable) 6Jan2023-Documents' tempting benefits, including all ordered property and child support. She and Adam still share her bank account and mortgage on their home (Brf.Pe-App.25-26). Their employment remains unaltered

since 2018. For two years, Elizabeth withheld nearly all litigation (Brf.Pe-App.39,63), assuming their reopened divorce would make such litigation moot. Considering Supreme Court output has slowed, this Appeal may be the last off-ramp from a highway of needless, "anticipated" (R.135:48¶13), "high conflict" (R.228:2), as the irresistible forces of court orders clashes with unmovable principles, potentially dwarfing ***Schafer v. Wegner***, 78 Wis.2d 127 ¶129-130 (1977) that at least began with a valid divorce.

Elizabeth requests this Court vacate its Decision and remand the case with the prior instructions (Brf.Pe-App.65) for the parties' undivorce.

Respectfully submitted, this 17th day of June, 2024:

By: _____

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CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this brief conforms to the rules contained in Wis. §809.24(1) motion produced with a proportional serif font. The length of this motion is **1,097** words.

Respectfully submitted, this 17th day of June, 2024:

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STATE OF WISCONSIN
SUPREME COURT

IN RE THE MARRIAGE OF:

ELIZABETH ANNE FITZGIBBON,

Petitioner-Appellant,

v.

ADAM PAUL FITZGIBBON,

Respondent-Respondent.

Winnebago County Circuit Court
Case #2021FA000564

Court of Appeals District 2
Decision: June 19, 2024
Appeal #2023AP000611

PETITION FOR REVIEW

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STATEMENT OF REVIEW CRITERIA AND MERIT

In Wisconsin, every person can divorce if their marriage is irretrievably broken (§767.315). The two procedural paths are either stipulated (§767.34(1)) or contested (§767.35(1)). Oddly, Elizabeth (Petitioner-Appellant) and Adam (Respondent-Respondent) Fitzgibbon appear to be the first couple declared divorced by decree via "Relief from judgment or order" (§806.07(1)(h)), as no court reviewed and approved their stipulated agreement (the court lost it), the ordered agreement is not their own and lacks their agreement, and no trial was held.

The circuit and appellate courts' decisions conflict but mutually support granting divorces without the divorcing parties' or the court's approval. They concur that conscience-shocking judicial discretion trumps due process and permits overriding multiple Wisconsin and Federal/UCC statutes.

This case showcases how the currently inadequate constraints do not liberate the judiciary, but denigrate it. Unfettered power has undoubtedly harmed parties within a portion of Wisconsin's >1500 Appellate and Supreme Court case decisions involving §806.07(1)(h), and multiples more have suffered unnoticed without appeal. In this case, as in many others, procedural due process is not the only victim, and property deprivation is not the only harm. Every anti-relief imposes immense costs on the aggrieved, often including all parties, even the State and courts, not merely individual litigants. Sans additional restraints, §806.07(1) spawns needless appeals, encourages unjust litigation, and condones societally harmful behavior.

This Court has a unique opportunity to review (§808.10) and provide the bench and Bar with much-needed procedural and policy guidance regarding delineations between family and contract law (§809.62(1r)(a,b)) and the boundaries of §806.07(1) judicial discretion and authority (§809.62(1r)(a,b,c)), particularly amidst conflicts of interest, either inherent to family law litigants competing with State interests (§767.205(2)) or specific to correcting court errors (or both). Left unresolved, the case offers a novel challenge to federal jurisdiction over family law.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. Could a stipulated divorce be granted without a court's review and approval of a divorcing parties' proposed Marital Settlement Agreement (MSA)?

Trial court answer: **Yes**.

Appellate court answer: **No.**

II. Without litigants' explicit consent, can a judge use §806.07(1)(h) to create and retroactively order a retired Commissioner's grant of a stipulated divorce using oral testimony that conflicts with both parties' on-record materials and testimony?

Trial court answer: **Yes**.

Appellate court answer: **Yes**.

STATEMENT OF THE CASE

(All dates are of year 2022 unless specified)

On September 8, 2021, Appellant-Petitioner Elizabeth Anne Fitzgibbon ("**Elizabeth**") filed a Petition for Divorce with Minor Children from Respondent-Respondent Adam Paul Fitzgibbon ("**Adam**").

On January 7, Elizabeth submitted to the court the signed versions and three photocopies of both FDSs and their Original MSA.

Meanwhile, Elizabeth and Adam agreed to co-create another MSA (P-App.33)(R.91:3¶9). Elizabeth's Attorney provided a partly-updated MSA to assist the Fitzgibbons' negotiations, titled "Amended MSA" (R.22)(P-App.33)(R.91:3¶9). Around 4:30AM on January 28 (P-App.33)(R.91:3¶10), Adam and Elizabeth completed negotiations, hand-editing a printed copy of the Amended MSA. After both signed it, Elizabeth submitted the final hand-edited Amended ("**HE Amended**") MSA and all photocopies to the court (P-App.33)(R.91:3¶10). Neither she nor Adam made other copies (electronic/physical) (P-App.84)(R.135:16¶1-16).

On **February 7, the Fitzgibbons attended their in-person stipulated divorce hearing**, during which they believed they were being divorced with the HE Amended MSA, but were shown/provided no copies.

Adam and Elizabeth soon began disagreeing about their obligations but lacked MSA copies to verify their beliefs. Elizabeth believed they were to co-create a Parenting Plan and placement schedule for their son, A.J.F. (like R.19:10¶A). Adam refused (P-App.35)(R.91:5¶17d), demanding their separated-but-married schedule continue (P-App.33)(R.91:3¶10).

On March 26, Adam informed Elizabeth that the HE Amended MSA had been lost (P-App.151)(R.174:3¶14a). Tara Berry, Clerk of Courts, confirmed that the HE Amended MSA was properly submitted on January 28 but destroyed prior

to scanning. Tara advised requesting help from FCC Bermingham (P-App.33)(R.91:3¶13)(R.20).

Elizabeth sought to recreate the lost MSA (P-App.34)(R.91:4¶14), but Adam refused, preferring the Original MSA.

On April 5, Elizabeth requested the court's help to resolve their lost MSA (P-App.25)(R.20)(R.91:3-4¶13-14), writing "I am unwilling to accept the...original MSA...evidenced by the...amended version."

On April 26, Elizabeth, Adam, and Adam's newly-hired Attorney (Culp) convened with FCC Bermingham. The FCC confirmed that the HE Amended MSA was correctly submitted January 28, then irretrievably lost. (P-App.34-35)(R.91:4-5¶15) **The FCC could not verify approving (or seeing) the HE Amended MSA.**

Adam and Elizabeth swore (P-App.172)(R.175:5¶9) that neither could individually, nor collectively, recall the Amended MSA's changes (P-App.152-153)(R.174:4-5¶15).

FCC Bermingham concluded that the lost MSA could not be re-created.

Adam and Elizabeth agreed to co-create and file a new, "reconfigured" MSA within 10 days, reconvene for another divorce hearing, and temporarily use their Original MSA as interim terms (R.59:2-3¶11) prior to a final Judgment, so custodial mediation to begin. The FCC ordered their agreement (P-App.26)(R.32:1)(P-App.35)(R.91:5¶16) and scheduled a May 23 "**Default Divorce**" hearing (R.30).

After April 26 meeting, Adam and Elizabeth discussed the new, "reconfigured" MSA. Elizabeth drafted a reconfigured MSA, retaining FCC Bermingham's verified-agreed custodial terms (P-App.36)(R.91:6¶18)-(R.136:5¶1-3)(P-App.180)(R.175:13¶15b). Negotiations stagnated (P-App.141)(R.139:23¶J).

On May 8, the deadline expired for transferring marital assets. **Elizabeth chose to <u>not enforce</u> the Original MSA**, which required selling their marital residence (P-App.21)(R.19:13).

Giving Adam more time to co-create an MSA, the parties' attorneys agreed to adjourn the May 23 hearing (R.34) to July 25.

On June 12, Elizabeth offered Adam the highlights of her final MSA draft (P-App.175)(R.175:8¶12a). He rejected her proposal (P-App.36)(R.91:6¶19-21) (P-App.142-143)(R.139:24-25¶K)(P-App.155-156)(R.174:7-8¶20).

On June 22, unsuccessful at convincing Elizabeth to accept Adam's custodial demands, Adam and Sally Fitzgibbon (Adam's mother) took A.J.F. against Elizabeth's consent ("kidnapped")(P-App.36-37)(R.91:6-7¶22).

On July 12, Elizabeth filed a Motion to "Declare as Void" (R.39-40). It sought a reconfigured MSA after first declaring the divorce void (P-App.181)(R.175:14¶15c). The court added this to the July 25 "Default Divorce" hearing, rescheduling it to September 9 (R.41-42)(R.49:1¶2).

On July 13, Elizabeth requested an emergency hearing to temporarily resolve escalating custody disputes (R.43)(R.44)(P-App.37)(R.91:7¶27). FCC Krueger denied Elizabeth's request, sharing confusion of the divorce situation (R.49:1¶2-3).

On August 18, Elizabeth's new attorney (Vesely,R.51) requested another emergency hearing (R.55)(R.54:3¶18-19). The court added it to the September 9 hearing (R.55), days after A.J.F. would begin Adam's unilaterally chosen school (R.171:3¶12-15).

On September 8, Elizabeth summarized the disaster (R.59).

On September 9, FCC Rust (replacing FCC Krueger) ordered (R.62) A.J.F.s immediate return to Elizabeth, ending Adam's 79-day "Wild West" withholding period (P-App.162)(R.174:14). The FCC sent Elizabeth's Motion to Declare as Void (R.39-40) to the trial court (R.63), but skipped the scheduled "Default Divorce".

On November 16, all convened with the Judge to hear Elizabeth's Motion to Declare as Void (R.39-40). Adam reiterated not knowing the Amended MSA's edits (R.136:23¶11-13), but sought (R.136:21¶17-19,24¶3-8) the Original MSA.

Beginning a December 20 "status conference", Attorney Vesely explained that "**the issue is that the parties had filed an amended MSA that was lost by the clerk of court's office, and that was the one...they were testifying to...at...the final hearing.**" (R.137:6¶9-20) He concluded, "**that order**[R.19]**...does not include...agreement of the parties**" (R.137:8¶4-6).

The Judge directed Adam and Elizabeth to (P-App.181-183)(R.175:14-16¶15e), "write down what...the agreement was" (R.137:8¶11-18).

Attorney Vesely re-explained that Elizabeth did not know the Amended MSA's hand-edits (R.22)(R.137:9-10).

The Judge adjourned, ordering new homework, stating, "when we come back, if it's not consistent, I'm going to...take testimony and...determine who I think is being credible," (R.137:13¶3-13) concluding, "we will take care of the MSA." (R.137:15¶15-18)

On December 31, Elizabeth filed a 21-paged detailed explanation (R.112)(R.116)(R.139:12-27) of the HE Amended MSA as of February 7.

Pre-hearing, Adam re-agreed to negotiate a reconfigured MSA, so Attorney Vesely requested adjournment. The Judge denied the request.

January 6, 2023 Hearing of Motion to Declare as Void (R.39-40)

The Judge began, "I've been trying to push...what [FCC]Bermingham ordered...**re-create the MSA**" (P-App.77)(R.135:9¶6-14).

1. "***Ronald J.R. vs. Alexis A.L.***[sic]...a party...regretted a stipulated bargain...hindsight does not make a stipulation invalid." (P-App.77)(R.135:9¶15-23).

2. "***Thoma vs. Village of Slinger***...we clearly have...extraordinary facts... though, **I don't have a memorialization of what was agreed**" (P-App.77-78)(R.135:9¶24-25,10¶1-16).

The Judge proceeded, "...this is **not a family issue**...this is a **contract issue...I'm going to determine what our MSA is**..." (P-App.78-79)(R.135:10¶16-25,11¶1-12). "From" the Amended MSA (R.22) "**you folks can file anything you want**." (P-App.88)(R.135:20¶23-25).

Attorney Vesely clarified FCC Bermingham's April 26 order "**to reconfigure it**" (R.135:21¶12-16).

Attorney Vesely added, "**it's an impossible task to...reconstruct**...the MSA that got lost...both parties...said they don't recall...that's part of the record...I don't know how we can...force terms," continuing, "**the record shows, they didn't have a meeting of the minds in terms of what...that MSA was.**" He added, "of the documents that we submitted...Exhibit A...**Mr. Fitzgibbon**...**states: I don't exactly remember what was in the lost MSA**...so...**how do you...say...terms without perjuring yourself?**" (P-App.89-91)(R.135:21¶20-25,22¶1-25,23¶1-6).

The Judge said, "**I'm not forcing terms on anyone…they were ordered to re-create…I want this MSA re-created…we're going to create an agreement today**" (P-App.93)(R.135:25¶1-20), adding, "**the Court has to make a determination…they've had since July…and nobody's done anything**." (P-App.94)(R.135:26¶1-5).

Sixteen times, Elizabeth stated that she did not recall (or similar) (P-App.94-104)(R.135:26¶21-22,27¶6-7,27¶15-17,28¶1-27,29¶6-7,30¶1,30¶5,30¶8,30¶20, 30¶25,31¶9-10,32¶17-19,34¶23-24,35¶16-17,36¶1-4,36¶13-14).

Throughout the hearing (e.g. R.135:18¶10,18¶19,33¶9,35¶2), Elizabeth and her attorney referenced Exhibit-G (P-App.137)(R.139:19). The Judge disregarded/dismissed its contents (R.119:2)(P-App.86-112)(R.135:18¶20-21,33¶13-18,35¶21-25,44¶2-5), though Elizabeth recited some of it (P-App.104)(R.135:36¶5-18).

Attorney Vesely noted, "**Mr. Fitzgibbon's credibility is…recalling something that he…said he didn't recall**" (P-App.115)(R.135:47¶5-11).

The Judge responded, "**I hold that against both of them**" (P-App.115)(R.135:47¶12-13).

Attorney Vesely asked, "are you denying then the…motions?" (P-App.115)(R.135:47¶16-25)

The Judge replied, "…**as to** [§806.07(1)](h)**, I'm granting it,** but that was the purpose of the hearing today…there is a need to clarify, but I'm not finding any of the provisions void…unenforceable, again, because **I'm attempting, through contract law, to reconstruct what the parties agreed to…the memorialization of that agreement…is what I accomplished today**." (P-App.116)(R.135:48¶1-24)

Attorney Vesely asked, "you are...**utilizing...**[§806.07(1)](**h**)**?"** (P-App.117)-(R.135:49¶1-3).

The Judge affirmed, "**Correct**...**we have a starting point to...probably...more litigation**." (P-App.117)-(R.135:49¶4-19).

The court created/ordered two Amended ("Mar**ti**al",R.127:10) MSAs and two back-dated Amended Judgements (R.120,R.121,R.122,R.126,R.127) ("**6Jan2023-Documents**"). Lacking agreement (P-App.174)(R.175:7¶11), all signatures (Adam/Elizabeth/CSA/FCC) were replaced by, "*As ordered by the Court to reconstruct the [MSA] that was lost...*".

On January 31, 2023, Attorney Vesely filed a Motion to Reconsider (P-App.119-129)(R.139:1-11), stating **Elizabeth disagreed that the 6Jan2023-Documents memorialized their stipulated agreement** (P-App.122)(R.139:4¶7) and re-appended the Exhibits (P-App.130-145)(R.139:12-27) cited in the December 31 filing (R.112)(R.116) referenced throughout the January 6, 2023 hearing.

On February 16, 2023, Elizabeth filed a Motion for Relief (R.146-147) but later withdrew this Motion, though her Affidavit remains relevant.

Adam sought enforcement of the 6Jan2023-Documents seeking to compel Elizabeth to relinquish the marital residence. She refused.

On March 30, 2023, Elizabeth was found in contempt, ordered to pay damages, and transfer the marital residence (R.165)(R.168).

On April 3, 2023, **Adam admitted that the Court did not recreate the lost MSA** (R.166:1), making new property division claims. Elizabeth rebutted (P-App.149-158)(R.174:1¶2,4¶14b,5-6¶18-19,10¶22) and refuted (P-App.150-151)(R.174:2-3¶10)(P-App.194)(R.177:4) Adam's claims (P-App.149)(R.174:1¶3).

Elizabeth showed Adam's latest claims of the 6Jan2023-Documents' inaccuracy: "*judge keberlein...was his ruling perfect 'no' I was supposed to get...*" (P-App.160)(R.174:12)(P-App.150)(R.174:2¶4)

On April 12, 2023, the Motion to Reconsider (R.139) was denied (R.190:2).

Meanwhile, Elizabeth sought a truce to stave off spiraling conflict/litigation (P-App.169-170)(R.175:2-3¶5-6), filing a Motion to Stay (R.175-177) the 6Jan2023-Documents, then her Appeal (R.180-183).

On May 30, 2023, the court denied her Motion to Stay (R.176).

On May 29, ***2024***, via summary disposition, the appellate court affirmed the circuit court's decisions. On June 18, 2024, Elizabeth filed a Motion for Reconsideration, which the appellate court promptly denied.

Despite duress, Elizabeth has avoided (P-App.44)(R.112:4) accepting the imposed, inequitable, and inaccurate "stipulated" 6Jan2023-Documents' benefits, including property and child support. Both litigants remain in their 2018 pre-divorce situation (e.g. jobs, homes, custody, shared bank account, shared mortgage). Elizabeth has adopted/enforced only the few DAR-captured, court-ordered terms for A.J.F. who could not wait years for MSA resolution (P-App.169)(R.175:2¶5).

ARGUMENT

Every Wisconsinite can divorce if their marriage is irretrievably broken (§767.315). The two procedural paths can be summarized as either stipulated (§767.34(1)) or contested (§767.35(1)). **Neither path was followed for the Fitzgibbons, nor ever achieved retroactively via remedy, so the parties are improperly divorced.**

The two issues that follow arise from Order (R.125), with a two-part decision. First, the circuit court denied in part Elizabeth's Motion for Relief from (and Declare as Void) the Original Judgment. Second, the court granted in part the same Motion using §806.07(1)(h) to justify the court creating, then ordering, an Amended Judgment and MSA without the parties' consent.

I. A stipulated divorce (§767.34) can only be granted following a court's approval of a proposed MSA paired with the divorcing parties' consent, so the Fitzgibbons' February 7, 2022 divorce was (and remains) improper/invalid.

A: The lower courts conflict in claiming that the lost MSA existed on February 7, though both courts erred.

The appellate court erred in claiming, "neither party disputes that a document reflecting the parties' stipulated agreement existed as of February 7". *See* ***Elizabeth Anne Fitzgibbon v. Adam Paul Fitzgibbon***, No. 2023AP000611, unpublished op. (WI App May 29, 2024) (henceforth:"***EFv.AF***-2023AP0611") at ¶12. No such dispute was necessary.

All agree that the HE Amended MSA existed, but it was never in the Record (**digitally**). None argued (and nothing confirms) that the HE Amended MSA **still** existed as of the February 7 divorce hearing. All evidence suggests that the HE

Amended MSA was in all forms destroyed by February 7, both **physically** (shredded (R.91:3¶12)) and **mentally** (forgotten by Adam/Elizabeth (R.20); unknown to FCC Bermingham (R.32)).

However, the circuit court argued that the HE Amended MSA remained in the Fitzgibbons' "minds". The appellate court agreed. Both erred.

The Record shows that FCC Bermingham never filed an MSA Checklist (R.14) for the HE Amended MSA, as he did with the Original MSA. On April 26, FCC Bermingham even admitted that he could not recall ever seeing the HE Amended MSA or taking notes on it. Undoubtedly, the HE Amended MSA was destroyed before February 7; neither litigants, nor Judge, nor FCC argued otherwise.

The circuit court correctly viewed "the mistakes of the clerk of the courts or court commissioner...losing the MSA" (R.135:8¶19-22), which meant that the HE Amended MSA (as a written document) did not exist **in court** on February 7. The Judge noted, "Commissioner Bermingham has one [MSA]...that doesn't have the handwritten notes, the [Fitzgibbons a]re answering yes to what they believed were their handwritten notes", which Elizabeth's counsel confirmed (P-App.92)(R.135:24¶15-25).

However, the circuit court erred in claiming that the lost MSA was preserved in the Fitzgibbons' minds during the February 7 hearing. (This will also be shown to be irrelevant.)

After much debate, on April 26, the Fitzgibbons swore to FCC Bermingham that they could not recall the lost MSA's details sufficiently enough to recreate it. Seven months later, they reiterated that they could not recall the changes made to the Amended MSA (R.136:23¶11-13,25¶2-17).

On December 20, the Judge acknowledged that "there may be some confusion or misunderstanding about" the lost MSA, but ".**you should be pretty close"** (R.137:13¶2-9).

Such "confusion or misunderstanding" was material, given the Fitzgibbons' diverging actions (R.59:3¶14)(P-App.170-172)(R.175:3-5¶8) even prior to their receiving the incorrect/unintended MSA (R.19) from the court. This demonstrated that even if there had ever been a "meeting of the [Fitzgibbons'] minds" (e.g. January 28), the terms were either misunderstood when co-signing or significantly forgotten on both financial and custodial matters by February 7, as Elizabeth's April 5 letter (P-App.25)(R.20) documented. Whether opportunistic or mistaken, Adam insisted on the Original MSA's property details (R.27) but disputed (R.23)(R.26) placement allocation, child support, placement schedules, vacation, travel, holidays, school choice, insurance, uninsured costs, and variable expenses. Failed (R.38) court-ordered mediation further confirmed severe disagreements over the HE Amended MSA remembered terms.

On January 6, 2023, the assigned homework (R.137:13¶15-19) and the Fitzgibbons' testimony conflicted. Adam's FDS (R.12), subsequently filed claims (R.106)(R.174:3¶10,4¶14b,5-6¶18), and past testimony all contradicted each other. **Using the Judge's own "pretty close" criteria, the evidence counters the circuit court's claim of a February 7 MSA existing even in their minds.**

While the circuit court considered Elizabeth's Motion to Reconsider (R.140), both Fitzgibbons filed statements (R.139:3-6¶7-8,10¶10)(R.166:1)(R.174:12) that the circuit court had **not** accurately "reconstructed" the HE Amended MSA.

Elizabeth honored her believed agreements before and after they were confirmed by the FCC on April 26 (R.32), but no other written agreement existed for her to honor or enforce. Critically, DAR-captured custodial agreement details mirror those of a separation agreement; **no property division specifics were**

reviewed or agreed (P-App.28)(R.39:2¶11-13)(P-App.147)(R.146:2¶6). Other essential terms were either not agreed, were proxied (e.g. bundles, overpayment), or were insufficiently-descript and unenforceable (e.g. A.J.F. placement schedule (P-App.180)(R.175:13¶15a)), so the sparse DAR details were as insufficient for representing an MSA as were the Fitzgibbons' memories, and no combination of minds or records confirmed that "all material issues" were ever "resolved".

To avoid fraud and misunderstanding resulting from oral testimony (January 6, 2023 and February 7 DAR), the Statute of Frauds requires every agreement be written "that by its terms is not to be performed within one year" or is "made upon consideration of marriage" (§241.02(1)). Clearly, the Fitzgibbons' MSA qualifies, as the final nuptial/marital agreement the couple could make (divorce) and included decade-long joint custody terms as well as specifies real estate considerations.

In summary, all **only** agree that the HE Amended MSA last existed on January 28, when Elizabeth submitted it to the Clerk of Courts' office.

B: Both lower courts ignored that the FCC's approval of the HE Amended MSA was required for the stipulated divorce, as the FCC is required in a "meeting of the minds" that transforms a litigants' proposal into an ordered, enforceable "Judgment with MSA" as a stipulated divorce memorialization.

Both courts ignored this Court's past guidance: "not all stipulations in divorce proceedings are contracts, but '**contractual obligations arise only in situations where the court expressly refers to and approves a formal agreement between the parties**'" *See* ***Pulkkila v. Pulkkila***, 391 Wis.2d 107,125-126 (Wis. 2020)(quoted source omitted).

Both courts misapplied §767.34(1), which states, "parties in...divorce may, **subject to the approval of the court**, stipulate" and §757.69(1)(p)1. that defines the **FCC's approval role, pursuant to various requirements and restrictions** (e.g. §757.69(1)(p)1.,§767.34(2),§767.41,§767.511(1m),§767.513,§767.61).

Neither court argued that the parties were divorced on January 28 (when the Fitzgibbons signed/submitted the HE Amended MSA), though the courts' opinions diverge afterward.

The appellate court inaccurately stated that the FCC had incorporated "the 'fair and reasonable'...Original MSA into" the Fitzgibbons' "judgment...rather than the Hand-Edited Amended MSA" (***EFv.AF***-2023AP0611 at ¶4-5).

The appellate court continued, "'both [Adam and Elizabeth] signed'–in other words, approved–this MSA" (on January 28), citing §807.05:

> "binding stipulations 'made in court...and entered in the minutes or recorded by the reporter, *or made in writing and subscribed by the party to be bound thereby*'"(*appellate court emphasis*)(***EFv.AF***-2023AP0611 at ¶13)

Combined, the appellate court decided that the Fitzgibbons' approval and submission of their own **proposed MSA** (regardless of its terms/content) was sufficient for the FCC granting their stipulated divorce and incorporating **a significantly different MSA** (as invalid as the replaced/voided Original MSA, or even a ham sandwich wrapper) into the Fitzgibbons' divorce judgment **via judicial discretion**, satisfying the appellate court's argued requirements of §767.34(1) and §807.05. **To the appellate court, the Fitzgibbons' HE Amended MSA was irrelevant to the stipulated divorce; only the FCC's decision to grant their divorce was critical**. This is error, as it ignores the aforementioned **FCC's role, requirements, and restrictions** in granting a stipulated divorce.

The circuit court had conceded (*See supra* Argument I.A.-I.B.) that the FCC never reviewed or approved the Fitzgibbons' HE Amended MSA. However, in conflict with the appellate court, **the circuit court argued that the FCC's approval (and "mind" in the meeting) was irrelevant, while the Fitzgibbons' HE Amended MSA (and any alterations they stipulated during their February 7 hearing) was critical.** This is also error, as it again ignores the aforementioned **FCC's role, requirements, and restrictions** in granting a stipulated divorce (albeit for reasons different from the appellate court).

First, the circuit court chose to neither depose nor include the now-retired/unemployed FCC Bermingham in the January 6, 2023 hearing. This was not oversight, as on November 16, the Judge discussed deposing (already-retired) Bermingham with the litigants. Attorney Vesely stated, "it may be necessary to take the deposition of Court Commissioner Bermingham, just to get the record" (R.136:4¶3-5). Attorney Culp added that, had the FCC "recognized that if there was any issue in dispute, he was not authorized and would not have gone forward and granted a judgment of divorce" (R.136:6¶6-9).

Excluding FCC Bermingham on January 6, 2023, the circuit court sought:

> "**a memorialization of what was agreed to**, that the parties swore that they reviewed, that they agreed to, that they drafted...**There was a contract... There was a meeting of the minds when the two drafted with handwritten notes on an MSA and...submitted it**" (R.135:10¶13-21).

To the circuit court, **though the divorce was granted on February 7, a contract was formed on January 28, during the meeting of the minds involving only Adam and Elizabeth Fitzgibbon.** The Judge continued:

> [The Fitzgibbons] "both said they were **in the same place, that they made handwritten notes, and that they made changes, and that they looked at**

it, and <u>that they filed it in triplicate</u>. So what's the proof that they didn't have a meeting of the minds?" (R.135:22¶12-17).

The Judge knew the FCC was uninvolved in those activities that defined the circuit court's view of a "meeting of the minds".

So important to the circuit court was re-creating and retroactively ordering a recreated/reconstructed MSA that the Judge cleared his calendar, stating, "we have the whole afternoon and evening if we need." (P-App.71)(R.135:3¶14-15) In apparent consideration of any additional oral stipulations to that agreement made during the hearing, the Judge reinforced, "the need here is...to find out what that original agreement from February 7...was." (R.135:17¶16-19).

Having acknowledged that the FCC had neither reviewed nor approved (including fair/equitable) the HE Amended MSA, the Judge again ignored FCC Bermingham's role by reminding the January 6, 2023 participants, "We're doing only the MSA that they agreed to...**Not if it's fair.**" (R.135:25¶21-23). The Judge viewed "fair" as a measure made by the Fitzgibbons, skipping the FCC's evaluation (and the Judge's).

Regardless, the circuit court did not view the FCC's approval of the HE Amended MSA as required and that the FCC's mind was not required in a "meeting of the minds".

To recap: the appellate court viewed the HE Amended MSA as essentially irrelevant to the stipulated divorce and viewed the FCC's role to grant was critical, while the circuit court viewed the FCC role as essentially irrelevant, but the HE Amended MSA was critical. Both lower courts viewed the HE Amended MSA as "binding" on the Fitzgibbons effective January 28. Both courts erred. The statutes (e.g. §757.69(1)(p)1.,§767.34(2)) are clear on the FCC's role, requirements, and restrictions in reviewing and approving the litigants' MSA,

thereby transforming it during the hearing into a stipulated divorce memorialization incorporated into the Judgment. Further, the FCC was a required "mind" that must agree in a "meeting of the minds" during the Fitzgibbons' courtroom hearing. Among other matters, before a stipulated divorce could be granted, the FCC was to determine:

> "whether a judgment of divorce...shall be granted if...**all material issues, including but not limited to division of property or estate, legal custody, physical placement, child support, spousal maintenance and family support, are resolved**." (§757.69(1)(p)1.)

The FCC could not possibly determine this without at least first reviewing the litigants' submitted, written HE Amended MSA.

Both lower courts decisions conflict with this Court's unambiguous support of the FCC's role, requirements, and restrictions:

"**A stipulation between the parties to a divorce action is only 'a recommendation'**", and **a "stipulation or agreement amounting to no more than an understanding of what the parties...recommend to the court does not rise to the dignity of a contract**." – ***Norman v. Norman***, 117 Wis.2d 80,81, 342 N.W.2d 780 (1983)(quoted source omitted). Until approved by the FCC, the HE Amended MSA amounted to nothing more than an understanding of what the parties recommended to the court and was **not a contract**. The HE Amended MSA was only an informal, non-binding memorandum of Adam's/Elizabeth's January 28 **household meeting**.

On February 7, FCC Bermingham failed his **"serious duty...to determine if the**[Fitzgibbons] **understand the provisions and the effect of the** [HE Amended MSA] **agreement...There is no such thing in this state as a divorce by consent or agreement**." – ***Conrad v. Conrad***, 92 Wis.2d 407,415-416, 284 N.W.2d 674

(1979)(quoted source omitted). Indeed, the DAR confirmed the Fitzgibbons' general consent, but without the HE Amended MSA, requirements go unmet (e.g. §757.69(1)(p)1.,§767.34(2)) for a stipulated divorce (e.g. property disposition).

Some MSAs are not simply between two parties; the State has interests (e.g. §767.205(2)) and the court is the State's representative third party (P-App.185)(R.175:18¶15i)("authorized entity")(§767.205(2)(a)2.)(§822.02(6)). Case law affirms this, as §767.57(1)) (previously §767.29(1)) "...reflects legislative concern..." **making "the [FCC] an arm of the state**...§785.03(3)" – ***Biel v. Biel***, 130 Wis.2d 335,338, 387 N.W.2d 295 (1986). This Court clarified: "Marriage is not simply a contract between two parties...**the state has a special interest...and**...**the spouses...contract in the shadow of the court's obligation to review the agreement on divorce**" (***Button v. Button***, 131 Wis.2d 84,94). Further, "**approval of such agreements is necessary to uphold the active third-party interests which the state has in divorce cases**" (***Ray v. Ray***, 57 Wis.2d 77,84 (1973)).

Without a judicial officer's review and approval of the MSA, no stipulated divorce can occur.

C: Both lower courts ignore that no FCC reviewed and approved the HE Amended MSA before or on February 7.

Even if one accepts an argument that the MSA was a binding contract entered into on January 28 (countering Argument I.B., particularly ***Ray*** and ***Norman***), none argued that the FCC approved the HE Amended MSA (P-App.170)(R.175:3¶7).

FCC Bermingham had retired before the 6Jan2023-Documents were created.

No court has argued otherwise.

The lower courts erred in claiming the divorce occurred without the FCC approving the HE Amended MSA (*See supra* Argument I.B.).

D: The Fitzgibbons were never properly divorced on February 7 or at any point afterward.

An FCC can only grant divorces if "all material issues...are resolved" (§757.69(1)(p)1.). Elizabeth's Motion (R.40) confirmed material issues remained (P-App.28)(R.39:2¶11-13) and MSA/memorialization deficiencies existed (P-App.121)(R.139:3¶6).

Recognizing the improper divorce, FCC Bermingham had scheduled the first of **three "Default Divorce"** hearings (May 23-September 9), but the FCC retired prior to reviewing and approving the "reconfigured" MSA he ordered the Fitzgibbons to file.

In July, FCC Krueger (replaced the retired Bermingham) expressed confusion, "I am not sure how this is scheduled for a Default Divorce" before erring, "since these parties are in fact divorced."(R.49:1¶2-3)

On September 9, FCC Rust was to hear the Fitzgibbons' stipulated Default Divorce after approving their MSA, which was never submitted (P-App.180)(R.175:13¶15b). Instead, the minutes (R.64) state, "**unless the circuit court reopens the divorce** based on the pending motion [(R.39-40)] certified...", showing that **FCC Rust misunderstood the parties' divorce deficiencies/invalidity** was the genesis for that day's hearing.

Entering the January 6, 2023 hearing, the Fitzgibbons were improperly divorced (separated, but still married). The Original Judgment with MSA (R.19) should be void ab initio.

II. Without litigants' explicit consent, judges lack authority (§806.07(1)(h) discretion and/or inherent) to create, backdate, and retroactively order (6Jan2023-Documents) a Commissioner's grant of a stipulated divorce (Judgment and MSA) amidst disputes and conflicting testimony.

Elizabeth's Motion (R.39-40) heard on January 6, 2023 provided a clear path forward: find and declare the improper divorce void and compel co-creation of another MSA for a stipulated divorce, or a contested divorce trial. Instead, the hearing, decisions, and resulting ordered materials (6Jan2023-Documents) suffered from categorical errors.

First, the circuit court failed to recognize (as did the appellate court) the Fitzgibbons' valid status (separated, but still married), operating under an improper and invalid divorce judgment, because they could neither re-create the lost MSA, nor successfully negotiate a reconfigured MSA.

Second, in disagreement with both lower courts, MSAs are not standard contracts and cannot be created (or reconstructed) and ordered as such. Protected by the Statute of Frauds, MSAs must be written and be shielded from self-serving erroneous oral testimony. Reconstructing one from oral testimony invalidates these protections, requiring the parties to again consent to the MSA for that MSA to be eligible for the court's review and approval. Incredible testimony, paired with large unresolved inconsistencies, generated an MSA that neither party agreed was a reconstruction of the lost MSA. Further, Elizabeth objected to this court-created MSA as inequitable. This did not occur, so reopening the divorce and conducting a full trial was necessary to resolve the disputes.

Third, assuming for the sake of argument that the court-created MSA had been approved by the litigants, the court-created MSA must still follow stipulated

divorce review and approval processes. This did not occur, so no divorce could be granted without a full trial. Both lower courts ignored this.

Fourth, the circuit court erred (and the appellate court affirmed) the use of judicial discretion to override all facts, fair processes, controls governing official documents, and the litigants' consent. This must be error, though the lower courts disagree and believe it just.

First: The lower courts failed to recognize the Fitzgibbons' valid status on January 6, 2023.

Entering the hearing, the Fitzgibbons were improperly divorced (separated, but still married). Since the April 26 FCC Bermingham hearing, they had been temporarily operating under the known-invalid Original Judgment with MSA (R.19) until they could co-create a reconfigured MSA. Failing to achieve a new MSA, Elizabeth's Motion (R.39-40) sought to compel Adam toward a valid divorce.

On January 6, 2023, rather than declaring as void the clearly erroneous Original Judgment with MSA (R.19), the Judge conceived and described the ethereal, undocumented Judgment with MSA (existing only in the Fitzgibbons' minds) that governed the divorce, "I still don't even know what the judgment is because we don't have a written memorialization of it". This was error (*See* Argument I), despite the appellate court's implicit affirmation.

The circuit court set about questing "what was agreed to." (R.135:8-11)

Second: MSAs are not standard contracts and cannot be (re-)created and ordered as such.

Referencing §806.07(1)(h), "there's another solution, and that's what I've been trying to push the parties toward". The Judge pushed, reneging the April 26 and November 16 commitments ("Court...to not get involved in...forcing...negotiations").

The Judge shared ***Ronald J.R. vs. Alexis L.A.***, 2013 WI App 79,¶11-13, 834 N.W.2d 437, presumably only to reveal the Judge's perspective that a valid MSA existed. (P-App.77)(R.135:9¶15-23).

The Judge next cited ***Thoma vs. Village of Slinger***, 2018 WI 45,¶30, 381 Wis.2d 311, 912 N.W.2d 56: "under [§806.07]**1(h)**...**the Court should...decide the truth or falsity of the allegations.**" The Judge misapplied ***Thoma***.

The court had already confirmed the truth of the allegations made April 26/November 16 (R.32)(R.136)(R.123) and the Judge agreed on December 20 (R.137:8¶8-10). These were simply that court mishaps improperly ordered the Original MSA (*See supra* Argument I,II.A.).

However, after declaring that this case's "extraordinary facts" (P-App.78)(R.135:10¶12-13) justified using §806.07(1)(h), the Judge shifted ***Thoma***'s meaning, focusing on Adam's newfound allegations of disputed terms within the lost MSA. Adam had disregarded the April 26 agreement/order (R.32)(R.93) and distracted attention from it by misrepresenting the case (R.44)(R.57-58)(R.93:1-2)(R.101)(R.136:15¶12-21). The Judge misguided the hearing toward recreating/ordering the lost MSA and blocked the hearing's Motion (R.40) from providing proper remedy via voiding, reopening, and driving divorce resolution via negotiation/trial (P-App.121)(R.139:3¶6)(P-App.174)(R.175:7¶10-11).

The appellate court affirmed that ***Thoma*** supported using §806.07(1)(h) under "extraordinary circumstances" and affirmed the circuit court's shift in ***Thoma***'s meaning to justify reopening the judgment of divorce (which never happened) to "clarify" the lost MSA's terms. Reusing ***State ex rel. M.L.B. v. D.G.H.***, 122 Wis.2d 536, 363 N.W.2d 419 (1985) the appellate court affirmed the Judge's unchecked discretionary power:

> "...**the court shall decide what relief if any should be granted...and upon what terms**." ***M.L.B.***, at 557.

Affirming the circuit court's appropriate use of discretion, the appellate court added:

> "Once [Elizabeth] invoked the [circuit] court's discretion under §806.07 to amend the decision, the court had the power to correct it to the disadvantage of [Elizabeth]..." *See* ***Anchor Sav. & Loan Ass'n v. Coyle***, 148 Wis.2d 94,106, 435 N.W.2d 727 (1989).

However, §767.34's unambiguous language limits courts' authority to only approving/rejecting stipulated agreements. These oust/bypass no court and undermine no public policy because if parties cannot reach agreement, processes exist to iteratively (stipulated) or immediately (contested, §767.35) revise terms to fulfill all requirements that a proposed MSA missed. Expediency must subordinate to the divorcing litigants on whether to stipulate (fair negotiation, known outcome, unknown timeline) or contest (fair trial, unknown outcome, known timeline). Either "shall" provisions of §767.61 subordinate to §767.34, or stipulated is indistinguishable from contested (foreshadowing Justice Bradley's warning; *See infra* Conclusion).

By April 26, the **court knew (P-App.26)(R.32:1) that no reliable basis of financial fact existed**. On January 6, 2023, Elizabeth's filings sought to supply this information (P-App.137)(R.139:19-**Exhibit-G**)(R.103:2), totaling $288,875, but

refrained from claiming specific allocations or accuracy ("should be further validated", "best understanding"). Adam's numbers (R.106) totaled $199,500.

Afterward, all specific testimony should have been deemed incredible (P-App.115)(R.135:47¶12-13), yet the court solicited guesses (P-App.181-183)(R.175:14-16¶15e), targeting, "**a starting point to...more litigation**" (P-App.117)(R.135:49¶4-19). Incongruent with a stipulated divorce free of unresolved material issues, this approach was error.

Elizabeth declined guessing (P-App.174)(R.175:7¶12).

Adam sought/claimed specific terms, but his assets, bundles, values, totals, and overpayments conflicted.

The circuit court should have estopped Adam's wavering statements/conflicting claims (or found Adam contemptuous (§785.03(2))). "A party who...consents to...the decree is estopped to question its validity, especially where he has obtained a benefit from it." ***Bliwas v. Bliwas***, 47 Wis.2d 635,640(quoted source omitted). Observing ***Rintelman v. Rintelman***, 118 Wis.2d 587,596, 348 N.W.2d 498 (1984), the Fitzgibbons entered into their April 26 agreement freely and knowingly. Both were to equally participate, but Adam refused. Pursuing unjust enrichment, Adam sought release from the April 26 agreement via delays, re-asserting that the Original MSA was valid (R.27)(R.93:1-2)(R.101) and declaring that his memory returned, which is inconsistent with the facts and the FCC's order (must "co-create a reconfigured MSA"), which Adam agreed were true.

Instead, the court continued using dubious information, dismissing its statutory duty of care. "Once spouses have filed for divorce...additional judicial oversight is necessary to ensure that the needs of the parties are met. §767.10(1)

[now: §767.34] embodies these concerns" – ***Van Boxtel v. Van Boxtel***, 2001 WI 40,¶24, 242 Wis.2d 474, 625 N.W.2d 284.

Contrary to the appellate court's criticism, Elizabeth need not identify "*a single term*" (D.14¶22) to know the 6Jan2023-Documents are inequitable/inaccurate, as both Adam and Elizabeth (P-App.128)(R.139:10¶10)(P-App.147-148)(R.146:2¶5,3¶6L)(P-App.187-188)(R.175:20-21¶16) claimed material (directionally certain, but specifically uncertain/wavering) financial shortfalls (inequitable or substantively unfair) from the 6Jan2023-Documents.

The court erred in ignoring that litigants only consent to an MSA as an entire set of specific terms. Elizabeth noted other issues (P-App.152-154)(R.174:4¶14a,5-6¶18) in the 6Jan2023-Documents. The court disregarded property list differences (R.106)(P-App.137)(R.139:19-Exhibit-G), knowing (P-App.44)(R.112:4)(R.116)(P-App.87)(R.135:19¶2-8) it lacked the full "inventories" (***Omernick v. Lepak***, 112 Wis.2d 285,291, 332 N.W.2d 307 (1983)) necessary to either verify/adopt an equitable stipulated agreement or properly divide property in a trial, as well as "overpayment" facts that necessitated knowing all details to reach (R.106)(P-App.122)(R.139:4¶8)(P-App.177-179)(R.175:10-12¶14) reasonable inferences (e.g. packages, specific assets – for sentimental, tax, convenience, and cash-flow reasons), and a logical conclusion (e.g. negotiation trends, R.112:2-3) of not only what the lost MSA could have been but if it or any future MSA was equitable. Only the lost HE Amended MSA encapsulated such specific asset considerations.

The court also erred in arbitrarily dividing only some assets (e.g. brokerage accounts), dismissing others (P-App.137)(R.139:19-Exhibit-G), ignoring value discrepancies, and failing to validate each MSA term. **Court-ignored assets have unclear remedy, since the court/State becomes the counterparty that inhibited proper consent.**

Regardless, the Judge created/ordered the 6Jan2023-Documents, primarily from Adam's testimony. This was error (P-App.176-179)(R.175:9-12¶14)(146:2¶6h).

Both proactively ("guess...then defend" R.116)(P-App.115)(R.135:47¶10-11) and reactively (P-App.121-122)(R.139:3-4¶7)(P-App.179-185)(R.175:12¶15,16-18¶15h), Elizabeth objected to the 6Jan2023-Documents as ineffective, inaccurate imitations of the HE Amended MSA, erroneously incorporating oral modifications to draft, approved-by-nobody, non-contract paperwork (R.22).

§241.02(1) specifically exists to safeguard critical agreements from:

> "To permit oral proof of an alteration would...expose the contract to all the evils which the statute is intended to remedy...where the parties have failed to put sufficient of the agreement in writing to comply with the statute, any subsequent oral modification...is ineffective, because there is no enforceable contract to be modified." – 72 Am.Jur.2d Statute of Frauds §274 (1962)

By ignoring that the HE Amended MSA had never been court-approved (*See supra* Argument I.,II.First), as it was only the Fitzgibbons' kitchen table proposal, not a divorce memorandum, the appellate court erroneously concluded its opinion:

> "The loss or destruction of a memorandum does not deprive it of its effect...and oral evidence of the making and contents of the memorandum is admissible." RESTATEMENT (FIRST) OF CONTRACTS §216 (1932); *see also* ***Mitchell Bank v. Schanke***, 2004 WI 13,¶¶7, 42, 268 Wis.2d 571, 676 N.W.2d 849. (***EFv.AF***-2023AP0611 at ¶22)

Elizabeth detailed why the ***Mitchell Bank*** case is irrelevant in her May 29, 2024 Motion for Reconsideration. In essence, no statutory (subject to "court-

approval") requirement existed for the bank's Note, in part because the court/State were not a party to the Note, unlike the Fitzgibbons' MSA.

The circuit court further erred by sustaining its Order (R.125) after learning:

1. Elizabeth's testimony contradicted neither her nor Adam's February 7 testimony (P-App.122)(R.139:4¶8a), which mirrored each other's, negating any credibility differences (P-App.175-176)(R.175:8-9¶13).

2. Elizabeth maintained that **the 6Jan2023-Documents did not reconstruct the lost MSA** (P-App.121)(R.139:3¶5)(P-App.174)(R.175:7¶11).

3. From his scattergun assertions, Adam can support nearly any claim with prior communications...if he hides conflicting information, which Elizabeth demonstrated using his E*Trade/Voya/home values and allocations (P-App.152-158)(R.174:4¶14b,5-6¶18,10¶22).

4. Adam brazenly denied the February 7 DAR transcript (R.69:7¶10-19) and prior two MSAs stating, "**60/40 [placement] was a number you[Elizabeth] slipped in there that got past me**"(P-App.191)(R.177:1).

Countering both courts, marital contracts include divorce MSAs, and require voluntary/free agreement (***Button v. Button***, 131 Wis.2d 84,95-96), so parties (including a court/State) cannot obligate/force others into an MSA, even under the guise of "reconstructing" a MSA.

Only if all parties agreed that an MSA was a facsimile of the lost MSA could it be harmlessly branded as "reconstructed" and retroactively ordered, but both Fitzgibbons agreed that the 6Jan2023-Documents are inaccurate (not facsimiles).

For a valid stipulated divorce, Elizabeth's approval of the 6Jan2023-Documents is required, but was neither sought, nor given. The court's thrice-

repeated expectation of further litigation to correct/refine/tailor the MSA (P-App.91-93,116-117)(R.135:23¶15-23,25¶9-20,48¶9-14,49¶4-19), shows that **the court knew the MSA lacked agreement. The 6Jan2023-Documents remain unsigned**. This Court "characterized the lack of a signature not as a mistake but as a 'formal defect'" – ***S.P.N.Bank v. Ginkowski***, 140 Wis.2d 332,338-339, 410 N.W.2d 589 (1987). Further, "assent of the parties is an essential element of even the most informal agreements. The lack of it is necessarily fatal." – ***Nelson v. Albrechtson***, 93 Wis.2d 552,560-561, 287 N.W.2d 811 (1980).

No 6Jan2023-Documents are the lost MSA, and are:

1. **inequitable** (P-App.148)(R.146:3¶6j), and
2. **incomplete** (missing Exhibit (P-App.60)(R.127:11¶II.C) and custody details that only the Parenting Plan (P-App.213-228)(R.192-193)(R.215) patched).

Procedurally/substantively unjust, **all 6Jan2023-Documents should be void ab initio**.

Third: The Fitzgibbons, with their new MSA, must still follow stipulated divorce review and court-approval processes, or a trial must be conducted. Both lower courts ignored this, so no valid divorce has (yet) occurred.

No judicial officer has **ever** reviewed the 6Jan2023-Documents to ensure they comply with the FCC's role, requirements, and restrictions (*See supra* Argument I.B.), including equitability (substantive fairness), so no divorce has occurred. The Fitzgibbons still need to agree on an MSA, propose it to the court, and gain a proper stipulated divorce (or undergo a contested trial if not).

On January 6, 2023, the Judge said of the lost HE Amended MSA, "I don't...need...to relitigate...**fair**" (P-App.78-79)(R.135:10¶16-25,11¶1-12), and explicitly denied deciding, "**if it's fair**" (R.135:25¶21-23).

§767.61(3)(L) states, "[No] written agreement...concerning...property distribution...**shall be binding where the terms of the agreement are inequitable as to either party**." Further, ***Button v. Button***, 131 Wis.2d 84,89 stated of §767.255(11)(now §767.61), "an agreement is **inequitable**...if it fails to satisfy...the substantive provisions...dividing the property...are fair to each spouse."

The appellate court erred by ignoring the circuit court's failed obligation to review and approve the 6Jan2023-Documents, including their equitability. Apparently, even amidst disputes (§757.69(1)(p)1.), the appellate court erroneously viewed §767.61(3)(L) equitability as a post-judgment issue (a "separate motion"), not a requirement of stipulated divorce. (*See* ***EFv.AF***-2023AP0611 at ¶23-24),

The appellate court erred in stating Elizabeth's February 16, 2023 Motion for Relief (R.147) was undecided. In fact, Elizabeth had withdrawn her Motion (R.147)(R.258), seeking review via her Appeal.

The appellate court erred by refraining from reviewing even the merit of Elizabeth's requested trial for the circuit court to assess equitability.

Per ***Evenson v. Evenson***, 228 Wis.2d 676,686 (Ct.App. 1999), citing ***Ray*** and ***Norman***, both Fitzgibbons should have been "free to repudiate all or part of" any MSA prior to the court's MSA review and approval and incorporation into their Judgment (e.g. R.127) of stipulated divorce, but the circuit court erred by skipping this step, depriving Elizabeth of both property and due process.

Elizabeth's varied post-judgment Motions attempted to repudiate all 6Jan2023-Documents.

Fourth: Both lower courts believe it proper and just to use §806.07(1)(h) discretion and/or inherent authority to divorce by decree, thereby overriding all facts, fair processes, controls governing official documents, and the litigants' consent. This must be error.

This Court has rhetorically questioned, "whether [806.07(1)](**h**)...gives the circuit court unlimited discretionary power..." (***M.L.B.***, at 545.) then offered limited guidance: "'Discretion'...**yields a conclusion...founded on proper legal standards**" – ***Mullen v. Coolong***, 153 Wis.2d 401,406, 451 N.W.2d 412 (1990).

Elizabeth argued that discretionary powers must exclude forcing new stipulations (P-App.183-185)(R.175:16-18¶15h) or similar (P-App.116)(R.135:48¶1-24), as §806.07(1)(h) "does not vest the court with completely **unfettered decision-making power**" (***Marks v. Gohlke***, 149 Wis.2d 750,754, 439 N.W.2d 157 (1989)).

Beyond §767.41's ("shall make...provisions") and §767.61's ("may alter...distribution") required discretion-consideration factors, §767.34's practical effect must be shielded from "**unfettered power**" amidst **competing interests** (State, expediency, or conflict exceeding de minimis, R.175:13¶15a).

Neither lower court explained how the Judge's decision to create the 6Jan2023-Documents remained within judicial authority (§806.07(1)(h) discretion and/or inherent) boundaries. Further, the circuit court acted without all other parties' explicit consent to waive the court's potential conflict of interest(s) and preferred statutory shortcuts.

Setting aside fault, the 6Jan2023-Documents claim to reconstruct the HE Amended MSA, but even failing that, they contain (P-App.174)(R.175:7¶11d-e):

1. altered writings purporting to (§943.38(1-3)) have been made by another (Bermingham/Adam/Elizabeth), at another time (on/after February 7), with different provisions (inauthentic stipulations), and/or authority of one who did not give such authority (Bermingham/Adam/Elizabeth), and

2. altered data in a formalized manner (§943.392, as clarified in §943.70(1)(f)) including altering, electronically signing, then filing Form FA-4160VA with the Clerk of Courts on January 12, 2023.

To resolve its WI Supreme Court Rule ("**SCR**") failures for records retention (SCR §72.01(11), SCR §72.02), and procedural errors following the loss of the MSA (ex. SCR §60.03), the "solution" the Judge "push[ed]" patched his employer's (Winnebago County Court's) MSA-sized clerical hole, but expanded conflict. For example, Adam promptly claimed to financial institutions that the "reconstructed" MSA had been (by court decree) signed by the Petitioner under oath (§943.39(3)). Adam then forced (R.148-149)(R.156)(R.168)(§943.60(1)) Elizabeth to defend herself (R.165) from contempt (costing her $$$$ in legal fees) for failing to provide Adam with a Quit Claim deed for the real estate in dispute (R.191). Such needless conflict is further evidenced by the ~15/month court filings for the 1.5 years since, as was foreseen (R.175:22¶20).

Compare such chaos with Elizabeth's requested solution (§757.69(1)(p)1.):

> "If the...commissioner does not approve...**the action shall be certified to the court for trial**."

Instead of a trial, the Judge exercised §806.07(1)(h)-based discretion that cannot be appropriate when (even enabling) violating/quashing various statutes (the aforementioned and §241.02(1),§767.34,§767.61,§807.05) and disregarding

court-acknowledged, unresolved "material issues" per §757.69(1)(p)1.) (*See infra* Argument I,II.First,II.Second), particularly when simple, statute-compliant options were requested and remained available. Neither court offered statute/case to argue otherwise. Such discretion undermines not only statutory marital property and process protections but also major custodial decision-making, whether school/religion choice (*See* WI Court of Appeals District 2 #2023AP001862) or military enlistment, logically empowering courts to conscript minors (Dan Bullock) into an involuntary army.

An MSA is a special kind of contract (***Button***, at 94), wherein a court acts as both the State's representative party and as an adjudicator. This creates a conflict of interest between the litigants and the Judge/court and employer/paymaster (State) with limited safeguards (e.g. SCR §60.04(1a,4d,6),§60.02), or even relief possibilities from substituting judges (§801.58), who share the same conflict. The creation of the 6Jan2023-Documents already signaled the Judge's disregard of self-disqualification criteria (§757.19(2)(b,d,g)).

To memorialize a non-agreement, the Judge risked oversights, inaccuracies, disputes, and statutory shortcuts, explaining that a court would be obliged to recreate a prisoner's conviction to justify their 83-day sentence, stating, "**if the judgment of conviction has to be re-created through all sorts of different means, that's what has to happen**." (P-App.91)(R.135:23¶7-13). The Judge excluded explaining how that prisoner could properly appeal a conviction that served judicial expediency over facts and due process. Like the prisoner, Elizabeth no longer knows who to litigate against or how, as Adam is no longer the key source of disputed terms (P-App.128)(R.139:10¶9e). Without reopening the case, the circuit court's expected litigation is assured, but remedy virtually impossible, as there is no fact-based agreement to adjudicate. Elizabeth's litigation now must challenge the foundation of the 6Jan2023-Documents, which the court itself (not Adam) adversarially defends with taxpayer funding (P-App.186)(R.175:19¶15j-k).

None have argued it was used, but inherent authority offers a parallel to §806.07(1)(h)-based discretion, whereby it is only used if "necessary" (***State v. Schwind***, 2019 WI 48, 386 Wis.2d 526, 926 N.W.2d 742). The §757.69(1)(p)1. path (reopen; conduct a contested divorce trial) was requested and available thereby barring inherent authority by having negated "**necessary**". **Such a standard seems proper to require when evaluating §806.07(1)(h)-based discretion abuse.**

Due process requires clarity of all parties and interests in every contract. The court should have explicitly disclosed itself as the State's representative party when hearing Elizabeth's declaration request (R.40)(§806.04(4)). Such party/interest identification seems mandatory for MSA-based real estate transactions (§706.02(1)).

Elizabeth proactively acted in good faith, with clean hands (§805.18(1)), and all but exhausted the potential remedies for a proper divorce that Wisconsin offers. This Court's review (or not) may conclude whether "deprivation" and "insuperable obstacles" exist (***Lynk v. LaPorte Superior Court No. 2***, 789 F.2d 554,569 (7th Cir. 1986)) and "whether [Elizabeth is] merely the victim of erroneous rulings by an individual judge [(SCR §60.03)] or whether the State...has armed its judges to deny state-created rights of liberty or property on irrational grounds irremediable by appeal"(***Id.*** at 567), since what is accessible remedy to most other contracts and civil statutes, state-neutral (Federal) review is inhibited by ***Ankenbrandt v. Richards***, 504 U.S. 689 (1992), so relief beyond this Court requires challenging federal jurisdiction over family law.

CONCLUSION

This case is feedstock for forming far-reaching policies, procedures, and clarifications. It pits Wisconsin public policy against judicial expediency and integrity. Lacking guidance that only this Court can provide, the lower courts' decisions conflict with each other and with Appellate and Supreme Court of Wisconsin decisions yet unite in subordinating State statutes and the Fourteenth Amendment to §806.07(1)(h) judicial discretion and/or inherent authority.

Justice Bradley's warned, "Wisconsinites beware: from this day forward, a court may at any time rewrite the terms of your" MSA (*See* ***Pulkkila v. Pulkkila***, 391 Wis.2d 107,124 (Wis. 2020)), yet the Winnebago court rewrote the Fitzgibbons' MSA *sua sponte, before anyone claimed anything "unfair".*

Review should be granted for these reasons as well as to "undivorce" the Fitzgibbons on remand, enabling their proper divorce with less conflict. ***Schafer v. Wegner***, 78 Wis.2d 127,129-130 (1977) at least began with a valid divorce.

Respectfully submitted, this 19th day of July, 2024:

By: ***Electronically Signed by Lawrence G. Vesely***

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COMBINED BRIEF & APPENDIX CERTIFICATION

All prior content of this Petition is 7,999 words encompassing the:

1. Table of Contents (§809.62(2)(b)),
2. Statement of Review Criteria and Merit (§809.62(1r) and §809.62(2)(c)),
3. Statement of Issues Presented for Review (§809.62(2)(a)),
4. Statement of the Case (§809.62(2)(d)), and
5. Argument (§809.62(2)(e)) with Conclusion.

I hereby certify that this brief conforms to the rules contained in Wis. Stat. §809.62(4) for a Petition for Review, as well as §809.19(8)(b) and §809.19(8)(bm) and §809.19(8)(g), produced with proportional serif font.

I also certify that filed with this Petition is an Appendix that complies with §809.62(2)(f) and that contains, at a minimum: (1) the decision and opinion of the court of appeals; (2) the Judgments, Orders, Findings of Fact, Conclusions of Law and Memorandum decisions of the circuit court necessary for an understanding of the Petition; and (3) any other portions of the record necessary for an understanding of this Petition.

I further certify that if the Record is required by law to be confidential, the portions of the Record included in the Appendix are reproduced using one or more initials or other appropriate pseudonym or designation instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the Record.

Respectfully submitted, this 19th day of July, 2024:

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